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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

Form 10-K

(Mark One)

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

For the fiscal year ended DECEMBER 31, 2016

Or

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

For the transition period from TO

Commission File Number: 001-36046

AXOGEN, INC.

(Exact name of registrant as specified in its charter)

MINNESOTA	**41-1301878**
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
13631 Progress Blvd., Suite 400 Alachua, FL	**32615**
(Address of principal executive offices)	(Zip Code)

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

Securities registered pursuant to Section 12(b) of the Act:	**Common Stock, par value $0.01 per share** (Title of class)
Securities registered pursuant to Section 12(g) of the Act:	**None**

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

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

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

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

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

As of June 30, 2016, the aggregate market value of the voting and non-voting common equity held by non-affiliates of the Registrant was approximately $154,307,062 based upon the last reported sale price of our common stock on the NASDAQ Capital Market.

The number of shares outstanding of the Registrant's common stock as of February 28, 2017 was 33,013,676 shares.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Registrant's definitive proxy statement for its 2016 annual meeting of shareholders are incorporated by reference into Part III of this Form 10-K to the extent stated herein. Such proxy statement will be filed with the Securities and Exchange Commission within 120 days after the fiscal year ended December 31, 2016.

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FORWARD-LOOKING STATEMENTS

From time to time, in reports filed with the Securities and Exchange Commission (including this Form 10-K), in press releases, and in other communications to shareholders or the investment community, AxoGen, Inc. (the “Company”, “AxoGen”, “we”, “our”, or “us”) may provide forward-looking statements, as defined in the Private Securities Litigation Reform Act of 1995, concerning possible or anticipated future results of operations or business developments. Words such as "expects", "anticipates", "intends", "plans", "believes", "seeks", "estimates", "projects", "forecasts", "continue", "may", "should", "will" 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 our assessment on our internal control over financial reporting, our growth, our 2017 guidance, product development, product potential, financial performance, sales growth, product adoption, market awareness of our products, data validation, our visibility at and sponsorship of conferences and educational events. 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 Form 10-K should be evaluated together with the many uncertainties that affect the Company’s business and its market, particularly those discussed in the risk factors and cautionary statements in the Company’s filings with the Securities and Exchange Commission, including as described in “Risk Factors” included in Item 1A of this Form 10-K. 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 the Company assumes no responsibility to update any forward-looking statements, whether as a result of new information, future events or otherwise.

PART I

ITEM 1. BUSINESS

General

We are a global leader in innovative surgical solutions for peripheral nerve injuries. We provide products and education to improve surgical treatment algorithms for peripheral nerve injuries. Our portfolio of products includes Avance® Nerve Graft, an off-the-shelf processed human nerve allograft for bridging severed nerves without the comorbidities associated with a second surgical site, AxoGuard® Nerve Connector, a porcine submucosa extracellular matrix ("ECM") coaptation aid for tensionless repair of severed nerves, AxoGuard® Nerve Protector, a porcine submucosa ECM product used to wrap and protect injured peripheral nerves and reinforce the nerve reconstruction while preventing soft tissue attachments and Avive™ Soft Tissue Membrane, a minimally processed human umbilical cord membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed. Along with these core surgical products, we also offer the AxoTouch™ Two-Point Discriminator and AcroVal™ Neurosensory and Motor Testing System. These evaluation and measurement tools assist healthcare professionals in detecting changes in sensation, assessing return of sensory, grip and pinch function, evaluating effective treatment interventions, and providing feedback to patients on nerve function. Our portfolio of products is available in the United States, Canada, the United Kingdom and several European and other international countries.

Peripheral nerves provide the pathways for both motor and sensory signals throughout the body and their damage can result in the loss of muscle function and/or feeling. Nerves can be damaged in a number of ways. When a nerve is cut due to a traumatic injury or surgery, functionality of the nerve may be compromised, causing the nerve to no longer carry the signals to and from the brain to the muscles and skin and reducing or eliminating functionality. This type of injury generally requires a surgical repair. The traditional gold standard has been to either suture the nerve ends together directly without tension or to bridge the gap between the nerve ends with a less important nerve surgically removed from elsewhere in the patient's own body, referred to as nerve autograft. Nerves that are not repaired or heal abnormally can form a complication called a neuroma which may send altered signals to the brain resulting in the sensation of pain. This abnormal section of nerve can, under certain circumstances, be surgically cut out and the resulting gap repaired. In addition, compression on a nerve, blunt force trauma or other irritations to a nerve can cause nerve injuries that may alter the signal conduction of the nerve and require surgical intervention or result in pain.

In order to improve the options available for the surgical repair and regeneration of peripheral nerves, AxoGen has developed and licensed regenerative medicine technologies. AxoGen's innovative approach to regenerative medicine has resulted in first-in-class products that it believes are redefining the peripheral nerve repair market. AxoGen's products are used by surgeons during surgical interventions to repair a wide variety of nerve injuries throughout the body. These injuries range from a simple laceration of a finger to a complex brachial plexus injury (an injury to the network of nerves that originate in the neck) as well as nerve injuries caused by dental, orthopedic and other surgical procedures. Avance® Nerve Graft provides surgeons an implant with the micro-architecture of a human nerve. This structure is essential and allows for bridging nerve gaps or discontinuities up to 70mm in length. Additionally, Avance® Nerve Graft has product and sales synergies with AxoGuard® Nerve Protector, AxoGuard® Nerve Connector and Avive™ Soft Tissue Membrane. AxoGuard® products provide the unique features of pliability, suturability, and translucence for visualization of the underlying nerve, while also allowing the extracellular matrix to remodel utilizing the patient's own cells. Avive™ Soft Tissue Membrane is minimally processed human umbilical cord membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed.

Regenerative Medical Products Industry

Regenerative medical products enable the repair, restoration, replacement or regeneration of tissue or organ systems of the body. Regenerative medical products are becoming common in various medical arenas because they have been shown to be effective repairing injured or defective tissues, such as bone, tendons, dermis and other tissues of the body. Surgeons utilize regenerative medical products because they can provide the complex structure required for implant integration and regeneration in the body.

We believe the primary driver of sustained growth in the regenerative medical product market is continued favorable efficacy as compared to autograft tissue and synthetic medical products, and a wider understanding of this advantage by practitioners. Repair with nerve autograft requires a secondary recovery procedure to remove tissue from another location of the patient's body to repair the injured area and results in loss of function at the site of donation. Further, nerve autograft may also be costly and time consuming and may result in complications at the second surgical site such as infection. In addition to processed nerve allograft (Avance® Nerve Graft), alternatives to nerve autograft include hollow-tube synthetic or collagen-based medical products that are designed to provide some restoration of function but may be limited by mechanisms of nerve healing and/or biocompatibility with the body. Regenerative medical products often provide more desirable conditions for reconstruction and regeneration of tissue, creating a superior solution for patients and physicians. AxoGen follows this trend, providing regenerative medical products for peripheral nerve repair.

Regenerative medicine products typically consist of and rely on:

i. A scaffold or ECM to support the cells and/or provide the architecture of the tissue; and/or
ii. Cells to regenerate or remodel the scaffold.

AxoGen's Avance® Nerve Graft, AxoGuard® Nerve Protector and AxoGuard® Nerve Connector are ECM scaffolds, and utilize the patients' own cells to remodel or regenerate these scaffolds. Avive™ Soft Tissue Membrane is a resorbable covering to keep tissue structures apart while providing the known beneficial properties of the placental membrane.

Peripheral Nerves and Their Regeneration

The peripheral nervous system, or PNS, consists of nerves that either extend outside of, or reside outside of, the central nervous system (primarily the brain and spinal cord). Peripheral nerves provide the pathway for signals between the central nervous system and target organs, regulating movement (motor nerves) and touch (sensory nerves). Therefore, if a peripheral nerve is crushed, severed, or otherwise damaged, its ability to deliver signals to the target organs is eliminated, or significantly reduced, and could result in a loss of sensation and/or motor functionality. The axon portion of the nerve cell, consisting of cell cytoplasm and resembling a hair-like fiber, carries signals from the cell body to the target organ. Axons can be quite long, even exceeding one meter, but are only a few micrometers in diameter. A typical nerve consists of hundreds of axons that lie within long, thin tubes (endoneurial tubes). Analogous to a wiring cable, these endoneurial tubes are bundled together in groups called fascicles, and each nerve may contain numerous fascicles. This sheath structure provides protection for the axons and support for regeneration in the event of injury. Nerve injury occurs when a sufficient number of axons have been crushed or transected (severed), thereby disrupting signals to the target motor or sensory organ.

Given the right conditions, peripheral nerves have the ability to regenerate. Regenerating axons require the proper environmental conditions including structure and guidance of axons in a tension and compression free environment. In an untreated severe crush injury or transected nerve, errant axons that are not guided by the nerve sheath structure, or other mechanism, can form painful and ineffective nerve proliferation (neuromas). This can then require revision surgery to relieve pain or bring back sensory and/or motor functionality. Therefore, the surgical treatment of nerve injuries is typically focused on restoring nerve functionality by providing structural guidance to regenerating axons while protecting the nerve to alleviate compression and tension.

Chronic inflammation can impair tissue regeneration and result in scarring and fibrosis that, in turn, can irritate and compress the nerve. Trauma and surgical interventions can trigger the body's repair response which can result in inflammation in the surgical arena (nerve and/or surrounding tissue). When this occurs it can compromise the surgical outcomes of nerve repair. Avive™ Soft Tissue Membrane reduces the risk of compression of tissues it covers.

Peripheral Nerve Regeneration Market Overview

Peripheral nerve injury ("PNI") is a major source of disability impairing the ability to move muscles or to feel normal sensations. Failure to treat nerve damage can, in severe cases, lead to full loss of sensation and/or function, pain

and, sometimes, amputation. Many peripheral nerve injury patients who receive treatment do not optimally recover. They may suffer from both reduced, or no, muscle strength, and reduced, or no, sensitivity and pain.

Every day patients suffer traumatic wounds to peripheral nerves severe enough to require surgical treatment, including injuries from motor vehicle accidents, power tool injuries, gunshot wounds, dislocations, fractures, lacerations, or other forms of penetrating trauma. The peripheral nerves commonly injured from these traumas include the digital, median, ulnar, radial, facial, spinal accessory and brachial plexus nerves. Traumatic PNI described herein, and excluding Oral and Carpal Tunnel defined below, is referred to by AxoGen as occurring in the "Extremity" PNI market.

Beyond traumatic injury to nerves described above, nerve damage also occurs due to surgical intervention. Some of these surgical nerve injuries can occur during dental and oral surgery procedures such as third molar extractions, placement of dental implants and removal of tumors during which an injury may be caused to one or more sections of the trigeminal nerve ("Oral"). This can result in numbness in certain areas of the face and mouth. Finally, nerves are also damaged or compromised due to compression injuries. For instance, severe and recurrent carpal tunnel cases may result in complications and damage to the nerve that requires surgical intervention and protection of the nerve. We refer to PNI caused by carpal tunnel syndrome as "Carpal Tunnel". Additional surgical procedures where nerves can be injured include the removal of cancerous tissues or reconstructive surgery. For example, nerves may be injured or removed during a radical prostatectomy to remove prostate cancer and this nerve injury may result in impotence and incontinence. Further, breast cancer patients may have reduced sensation in the tissue used to reconstruct the breast after mastectomy.

In the cases where a nerve is severed and the gap between the two ends of the nerve is extremely small, the surgeon may be able to reconnect the nerve without tension through direct suturing using a coaptation aid ("Primary Repair"). When the gap in the nerve tissue is more than a few millimeters in length, the surgeon typically needs to use material to bridge the gap between the nerve ends to ensure a tension-free repair ("Gap Repair"). Historically for a Gap Repair surgeons have relied on a nerve autotransplantation (autologous nerve grafting or nerve autograft). In nerve autograft procedures, surgeons remove nerve from another part of the patient's body, frequently the sural nerve from the back of the lower leg, to repair the damaged nerve. Nerve autografting is often effective in repairing a damaged peripheral nerve, but it presents a tradeoff — the surgeon can attempt to fix the damaged nerve but must create an additional nerve deficit at another location in the body. For example, a patient may opt to get movement and feeling back in their finger while losing some sensation in their foot. Additionally, the secondary surgery to obtain the needed nerve autograft also increases operating time, and thus medical expenses, and increases the risk of surgical site infection and other complications. In the case of extreme trauma where multiple nerves need to be repaired, it may not be possible to recover enough nerve from the patient to complete the Gap Repair. Further, nerve autograft tissue may not provide an appropriate diameter match with the diameter of the injured nerve stump, an important factor in a successful repair outcome.

Drawbacks of repair with autograft nerve eventually led to the development of hollow tube conduits, or hollow tube nerve cuffs for Primary Repair and Gap Repair made of, for instance, bovine collagen or polyglycolic acid. The nerve cuff is typically an absorbable hollow tube that, unlike natural peripheral nerve, does not have internal microarchitecture and endoneurial tubes to support regenerating axons; as a result, it is deficient in the qualities that natural nerve possesses to support nerve regeneration across a gap. Hollow-tubes may also lack pliability and structural integrity needed when used around joints and may be difficult to use in a confined space. Clinical data has demonstrated that hollow tubes are most effective when used in very short gaps, what AxoGen defines as Primary Repair, and the reliability of successful nerve recovery diminishes as gap length increases.

The shortcomings of hollow-tubes for nerve repair limit where they may be used effectively. Thus, AxoGen believes the nerve repair market needs an alternative off-the-shelf product that offer other features such as a natural ECM scaffold and three-dimensional structure of a typical nerve for bridging nerve discontinuities without the comorbidities of an additional surgical site required for harvest of autograft nerve tissue. AxoGen believes its Avance® Nerve Graft and AxoGuard® Nerve Connector products address the market needs for both Primary Repair and Gap Repair.

Compression on a nerve or blunt force trauma can also cause nerve injuries that may require surgical intervention. In these cases, the nerve is not severed and thus does not create the need for a Primary or Gap Repair. However, the

surgeon may want to protect and isolate the nerve during the healing process. In these situations nerve protection is provided by wrapping the nerve ("Nerve Protection").

AxoGuard® Nerve Protector is a porcine submucosa extracellular matrix used for Nerve Protection. Other Nerve Protection products are usually made from bovine collagen or polyglycolic acid and are typically absorbable. AxoGuard® Nerve Protector provides the unique features of pliability, suturability, and translucence for visualization of the underlying nerve, while also allowing the patient's own cells to incorporate into the extracellular matrix to remodel and separate the nerve from the surrounding tissue.

Chronic inflammation can impair tissue regeneration and result in scarring and fibrosis that, in turn, can irritate and compress the nerve. Trauma and surgical interventions can trigger the body's repair response which can result in inflammation in the nerve and/or the tissue surrounding the nerve. When this occurs it can compromise the surgical outcomes of nerve repair. Avive™ Soft Tissue Membrane can be proactively used in these surgical applications ("Proaction"). Avive™ Soft Tissue Membrane has been specifically designed as a soft tissue covering to modulate inflammation, provide a longer resorption profile to separate the tissue layers for at least 16 weeks and to provide the handling and suturability features the Company believes is favored by nerve surgeons.

Based on estimates prepared by AxoGen, it believes the United States PNI market for its current product portfolio for Extremity, Oral and Carpal Tunnel Revision is $1.8 billion (the "Market"). We estimate that the Extremity portion of the Market is approximately $1.5 billion. The estimated size of the Extremity portion of the market is based upon epidemiological studies regarding the general number of trauma patients, physician interviews and incidence of PNI in the population. AxoGen believes each year in the U.S. more than 1.4 million people suffer traumatic injuries to peripheral nerves. AxoGen estimates that traumatic injuries to peripheral nerves result in over 700,000 extremity nerve repair procedures ("Health", United States, 2011, Publication of U.S. Department of Health & Human Services; Noble, et al. J of Trauma Injury Infection and Critical Care 1998; Kurt Brattain, MD, Magellan Medical Technology Consultants, Inc., Minneapolis, Minnesota 2013). AxoGen further estimated the portion of extremity nerve repair procedures that would be addressed by AxoGen's Gap Repair, Primary Repair, Nerve Protection and Proaction products and applied the average sales price of the AxoGen product appropriate to the procedure (Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive™ Soft Tissue Membrane, respectively). As a result, AxoGen estimates that the market sizes, within the Extremity portion of the Market, for our Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive™ Soft Tissue Membrane products are approximately $668 million, $161 million, $238 million and $439 million, respectively.

AxoGen estimates that the Oral portion of the Market is approximately $129 million of the Market, based upon research that has indicated approximately 68,000 PNI occur in the U.S. each year that are related to third molar extractions, anesthetic injections and dental implants. (The Prophylactic Extraction of Third Molars: A Public Health Hazard: Jay W. Friedman, DDS, Health Policy and Ethics; Peer Reviewed; Friedman American Journal of Public Health; September 2007, Vol 97, No. 9, pp 1554 — 1559 — Journal of Oral Implantology, Vol. XXXVI/No. Five/2010; "Inferior Alveolar Nerve Injury in Implant Dentistry: Diagnosis, Causes, Prevention, and Management"; Ahmed Ali Alhassani, BDS - "Nerve Injuries after Dental Injection: A Review of the Literature"; Clinical Practice, July/August 2006, Vol. 72, No. 6, Miller H. Smith, BMedSc, DDS; Kevin E. Lung, BSc, DDS, MSc, FRCD(C)). AxoGen has applied the average sales price of the Avance® Nerve Graft and AxoGuard® Nerve Protector that address Oral PNI in order to derive the Oral portion of the Market.

AxoGen estimates that the Carpal & Cubital Tunnel portion of our market is approximately $188 million, or 118,000 procedures. According to literature, there are approximately 500,000 primary carpal tunnel and 53,000 primary cubital tunnel relief surgeries performed annually in the U.S. For carpal tunnel, AxoGen estimates that our addressable market is the 20% of carpal tunnel surgeries that require revision procedures to address the recurrence of symptoms. From the 53,000 primary cubital tunnel surgeries, AxoGen estimates that our addressable market is 18,000 of such surgeries comprised of revision and primary interventions. As a result, AxoGen estimates that approximately 100,000 carpal tunnel revision surgeries and 18,000 total cubital tunnel procedures are addressable each year in the U.S. to mitigate the recurrence of symptoms. These revision and primary surgeries are required due to compression of the nerve due to soft tissue attachments from the surrounding tissue or tissue infiltration entrapping the nerve. To prevent additional recurrences, surgeons will opt to use a Nerve Protection product such as the AxoGuard® Nerve Protector. In

order to derive the Carpal & Cubital Tunnel portion of the Market, AxoGen multiplied the average sales price of our AxoGuard® Nerve Protector by the number of estimated procedures

AxoGen continues to look at expansion markets beyond those that AxoGen has defined as Extremity, Oral and Carpal Tunnel. In addition to these areas, AxoGen believes a market exists to treat nerves that are severed during the removal of both benign and cancerous tumors. For example, nerves may be injured or removed during a surgical prostatectomy to remove prostate cancer resulting in impotence and incontinence. Further, a patient who receives repair of peripheral nerves in the breast following a mastectomy and reconstruction, may avoid the reduced sensation typically experienced by many breast cancer patients. AxoGen believes that we will continue to identify market expansion opportunities for our current product portfolio.

AxoGen's Product Portfolio

Overview of AxoGen's Products

AxoGen's proprietary products and technologies are designed to overcome fundamental challenges in nerve repair. AxoGen's Avance® Nerve Graft is the alternative to autografts and other off-the-shelf nerve repair products for nerve gaps up to 70mm in length. AxoGuard® Nerve Connector is a coaptation aid for transected nerve injuries. AxoGuard® Nerve Protector is a protective wrap for nerves damaged by compression, or where the surgeon wants to protect and isolate the nerve during the healing process after surgery. Avive™ Soft Tissue Membrane expands the surgical repair portion of the product portfolio and offers a resorbable covering to keep tissue structures apart while providing the known beneficial properties of placental membrane.

The AxoGen surgical solution product portfolio provides surgeons off-the-shelf products for a wide variety of peripheral nerve injuries.

Functional measurements play an important role in the evaluation of nerve function. It assists the healthcare professionals in detecting changes in sensation or muscle strength, assessing return of sensory or motor function, establishing effective treatment interventions, and providing feedback to the patients Standardized evaluation and measurement of nerve function is also an important part of identifying nerve injuries and determining treatment outcomes. AxoGen's functional measurement products include the AxoTouch™ Two-Point Discriminator tool (for sensory function) and the AcroVal™ Neurosensory and Motor Testing System (for sensory and motor function).

Avance® Nerve Graft

Avance® Nerve Graft is intended for the surgical repair of peripheral nerve discontinuities to support regeneration across the defect (a gap created when the nerve is severed). It is intended to act as a bridge in order to guide and structurally support axonal regeneration across a nerve gap caused by traumatic injury or surgical intervention. Avance® Nerve Graft is decellularized and sterile extracellular matrix (ECM) processed from human peripheral nerve tissue. AxoGen developed the Avance® Nerve Graft by following the guiding principle that the human body created the optimal nerve structure. AxoGen, through its licensing efforts and research, developed the Avance® process, a proprietary method for processing recovered human peripheral nerve tissue in a manner that preserves the essential structure of the ECM while cleansing away cellular and noncellular debris. Avance® Nerve Graft provides the natural nerve structure of an autograft and the ease and availability of an off-the-shelf product. AxoGen believes that Avance® Nerve Graft is the first off-the-shelf human nerve allograft for bridging nerve discontinuities. Avance® Nerve Graft is comprised of bundles of small diameter endoneurial tubes that are held together by an outer sheath called the epineurium. Avance® Nerve Graft has been processed to remove cellular and noncellular factors such as cells, fat, blood, axonal debris and chondroitin sulfate proteoglycans ("CSPG"), while preserving the three-dimensional laminin lined tubular bioscaffold (i.e. microarchitecture), epineurium and microvasculature of the peripheral nerve. After processing, Avance® Nerve Graft is flexible and pliable, and its epineurium can be sutured in place allowing for tension-free approximation of the proximal and distal peripheral nerve stumps. The design results in a product that has clean and clear pathways for the regenerating axons to grow through. During the healing process, the body revascularizes and gradually remodels the graft into the patient's own tissue while allowing the processed nerve allograft to physically support axonal regeneration across the nerve discontinuity.

With lengths up to 70 mm and diameters up to 5 mm, the Avance® Nerve Graft allows surgeons to choose the correct length for repairing the relevant nerve gap, as well as to match the diameter to the proximal and distal end of the severed nerve. The Avance® Nerve Graft is stored frozen and utilizes packaging that maintains the graft in a sterile condition. The packaging is typical for medical products so the surgical staff is familiar with opening the package for transfer of the Avance® Nerve Graft into the sterile surgical field. Such packaging also provides protection during shipment and storage and a reservoir for the addition of sterile fluid to aid in thawing the product. The Avance® Nerve Graft thaws in less than 10 minutes, and once thawed, it is ready for implantation.

The Avance® Nerve Graft provides the following key advantages:

- A three-dimensional bioscaffold for bridging a nerve gap;
- No patient donor-nerve surgery, therefore no comorbidities associated with a secondary surgical site;
- Available in a variety of diameters up to 5mm to meet a range of anatomical needs;
- Available in a variety of lengths up to 70mm, to meet a range of gap lengths;
- Decellularized and cleansed extracellular matrix that remodels into patient's own tissue;
- Structurally supports the body's own regeneration process;
- Handles similar to an autograft, and is flexible and pliable;
- Alleviates tension at the repair site;
- Three year shelf life; and
- Supplied sterile.

AxoGuard® Nerve Connector

AxoGuard® Nerve Connector is a coaptation aid used to align and connect severed nerve ends in a tensionless repair. The product is in a tubular shape with an open lumen on each end where the severed nerve ends are placed. It is typically used when the gap between the nerve ends is less than 5mm in length. AxoGuard® Nerve Connector is made from a minimally processed porcine ECM which allows the body's natural healing process to repair the nerve while its tube shape isolates and protects the injured nerves during the healing process. During healing, the patient's own cells incorporate into the extracellular matrix product to remodel and form a tissue similar to the outermost layer of the nerve (nerve epineurium). AxoGuard® Nerve Connector is provided sterile, for single use only, and in a variety of sizes to meet the surgeon's needs.

AxoGuard® Nerve Connector can be used:

- As an alternative to direct suture repair;
- To relieve tension at the coaptation site of severed nerves;
- To aid coaptation in direct repair, grafting, or cable grafting repairs;
- To reduce the risk of forced fascicular mismatch; and
- To reinforce the coaptation site.

AxoGuard® Nerve Connector has the following advantages:

- Minimally processed porcine submucosa extra-cellular matrix product used to repair severed nerve tissue;
- Alleviates tension at the repair site;
- Remodels into the patient's own tissue instead of degrading;
- Reduces the number of required sutures (versus direct repair with suture) allowing for up to 40% reduced surgery time (Boechstyns, Jhand Surg. 2013;38:2405-2411);
- Moves location of sutures away from the coaptation face;
- Reduces potential for fascicular mismatch;
- Allows visualization of underlying nerve tissue;

- Available in seven different diameters and two different lengths to address a variety of nerve repair situations;
- Conforms to the nerve;
- Strong and flexible, easy to suture; and
- Stored at room temperature with an 18-month shelf life.

AxoGuard® Nerve Protector

AxoGuard® Nerve Protector is a product used to protect and wrap injured peripheral nerves and reinforce reconstructed nerve gaps while preventing soft tissue attachments. It is designed to protect and isolate the nerve during the healing process after surgery by creating a barrier between the nerve tissue and the surrounding tissue bed. The product is delivered in a slit tube format allowing it to be wrapped around nerve structures. AxoGuard® Nerve Protector is made from a minimally processed porcine ECM. During healing, the ECM remodels allowing the protector to separate the nerve from the surrounding tissue. AxoGuard® Nerve Protector competes against off-the-shelf biomaterials such as reconstituted collagen as well as the use of the patients own tissue such as vein and hypothenar fat pad wrapping. AxoGuard® Nerve Protector is provided sterile, for single use only, and in a variety of sizes to meet the surgeon's needs.

AxoGuard® Nerve Protector can be used to:

- Protect injured nerves or nerve repair sites from surrounding tissue;
- Minimize risk of soft tissue attachments and entrapment in compressed nerves;
- Protect nerves in a traumatized wound bed; and
- Reinforce a coaptation site.

AxoGuard® Nerve Protector has the following advantages:

- Minimally processed Porcine submucosa bioscaffold used to reinforce a coaptation site, wrap a partially severed nerve or protect nerve tissue;
- Creates a protective layer that isolates and protects the nerve in a traumatized wound bed;
- Remodels into the patient's own tissue instead of degrading;
- Easily conforms and provides 360 degree wrapping of injured nerve tissue;
- Supports the body's own natural wound healing;
- Minimizes the potential for soft tissue attachments and nerve entrapment by physically isolating the nerve during the healing process;
- Allows nerve gliding;
- Strong and flexible, plus easy to suture;
- Is available in five different widths and two different lengths to address a variety of nerve repair situations; and
- Stored at room temperature with an 18-month shelf life.

Avive™ Soft Tissue Membrane

Avive™ Soft Tissue Membrane is minimally processed human umbilical cord membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed. Chronic inflammation can impair tissue regeneration and result in scarring and fibrosis that, in turn, can irritate and compress the nerve. Trauma and surgical interventions can trigger the body's repair response which can result in inflammation in the surgical arena (nerve and/or surrounding tissue). When this occurs it can compromise the surgical outcomes of nerve repair.

For decades, the medical community has realized the beneficial qualities of human amniotic membrane and continues to utilize this natural tissue in applications across the body. Avive™ Soft Tissue Membrane offers a resorbable anatomical covering to keep tissue surfaces apart. Avive™ Soft Tissue Membrane is provided sterile and in a variety of sizes to meet the surgeon's surgical needs.

Avive™ Soft Tissue Membrane:

- Serves as a permeable membrane to separate tissues in the surgical bed; and
- Modulates inflammation in the surgical bed.

Avive™ Soft Tissue Membrane has the following advantages:

- Amniotic membrane that is naturally resorbable;
- Is non-immunogenic;
- Minimally processed to preserve the natural properties of umbilical cord amniotic membrane;
- Comprised of umbilical cord amniotic membrane which is up to eight times thicker than amniotic sac alone;
- Long lasting (in animal studies, stays in place for at least 16 weeks);
- Easy to handle, suture or secure during a surgical procedure;
- Conforms and stays in place at the application site;
- Chorion Free (reducing the likelihood of immune response); and
- Room temperature storage with a two-year shelf life.

AcroVal™ Neurosensory and Motor Testing System

AcroVal™ Neurosensory and Motor Testing System is a device for evaluating patients with peripheral nerve conditions. We believe that an important step for improving patient outcomes is to support the standardized evaluation and measurement of nerve function. Today there is little consistency of measurement protocols. With the AcroVal™ system examiners will have digital, less subjective results for their patients with conditions like peripheral neuropathy, nerve compression syndromes, and transected nerves. Ultimately, we believe that standardization of evaluation and measurement techniques will facilitate comparison and interpretation of clinical results leading to better understanding and care for patients with peripheral nerve conditions.

Dr. A. Lee Dellon, a world-renowned peripheral nerve expert, developed the nerve functional evaluation and measurement system over 25 years ago. We acquired the rights to his device in 2015 and launched the product in March 2016. The AcroVal™ consists of three different devices designed to evaluate hand strength and neurosensory function:

- AcroGrip™ - hand grip strength measurement;
- AcroPinch™ – pinch strength measurement; and
- Pressure-Specified Sensory Device™ (PSSD) – somatosensory evaluation and measurement device.

AcroVal™ can be used to assist healthcare professionals:

- In detecting changes in sensation, pinch strength or grip strength;
- Assessing return of sensory or motor function;
- Establishing effective treatment interventions; and
- Providing feedback to patients.

AcroVal™ has the following advantages:

- Quantitative, electronic pre and post-intervention results;
- Flexible format to allow for additional measurement devices;
- Assessment of severity of nerve entrapment syndromes;
- Noninvasive; and
- Reference database to provide baseline standards and support patient education.

AxoTouch™ Two Point Discriminator

The AxoTouch™ Two-Point Discriminator tool can be used to measure the innervation density of any surface area of the skin. The discs are useful for determining sensation after a nerve injury, following the progression of a repaired nerve, and during the evaluation of a person with a possible nerve injury, such as nerve division or nerve compression.

The AxoTouch™ Two-Point Discriminator tool is a set of two aluminum discs each containing a series of prongs spaced between two to 15 millimeters apart. Additionally, 20 and 25 millimeter spacing is provided. A circular depression on either side of the disc allows ease of rotation. The discs can be rotated between a single prong for testing one-point and any of the other spaced prongs for testing two-point intervals.

AxoTouch™ Two-Point Discriminator has the following advantages:

- Capable of measuring the innervation density of any skin surface;
- Portable and easy to use;
- Strong aluminum design is resistant to bending;
- Bright colors allow for clear discrimination between discs;
- Clear numbering allows users to interpret results; and
- Reusable carry case protects discs.

Tissue Recovery and Processing for Avance® Nerve Graft and Avive™ Soft Tissue Membrane

Avance® Nerve Graft Processing Overview

Over several years, AxoGen has developed the Avance® Process, an advanced and proprietary technique to process the Avance® Nerve Graft from donated peripheral nerve tissue. The Avance® Process requires special training over several months for each manufacturing associate who processes Avance® Nerve Grafts. The processing and manufacturing system for Avance® Nerve Graft has required significant capital investment, and we plan to make additional investments to continually improve our manufacturing and quality assurance processes and systems. AxoGen's Avance® Process is depicted as follows:

Avance® Nerve Graft and Avive™ Soft Tissue Membrane Processing

The AxoGen's Avance® Process and SMART processing of Avive™ Soft Tissue Membrane consists of several steps, including peripheral nerve tissue, in the case of Avance®, and umbilical cord, in case of Avive™, recovery and testing, donor medical review and release, processing, packaging, and sterilization to meet or exceed all applicable U.S. Food and Drug Administration (the "FDA"), state, and international regulations and American Association of Tissue Banks ("AATB") standards. As an FDA registered tissue establishment, AxoGen utilizes both its own personnel and a variety of subcontractors for recovery, storage, testing, processing and sterilization of the donated peripheral nerve and umbilical cord tissue. Additionally, independent certified laboratories have been contracted by AxoGen and its subcontractors to perform testing. The safety of Avance® Nerve Graft and Avive™ Soft Tissue Membrane is supported

by donor screening, process validation, process controls, and validated terminal sterilization methods. The AxoGen Quality System has built in redundancies so that each product released for implantation meets our stringent quality control and product requirements.

Avance® Nerve Graft and Avive™ Soft Tissue Membrane Tissue Recovery and Processing Facility

AxoGen partners with FDA registered tissue establishments and AATB accredited recovery agencies or recovery agencies in compliance with AATB standards for human tissue recovery. After consent for donation is obtained, donations are screened and tested in detail for safety in compliance with the federal regulations and AATB standards on communicable disease transmission. AxoGen processes and packages Avance® Nerve Graft and Avive™ Soft Tissue Membrane using its employees and equipment. From 2009 until February 2016 Avance® Nerve Graft processing and packaging was performed in a clean room facility at LifeNet Health, Virginia Beach, Virginia ("LifeNet Health"). Business requirements of LifeNet Health led to their need for additional space and they notified AxoGen that AxoGen would need to transition out of the Virginia Beach facility on or before February 27, 2016. On August 6, 2015 AxoGen entered into a License and Services Agreement (the "CTS Agreement") with Community Blood Center (d/b/a Community Tissue Services) ("CTS"), Dayton, Ohio, an FDA registered tissue establishment. Processing of the Avance® Nerve Graft in the clean room facility pursuant to the CTS Agreement began in February 2016. Avive™ Soft Tissue Membrane is now processed at CTS under this same agreement.

The CTS Agreement is for a five-year term, subject to earlier termination by either party for cause, or after August 6, 2017 without cause, upon 18 months prior notice. Under the CTS Agreement AxoGen pays CTS a facility fee for clean room/manufacturing, storage and office space. CTS also provides services in support of AxoGen's manufacturing such as routine sterilization of daily supplies, providing disposable supplies, microbial services and office support. The service fee is based on a per donor batch rate. The CTS facility provides a cost effective, quality controlled and licensed facility. However, AxoGen could reproduce a manufacturing space that would meet its needs if it no longer continued its relationship with CTS. AxoGen's processing methods and process controls have been developed and validated to ensure product uniformity and quality. Pursuant to the CTS Agreement, AxoGen pays license fees on a monthly basis to CTS which total an annual amount of approximately $753,000.

Avance® Nerve Graft and Avive™ Soft Tissue Membrane Packaging

After processing, each Avance® Nerve Graft and Avive™ Soft Tissue Membrane is visually inspected and organized by size into finished product codes. It is then packaged in primary packaging. The outer pouch is the primary sterility and moisture barrier. The packaging operation is performed in a controlled environment at CTS.

Avance® Nerve Graft and Avive™ Soft Tissue Membrane Sterilization and Labeling

After being processed and packaged, Avance® Nerve Graft and Avive™ Soft Tissue Membrane are then terminally sterilized and shipped to its Burleson, Texas distribution facility (the "Distribution Facility"). There the products receive their final labels and are released following a final stringent technical and quality review. Orders for Avance® Nerve Graft and Avive™ Soft Tissue Membrane are placed with AxoGen's customer care team and the products are packaged and shipped from the Distribution Facility.

Avance® Nerve Graft and Avive™ Soft Tissue Membrane Product Release

The AxoGen Quality System meets the requirements set forth under 21 CFR Part 1271 for Human Cells, Tissues and Cellular and Tissue-Based Products, including Good Tissue Practices ("GTP") and is compliant with the 21 CFR Part 820 Quality System Regulations ("QSR"). AxoGen has established quality procedures for review of tissue recovery, relevant donor medical record review and release to processing that meet or exceed FDA requirements as defined in 21 CFR Part 1271, state regulations, international regulations and AATB standards. Furthermore, AxoGen utilizes validated processes for the handling of raw material components, environmental control, processing, packaging and terminal sterilization. In addition to ongoing monitoring activities for product conformity to specifications and sterility, shipping methods have been validated in accordance with applicable industry standards.

Manufacturing of AxoGen Products Other Than Avance® Nerve Graft and Avive™ Soft Tissue Membrane

Manufacturing for the AxoGuard® Product Line

AxoGuard® is manufactured by Cook Biotech Incorporated, West Lafayette, Indiana ("Cook Biotech"), which was established in 1995 to develop and manufacture tissue grafts utilizing porcine extracellular matrix technology. AxoGen decided to expand its portfolio of products and felt that the unique ECM material offered by Cook Biotech provided the combination of properties needed in nerve reconstruction. Cook Biotech's ECM material is pliable, capable of being sutured, translucent and allows the patient's own cells to incorporate into the extracellular matrix to remodel and form a tissue similar to the nerve's epineurium. In August 2008, Cook Biotech entered into an agreement, amended in March 2012, with AxoGen to distribute its product worldwide in the field of the peripheral and central nervous system, but excluding use of the AxoGuard® 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. The exclusion results in certain areas of AxoGen's market expansion into the oral surgery market being limited to the Avance® Nerve Graft.

The Cook Biotech agreement runs through August 27, 2022. It requires certain minimum purchases, although through mutual agreement the parties have not established such minimums and to date have not enforced such provision, and establishes a formula for the transfer cost of the AxoGuard® products. Under the agreement, AxoGen provides purchase orders to Cook Biotech, and Cook Biotech fulfills the purchase orders.

Manufacturing for the AcroVal™ Neurosensory and Motor Testing System and AxoTouch ™ Two Point Discriminator

The AcroVal™ Neurosensory and Motor Testing System and AxoTouch™ Two Point Discriminator are contract manufactured by Viron Technologies, doing business as Cybernetics Research Laboratories ("CRL"), Tucson, Arizona. CRL provides the AcroVal™ to the Company's Distribution Facility and AxoGen performs final inspection and packaging for customer shipment. CRL provides warranty service on behalf of the Company for the AcroVal™ and maintains certain levels of spare parts inventory for manufacturing and fulfillment of warranty work. CRL supplies the AxoTouch unpackaged and it is packaged at the Distribution Facility.

We believe CRL has capacity to support any future volumes of AcroVal™ and AxoTouch™.

Sales and Marketing

Overview

The AxoGen portfolio of nerve repair solutions, consisting of the Avance ® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector and Avive™ Soft Tissue Membrane, offers a full range of products for surgical peripheral nerve repair needs. Its AcroVal™ Neurosensory and Motor Testing System and AxoTouch™ Two Point Discriminator evaluation and measurement tools assist healthcare professionals in detecting changes in sensation, assessing return of sensory function, establishing effective treatment interventions, and providing feedback to patients. AxoGen is focused on the developing market of peripheral nerve repair and regeneration, is committed to improving awareness of new surgical peripheral nerve repair options and is advancing evaluation capabilities for nerve issues, as well as building additional scientific and clinical data to assist surgeons and patients in making informed choices. AxoGen believes that there is an opportunity to rethink current approaches to nerve repair and that its approach will solidify its position as a leader in the field of products for peripheral nerve injuries. The following provides the key elements of AxoGen's sales and marketing strategy.

Increase Awareness of AxoGen's Products

Prior to the introduction of AxoGen's portfolio of nerve repair products, surgeons had a limited number of options available for the surgical repair of nerve injuries. AxoGen entered the market to improve the standard of care for patients. Unlike other off-the-shelf options, AxoGen's Avance® Nerve Graft, AxoGuard® Nerve Connector and AxoGuard® Nerve Protector nerve repair products are composed of an extracellular matrix which remodels into the

patient's own tissue and provides physical support for the body's natural healing process. Avive™ Soft Tissue Membrane expands the surgical repair portion of the product portfolio and is a soft tissue membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed.

AxoGen intends to increase market share by improving awareness of nerve repair techniques and AxoGen's products through the continued use of educational conferences and presentations, surgical resident and fellow training, scientific publications, and a knowledgeable and professional sales team. AxoGen works to increase usage within active accounts as well as expand the overall customer base by adding new active accounts. AxoGen defines an "active account" as an account that has ordered one or more of AxoGen's surgical products six or more times in the last twelve months. AxoGen is focused on plastic reconstructive surgeons and orthopedic and plastic hand surgeons who perform surgeries on patients suffering traumatic nerve injuries and who perform hand reconstructive surgeries and certain oral surgeons who repair oral nerve injuries.

Expand Clinical and Scientific Data Regarding the Performance of AxoGen Products

Generating clinical data is an important component of AxoGen's marketing strategy. AxoGen will continue to accept patients in its RANGER® clinical study (defined below in "Government Regulations"), a utilization registry of Avance® Nerve Graft. Four publications and more than 50 scientific conference presentations have been generated to date from the registry. A multicenter prospective randomized comparative pilot study of hollow tube conduits and Avance® Nerve Graft has completed subject enrollment and outcome follow-up. A pivotal multicenter prospective randomized comparative pilot study of hollow tube conduits and Avance® Nerve Graft to support the transition to a BLA is currently enrolling. Case series in digital nerve repair have been published from the Mayo Clinic, Georgetown University Medical Center and Philadelphia Hand Center and a case series in OMF have been published from UT Southwestern and University of Illinois-Chicago. A number of additional investigator initiated case reports, studies and publications have been completed. A pilot study on the repair of the cavernous nerves in prostate cancer patients has completed enrollment, follow-up and data analysis . Case series in brachial plexus, military trauma, neurotization of breast reconstruction and compressive neuropathy are also being developed. AxoGen also supports outside research and will continue to work with investigators working on grants with a translational focus.

Commitment to the Education of Best Practices in Peripheral Nerve Repair

AxoGen has established educational conferences and presentations and surgical resident and fellow training that we believe is positioning us as a leader in providing peripheral nerve repair best practices. The Company provides education on nerve repair through its "Best Practices in Nerve Repair" national courses as well as local and regional educational events. These are supported by on line tools and discussion forums such as Nerve Matters, an on-line community of nerve surgeons where the surgeons can ask questions, present cases and share findings in the area of nerve repair.

Execute the Sales Process and Expand the AxoGen Sales Team

AxoGen provides full sales and distribution services through both a direct sales force and a team of independent distributors. As of December 31, 2016, we had 51 direct sales professionals and 20 independent distributors in the U.S. AxoGen sells its products in eleven countries outside the U.S. through nine independent distributors. AxoGen provides support and resources for independent distributors both within and outside the United States and is increasing its direct sales force in selected United States territories. AxoGen provides products to hospitals, surgery centers and military hospitals, calling on plastic reconstructive surgeons and orthopedic and plastic hand surgeons and certain oral surgeons to review the benefits of the AxoGen products. While surgeons make the decision to implant the products in appropriate patients, hospitals make the decision to buy the products from AxoGen. In today's budget constrained environment, hospital committees review new technologies for cost effectiveness as well as quality. AxoGen believes that it has been successful in meeting the needs of these hospital committees by demonstrating the cost/benefit of its products and providing a fair value to the hospital.

Expand the Product Pipeline and Applications in Peripheral Nerve Repair

AxoGen has developed line extensions and additional products to support surgeons in their needs for repairing injured peripheral nerves. AxoGen believes additional opportunities exist to develop or acquire complementary products in peripheral nerve repair. In addition, there exists opportunities to expand the existing portfolio of products in new applications of peripheral nerve repair. AxoGen is currently exploring two expansion opportunities: (1) neurotization of breast flaps following mastectomy to provide sensory restoration in the reconstructed breast; and (2) repair of nerves injured in orthopedic total joint replacement.

AxoGen Strengths

AxoGen believes that it has the following strengths in the field of nerve repair and regeneration:

Established Nerve Repair Expertise

AxoGen has made a significant investment in understanding peripheral nerve anatomy and surgical nerve repair and regeneration. This has been accomplished through interaction with leading academic centers throughout the United States and by striving to build an outstanding internal team of technical and clinical experts.

Commitment to the Promotion and Education of Best Practices in Peripheral Nerve Repair

AxoGen has established educational conferences and presentations and surgical resident and fellow training that we believe is positioning us as a leader in providing peripheral nerve repair best practices. AxoGen has developed the programs and speakers to train surgeons currently in practice as well as surgical fellows.

Surgical Implant Commercialization Experience

The AxoGen commercialization team consists of sales, marketing, and customer care professionals with backgrounds in the medical device and biotechnology industries. The team has strong experience in the introduction of technologies and has been instrumental in beginning to establish the Avance® Nerve Graft and the AxoGuard® product lines as a new standard of care for the surgical treatment of nerve injuries in our core markets. AxoGen believes it can leverage these capabilities in expanding the commercial success of the current AxoGen products and future product opportunities such as the Avive™ Soft Tissue Membrane and in new surgical applications.

Avance® Nerve Graft Performance

AxoGen has worked with leading institutions, researchers and surgeons to support innovation in the field of surgical peripheral nerve repair. We believe AxoGen's RANGER® study (defined below in the section entitled "Government Regulations") is the largest multi-center clinical study conducted in peripheral nerve gap repair. AxoGen is also conducting a Multicenter, Prospective, Randomized, Subject and Evaluator Blinded Comparative Study of Nerve Cuffs and Avance® Nerve Graft Evaluating Recovery Outcomes for the Repair of Nerve Discontinuities ("RECON"). This study is the phase 3 trial to support its Biologics License Application ("BLA") for the Avance® Nerve Graft. (See "Government Regulations"). The January, 2012 edition of Microsurgery and November 2012 edition of The Journal of Hand Surgery, June 2015 edition of Journal of Reconstructive Microsurgery and January 2017 edition of HAND each contain an article summarizing the RANGER® study results. The Brooks et al. publication reported on 55 Avance® Nerve Graft nerve repairs and resulted in meaningful motor and sensory recovery in 87% of nerve discontinuities between 5 and 50 mm. Additionally, no implant related adverse events were reported. (Brooks, D. N., Weber, R. V., Chao, J. D., Rinker, B. D., Zoldos, J., Robichaux, M. R., Ruggeri, S. B., Anderson, K. A., Bonatz, E. E., Wisotsky, S. M., Cho, M. S., Wilson, C., Cooper, E. O., Ingari, J. V., Safa, B., Parrett, B. M. and Buncke, G. M. (2012), Processed nerve allografts for peripheral nerve reconstruction: A multicenter study of utilization and outcomes in sensory, mixed, and motor nerve reconstructions. Microsurgery, 32: 1—14. doi: 10.1002/micr.20975 and Cho, et al. 2012, J Hand Surg Am 37(11):2340-9). A meta-analysis of available clinical outcomes data from published papers on the leading synthetic collagen conduit showed meaningful improvement in only 40-74% of cases bridging a gap in the nerve. This data was

further verified in a review of autograft alternative in the 2016 edition of Hand Clinics. A similar meta-analysis for nerve autograft reported meaningful improvement in 60-88% of nerve repairs.

International Opportunity for Product Sales

AxoGen currently focuses on the U.S. market, with additional foreign sales in Canada, United Kingdom and certain other countries. The need for the surgical repair of injured nerves is a global issue. Through its ex-U.S. sales, AxoGen has shown the capability to take its current nerve repair product offering into new geographical markets. AxoGen does not currently have European Union ("E.U.") wide approval for Avance® Nerve Graft, but the AxoGuard® products have a CE Mark and can be sold in the E.U. and affiliated countries. The Avive™ Soft Tissue Membrane, AcroVal™ Neurosensory and Motor Testing System and AxoTouch™ Two Point Discriminator are only available in the United States, but AxoGen is taking action to introduce them internationally, which introduction is subject to meeting the appropriate regulatory standards of a particular country.

Research and Development

AxoGen believes it provides the most extensive product portfolio for peripheral nerve repair available. Our current development focus is to expand clinical data in both traumatic nerve repair and other surgical applications. Additional product line extensions of the Avance® and AxoGuard® products and other nerve repair products may be developed. In this regard, AxoGen introduced: (1) an AxoGuard® Connector line extension in winter 2014 by providing a new longer 15mm product; (2) AxoTouch™ in the fall of 2014; (3) AcroVal™ in March 2016 and (4) Avive™ Soft Tissue Membrane launched in November 2016.

AxoGen works with academic institutions in the expansion of treatments for peripheral nerve and is involved in a number of grants from government agencies related to nerve repair or use of our products and/or technologies. For the years ended December 31, 2016 and 2015, AxoGen spent approximately $4,212,000 and $3,237,000, respectively, on research and development expenses and recognized grant revenue of approximately $290,000 and $433,000, respectively.

Competition

The medical device and biotechnology industries are characterized by rapidly advancing technologies, intense competition and a strong emphasis on proprietary products. As such, AxoGen cannot predict what products may be offered in the future that may compete with AxoGen's products. With regard to nerve function evaluation and measurement there are a number of methods and techniques with little consistency of measurement protocols. Currently as to nerve repair products, AxoGen competes primarily against all transected and non-transected nerve repair approaches including direct suture repair, autograft and hollow-tube nerve conduits and materials used to wrap and protect nerve tissue. Finally, there are numerous companies that offer amnion products in a variety of formats, primarily in the area of wound care, which could be competitive with the Company's Avive™ product.

Because the requirements of the biomaterials used in nerve repair can vary based on the severity and location of the injury, the size and function of the nerve, surgical technique and patient preference, AxoGen's nerve repair products compete against both autograft materials (nerve in the case of a bridging repair and vein or fat in the case of a nerve protection repair), and a limited number of off-the-shelf alternatives for grafting and protecting. Competitive aspects of our products focus on the overall value proposition of our products and their suitability for specific applications and can include composition and structure of the material, ease of use, clinical evidence, handling, and price. AxoGen's major competitors for off-the-shelf repair options in hollow-tube conduits and bio-absorbable wraps are the following companies:

- Integra LifeSciences Holding Corporation (NASDAQ: IART) ("Integra"). Integra offers NeuraGen®, a hollow tube product made from reconstituted bovine collagen and NeuraWrap™, a reconstituted bovine collagen biomaterial used for nerve wrapping;
- Baxter International, Inc. (NYSE: BAX) ("Baxter"). Baxter acquired Synovis which offers Neurotube, a hollow tube made of polyglycolic acid; and

- Stryker Corporation (NYSE: SYK) ("Stryker"). Stryker offers the NeuroMatrix and Neuroflex products, both of which are hollow tubes derived from reconstituted bovine collagen and NeuroMend, a reconstituted bovine collagen biomaterial used for nerve wrapping.

AxoGen believes that surgeons use Avance® Nerve Graft because it provides them with the natural three-dimensional structure and familiar handling characteristics of a typical nerve for bridging nerve discontinuities (severed nerves) without the comorbidities and additional surgical site of an autograft as well as confidence in the performance of the product as a result of the growing body of clinical literature. AxoGuard® Nerve Protector and AxoGuard® Nerve Connector provide the unique features of pliability, suturability, and translucence for visualization of the underlying nerve while also allowing the patient's own cells to incorporate into the extracellular matrix to remodel and form a tissue similar to the outermost layer of the nerve (nerve epineurium). Avive™ Soft Tissue Membrane expands the surgical repair portion of the product portfolio and is a resorbable soft tissue used to keep tissue structures apart while providing the known beneficial properties of placental membrane. The release of AcroVal™ Neurosensory and Motor Testing System is a continuation of AxoGen's commitment to improving patient outcomes. The Company believes that the standardization of evaluation and measurement techniques will facilitate comparison and interpretation of clinical results leading to better understanding and care for patients with peripheral nerve injuries.

AxoGen believes any current or future competitors face the following important barriers to entry as it relates to the market for its nerve repair products. AxoGen's intellectual property ("IP"), and that of its partners, including patents, patents-pending and know how, is believed to be an important barrier for its Avance® Nerve Graft and AxoGuard® products. AxoGen has developed knowledge and experience in understanding and meeting FDA regulatory requirements for Avance® Nerve Graft, including having made a substantial investment in conducting the preclinical and clinical testing necessary to support a submission for a FDA BLA. Additionally, AxoGen believes the ability to offer a portfolio of products focused on peripheral nerve repair and evaluation provides a unique competitive position as to other entities that do not have this breath of product offering. However, due to its limited resources, its smaller size and its relatively early stage, AxoGen believes it may face competitive challenges from larger entities and barriers that are difficult to overcome and could negatively impact its growth.

Intellectual Property

Overview

AxoGen relies on a combination of patent, trademark, trade secret, and copyright, as well as other IP laws, to protect IP rights. In addition, AxoGen utilizes license, non-disclosure, and assignment agreements to protect these IP rights. Specifically, AxoGen requires vendors, contract organizations, consultants, advisors and employees to execute nondisclosure agreements. AxoGen also requires consultants, advisors and employees who develop IP to assign to AxoGen any of their rights to all IP conceived in connection with their relationship with AxoGen.

License Agreements

AxoGen has entered into license agreements with University of Florida Research Foundation (the "UFRF") and the University of Texas at Austin ("UTA"). Under the terms of these license agreements, AxoGen has exclusive worldwide licenses for the underlying technologies used by AxoGen in its Avance® Nerve Graft. The license agreements include both the right to issued patents and patents pending in the U.S. and international markets. The effective term of the license agreements extends through the term of the related patents. In the event of default, licensors may also terminate an agreement (after written notice) if AxoGen fails to cure a breach. The license agreements contain the following key terms:

- Payment of annual license maintenance fees, some of which may be credited against future royalty payments;
- Payment of royalty fees of 1%-3% based on net sales of the licensed products, the level depending on the agreement, which may include a minimum quarterly royalty payment with discounts off royalty rates when royalty stacking applies;
- Payment of a percentage of sublicense fees received;

- Reimbursement of certain legal expenses incurred for patent prosecution and defense; and
- Other payments of various amounts based on achieving certain milestones.

Currently, AxoGen pays royalties to UFRF and UTA specific to the licensed technologies related to the Avance® Nerve Graft.

Patents

As of the date of this Form 10-K, AxoGen owned or was the exclusive licensee of nine issued U.S. patents, six pending U.S. patent applications and multiple international patents and patent applications with regard to its peripheral nerve products. The granted European Patent No. EP1425390 has been validated in France, Germany, Italy, Spain, Sweden, Switzerland, and the United Kingdom. The following table illustrates the issued U.S. patents owned or licensed by AxoGen with regard to its peripheral nerve products, including the patent number, a description of each patent, and the estimated expiration date of each patent.

Patent No.	Description	Estimated expiration date
US 6,972,168	Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and in vitro Nerve Tissue Culture	August 2022
US 7,402,319	Cell Free Tissue Replacement for Tissue Engineering	September 2023
US 7,732,200	Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and in vitro Nerve Tissue Culture	December 2023
US 6,696,575	Biodegradable, electrically conducting polymer for tissue engineering applications	March 2022
US 7,851,447	Materials and Methods for Nerve Repair	November 2023
US 8,545,485	Nerve Elevator and Method of Use	May 2032
US 8,758,794	Cell Free Tissue Replacement for Tissue Engineering	September 2023
US 8,986,733	Materials and Methods for Nerve Repair	December 2023
US D777,917	Two Point Discriminator Sensory Measurement Device	N/A

Additionally, AxoGen entered into an exclusive distribution agreement with Cook Biotech in August 2008, as subsequently amended in March 2012, to distribute its ECM technology in the form of the Surgisis® Nerve Cuff, the form of a nerve wrap or patch, or the form of any other mutually- agreed-to configuration in the field of peripheral nervous system and central nervous system use, but excluding use of the AxoGuard® 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. AxoGen has subsequently rebranded the Surgisis products under the AxoGuard® name. Cook Biotech holds multiple issued and pending U.S. and international patents covering its ECM technology. The following table illustrates the non-licensed U.S. patents held by Cook Biotech that are specifically identified on

AxoGen's AxoGuard® Nerve Connector and AxoGuard® Nerve Protector product labeling. The table includes the U.S. patent number, a description of each patent, and the estimated expiration date of each patent.

U.S. Patent No.	Description	Estimated expiration date
6,206,931	Graft Prosthesis Material	August 2017
6,241,981	Composition and Method for Repairing Neurological Tissue	September 2017
7,652,077	Graft Prosthesis, Materials and Methods	November 2018
6,358,284	Tubular Grafts from Purified Submucosa	December 2017

Because of the length of time and expense associated with bringing new products through development and the governmental approval process, medical technology companies have traditionally placed considerable importance on obtaining and maintaining patent protection for significant new technologies, products and processes. AxoGen intends to seek patent protection for appropriate proprietary technologies by filing patent applications when possible in the U.S. and selected other jurisdictions. AxoGen's policy is to seek patent protection for the inventions that it considers important to the development of its business. However, in some cases patent protection is not possible, but product value to AxoGen's portfolio can still be derived. AxoGen also intends to use its scientific expertise to pursue and file patent applications on new developments with respect to uses, methods, and compositions to enhance its IP position in the areas that are important to the development of its business.

Trademarks, Trade Secrets, Copyrights and Domain Names

AxoGen has registered and filed numerous trademark applications with the U.S. Patent and Trademark Office and appropriate offices in foreign countries in order to distinguish its products from competitors' products. It possesses trade secrets and material know-how in the following general subject matters: nerve and tissue processing, nerve repair, product testing methods, and pre-clinical and clinical expertise. AxoGen has registered copyrights for training tools and artistic renderings. It has entered into an agreement with an independent artistic creator, under which the artistic director retains copyright rights to any copyrighted material under agreement with AxoGen and provides AxoGen a license to such copyrights.

Government Regulations

U.S. Government Regulation Overview

AxoGen's products are subject to regulation by the FDA, as well as other federal and state regulatory bodies in the U.S. and comparable authorities in other countries. In addition, its Avance® Nerve Graft and Avive™ Soft Tissue Membrane must comply with the standards of the tissue bank industry's accrediting organization, the AATB.

AxoGen distributes for Cook Biotech the AxoGuard® product line. Cook Biotech is responsible for the regulatory compliance of the AxoGuard® product line. AxoGuard® products are regulated as medical devices and subject to premarket notification requirements under section 510(k) of the Federal Food, Drug, and Cosmetic Act (the "FD&C Act"), 21 CFR Part 820 ("Quality System Regulation") and related laws and regulations. Cook Biotech has obtained a 510(k) premarket clearance from the FDA for the use of porcine (pig) small intestine submucosa for the repair of peripheral nerve discontinuities where gap closure can be achieved by flexion of the extremity. Cook Biotech has also obtained a 510(k) premarket clearance for the AxoGuard® Nerve Protector for the repair of peripheral nerve injuries in which there is no gap or where a gap closure is achieved by flexion of the extremity. We sell the 510(k)-cleared device under the trade name AxoGuard® Nerve Protector and AxoGuard® Nerve Connector.

AxoGen is responsible for the regulatory compliance of the Avive™ Soft Tissue Membrane. The Avive™ Soft Tissue Membrane is processed and distributed in accordance with FDA requirements for Human Cellular and Tissue-based Products (HCT/P) under 21 CFR Part 1271 regulations, US State regulations and the guidelines of the AATB.

AxoGen also distributes the AxoTouch™ Two-Point Discriminator. This device that is manufactured for AxoGen and distributed from the Burleson Facility is a Class I device (general controls) that is exempt from premarket notification and the Quality System Regulation requirements except for the Recordkeeping and Complaint file requirements. It is classified by FDA under 21 CFR 882.1200 (Two-point discriminator, product code: GWI).

The AcroVal™ line of devices is manufactured for AxoGen and distributed from the Burleson Facility. The AcroVal™ devices are regulated as medical devices and are subject to premarket notification requirements under section 510(k) of the FD&C Act. The AcroVal™ line of devices includes the AcroGrip™, AcroPinch™ and PSSD™, all of which received 510(k) clearance by the FDA in the 1990's. The AcroGrip™ was cleared under the name Digi-Grip Sensor, the AcroPinch™ was cleared as Pinch Sensor and PSSD™ as the NK Pressure-Specified Sensory Device.

In 2007, AxoGen began to process and distribute its Avance® Nerve Graft pursuant to Section 361 of the PHS Act and 21 CFR Part 1271 Human Cells, Tissues, and Cellular and Tissue Based Products controls. Such action was based on AxoGen's good faith belief that the Avance® Nerve Graft product was a HCT/P tissue product regulated solely under Section 361. From October 2008 through early 2010, AxoGen was in communication with the FDA concerning the regulatory status of the Avance® Nerve Graft product. In April 2010, in response to a Request For Designation filed by AxoGen, the FDA determined that the Avance® Nerve Graft was a biologic product that would be reviewed and regulated by CBER under the requirements of Section 351 of the PHS Act. Section 351 requires, among other things, an approved license to market a biological product.

AxoGen met with CBER in July 2010 and, between July 2010 and November 2010, provided information to CBER that resulted in the FDA issuing a letter stating the agency's intent to exercise enforcement discretion with respect to the introduction or delivery for introduction into interstate commerce of the Avance® Nerve Graft assuming that certain conditions are met relating to the transition of the Avance® Nerve Graft from regulation as a HCT/P to a biological product under section 351 of the PHS Act. Specifically, the FDA is permitting the Avance® Nerve Graft to be distributed, subject to FDA enforcement discretion, provided that:

- AxoGen transitions to compliance with Section 501(a)(2)(B) of the FD&C Act, the current Good Manufacturing Practice, or cGMP, regulations in 21 CFR Parts 210 and 211 and the applicable regulations and standards in 21 CFR Parts 600-610 prior to initiation of a phase 3 clinical trial; designed to demonstrate the safety, purity, and potency of the Avance® Nerve Graft.

- AxoGen has performed several gap analyses of its quality system for compliance with 21 CFR Parts 210/211 and 600-610 regulations. The gap analyses have identified areas in which our quality system could improve with respect to compliance to the regulations. The transition is in process and we periodically review the 21 CFR Parts 210/211 and 600-610 regulations to ensure that we create and implement appropriate changes, including new quality procedures. Through our internal auditing process, we periodically assess our compliance to the regulations. As AxoGen initiates the phase 3 clinical trial and eventual BLA submission, we will retain an external audit firm with experience in auditing to 21 CFR Parts 210/211 and 600-610 regulations to verify quality system compliance to the regulations. The associated costs for these activities are not material and the Company believes it can appropriately implement all necessary changes.

- AxoGen conducts a phase 3 clinical trial to demonstrate safety, purity and potency of the Avance® Nerve Graft under a Special Protocol Assessment ("SPA").

- AxoGen and the FDA agreed to the SPA in August 2011 and in accordance with FDA regulations in 21CFR § Part 312, AxoGen submitted an Investigational New Drug Application ("IND") to the FDA in April 2013. The IND became effective in March 2015 and the phase 3 clinical trial was initiated in the second quarter of 2015.

- AxoGen continues to comply with the regulations and standard for 21 CFR Part 1271.

- AxoGen was audited by the FDA at its processing facility in March 2013, March 2015 and October 2016 and its Distribution Facility in October 2015. The quality system was found to be in compliance with 21 CFR Part 1271 and no FDA Form 483 observations were issued.

- AxoGen continues to exercise due diligence in executing its requirements under the transition program.

AxoGen is working to ensure compliance with the applicable regulations through ongoing discussions with the FDA regarding the transition of the quality system to 21 CFR Parts 210/211 and 600-610 regulations with the FDA and through audits for compliance to 21 CFR Part 1271 and amendments to the IND providing updates to the phase III clinical trial. The final determination of regulatory compliance will be made by the FDA during the pre-license inspection as part of the BLA review. If the FDA does not find AxoGen to be in compliance, or if AxoGen is unable to meet the required standards for preclinical studies, clinical studies and Chemistry, Manufacturing, and Controls, the approval of the BLA would become impossible or delayed.

The FDA will end the period of enforcement discretion upon a final determination of AxoGen's future BLA submission or if the FDA finds that AxoGen does not meet the conditions for the transition plan, or is not exercising due diligence in executing the transition (e.g., study completion, or BLA submission is neither timely nor adequate). If final action on the BLA is negative or AxoGen is found to not meet the conditions for the transition plan or its execution, AxoGen will not be able to continue to distribute the Avance® Nerve Graft. AxoGen continues to work diligently with the FDA and, in this context, continues to distribute Avance® Nerve Graft.

The BLA application of Avance® Nerve Graft, if approved, will require a potentially substantial user fee payment to the FDA, although certain exemptions, waivers and discounts of the user fees may apply, including certain waivers or discounts for small businesses.

The Food and Drug Administration Safety and Innovation Act, referred to herein as FDASIA (Public Law 112-144), which was signed into law on July 9, 2012, amended the FD&C Act. FDASIA includes the Prescription Drug User Fee Amendments of 2012 which authorizes the FDA to continue to collect the following user fees from applicants who submit certain new drug and biological product applications and supplements:

- *Application Fee:* Each new BLA has a fee required upon submission. For the fiscal year ending December 31, 2017, this fee for a BLA requiring clinical data is $2,038,100. The fee is adjusted each year so we cannot provide an accurate estimate of what our fee will be upon submission of our BLA. For small companies (fewer than 500 employees and no other approved biologic product on the market) submitting its first application, a waiver of the application fee is available. AxoGen may be able to apply for this waiver for the Avance® Nerve Graft BLA.
- *Establishment Fee:* Establishment fees (for the place of business where the biologic product is manufactured) are based on the FDA budget divided by the total number of establishments. For the fiscal year ending December 31, 2017, the Establishment Fee is $512,200. This fee is adjusted each year so we cannot provide an accurate estimate of what our fee will be upon approval of our BLA. AxoGen will have to pay an establishment fee after BLA approval and then pay such fee annually thereafter.
- *Product Fee:* A product fee is assessed for each strength or potency in which the approved (non-revoked, non-suspended) product is manufactured in final dosage form. The product fee is based on an estimate of the number of products that would be subject to, and for which the companies would pay, product fees. The product fee is determined by dividing the adjusted total fee revenue from product fees by the number of estimated products (based on previous year's product fees) subject to the product fee (excluding product fee waivers and reductions granted by the FDA). For the fiscal year ending December 31, 2017, the product fee has been established at $97,750. AxoGen may have to pay a Product Fee after BLA approval. AxoGen expects to apply for a product fee waiver for the Avance® Nerve Graft.

FDA — General

FDA regulations govern nearly all the activities that AxoGen performs, or that are performed on its behalf, to ensure that medical products distributed domestically or exported internationally are safe and effective for their intended uses. The activities the FDA regulates include the following:

- product design, development and manufacture;
- product safety, testing, labeling and storage;
- pre-clinical testing in animals and in the laboratory;
- clinical investigations in humans;
- premarketing clearance or approval and licensing;
- record-keeping and document-retention procedures;
- advertising and promotion;
- the import and export of products;
- product marketing, sales and distribution;
- post-marketing surveillance and medical device reporting, including reporting of deaths, serious injuries, communicable diseases, device malfunctions or other adverse events; and
- corrective actions, removals and recalls.

Failure to comply with applicable FDA regulatory requirements may subject AxoGen to a variety of administrative or judicially-imposed penalties or sanctions and/or prevent it from obtaining or maintaining required approvals, clearances or licenses to manufacture and market its products. Such failure to comply with the applicable FDA requirements may subject AxoGen to stringent administrative or judicial actions or sanctions, such as agency refusal to approve pending applications, warning letters, product recalls, product seizures, total or partial suspension of production or distribution of products, injunctions, or civil or criminal prosecution.

FDA's Premarket Clearance and Approval Requirements - Medical Devices

Unless an exemption applies, each medical device distributed commercially in the U.S. requires either a 510(k) premarket notification submission or a Pre-Market Approval ("PMA") Application to the FDA. Medical devices are classified into one of three classes—Class I, Class II, or Class III—depending on the degree of risk, the level of control necessary to assure the safety and effectiveness of each medical device and how much is known about the type of device. For devices first intended for marketing after May 28, 1976, pre-market review and clearance by the FDA for Class I and II medical devices is accomplished through the 510(k) pre-market notification procedure by finding a device substantially equivalent to a legally marketed Class I or II device, unless the device is exempt. The majority of Class I medical devices are exempt from the 510(k) premarket notification requirement. Devices deemed by the FDA to pose the greatest risk, such as life-sustaining, life-supporting or implantable devices for which Class II controls are inadequate to assure safety or effectiveness, and novel devices, including devices deemed not substantially equivalent to a previously cleared 510(k) device, are placed in Class III. Class III devices generally require an approved PMA prior to marketing.

A PMA must be supported by extensive data, including, but not limited to, technical, preclinical, clinical trials, manufacturing and labeling to demonstrate to the FDA's satisfaction, the safety and effectiveness of the device.

FDA's Premarket Approval Requirements - Biologic Products

Biological Product License Application (BLA) Pathway

Biological products subject to BLA requirements are approved under the Public Health Service Act. Biological products require FDA approval of a BLA to be marketed. In order to be approved, a BLA must demonstrate the safety, purity and potency of the product candidate based on results of preclinical studies and clinical trials. A BLA must also contain extensive CMC and other manufacturing information, and the applicant must pass an FDA pre-approval inspection of the manufacturing facility or facilities at which the biologic product is produced to assess compliance with the FDA's cGMP. Satisfaction of FDA approval requirements for biologics typically takes several years and the actual time required may vary substantially based on the type, complexity and novelty of the product. AxoGen cannot be certain that any BLA approvals for its products will be granted on a timely basis, or at all.

The steps for obtaining FDA approval of a BLA to market a biologic product in the U.S. include:

- completion of preclinical laboratory tests, animal studies and formulation studies under the FDA's good laboratory practices regulations;
- submission to the FDA of an IND, for human clinical testing, which must become effective before human clinical trials may begin and which must include independent Institutional Review Board, or IRB, approval at each clinical site before the trials may be initiated;
- performance of an adequate and well-controlled clinical trial in accordance with Good Clinical Practices to establish the safety and efficacy of the product for each indication;
- submission to the FDA of a BLA, which contains detailed information about the CMC for the product, reports of the outcomes and full data sets of the clinical trials, and proposed labeling and packaging for the product;
- satisfactory review of the contents of the BLA by the FDA, including the satisfactory resolution of any questions raised during the review;
- satisfactory completion of an FDA Advisory Committee review, if applicable;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the product is produced to assess compliance with cGMP regulations, to assure that the facilities, methods and controls are adequate to ensure the product's identity, strength, quality and purity; and
- FDA approval of the BLA including agreement on post-marketing commitments, if applicable.

Preclinical tests include laboratory evaluations of product chemistry, toxicity and formulation, as well as animal studies. An IND sponsor must submit the results of the preclinical tests, together with manufacturing information and analytical data, to the FDA as part of the IND. Some preclinical testing may continue after the IND is submitted. The IND must become effective before human clinical trials may begin. An IND will automatically become effective 30 days after receipt by the FDA, unless before that time the FDA raises concerns or questions about issues such as the conduct of the trials and or supporting preclinical data as outlined in the IND. In that case, the IND sponsor and the FDA must resolve any outstanding FDA concerns or questions before clinical trials can proceed. In other words, submission of an IND may not result in the FDA allowing clinical trials to commence.

Biosimilar Biological Products

A regulatory approval pathway for biosimilars was established by The Biologics Price Competition and Innovation Act ("BPCIA"), as part of the Patient Protection and Affordable Care Act of 2010. An important component of the legislation specified that a manufacturer of a reference biological product would be granted 12 years of exclusive, non-patent market exclusivity before a biosimilar could be approved for marketing in the US. An application for a biosimilar product may not be submitted to FDA until four years after the approval date of the BLA for the reference biological product. BPCIA provides for an abbreviated licensure process for a biosimilar, *i.e.*, a biological product that is highly similar to an FDA-approved biological product, known as a reference product, and has no clinically meaningful differences compared to the reference product in terms of safety, purity and potency. At its discretion, the FDA can waive a requirement for any required element in an application for a biosimilar product. In addition, the legislation distinguished approval of a biosimilar from approval of such a product as a substitute for the reference biological

products. Where a product is approved as a substitute for the reference biologic, it is considered an interchangeable product. Approval as interchangeable requires that the product is biosimilar and can be expected to produce the same clinical results as the reference product in any given patient, and if intended for repeat dosing, a demonstration that the risk in terms of safety or diminished efficacy of alternating or switching between the use of the interchangeable and reference product is not greater than the risk of using the reference product without such alternating or switching. Interchangeable products can be substituted for a reference product without intervention of the prescribing healthcare provider. Several states are enacting or are considering laws that regulated the use and substitution of biosimilar and interchangeable products. For example, Virginia requires licensure as interchangeable by the FDA for a pharmacist to dispense a biosimilar in place of a prescribed biological product (Virginia § 54.1-3408.04).

FDA's Pre-Approval and Pre-Licensing Requirements

Before approving a BLA, the FDA generally inspects the facility or the facilities at which the product is manufactured. The FDA will not approve the product if it finds that the facility does not appear to be in cGMP compliance. If the FDA determines the application, manufacturing process or manufacturing facilities are not acceptable, it will either not approve the application or issue a complete response letter to indicate that the review cycle for an application is complete and that the application is not ready for approval. The letter will describe specific deficiencies and, when possible, will outline recommended actions the applicant might take to get the application ready for approval. Notwithstanding the submission of any requested additional information, the FDA ultimately may decide that the application does not satisfy the regulatory criteria for approval.

The testing and approval process requires substantial time, effort and financial resources, and each may take several years to complete. Data obtained from clinical activities are not always conclusive and may be susceptible to varying interpretations, which could delay, limit or prevent regulatory approval. The FDA may not grant approval on a timely basis, or at all. AxoGen may encounter difficulties or unanticipated costs in its efforts to secure necessary governmental approvals, which could delay or preclude it from marketing its products. The FDA may limit the indications for use or place other conditions on any approvals that could restrict the commercial application of the products. After approval, some types of changes to the approved product, such as adding new indications, manufacturing changes and additional labeling claims, are subject to further testing requirements and FDA review and approval.

Post-Approval Requirements

After regulatory approval of a product is obtained, AxoGen will be required to comply with a number of post-approval requirements. For example, as a condition of approval of a BLA, the FDA may require post marketing testing and surveillance to monitor the product's safety or efficacy. In addition, holders of an approved BLA are required to keep extensive records, to report certain adverse reactions and production problems such as biologic deviation reports to the FDA, to provide updated safety and efficacy information and to comply with requirements concerning advertising and promotional labeling for their products. Also, quality control and manufacturing procedures must continue to conform to cGMP regulations as well as the manufacturing conditions of approval set forth in the BLA. The FDA periodically inspects manufacturing facilities to assess compliance with cGMP regulations, which imposes certain procedural, substantive and recordkeeping requirements. Accordingly, manufacturers must continue to expend time, money and effort in the area of production and quality control to maintain compliance with cGMP and other aspects of regulatory compliance.

Future FDA inspections may identify compliance issues at AxoGen's facilities or at the facilities of its contract manufacturers that may disrupt production or distribution, or require substantial resources to correct and prevent recurrence of any deficiencies. In addition, discovery of problems with a product or the failure to comply with applicable requirements may result in restrictions on a product, manufacturer or holder of an approved BLA, including withdrawal or recall of the product from the market or other voluntary, FDA-initiated or judicial action that could delay or prohibit further marketing. Newly discovered or developed safety or effectiveness data may require changes to a product's approved labeling, including the addition of new warnings and contraindications. Finally, new government requirements, including those resulting from new legislation, may be established that could delay or prevent regulatory approval of AxoGen products that are currently under development or regulatory activity.

The FDA has broad regulatory compliance and enforcement powers. If the FDA determines that AxoGen failed to comply with applicable regulatory requirements, it can take a variety of compliance or enforcement actions, such as issuing a FDA Form 483 notice of inspectional observations, warning letter, or untitled letter, imposing civil money penalties, suspending or delaying issuance of approvals, requiring product recall, imposing a total or partial shutdown of production, withdrawal of approvals or clearances already granted, and pursuing product seizures, consent decrees or other injunctive relief, and criminal prosecution through the U.S. Department of Justice (the "DOJ"). The FDA can also require AxoGen to repair, replace or refund the cost of devices that it manufactured or distributed. If any of these events were to occur, it could materially adversely affect AxoGen's business.

Clinical Trials

Clinical trials are required to support a BLA or PMA and are sometimes required for 510(k) clearance. Clinical trials involve the administration of the investigational product to human subjects under the supervision of qualified investigators. Clinical trials are conducted under strict requirements to ensure the protection of human subjects participating in the trial and under protocols detailing, among other things, the objectives of the study, the parameters to be used in monitoring and safety, and the effectiveness criteria to be evaluated. Clinical trials for biological products require the submission and FDA acceptance of an IND and clinical trials for medical devices require the submission and FDA approval of an Investigational Device Exemption application, or IDE, unless the device regulations provide for an exemption from the IDE requirement. Clinical trials for significant risk devices may not begin until the IDE is approved by the FDA and the Institutional Review Board (IRB) overseeing the particular clinical trial. If the product is considered a non-significant risk device under FDA regulations, the trial must only be approved by an IRB prior to its initiation. A protocol for each clinical trial and any subsequent protocol amendments must be submitted to the FDA as part of the IND or IDE, for significant risk devices. In addition, for these studies, an IRB at each site at which the study is conducted must approve the protocol, subject consent form and any amendments for each site at which the study is conducted. All research subjects must be informed, among other things, about the risks and benefits of the investigational product and provide their informed consent in writing.

Clinical trials under an IND typically are conducted in three sequential phases, but the phases may overlap or be combined. In AxoGen's case, AxoGen believes that the Phase 3 clinical trial study for the Avance® Nerve Graft represents the only new clinical data that will be required to evaluate safety and effectiveness. Phase 1 clinical trials usually involve the initial introduction of the investigational product into a small group of healthy volunteers (e.g., 10 to 20) to evaluate the product's safety (dosage tolerance and pharmacokinetics if a biologic product) and, if possible, to gain an early indication of its effectiveness. Phase 2 clinical trials usually involve controlled trials in a larger but limited patient population (e.g., a few hundred) to:

- evaluate dosage tolerance and appropriate dosage;
- identify possible adverse effects and safety risks; and
- provide a preliminary evaluation of the efficacy of the product for specific indications.

Phase 3 clinical trials usually further evaluate clinical efficacy and test further for safety in an expanded patient population (e.g., a hundred to several thousand). Phase 3 clinical trials usually involve comparison with placebo, standard treatments or other comparators. Usually at least one well-controlled large Phase 3 or pivotal clinical trial demonstrating safety and efficacy is required to support a BLA. These trials are intended to establish the overall risk-benefit profile of the product and provide an adequate basis for physician labeling. Phase 3 trials are almost always larger, more time consuming, complex and costly than Phase 1 and Phase 2 clinical trials. Phase 1, Phase 2 and Phase 3 clinical testing may not be completed successfully within any specified period, if at all. Furthermore, the FDA or AxoGen may suspend or terminate clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk, have experienced a serious and unexpected adverse event, or that continued use in an investigational setting may be unethical. Similarly, an IRB can suspend or terminate approval of research if the research is not being conducted in accordance with the IRB's requirements or if the research has been associated with unexpected serious harm to patients.

Investigational New Drug Application

For a biologic product, an IND must be submitted prior to the initiation of the clinical study. The IND application must contain information in three broad areas:

- Animal Pharmacology and Toxicology Studies - Preclinical data to permit an assessment as to whether the product is reasonably safe for initial testing in humans. Also included are any previous experiences with the product in humans (often foreign use).
- Manufacturing Information - Information pertaining to the composition, manufacturer, stability, and controls used for manufacturing of the drug substance and the drug product. This information is assessed to ensure that the company can adequately produce and supply consistent batches of the drug.
- Clinical Protocols and Investigator Information - Detailed protocols for proposed clinical studies to assess whether the initial-phase trials will expose subjects to unnecessary risks. Also, information on the qualifications of clinical investigators—professionals (generally physicians) who oversee the administration of the experimental compound—to assess whether they are qualified to fulfill their clinical trial duties. Finally, commitments to obtain informed consent from the research subjects, to obtain review of the study by an IRB, and to adhere to the investigational new drug regulations.

Once the IND is submitted, the sponsor must wait 30 calendar days before initiating any clinical trials. During this time, the FDA has an opportunity to review the IND for safety to assure that research subjects will not be subjected to unreasonable risk.

AxoGen Clinical Trials

AxoGen has an active clinical research program to gather data on the Avance® Nerve Graft. AxoGen has completed two clinical studies and is performing two ongoing clinical studies. The ongoing studies are "A Multicenter Retrospective Study of Avance® Nerve Graft Utilization, Evaluations and Outcomes in Peripheral Nerve Injury Repair ("RANGER®")" and "A Multicenter, Prospective, Randomized, Patient and Evaluator Blinded Comparative Study of Nerve Cuffs and Avance® Nerve Graft Evaluating Recovery Outcomes for the Repair of Nerve Discontinuities ("RECON")". Completed studies are "A Multicenter, Prospective, Randomized, Comparative Study of Hollow Nerve Conduit and Avance® Nerve Graft Evaluation Recovery Outcomes of the Nerve Repair in the Hand ("CHANGE")" and a pilot study to evaluate the use of Avance® Nerve Graft in the reconstruction of nerves following prostatectomy.

AxoGen will continue to accept patients in the RANGER® clinical study, a utilization registry of Avance® Nerve Graft. Three publications and more than 44 scientific conference presentations have been generated to date from the registry. The RANGER® Study is an observational study in current enrollment. It is designed to allow enrollment of up to a total of 2,500 subjects over the next several years. The follow-up for the RANGER® Study is standard of care up to 36 months post nerve repair. At the time of the BLA submission, AxoGen will submit an interim report in the BLA for the enrolled subjects. In 2013, a Matched Autograft and Tube Conduit Case Control Cohort Arm of RANGER® ("MATCH") comparative arm was added. Subjects treated with Avance® Nerve Graft were matched to the nerve autograft or tube conduit treated groups based on size of gap length. We anticipate having approximately 300 subjects treated with nerve autograft and/or tube conduit in the comparative arm.

AxoGen has worked with leading institutions, researchers and surgeons to support innovation in the field of surgical peripheral nerve repair. AxoGen believes that RANGER® is currently the largest multi-center observational clinical study conducted in peripheral nerve gap repair. AxoGen's ongoing RECON study will also continue our clinical work, providing a new multi-center, prospective, randomized, clinical study on Avance® Nerve Graft. The January 2012 edition of Microsurgery, November 2012 edition of The Journal of Hand Surgery June 2015 edition of Journal of Reconstructive Microsurgery and the January 2017 edition of HAND, each contain an article summarizing RANGER® study results (Brooks, et al. Processed nerve allografts for peripheral nerve reconstruction: A multicenter study of utilization and outcomes in sensory, mixed, and motor nerve reconstructions. Microsurgery, 2012 Jan; 32(1): 1-14; and Cho, et al. Functional outcome following nerve repair in the upper extremity using processed nerve allograft. J Hand Surg Am 2012 Nov; 37(11):2340-9 and Rinker, et al. Outcomes of short-gap sensory nerve injuries reconstructed with processed nerve allografts from a multicenter registry study. J Reconstr Microsurg 2015 Jun; 31(5):384-90). Brooks et

al. reported on 55 Avance® Nerve Graft nerve repairs and resulted in meaningful motor and sensory recovery in 87% of nerve discontinuities between 5 and 50 mm. Cho et al. showed that Avance® Nerve Graft provided 89% meaningful recovery for digital nerve injuries, and 80% meaningful recovery for motor function in mixed and motor nerve injuries. An expanded data milestone was presented at the 5th Vienna Symposium on Surgery of Peripheral Nerves in June 2014 and such expanded RANGER® data provides that of the injuries repaired with the Avance® Nerve Graft 90%, 80% and 87% achieved meaningful recovery for gap lengths of 5-14 mm, 15-29 mm and 30-65 mm, respectively. Rinker et al. reported on a subgroup from the RANGER® registry on sensory recovery of short-gap digital nerve repairs between 5-15 mm using Avance® Nerve Graft. The study cohort included 24 subjects with 37 digital nerve repairs. Outcomes analysis demonstrated meaningful levels of sensory recovery. No implant related adverse experiences were reported in any of such reports. Isaacs and Safa reported on a subgroup of subjects with large diameter nerve injuries repaired with Avance® Nerve Graft. The study included 15 nerve repairs with 4-5 mm diameter Avance® Nerve Grafts. Outcomes analysis found that meaningful levels of sensory and motor function were achieved and no safety concerns were reported.

The following describes available clinical outcomes data from published papers on the leading synthetic and collagen conduit. Published papers on the leading synthetic collagen conduit by Weber, et al., 2000 and Wangensteen and Kalliainen, 2009, showed meaningful improvement: 74% in sensory nerves and 43% in sensory, mixed and motor nerves, respectively, of cases bridging a gap in the particular type of nerve. A paper published by Haug, et al., 2013 on the leading synthetic and collagen conduit showed meaningful improvement in 40% sensory nerves using the static 2-point discrimination test. Autograft studies where autograft and direct repair or direct suture were tested by Weber, et al., 2000, Kim and Kline 2001-2006, Frykman and Gramyk, 1991, Frykman and Gramyk, 1991 and Kallio, 1993, as interpreted by Brooks et al. 2012, reported meaningful recovery: 86% in sensory nerves, 67-86% in sensory and mixed nerves, 80% in sensory nerves, 75-78% mixed nerves and 70% sensory nerves, respectively, of cases bridging a gap in the particular type of nerve. Published papers by Kim and Kline 2001-2006 and Frykman and Gramyk, 1991 reported successful recovery in 75% and 78% of mixed and motor nerves, respectively. A study by Kallio et al., 1993 showed recovery in 67% of mixed and motor nerves where recovery was defined as results indicating a classification of useful or better motor and sensory recovery.

The RECON study will include up to 15 centers and is a prospective, randomized, controlled, patient and evaluator blinded, comparative study of Avance® Nerve Graft and Collagen Nerve Cuffs in the repair of peripheral nerve discontinuities. The study is a non-inferiority study designed to assess the outcome of peripheral nerve repair in 150 subjects. Subjects will be followed over the course of 12 months to assess safety and efficacy outcomes with assessments being performed at various defined intervals up to 12 months. The study is currently in early enrollment and no outcome data is available at this time.

CHANGE was a prospective randomized controlled pilot study of nerve cuffs and Avance® Nerve Graft for the reconstruction of peripheral nerve discontinuities in male and female subjects that sustained injury to at least one nerve in the hand, distal to the superficial palmar arch that after resection resulted in a nerve gap of >5 mm and ≤20 mm. The study results were published by Means et al in the June 2016 edition of HAND. The authors randomized 23 participants with 31 digital nerve injuries. Sixteen participants with 20 repairs had at least six months of follow-up while 12-month follow-up was available for 15 repairs. There were no significant differences in participant and baseline characteristics between treatment groups. The average static two point discrimination (s2PD) for the Avance® Nerve Graft was 5 ± 1 mm (n = 6) compared with 8 ± 5 mm (n = 9) for hollow conduits. All injuries randomized to processed nerve allograft returned some degree of s2PD as compared with 75% of the repairs in the conduit group. The authors concluded that in this pilot study, patients whose digital nerve reconstructions were performed with processed nerve allografts had significantly improved and more consistent functional sensory outcomes compared with hollow conduits.

A pilot study on the repair of the cavernous nerves in prostate cancer patients at Vanderbilt with 24 month follow-up has been completed. A total of 12 subjects were enrolled in this single center study. The primary objective of this study was to assess the technical feasibility of using Avance® Nerve Graft for neurovascular bundle (NVB) reconstruction during Robotic Assisted Laparoscopic Prostatectomy (RALP). The secondary objective of the study was to assess the long term safety and efficacy of NVB reconstruction by assessing quality of life and erectile function through validated questionnaires 24 months post-repair.

Clinical trials are subject to extensive recordkeeping and reporting requirements. AxoGen's clinical trials must be conducted under the oversight of an IRB for the relevant clinical trial sites and must comply with FDA regulations, including but not limited to those relating to good clinical practices. AxoGen is also required to obtain the patients' written informed consent in form and substance that complies with both FDA requirements and state and federal privacy and human subject protection regulations. AxoGen, the FDA or the IRB may suspend a clinical trial at any time for various reasons, including a belief that the risks to study subjects outweigh the anticipated benefits. Even if a trial is completed, the results of clinical testing may not adequately demonstrate the safety and efficacy of the biological product or device, or may otherwise not be sufficient to obtain FDA approval to market the product in the U.S. Similarly, in Europe, the clinical study for a medicine product must be authorized by the Competent Authority in each Member State in which the clinical trial is to be conducted, and must receive a favorable opinion from an ethics committee.

Pervasive and Continuing Regulation

There are numerous regulatory requirements that apply after a product is cleared or approved. For medical devices, these include, but are not limited to: the FDA's regulations for device labeling (21 CFR Part 801), medical device reporting (21 CFR Part 803), reporting of corrections and removals (21 CFR Part 806), establishment registration and device listing requirements (21 C.F.R. Part 807); and compliance with the Quality System Regulation (QSR) per 21 CFR Part 820. Distribution of medical devices is also subject to license/registration requirements in some states. For tissue and biologic products, the regulatory requirements include: the FDA's registration and listing requirements, donor eligibility requirements and compliance with Good Tissue Practices ("GTP") in 21 CFR Part1271 for human tissue products, compliance with the FDA's cGMP in 21 CFR Parts 210, 211, and 600 for biological products, and postmarket BLA requirements (21 CFR Part 601). Among other things, these regulations require manufacturers, including third party manufacturers to:

- follow stringent design, testing, control, documentation and other quality assurance procedures during all aspects of the manufacturing process;
- comply with labeling regulations and FDA prohibitions against the false or misleading promotion or the promotion of products for uncleared, unapproved or off-label uses or indications;
- comply with requirements to obtain clearance or approval for certain changes affecting the product, including changes to the product's manufacturing, labeling, or intended use;
- report to the FDA certain adverse events, adverse reactions and deviations: (a) for medical devices, a report to FDA is required if the device may have caused or contributed to a death or serious injury or malfunctioned in a way that would likely cause or contribute to a death or serious injury if the malfunction were to recur; (b) for biologics, a deviation from current GMP or an unexpected or unforeseeable event that may affect the safety, purity, or potency of the product must be reported; and (c) for human tissue products, FDA requires reporting of certain adverse reactions involving a communicable disease related to an HCT/P that the company made available for distribution;
- comply with post-approval restrictions or conditions, including post-approval study commitments and post-market safety and annual reporting requirements;
- follow post-market surveillance regulations that may apply when necessary to protect the public health or to provide additional safety and effectiveness data for the device; and
- follow requirements to issue notices of correction or removal, or conduct market withdrawals or recalls where quality or other issues arise.

AxoGen has not received any reports of adverse events concerning the Avance® Nerve Graft or Avive™ Soft Tissue Membrane products. Four adverse events have been reported for the AxoGuard® products (one each in 2013, 2014, 2015 and 2016). AxoGen has not had to submit any Medical Device Reports ("MDRs"), biological deviation reports, or tissue adverse reaction reports to the FDA. Cook Biotech submitted an MDR for the AxoGuard® adverse events in 2013, 2014, 2015 and 2016. Although AxoGen's AxoGuard® products have had just four adverse events reported to date, there may have been other incidents, including patient deaths, which may have occurred during procedures utilizing AxoGen's products without AxoGen being aware of any such incidents. In addition, there can be no assurance that in the future AxoGen's products will not cause or contribute to an adverse event that would require AxoGen to submit MDRs, biological deviation reports, or tissue adverse reaction reports to the FDA.

The advertising and promotion of medical products are also regulated by the Federal Trade Commission and by state regulatory and enforcement authorities. Recently, some promotional activities for FDA-regulated products have been the subject of enforcement action brought under healthcare reimbursement laws and consumer protection statutes. In addition, under the Federal Lanham Act and similar state laws, competitors and others can initiate litigation relating to advertising claims.

AxoGen is registered with the FDA as a tissue establishment for the Avance® Nerve Graft and Avive™ Soft Tissue Membrane. The FDA has broad post-market and regulatory enforcement powers. AxoGen is subject to unannounced inspections by the FDA to determine compliance with the GTP, GMP and other regulations, and these inspections may also include the manufacturing facilities of suppliers.

Failure by AxoGen or by AxoGen's suppliers to comply with applicable regulatory requirements can result in enforcement action by the FDA or other federal or state authorities, which may include any of the following sanctions, among others:

- warning letters, fines, injunctions, consent decrees and civil penalties;
- customer notifications, repair, replacement, refunds, recall or seizure of our products;
- operating restrictions, partial suspension or total shutdown of production;
- suspension or termination of our clinical trials;
- refusing our PMA or BLA for new products, new intended uses or modifications to existing products; and
- withdrawing or spending premarket approvals that have already been granted; and criminal prosecution.

Education Grants, U.S. Anti-kickback, False Claims and Other Healthcare Fraud and Abuse Laws

Educational Grants

A medical product manufacturer may provide financial support, including support by way of grants, to third-parties for the purpose of conducting medical educational activities. If these funded activities are considered by the FDA to be independent of the manufacturer, then the activities fall outside the FDA restrictions on promotion to which the manufacturer is subject.

The FDA considers several factors in determining whether an educational event or activity is independent from the substantive influence of the product manufacturer and therefore non-promotional, including, but not limited to, the following:

- whether the intent of the funded activity is to present clearly defined educational content, free from commercial influence or bias;
- whether the third party grant recipient and not the manufacturer has maintained control over selecting the faculty, speakers, audience, program content and materials;
- whether the program focuses on a single product of the manufacturer without a discussion of other relevant existing competitive products or treatment options;
- whether there was meaningful disclosure to the audience, at the time of the program, regarding the manufacturer's funding of the program, any significant relationships between the provider, presenters, or speakers and the supporting manufacturer; whether any unapproved uses will be discussed;
- whether there are legal, business, or other relationships between the supporting manufacturer and provider or its employees that could permit the supporting manufacturer to exert influence over the content of the program;
- whether the individuals employed by the provider and involved in designing or conducting the educational activities are also involved in advising or assisting the company with respect to sales or marketing;

- whether the information about the company's products is further disseminated after the initial program, by or at the direction of the company, other than in response to an unsolicited request or through an independent provider; and
- whether the provider is compliant with standards for independence, balance, objectivity, and scientific rigor when putting on ostensibly independent educational programs.

AxoGen seeks to ensure that the activities it supports pursuant to educational grants program are in accordance with these criteria for independent educational activities. However, AxoGen cannot provide assurance that the FDA or other government authorities would view the programs supported as being independent.

Fraud, Abuse and False Claims

AxoGen is directly and indirectly subject to various federal and state laws governing relationships with healthcare providers and pertaining to healthcare fraud and abuse, including anti-kickback laws. In particular, the federal healthcare program Anti-Kickback Statute prohibits persons from knowingly and willfully soliciting, offering, receiving or providing remuneration, directly or indirectly, in exchange for or to induce either the referral of an individual, or the furnishing, arranging for or recommending a good or service for which payment may be made in whole or part under federal healthcare programs, such as the Medicare and Medicaid programs. Penalties for violations include criminal penalties and civil sanctions such as fines, imprisonment and possible exclusion from Medicare, Medicaid and other federal healthcare programs. The Anti-Kickback Statute is broad and prohibits many arrangements and practices that are lawful in businesses outside of the healthcare industry. In implementing the statute, the Office of Inspector General of the U.S. Department of Health and Human Services ("OIG") has issued a series of regulations, known as the "safe harbors." These safe harbors set forth provisions that, if all their applicable requirements are met, will assure healthcare providers and other parties that they will not be prosecuted under the Anti-Kickback Statute for activities that fit within a safe harbor. The failure of a transaction or arrangement to fit precisely within one or more safe harbors does not necessarily mean that it is illegal or that prosecution will be pursued. However, conduct and business arrangements that do not fully satisfy each applicable element of a safe harbor may result in increased scrutiny by government enforcement authorities, such as the OIG, and are at risk activities unless a favorable advisory opinion is obtained from the OIG.

The Federal False Claims Act ("FCA") imposes civil liability on any person or entity that submits, or causes the submission of, a false or fraudulent claim to the U.S. government. Damages under the FCA can be significant and consist of the imposition of fines and penalties. The FCA also allows a private individual or entity with knowledge of past or present fraud against the federal government to sue on behalf of the government to recover the civil penalties and treble damages. The DOJ has previously alleged that the marketing and promotional practices of pharmaceutical and medical device manufacturers included the off-label promotion of products or the payment of prohibited kickbacks to doctors violated the FCA resulting in the submission of improper claims to federal and state healthcare entitlement programs such as Medicaid. In certain cases, manufacturers have entered into criminal and civil settlements with the federal government under which they entered into plea agreements, paid substantial monetary amounts and entered into corporate integrity agreements that require, among other things, substantial reporting and remedial actions going forward.

AdvaMed is one of the primary voluntary U.S. trade associations for medical device manufacturers. This association has established guidelines and protocols for medical device manufacturers in their relationships with healthcare professionals on matters including research and development, product training and education, grants and charitable contributions, support of third party educational conferences, and consulting arrangements. Adoption of the AdvaMed Code by a medical device manufacturer is voluntary, and while the OIG and other federal and state healthcare regulatory agencies encourage its adoption and may look to the AdvaMed Code, they do not view adoption of the AdvaMed Code as proof of compliance with applicable laws. AxoGen has incorporated the principles of the AdvaMed Code in its standard operating procedures, sales force training programs, and relationships with doctors. Key to the underlying principles of the AdvaMed Code is the need to focus the relationships between manufacturers and healthcare professionals on matters of training, education and scientific research, and limit payments between manufacturers and healthcare professionals to fair market value for legitimate services provided and payment of modest meal, travel and other expenses for a healthcare professional under limited circumstances. AxoGen has incorporated these principles into its relationships with healthcare professionals under its consulting agreements, payment of travel and lodging expenses,

research and educational grant procedures and sponsorship of third party conferences. In addition, AxoGen has conducted training sessions on these principles. Finally, the Sunshine act, as defined below, imposes additional new reporting and disclosure requirements on AxoGen for any "transfer of value" made or distributed to physicians and teaching hospitals, as well as reporting of certain physician ownership interests. AxoGen cannot provide any assurance that regulatory or enforcement authorities will view its relationships with physicians or policies as being in compliance with applicable regulations and laws.

Regulation Outside of the United States

Sales of medical products outside of the U.S. are subject to foreign governmental regulations that vary substantially from country to country. The time required to obtain certification or approval by a foreign country may be longer or shorter than that required for FDA clearance or approval and the requirements may be different.

There are restrictions under U.S. law on the export from the U.S. of medical devices and biological product that cannot be legally distributed in the U.S. If a Class I or Class II device does not have 510(k) clearance and the manufacturer reasonably believes that the device could obtain 510(k) clearance in the U.S., then the device can be exported to a foreign country for commercial marketing without the submission of any type of export request or prior FDA approval if (i) the device is not sold or offered for sale in the U.S., (ii) is labeled for export only and (iii) satisfies certain criteria relating primarily to specifications of the foreign purchaser and compliance with the laws of the country to which it is being exported, known as Importing Country Criteria. An unapproved Class III device can be exported if it (i) complies with the criteria discussed above for devices that could obtain 510(k) clearance, (ii) meets certain other quality and labeling requirements, and (iii) has a valid marketing authorization from one of a list of countries listed in the FD&C Act. If an unapproved Class III device does not have a valid marketing authorization from one of the listed countries, an export permit from the FDA is required in order to export it. An unapproved biological product can be exported without submitting an export request to FDA if the product has received a marketing authorization in one of a list of countries listed in the FD&C Act and it meets applicable requirements of the FD&C Act and the laws of the country to which it is exported. An investigational biological product may also be exported under an IND if a listed investigator is in a foreign country and certain requirements specified in FDA's regulations are met. AxoGen currently believes it complies with applicable regulations when exporting its products and AxoGen intends to continue such compliance in the event there are any regulatory changes regarding its products in the United States.

The primary regulatory body in Europe is the E.U. which has adopted numerous directives and promulgated voluntary standards regulating the design, manufacture and labeling of, and clinical trials and adverse event reporting for, medical devices. Devices that comply with the requirements of a relevant directive will be entitled to bear CE marking, indicating that the device conforms to the essential requirements of the applicable directives and, accordingly, can be commercially distributed throughout the member states of the E.U. and other countries that comply with these directives. The method for assessing conformity varies depending on the type and class of the device, but normally involves an assessment by the manufacturer and a third party assessment by a notified body, an independent and neutral institution appointed by a country to conduct the conformity assessment. This third party assessment may consist of an audit of the manufacturer's quality system and specific testing of the manufacturer's device. Such an assessment is required for a manufacturer to commercially distribute the product throughout these countries. In the second quarter of 2014, AxoGen's Quality System became registered to ISO 13485 for Receipt, Handling, Storage and Distribution of Medical Devices related to nerve repair.

Cook Biotech is responsible for all regulatory filings for the AxoGuard products including international registrations. AxoGen works with Cook Biotech by providing the countries for Cook to register or get approval for the AxoGuard® products. Cook Biotech prepares the product filing documentation and submits this documentation to the Ministry of Health ("MOH") for the country. Each country or region has its own regulations and the documentation required for submission varies. It typically takes less than nine months from the initiation of the project to obtain AxoGuard® clearance in a given country or region. To date, the AxoGuard® product line was registered in May 2013 in Canada for distribution and in April 2013 the product line was awarded the CE Mark allowing distribution into the E.U. and other countries that accept the CE Mark.

Tissue products are not currently regulated under the CE Mark

AxoGen is responsible for all regulatory filings for Avance® Nerve Graft and Avive™ Soft Tissue Membrane including international registrations. To obtain approvals AxoGen will prepare the product filing documentation and submit this documentation to the Ministry of Health ("MOH") for a country.

Although some standards of harmonization exist, each country in which AxoGen conducts business has its own specific regulatory requirements. AxoGen procures and processes its tissue for the Avance® Nerve Graft and Avive™ Soft Tissue Membrane in the U.S., and markets the Avance® Nerve Graft in Canada, United Kingdom, and certain other countries under compliance with the individual country regulations. These requirements are dynamic in nature and, as such, are continually changing. New regulations may be promulgated at any time and with limited notice. AxoGen will review the regulations at the time of submission of the product dossier for regulatory review. This review involves reviewing the appropriate MOH regulations, discussion with in-country distributors and use of consultants. It typically takes less than nine months from the initiation of the product to develop a product dossier (specific for that country), submission of the documentation and MOH review of the product filing. While AxoGen believes that it is in compliance with all existing pertinent international and domestic laws and regulations, there can be no assurance that changes in governmental administrations and regulations will not negatively impact AxoGen's operations. To date, AxoGen has not filed for international approvals for Avive™ Soft Tissue Membrane.

The FDA and international regulatory bodies conduct periodic compliance inspections of AxoGen's U.S. processing facilities. AxoGen's operations are registered with the U.S. FDA Center for Biologics Evaluation and Research (CBER), as a tissue establishment. AxoGen is also accredited by the AATB and is licensed in the states of Florida, New York, California, Maryland, Delaware, Oregon and Illinois. AxoGen believes that worldwide regulation of tissue products is likely to intensify as the international regulatory community focuses on the growing demand for these implant products and the attendant safety and efficacy issues of citizen recipients. Changes in governing laws and regulations could have a material adverse effect on AxoGen's financial condition and results of operations. AxoGen management further believes that it can help to mitigate this exposure by continuing to work closely with government and industry regulators.

Environmental

AxoGen's products, as well as the chemicals used in processing, are handled and disposed of in accordance with country-specific, federal, state and local environmental regulations. Since 2007, AxoGen has used outside third parties to perform all biohazard waste disposal.

AxoGen contracts with independent, third parties to perform sterilization of its allografts. In view of the engagement of a third party to perform irradiation services, the requirements for compliance with radiation hazardous waste do not apply, and therefore AxoGen does not anticipate that this engagement will have any material adverse effect upon its capital expenditures, results of operations or financial condition. However, AxoGen is responsible for assuring that the service is being performed in accordance with applicable regulations. Although AxoGen believes it is in compliance with all applicable environmental regulations, the failure to fully comply with any such regulations could result in the imposition of penalties, fines and/or sanctions which could have a material adverse effect on AxoGen's business.

Corporate History

On September 30, 2011, AxoGen Corporation ("AC"), a Delaware corporation, completed its business combination with LecTec Corporation ("LecTec"), a Minnesota corporation, 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 August 9, 2011 and September 30, 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. In October 2011, AxoGen Inc. moved its corporate headquarter facilities (principal executive office) from Texarkana, Texas to Alachua, Florida.

LecTec was organized in 1977 as a Minnesota corporation and went public in December 1986. Prior to the Merger it was an intellectual property licensing and holding company. LecTec held multiple domestic and international patents based on its original hydrogel patch technology and filed patent applications on a hand sanitizer patch. LecTec also had a licensing agreement with Novartis Consumer Health, Inc. LecTec took legal action to protect its IP and settled all of its litigation prior to the Merger and AxoGen subsequent to the Merger continued to hold LecTec IP until it expired.

Employees

At December 31, 2016, AxoGen had 146 total employees, including 8 part-time employees and 138 full-time employees. Of the full-time employees, 13 employees work in administration, information technology and finance, 20 employees work in manufacturing and quality control, 12 employees work in research and development and regulatory and 93 employees work in sales and marketing. As of the date of this annual report on Form 10-K AxoGen has not had a work stoppage and no employees are represented by a labor union. AxoGen believes its relationship with its employees is satisfactory.

Executive Officers of the Registrant

The following table lists the names and positions of the individuals who are, as of February 28, 2017, executive officers of AxoGen:

Name	Title
Karen Zaderej	President, Chief Executive Officer and Director
Pete Mariani	Chief Financial Officer
Gregory G. Freitag, JD CPA	General Counsel, Senior Vice President of Business Development and Director
John P. Engels	Vice President
Mark Friedman, Ph.D.	Vice President of Regulatory and Quality
David Hansen	Chief Accounting Officer
Shawn McCarrey	Senior Vice President of Sales
Kevin Leach	Vice President of Marketing
Erick DeVinney	Vice President of Clinical and Translational Sciences
Mike Donovan	Vice President of Operations

Biographical information for each of our executive officers is included below.

Karen Zaderej, President, Chief Executive Officer and Director (Age 55)

Ms. Zaderej has served as AxoGen's President, Chief Executive Officer and a member of our board of directors (the "Board of Directors") since September, 2011. She has served as the Chief Executive Officer of AC, and a member of AC's board of directors since May 2010. Ms. Zaderej joined AC in May 2006 and served as Vice President of Marketing and Sales from May 2006 to October 2007 and as Chief Operating Officer from October 2007 to May 2010. From October 2004 to May 2006, Ms. Zaderej worked for Zaderej Medical Consulting, a consulting firm she founded, which assisted medical device companies in building and executing successful commercialization plans. From 1987 to 2004, Ms. Zaderej worked at Ethicon, Inc., a Johnson & Johnson company, where she held senior positions in marketing,

business development, and research & development, as well as ran a manufacturing business. Ms. Zaderej is a Director of SEBio, a non-profit supporting the life science industry in the southeastern United States. Ms. Zaderej has a MBA from the Kellogg Graduate School of Business and a BS in Chemical Engineering from Purdue University.

Peter Mariani, Chief Financial Officer (Age 53)

Mr. Mariani, has been AxoGen's Chief Financial Officer since March of 2016. Prior to joining AxoGen, he served as Chief Financial Officer of Lensar, Inc, a privately held laser refractive cataract surgery company, from July 2014 through January 2016, which was sold in December 2015. From June 2011 to June 2014 Mr. Mariani served as Chief Financial Officer of Hansen Medical, a publicly traded medical device company developing robotic solutions for intravascular procedures. From 2007 through 2010 Mr. Mariani served as Chief Financial Officer for two privately held companies: Harlan Laboratories (2007 – 2009); and BMW Constructors (2009 – 2010). From 1994 through 2006 Mr. Mariani served in various senior financial roles with Guidant Corporation, a publicly traded leader in the development and sale of medical devices for the treatment of cardiovascular disease. Mr. Mariani began his career with Guidant as Director of Corporate Financial Reporting where he supported the initial public offering of Guidant and ultimately served as Vice President, Controller and Chief Accounting Officer. Mr. Mariani's experience at Guidant included two years as Director of Financial Reporting, Guidant Vascular Intervention in Santa Clara, California, and four years in Tokyo, Japan, mostly as Vice President Finance and Administration where he helped to facilitate the conversion and scale of the Japan business from a distributor network to a direct sales and marketing organization. Following the 2006 sale of Guidant to Boston Scientific Corporation, Mr. Mariani co-led the initial integration of the two companies. From 1987 to 1994, Mr. Mariani worked with Ernst and Young, LLP, where he served a diverse client base as a Certified Public Accountant. Mr. Mariani received a Bachelor of Science Degree in Accounting from Indiana University.

Gregory G. Freitag, JD, CPA, General Counsel, Senior Vice President Business Development and Director (Age 55)

Mr. Freitag, J.D., CPA, has been AxoGen's General Counsel and a member of our Board of Directors since September 2011, has been AxoGen's Senior Vice President Business Development since May 2014, and was AxoGen's Chief Financial Officer from September 2011 to May 2014 and August 2015 to March 2016. He was Chief Executive Officer, Chief Financial Officer and a board member of LecTec Corporation, an IP licensing and holding company that merged with AxoGen in September 2011, from June 2010 through September 2011. From May 2009 to the present, Mr. Freitag has been a principal of FreiMc, LLC, a healthcare and life science consulting and advisory firm he founded that provides strategic guidance and business development advisory services. Prior to founding FreiMc, LLC, Mr. Freitag was a Director of Business Development at Pfizer Health Solutions, a former subsidiary of Pfizer, Inc., from January 2006 to May 2009. From July 2005 to January 2006, Mr. Freitag worked for Guidant Corporation in its business development group. Prior to Guidant Corporation, Mr. Freitag was the Chief Executive Officer of HTS Biosystems, a biotechnology tools start-up company, from March 2000 until its sale in early 2005. Mr. Freitag was the Chief Operating Officer, Chief Financial Officer and General Counsel of Quantech, Ltd., a public point of care diagnostic company, from December 1995 to March 2000. Prior to that time, Mr. Freitag practiced corporate law in Minneapolis, Minnesota. Mr. Freitag is also a director of the Foundation Board of HealthEast Care System, a health care system in Minnesota, and PDS Biotechnology Corporation, a private, clinical stage biopharmaceutical company developing immunotherapies for cancer and other disease areas such as infectious disease. Mr. Freitag holds a JD from the University of Chicago and a BA Economics & Business and Law & Society from Macalester College, Minnesota.

John P. Engels, Vice President (Age 45)

Mr. Engels has served as AxoGen's Vice President since September 2011. He is a co-founder of AC and has served as AC's Vice President since June 2006, having provided operational and financial leadership and managing AxoGen's strategic and product development partnerships until January 2012 when he assumed the leadership of international sales. From 1999 to 2002, Mr. Engels worked as a consultant for the University of Florida, Saffron Hill Ventures and PA Early Stage Partners, among other companies. From 1993 to 1997, Mr. Engels was an analyst and associate at CACM, a boutique investment banking firm. Mr. Engels is currently a member of the board of directors of Oxicool, Inc., a

privately-held company developing new cooling technologies. Mr. Engels holds a MBA in Management and Operations from the Wharton School of Business at the University of Pennsylvania, and a BA from the University of Chicago.

Mark Friedman, Ph.D., Vice President of Regulatory and Quality (Age 59)

Dr. Friedman has served as AxoGen's Vice President of Regulatory and Quality since September 2011. He has served as AC's Vice President of Regulatory and Quality since June 2011 and served as AC's Director of Quality Assurance and Regulatory Affairs from September 2006 to June 2011. Prior to joining AxoGen, Dr. Friedman held several regulatory and quality leadership positions at Enable Medical Corporation, a medical device company, including Director of Quality Assurance from 1997 to 1998 and Vice President of Quality and Regulatory from 1998 to 2001 and from 2004 to 2005. Dr. Friedman also worked for AtriCure, Inc., a company that develops, manufactures and sells surgical ablation systems to treat atrial fibrillation, as Vice President of Quality and Regulatory from 2001 to 2004 and as Vice President of Operations in 2004. AtriCure acquired Enable Medical in 2005. Dr. Friedman has over 25 years of experience in developing and directing regulatory strategy and quality systems for medical products, including 15 years with start-up medical product firms. Dr. Friedman has a Ph.D. in Chemistry specializing in protein biochemistry from the University of Cincinnati. Dr. Friedman sits on various agency committees for the Alliance of Regenerative Medicine, Medical Device Manufacturer's Association and American Association of Tissue Banks, working on improving regulatory laws and standards for regenerative products and medical devices.

David Hansen, Chief Accounting Officer (Age 56)

Mr. Hansen has served as Chief Accounting Officer of AxoGen since December 2015. Mr. Hansen has served as the Corporate Controller of AxoGen, Inc. since November 2011 and the Corporate Controller of AC since June 2006. Mr. Hansen was Vice President of Finance—Corporate Controller and Treasurer of Perma-Fix Environmental Services, Inc., a publicly-traded environmental services company, and held other corporate and regional accounting positions at Perma-Fix Environmental Services from 1995 to 2005. Mr. Hansen was also the Controller at Kraft Foodservice, Inc. from 1994 to 1995 and held other accounting and procurement positions at Kraft Foodservice, Inc. from 1985 to 1994. Mr. Hansen has over 20 years of experience in senior financial positions at both publicly traded and private companies. Mr. Hansen holds a BBA degree in Accounting from the University of Oklahoma.

Shawn McCarrey, Senior Vice President of Sales (Age 59)

Mr. McCarrey has served as AxoGen's Senior Vice President of Sales since February 2013. Mr. McCarrey was Executive Vice President of North American Cardiovascular Sales at Bayer Interventional/MEDRAD Interventional from January 2009 to May 2012. Bayer HealthCare, a subgroup of Bayer AG, is one of the world's leading, innovative companies in the healthcare and medical products industry. Bayer Interventional, now doing business as part of Bayer Medical Care's Radiology and Interventional business, is the interventional franchise formerly operated under Bayer's MEDRAD brand. From 1998 to 2009, Mr. McCarrey held multiple escalating positions with Possis Medical, Inc., a company that developed, manufactured and marketed medical devices for the cardiovascular and vascular treatment markets, and served as Director or Sales, VP of US Sales, VP of Worldwide Sales and EVP of Worldside Sales & Marketing. For more than 15 years prior to joining Possis, Mr. McCarrey served in a series of progressively responsible roles with two divisions of C.R. Bard, United States Catheter and Instrument Corporation (USCI) which specialized in the treatment of coronary disease in the cardiac catheterization laboratory and Davol, an operating room division that promoted Thoraclex and Simpulse to cardiovascular and orthopedic surgeons. Mr. McCarrey holds a BS degree in Marketing from Central Michigan University.

Kevin Leach, Vice President of Marketing (Age 47)

Mr. Leach has been AxoGen's Vice President of Marketing since March 2016. Prior to joining AxoGen, Mr. Leach worked in a consulting capacity between September 2015 and March 2016 for start-up companies supporting strategic planning and due diligence activities for targeted acquisitions. Mr. Leach previously served as Vice President of Marketing for Stryker within their orthopedic division, where he led the overall knee strategy from September 2013 through August 2015. From February 2013 to September 2013 Mr. Leach served as marketing consultant for SteadMed Medical, a medical device company focusing on acute and chronic wounds. From January 2008 to February 2013 Mr. Leach served in marketing roles with increasing responsibility including as Vice President, Marketing with ConvaTec, a

medical products and technologies company with leading market positions in Wound Therapeutics, Ostomy Care, Continence and Infusion Devices. ConvaTec was acquired by private equity firms Nordic Capital and Avista Capital Partners in 2008. Prior to moving to the United States, from October 2000 to January 2008, Mr. Leach was a global marketing leader for ConvaTec, a Bristol-Myers Squibb company where he led the launch of new products globally. From February 1999 to October 2000 Mr. Leach served as Business Unit Manager at Zimmer UK, within a newly established division for the orthopedic business unit focusing on market development and commercialization of an injectable hyaluronic acid for the relief of joint pain. From January 1992 to February 1999 Mr. Leach held various sales and marketing roles within the UK division of ConvaTec. Mr. Leach qualified as a Podiatrist from Queen Margaret University in Edinburgh.

Erick DeVinney, Vice President of Clinical and Translational Sciences (Age 41)

Mr. DeVinney has served as AxoGen's Vice President of Clinical and Translational Sciences since January 2014. Prior to January 2014, Mr. DeVinney was the Director of Clinical and Translational Sciences for AxoGen from April 2007 until January 2014. Erick has over 14 years of experience in the successful planning and management of clinical development. Prior to joining AxoGen Mr. DeVinney served as Manager of Clinical Operations for Angiotech Pharmaceuticals from 2005 to 2007 and Clinical Program Lead for Pharmaceutical Research Associates International from 2001 to 2005. Mr. DeVinney has been involved in the successful submission of numerous 510(k), IDE and NDA applications. He has a BS in Chemistry from Virginia Commonwealth University.

Mike Donovan, Vice President of Operations (Age 52)

Mr. Donovan has served as AxoGen's Vice President of Operations since September 2015. Prior to September 2015, Mr. Donovan was AxoGen's Director of Operations from January 2011 until September 2015. From 1988 to 2010, Mr. Donovan held positions at Zimmer Holdings in manufacturing, continuous improvement, quality assurance and sterilization including Director of Manufacturing from 2002 to 2010. Mr. Donovan has a BS in Chemical Engineering and an MBA from the University of Akron.

ITEM 1A. RISK FACTORS

AxoGen's business involves a number of risks, some of which are beyond its control. The risk and uncertainties described below are not the only ones the Company faces. Set forth below is a discussion of the risks and uncertainties that management believes to be material to AxoGen.

Risks Related To The Company

AxoGen has not experienced positive cash flow from its operations, and the ability to achieve positive cash flow from operations will depend on increasing sales of its products, which may not be achievable.

AxoGen has historically operated with negative cash flow from its operations. As of December 31, 2016, AxoGen had an accumulated deficit of approximately $118 million. If AxoGen product sales do not increase as anticipated, then it will continue to experience negative cash flows and adverse operating conditions. AxoGen's continuing capital needs and other factors could cause the Company to raise additional funds through public or private equity offerings, debt financings or from other sources. The sale of additional equity may result in dilution to AxoGen's shareholders. There is no assurance that AxoGen will be able to secure funding on terms acceptable to it, or at all.

AxoGen's revenue growth depends on its ability to expand its sales force, increase sales to existing customers and develop new customers, and there can be no assurance that these efforts will result in significant increase in sales.

AxoGen is in the process of investing in its sales channels composed of a combination of its direct sales force and independent distributors to allow it to increase sales to existing customers and reach new customers. There can be no assurance that these efforts will be successful in expanding AxoGen's product sales. AxoGen currently sells products directly through its employees and indirectly through distributor relationships. AxoGen is engaged in an initiative to build and further expand sales and marketing capabilities. The incurrence of these expenses impacts AxoGen's operating results, and there can be no assurance of their effectiveness. If AxoGen is unable to develop its sales force, increase sales

to existing customers and attract new customers, it may not be able to grow revenue or maintain its current level of revenue generation.

AxoGen's revenue depends primarily on three products.

Substantially all of AxoGen's revenue is currently derived from only three products, the Avance® Nerve Graft, AxoGuard® Nerve Protector and AxoGuard® Nerve Connector, for the treatment of peripheral nerve damage. Its ability to generate revenue is dependent on the success of these products. Accordingly, any disruption in AxoGen's ability to generate revenue from the sale of these products will have a material adverse impact on its business, results of operations, financial condition and growth prospects. Although AxoGen has launched other products, such as the Avive™ Soft Tissue Membrane, there can be no assurance that this, or other products, will provide significant revenue.

The AxoGuard® products are only available through an exclusive distribution agreement with Cook Biotech. The agreement runs through August 27, 2022. However, there are conditions for continuation of the agreement, including payment terms and minimum purchase requirements, that if breached could result in an earlier termination of the agreement; except that through mutual agreement the parties have not established such minimums and to date have not enforced such minimum purchase provision. Additionally, in the event that AxoGen and Cook Biotech were to fail to reach an agreement as to minimum purchase quantities, Cook Biotech could terminate the agreement if it was deemed that AxoGen had failed to generate commercially reasonable sales of AxoGuard® 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. Although there are products that AxoGen believes it could develop or obtain that would replace the AxoGuard® products obtained through the agreement with Cook Biotech, the loss of the ability to sell the AxoGuard® products could have a material adverse effect on AxoGen's business until other replacement products are available.

AxoGen's success will be dependent on continued acceptance of its products by the medical community.

Continued market acceptance of AxoGen's products will depend on its ability to demonstrate that its products are an attractive alternative to existing nerve reconstruction treatment options and provide appropriate solutions for nerve repair. Its ability to do so will depend on surgeons' evaluations of clinical safety, efficacy, ease of use, reliability, and cost-effectiveness of AxoGen's nerve repair products. For example, although AxoGen's Avance® Nerve Graft follows stringent safety standards, including sterilization by gamma irradiation, AxoGen believes that a small portion of the medical community has lingering concerns over the risk of disease transmission through the use of allografts in general. Furthermore, AxoGen believes that even if its products receive general acceptance within the medical community, acceptance and clinical recommendations by influential surgeons will be important to the commercial success of AxoGen's products.

Negative publicity concerning methods of donating human tissue and screening of donated tissue, in the industry in which AxoGen operates, may reduce demand for its products and negatively impact the supply of available donor tissue.

AxoGen is highly dependent on its ability to recover human tissue from tissue donors for its Avance® Nerve Graft product and Avive™ Soft Tissue Membrane. The availability of acceptable donors is relatively limited, and this availability is impacted by regulatory changes, general public opinion of the donation process and AxoGen's reputation for its handling of the donation process. Media reports or other negative publicity concerning both improper methods of tissue recovery from donors and disease transmission from donated tissue, including bones and tendons, may limit widespread acceptance of AxoGen's Avance® Nerve Graft and Avive™ Soft Tissue Membrane. Unfavorable reports of improper or illegal tissue recovery practices, both in the U.S. and internationally, as well as incidents of improperly processed tissue leading to transmission of disease, may broadly affect the rate of future tissue donation and market acceptance of allograft technologies and donated tissue use. Potential patients may not be able to distinguish AxoGen products, technologies, and tissue recovery and processing procedures from others engaged in tissue recovery. In addition, unfavorable reports could make families of potential donors or donors themselves from whom AxoGen is required to obtain consent before processing tissue reluctant to agree to donate tissue to for-profit tissue processors. Any disruption in the supply could have negative consequences for AxoGen's revenue, operating results and continued operations.

AxoGen is highly dependent on the continued availability of its facilities and could be harmed if the facilities are unavailable for any prolonged period of time.

Any failure in the physical infrastructure of AxoGen's facilities, including the facility it licenses from CTS, could lead to significant costs and disruptions that could reduce its revenues and harm its business reputation and financial results. Any natural or man-made event that impacts AxoGen's ability to utilize its facilities could have a significant impact on its operating results, reputation and ability to continue operations. This includes termination of the CTS facility service agreement which can occur after August 6, 2017 upon 18 months' prior notice from either party. Although AxoGen believes it can find and make operational a new facility in less than six months, the regulatory process for approval of facilities is time-consuming and unpredictable. AxoGen's ability to rebuild or find acceptable service facilities takes a considerable amount of time and expense and could cause a significant disruption in service to its customers. Although AxoGen has business interruption insurance which would, in instances other than service agreement termination, cover certain costs, it may not cover all costs nor help to regain AxoGen's standing in the market.

AxoGen must maintain high quality processing of its products.

AxoGen's Avance® Nerve Graft is processed through its Avance® Process which requires careful calibration and precise, high-quality processing and manufacturing. Its Avive™ Soft Tissue Membrane is also human tissue that requires skill in its processing. Achieving precision and quality control requires skill and diligence by its personnel. If it fails to achieve and maintain these high levels of quality control and processing standards, including avoidance of processing errors, defects or product failures, AxoGen could experience recalls or withdrawals of its product, delays in delivery, cost overruns or other problems that would adversely affect its business. AxoGen cannot completely eliminate the risk of errors, defects or failures. In addition, AxoGen may experience difficulties in scaling-up processing of its Avance® and Avive™ products, including problems related to yields, quality control and assurance, tissue availability, adequacy of control policies and procedures, and lack of skilled personnel. If AxoGen is unable to process and produce its human tissue products on a timely basis, at acceptable quality and costs, and in sufficient quantities, or if it experiences unanticipated technological problems or delays in production, its business would be adversely affected.

Delays, interruptions or the cessation of production by AxoGen's third party suppliers of important materials or delays in qualifying new materials, may prevent or delay AxoGen's ability to manufacture or process the final products.

Most of the raw materials used in the process for Avance® Nerve Graft and Avive™ Soft Tissue Membrane are available from more than one supplier. However, one of the chemicals AxoGen uses in the processing of Avance® Nerve Graft is no longer manufactured by the original single source provider. AxoGen has inventory of such chemical which it believes provides more than one year of production. AxoGen is currently evaluating multiple avenues including new suppliers of the chemical and acceptable substitutes for the chemical. In addition, some of the test results, packaging and reagents/chemicals AxoGen uses in its manufacturing process are also obtained from single suppliers. AxoGen does not have written contracts with any of its single source suppliers, and at any time they could stop supplying AxoGen's orders. FDA approval of a new supplier may be required if these materials become unavailable from AxoGen's current suppliers. Although there may be other suppliers that have equivalent materials that would be available to AxoGen, FDA approval of any alternate suppliers, if required, could take several months or years to obtain, if able to be obtained at all. Any delay, interruption or cessation of production by AxoGen's third party suppliers of important materials, or any delay in qualifying new materials, if necessary, would prevent or delay AxoGen's ability to manufacture products. In addition, an uncorrected impurity, a supplier's variation in a raw material or testing, either unknown to AxoGen or incompatible with its manufacturing process, or any other problem with AxoGen's materials, testing or components, would prevent or delay its ability to process tissue. These delays may limit AxoGen's ability to meet demand for its products and delay its clinical trial, which would have a material adverse impact on its business, results of operations and financial condition.

The failure of third parties to perform many necessary services for the commercialization of Avance® Nerve Graft and Avive™ Soft Tissue Membrane, including services related to recovery, distribution and transportation, would impair AxoGen's ability to meet commercial demand.

AxoGen relies upon third parties for certain recovery, distribution and transportation services. In accordance with product specifications, third parties ship Avance® Nerve Graft in specially validated shipping containers at frozen temperatures. If any of the third parties that AxoGen relies upon in its recovery, distribution or transportation process fail to comply with applicable laws and regulations, fail to meet expected deadlines, or otherwise do not carry out their contractual duties to AxoGen, or encounter physical damage or natural disaster at their facilities, AxoGen's ability to deliver product to meet commercial demand may be significantly impaired.

AxoGen is dependent on its relationships with distributors to generate revenue.

AxoGen derives material revenues through its relationships with distributors. If such distributor relationships were terminated for any reason, it could materially and adversely affect AxoGen's ability to generate revenues and profits. AxoGen intends to obtain the assistance of additional distributors to continue its sales growth. It may not be able to find additional distributors who will agree to market and distribute its products on commercially reasonable terms, if at all. If AxoGen is unable to establish new distribution relationships or renew current distribution agreements on commercially acceptable terms, its operating results could suffer.

Loss of key members of management, who it needs to succeed, could adversely affect its business.

AxoGen's future success depends on the continued efforts of the members of its senior management team. Competition for experienced management personnel in the healthcare industry is intense. If one or more of AxoGen's senior executives or other key personnel are unable or unwilling to continue in their present positions, or if AxoGen is unable to attract and retain high quality senior executives or key personnel in the future, its business may be adversely affected.

AxoGen's operating results will be harmed if it is unable to effectively manage and sustain its future growth or scale its operations.

There can be no assurance that AxoGen will be able to manage its future growth efficiently or profitably. Its business is unproven on a large scale and actual revenue and operating margins, or revenue and margin growth, may be less than expected. If AxoGen is unable to scale its production capabilities efficiently or maintain pricing without significant discounting, it may fail to achieve expected operating margins, which would have a material and adverse effect on its operating results. Growth may also stress AxoGen's ability to adequately manage its operations, quality of products, safety and regulatory compliance. If growth significantly decreases it will negatively impact AxoGen's cash reserves, and it may be required to obtain additional financing, which may increase indebtedness or result in dilution to shareholders. Further, there can be no assurance that AxoGen would be able to obtain additional financing on acceptable terms if all at.

There may be significant fluctuations in AxoGen's operating results.

Significant quarterly fluctuations in AxoGen's results of operations may be caused by, among other factors, its volume of revenues, seasonal changes in nerve repair activity, timing of sales force expansion and general economic conditions. There can be no assurance that the level of revenues and profits, if any, achieved by AxoGen in any particular fiscal period, will not be significantly lower than in other comparable fiscal periods. AxoGen's expense levels are based, in part, on its expectations as to future revenues. As a result, if future revenues are below expectations, net income or loss may be disproportionately affected by a reduction in revenues, as any corresponding reduction in expenses may not be proportionate to the reduction in revenues.

AxoGen's revenues depend upon prompt and adequate reimbursement from public and private insurers and national health systems.

Political, economic and regulatory influences are subjecting the healthcare industry in the U.S. to fundamental change. The ability of hospitals to pay fees for AxoGen's products depends in part on the extent to which reimbursement for the costs of such materials and related treatments will continue to be available from governmental health administration authorities, private health coverage insurers and other organizations. Major third party payers of hospital services and hospital outpatient services, including Medicare, Medicaid and private healthcare insurers, annually revise their payment methodologies which can result in stricter standards for reimbursement of hospital and/or surgeon charges for certain medical procedures or the elimination of reimbursement. Further, Medicare, Medicaid and private healthcare insurer cutbacks could create downward price pressure on AxoGen's products.

AxoGen may be subject to future product liability litigation which could be expensive and its insurance coverage may not be adequate.

Although AxoGen is not currently subject to any product liability proceedings and it has no reserves for product liability disbursements, it may incur material liabilities relating to product liability claims in the future, including product liability claims arising out of the usage of AxoGen products. Although AxoGen currently carries product liability insurance in an amount consistent with industry averages, its insurance coverage and any reserves it may maintain in the future for product related liabilities may not be adequate and AxoGen's business could suffer material adverse consequences.

Technological change could reduce demand for AxoGen's products.

The medical technology industry is intensely competitive. AxoGen competes with both U.S. and international companies that engage in the development and production of medical technologies and processes including:

- biotechnology, orthopedic, pharmaceutical, biomaterial, chemical and other companies;
- academic and scientific institutions; and
- public and private research organizations.

AxoGen products compete with autograft, hollow-tube conduits, commercially available wraps and amnion products, as well as with alternative medical procedures. For the foreseeable future, AxoGen believes a significant number of surgeons will continue to choose to perform autograft procedures when feasible, despite the necessity of performing a second operation and its drawbacks. In addition, many members of the medical community will continue to prefer the use of hollow-tube conduits due in part to their familiarity with these products and the procedures required for their use. Amnion products are widely available and AxoGen may not be able to distinguish the Avive™ Soft Tissue Membrane from such other products so as to produce significant revenue from its sale. Also, steady improvements have been made in synthetic human tissue substitutes, which could compete with AxoGen's products in the future. Unlike allografts, synthetic tissue technologies are not dependent on the availability of human or animal tissue. Although AxoGen's growth strategy contemplates the introduction of new technologies, the development of these technologies is a complex and uncertain process, requiring a high level of innovation, as well as the ability to accurately predict future technology and market trends. AxoGen may not be able to respond effectively to technological changes and emerging industry standards, or to successfully identify, develop or support new technologies or enhancements to existing products in a timely and cost effective manner, if at all. Finally, there can be no assurance that in the future AxoGen's competitors will not develop products that have superior performance or are less expensive relative to AxoGen's products rendering AxoGen's products obsolete or noncompetitive. Due to its limited resources, its smaller size and its relatively early stage, AxoGen may face competitive challenges and barriers that are difficult to overcome and could negatively impact its growth.

AxoGen may be unsuccessful in commercializing its products outside the U.S.

To date, AxoGen has focused its commercialization efforts in the U.S., except for minor revenues in certain countries outside the U.S. AxoGen intends to expand sales in these and other countries outside the U.S. and will need to

comply with applicable foreign regulatory requirements, including obtaining the requisite approvals to do so. Avive™ Soft Tissue Membrane is only available in the U.S. and has not, as of this time period, received any regulatory registration allowing for sales outside the U.S. Additionally, AxoGen will need to either enter into distribution agreements with third parties or develop a direct sales force in these foreign markets. If it does not obtain adequate levels of reimbursement from third party payers outside of the U.S., it may be unable to develop and grow its product sales internationally. Outside of the U.S., reimbursement systems vary significantly by country. Many foreign markets have government-managed healthcare systems that govern reimbursement for medical devices and procedures. Additionally, some foreign reimbursement systems provide for limited payments in a given period and therefore result in extended payment periods. If AxoGen is unable to successfully commercialize its products internationally, its long term growth prospects may be limited.

If AxoGen does not manage tissue and tissue donation in an effective and efficient manner, it could adversely affect its business.

Many factors affect the supply, quantity and timing of donor medical releases, such as effectiveness of donor screening, the effective recovery of tissue, the timely receipt, recording, review and approval of required medical and testing documentation, and employee loss and turnover in AxoGen's and its contractor's recovery department. AxoGen can provide no assurance that tissue recovery or donor medical releases will occur at levels that will maximize processing efficiency and minimize AxoGen's costs.

If AxoGen does not manage product inventory in an effective and efficient manner, it could adversely affect profitability.

Many factors affect the efficient use and planning of product inventory, such as effectiveness of predicting demand, effectiveness of preparing manufacturing to meet demand, efficiently meeting product mix and product demand requirements and product expiration. AxoGen may be unable to manage its inventory efficiently, keep inventory within expected budget goals, keep its work-in-process inventory on hand or manage it efficiently, control expired product or keep sufficient product on hand to meet demand. Finally, AxoGen can provide no assurance that it can keep inventory costs within its target levels. Failure to do so may harm long term growth prospects.

AxoGen's payment obligations under the MidCap Financial Trust Term Loan Agreement and Revolving Loan Agreement may adversely affect our financial position and our ability to obtain additional funds, and may increase our vulnerability to economic or business downturns.

As described in "Management's Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources," on October 25, 2016 (the "Closing Date"), AxoGen and AC, each as borrowers, entered into the term loan agreement (the "MC Term Loan Agreement") with the lenders party thereto and MidCap Financial Trust ("MidCap"), as administrative agent and lender. Under the MC Term Loan Agreement, MidCap provided AxoGen a term loan in the aggregate principal amount of $21 million (the "Term Loan"). On the Closing Date AxoGen and AC, each as borrows, also entered into a Credit and Security Agreement (Revolving Loan) (the "Revolving Loan Agreement") with the lenders party thereto and MidCap, as administrative agent and a lender. Under the Revolving Loan Agreement, MidCap has agreed to lend AxoGen up to $10 million under a revolving credit facility (the "Revolving Loan") which amount may be drawn down by AxoGen based upon an available borrowing base. The Revolving Loan may be increased to up to $15 million at AxoGen's request and with the approval of MidCap. As of the Closing Date, AxoGen's borrowing base under the Revolving Loan provided availability of approximately $5.4 million of which AxoGen borrowed $4 million. The MC Term Loan Agreement, Revolving Loan Agreement and the indebtedness pursuant thereto are secured by substantially all of AxoGen's tangible and intangible assets.

Outstanding debt could have important negative consequences to the holders of AxoGen's securities, including the following:

- a portion of our cash flow from operations will be needed to pay debt service and will not be available to fund future operations;

- AxoGen is required to maintain certain covenants, the breach of which would result in default under the MC Term Loan Agreement and Revolving Loan Agreement;
- AxoGen has increased vulnerability to adverse general economic and industry conditions; and
- AxoGen may be vulnerable to higher interest rates because interest expense on the Term Loan in limited circumstances could increase.

Payment requirements under the MC Term Loan Agreement and the Revolving Loan Agreement increase AxoGen's cash burden. AxoGen's future operating performance is subject to market conditions and business factors that are beyond its control. If AxoGen's cash flows and capital resources are insufficient to allow AxoGen to make required payments, AxoGen may have to reduce or delay capital expenditures, sell assets, seek additional capital or restructure or refinance its debt. If AxoGen raises funds by selling additional equity, such sale would result in dilution to its shareholders. There is no assurance that if AxoGen is required to secure funding it can do so on terms acceptable to it, or at all. Failure to pay interest or the principal amount when due would result in a default under the MC Term Loan Agreement and Revolving Loan Agreement and result in foreclosure on AxoGen's assets which would have a material adverse effect.

The MC Term Loan Agreement and Revolving Loan Agreement each contain certain covenants and failure to comply with the terms of such indebtedness could result in a default that could have material adverse consequences for us.

The MC Term Loan Agreement and the Revolving Loan Agreement each contain covenants that place restrictions on AxoGen's operations, including, without limitation, covenants related to debt restrictions, investment restrictions, dividend restrictions, restrictions on transactions with affiliates and certain revenue covenants. AxoGen's ability to comply with these covenants may be affected by general economic and industry conditions, as well as market fluctuations and other events beyond AxoGen's control. AxoGen does not know if it will be able to satisfy all such covenants in the future. AxoGen's breach of the covenants could result in a default under such agreements. In the event of a default under such agreements, the lender could require AxoGen to repay some of its outstanding debt prior to maturity, and/or to declare all amounts borrowed by it, together with accrued interest, to be due and payable. In the event that this occurs, AxoGen may be unable to repay all such accelerated indebtedness. Any indebtedness that it incurs under the MC Term Loan Agreement and Revolving Loan Agreement is secured by substantially all of its tangible and intangible assets. If AxoGen defaults under the indebtedness secured by its assets, those assets would be available to the secured creditors to satisfy AxoGen's obligations to the secured creditors.

AxoGen incurs costs as a result of operating as a public company, and its management is required to devote substantial time to compliance initiatives.

As a public company, AxoGen incurs legal, accounting and other expenses to comply with relevant securities laws and regulations, including, without limitation, the requirement of establishment and maintenance of effective disclosure and financial controls and corporate governance practices. AxoGen's management devotes substantial time and financial resources to these compliance initiatives. Failure to comply with public company requirements could have a material adverse effect on AxoGen's business.

Our business and stock price may be adversely affected if our internal controls are not effective.

Section 404 of the Sarbanes-Oxley Act of 2002 requires that public companies conduct a comprehensive evaluation of their internal control over financial reporting. To comply with this statute, each year we are required to document and test our internal control over financial reporting and our management is required to assess and issue a report concerning it.

In our annual report on Form 10-K for the year ended December 31, 2011, we reported a material weakness in our internal control over financial reporting which related to an instance in which the accounting for a contract was

inappropriately treated as an expense as opposed to a prepaid asset. We believe we took appropriate actions to remediate the control deficiencies we identified in this instance. We have reported herein material weaknesses in our internal control as of December 31, 2016 relating to the design and operation of key controls around the calculations of significant judgment and estimates and quarterly cycle count procedures related to consigned inventories. These control deficiencies are not expected to result in any changes of prior period financial statements or previously released financial results.

We have reviewed and modified the design of internal controls over financial reporting and will continue to make additional modifications as necessary. The material weaknesses will not be considered remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

Although we have taken actions to correct the control deficiencies we identified and to strengthen our internal control over financial reporting, we cannot assure you that we will not discover other material weaknesses in the future or that no material weakness will result from any difficulties, errors, delays or disruptions while we implement and transition to new internal systems. The existence of one or more material weaknesses could result in errors in our financial statements, and substantial costs and resources may be required to rectify these or other internal control deficiencies. If we cannot produce reliable financial reports, investors could lose confidence in our reported financial information, the market price of our common stock could decline significantly, we may be unable to obtain additional financing to operate and expand our business and our business and financial condition could be harmed.

Our business and financial performance could be adversely affected, directly or indirectly, by disasters, by terrorist activities or by international hostilities.

Neither the occurrence nor the potential impact of disasters, terrorist activities and international hostilities can be predicted. However, these occurrences could impact us directly as a result of damage to our facilities or by preventing us from conducting our business in the ordinary course, or indirectly as a result of their impact on our customers, suppliers or other counterparties. We could also suffer adverse consequences to the extent that disasters, terrorist activities or international hostilities affect the financial markets or the economy in general or in any particular region.

Our ability to mitigate the adverse consequences of such occurrences is in part dependent on the quality of our resiliency planning, and our ability, if any, to anticipate the nature of any such event that occurs. The adverse impact of disasters or terrorist activities or international hostilities also could be increased to the extent that there is a lack of preparedness on the part of national or regional emergency responders or on the part of other organizations and businesses that we deal with, particularly those that we depend upon but have no control over.

Risks Related to the Regulatory Environment in which AxoGen Operates

AxoGen's business is subject to continuing regulatory compliance by the FDA and other authorities which is costly and could result in negative effects on its business.

AxoGen is subject to extensive regulation by foreign and domestic government entities and healthcare professionals, such as physicians, hospitals and those to whom and through whom we may market our products. We are subject to scrutiny under various federal, state and territorial laws in the United States and other jurisdictions in which we conduct business. These include, for example, anti-kickback laws, physician self-referral laws, false claims laws, criminal health care fraud laws, and anti-bribery laws such as the United States Foreign Corrupt Practices Act. Violations of these laws are punishable by criminal and/or civil sanctions, including, in some instances, fines, imprisonment and, within the United States, exclusion from participation in government healthcare programs, including Medicare, Medicaid and Veterans Administration health programs. These laws are administered by, among others, the U.S. Department of Justice ("DOJ"), the Office of Inspector General of the Department of Health and Human Services, state attorneys general, and their respective counterparts in the applicable foreign jurisdictions in which we conduct business. Many of these agencies have increased their enforcement activities with respect to medical device manufacturers in recent years. There can also be changes to the regulations by foreign and domestic government entities that require AxoGen to update or upgrade business processes or to perform additional validation activities for product or processes. Compliance with such

changes can be costly to implement or result in non-compliance and restricting the ability to sell products that would have a material adverse effect.

Our products are also subject to regulation by the FDA in the U.S. The FDA regulates the development, clinical testing, marketing, distribution, manufacturing, labeling, and promotion of biological products, such as that of AxoGen's Avance® Nerve Graft product. The Avive™ Soft Tissue Membrane is processed and distributed in accordance with FDA requirements for Human Cellular and Tissue-based Products (HCT/P) under 21 CFR Part 1271 regulations, U.S. State regulations. The FDA also regulates medical devices, for example the AxoGuard® products. The FDA requires the approval of a biological product, like the Avance® Nerve Graft product, through a BLA prior to marketing. Although the Avance® Nerve Graft product has not yet been approved by FDA through a BLA, FDA is permitting the product to be distributed, subject to FDA enforcement discretion, provided that AxoGen: (1) transitions to compliance with section 501(a)(2)(B) of the FD&C Act, the cGMP regulations in 21 CFR Parts 210 and 211 and the applicable regulations and standards in 21 CFR Parts 600-610 prior to initiation of a phase 3 clinical trial designed to demonstrate the safety, purity, and potency of the Avance® Nerve Graft; (2) conducts a phase 3 clinical trial to demonstrate safety, purity and potency of the Avance® Nerve Graft under an SPA; (3) continues to comply with the requirements of 21 CFR Part 1271; and (4) exercises due diligence in executing the transition plan. See "Business — Government Regulations — U.S. Government Regulation Review."

The FDA also regulates medical devices and requires certain medical devices, such as the AxoGuard® products, be cleared through the 510(k) premarket notification process prior to marketing. The FDA's premarket review process for new and modified existing devices that precedes product marketing can be time consuming and expensive. Some of the future products and enhancements to such products that AxoGen expects to develop and market may require marketing clearance or approval from the FDA.

There can be no assurance, however, that clearance or approval will be granted with respect to any of AxoGen's device products or enhancements of marketed products or that AxoGen's Avance® Nerve Graft will achieve an effective IND or ultimately an approved BLA. FDA review of AxoGen's devices or biological products may encounter significant delays during FDA's premarket review process that would adversely affect AxoGen's ability to market its products or enhancements. In addition, there can be no assurance that AxoGen products, including the Avance® Nerve Graft, or enhancements will not be subject to a lengthy and expensive approval process with the FDA.

It is possible that if regulatory clearances or approvals to market a product are obtained from the FDA, the clearances or approvals may contain limitations on the indicated uses of such product and other uses may be prohibited. Product approvals by the FDA can also be withdrawn due to failure to comply with regulatory standards or the occurrence of unforeseen problems following initial approval. Furthermore, the FDA could limit or prevent the distribution of AxoGen products and the FDA has the power to require the recall of such products. FDA regulations depend heavily on administrative interpretation, and there can be no assurance that future interpretations made by the FDA or other regulatory bodies will not adversely affect AxoGen's operations. AxoGen, and its facilities, may be inspected by the FDA from time to time to determine whether it is in compliance with various regulations relating to specifications, development, documentation, validation, testing, quality control and product labeling. A determination that AxoGen is in violation of such regulations could lead to imposition of civil penalties, including fines, product recalls or product seizures and, in certain cases, criminal sanctions.

The use, misuse or off-label use of AxoGen's products may harm its reputation or the image of its products in the marketplace, or result in injuries that lead to product liability suits, which could be costly to AxoGen's business or result in FDA sanctions if the company is deemed to have engaged in off-label promotion. AxoGen is seeking a biologics license through the BLA process for specific uses of Avance® Nerve Graft under specific circumstances. Its promotional materials and training methods must comply with FDA requirements and other applicable laws and regulations, including the prohibition against off-label promotion. AxoGen's promotion of the AxoGuard® products, which are regulated as medical devices, also must comply with FDA's requirements and must only use labeling that is consistent with the specific indication(s) for use included in the FDA substantial equivalence order that results in marketing the devices. The Avive™ Soft Tissue Membrane is processed and distributed in accordance with FDA requirements for (HCT/P) under 21 CFR Part 1271 regulations and is to be dispensed only by or on the order of a licensed physician and is contraindicated for use in any patient in whom soft tissue implants are contraindicated. The FDA does not restrict or

regulate a physician's use of a medical product within the practice of medicine, and AxoGen cannot prevent a physician from using its products for an off-label use. However, the FD&C Act and the FDA's regulations restrict the kind of promotional communications that may be made about AxoGen's products and if the FDA determines that AxoGen's promotional or training materials constitute the unlawful promotion of an off-label use, it could request that AxoGen modify its training or promotional materials and/or subject the Company to regulatory or enforcement actions, including the issuance of an untitled letter, a warning letter, civil money penalties, seizure, injunction or criminal fines and penalties. Other federal, state or foreign governmental authorities might also take action if they consider AxoGen promotion or training materials to constitute promotion of an uncleared or unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement, or exclusion from participation in federal health programs. In that event, AxoGen's reputation could be damaged and the use of its products in the marketplace could be impaired.

In addition, there may be increased risk of injury if physicians or others attempt to use AxoGen products off-label. Furthermore, the use of AxoGen's product for indications other than those for which its products have been approved, cleared or licensed by the FDA may not effectively treat the conditions not referenced in product indications, which could harm AxoGen's reputation in the marketplace among physicians and patients. Physicians may also misuse AxoGen's product or use improper techniques if they are not adequately trained in the particular use, potentially leading to injury and an increased risk of product liability. Product liability claims are expensive to defend and could divert management's attention from its primary business and result in substantial damage awards against AxoGen. Any of these events could harm AxoGen's business, results of operations and financial condition.

AxoGen's Avance® Nerve Graft product is currently allowed to be distributed pursuant to a transition plan with the FDA and a change in position by the FDA regarding its use of enforcement discretion to permit the sale of Avance® Nerve Graft would have a material adverse effect on AxoGen.

The FDA considers AxoGen's Avance® Nerve Graft product to be a biological product, subject to BLA approval requirements. Although the Avance® Nerve Graft product has not yet been approved by FDA through a BLA, AxoGen's Avance® Nerve Graft product is currently distributed under the controls applicable to a HCT/P pursuant to section 361 of the Public Health Service Act and 21 CFR Part 1271 of FDA's regulations, subject to FDA's enforcement discretion and AxoGen's compliance with a transition plan established by the FDA. See "Business — Government Regulations — U.S. Government Regulation Review." AxoGen has continued to communicate with the FDA's CBER since the acceptance of the transition plan on clinical trial design, preclinical studies, Chemistry, Manufacturing, and Controls ("CMC") for the Avance® Nerve Graft, and other issues related to the effective IND Subject to the FDA's enforcement discretion, AxoGen can commercially distribute the Avance® Nerve Graft until the FDA makes a final determination on an Avance® Nerve Graft BLA submission, assuming AxoGen remains in compliance with the transition plan and exercises due diligence in executing the transition plan. In the event that the FDA becomes dissatisfied with AxoGen's progress or actions with respect to the transition plan or the FDA changes its position for any reason regarding its use of enforcement discretion to permit AxoGen to distribute and sell the Avance® Nerve Graft product in accordance with the transition plan, AxoGen would no longer be able to sell the Avance® Nerve Graft product, which would have a material adverse effect on AxoGen's operations and financial viability. In addition, if AxoGen does not meet the conditions of the transition plan, or fails to comply with applicable regulatory requirements, the FDA could impose civil penalties, including fines, product seizures, injunctions or product recalls and, in certain cases, criminal sanctions. These consequences also would have a material adverse effect on AxoGen's operations and financial viability.

AxoGen's business is subject to continuing compliance to standards by various accreditation and registration bodies which is costly and loss of accreditation or registration could result in negative effects on its business.

AxoGen is subject to accreditation such as that by the AATB and as a Verified-Accredited Wholesale Distributor. AxoGen has registration requirements such as that with the National Association of Boards of Pharmacy and ISO 13485 registration bodies. These accreditations and regulations can affect distribution and sale of AxoGen products on a state-by-state basis, within the United States and also affects distribution and sale of AxoGen products outside of the United States. The loss of accreditation or registration could keep AxoGen from selling and distributing its product which may have negative effects on its business.

AxoGen's AxoGuard® and Avive™ products are subject to FDA and other regulatory requirements.

AxoGen's AxoGuard® product line is regulated as a medical device under the FD&C Act and subject to premarket notification and clearance requirements under section 510(k) of the FD&C Act, 21 CFR Part 820 (Quality System Regulation) and other FDA regulations. AxoGen distributes for Cook Biotech the AxoGuard® product line and Cook Biotech is responsible for the regulatory compliance of the AxoGuard® product line. Cook Biotech has obtained a 510(k) premarket clearance from the FDA for porcine (pig) small intestine submucosa for the repair of peripheral nerve discontinuities where gap closure can be achieved by flexion of the extremity. Cook Biotech has also obtained a 510(k) premarket clearance for the AxoGuard® Nerve Protector for the repair of peripheral nerve injuries in which there is no gap or where a gap closure is achieved by flexion of the extremity. If AxoGen or Cook Biotech fails to comply with applicable regulatory requirements, the FDA could deny or withdraw 510(k) clearance for the AxoGuard® products, or impose civil penalties, including fines, product seizures or product recalls and, in certain cases, criminal sanctions.

Avive™ Soft Tissue Membrane is processed and distributed in accordance with U.S. FDA requirements for Human Cellular and Tissue-based Products (HCT/P) under 21 CFR Part 1271 regulations, U.S. State regulations and the guidelines of the American Association of Tissue Banks (AATB). If AxoGen fails to comply with applicable regulatory requirements, the FDA could require AxoGen to stop selling Avive™, or impose civil penalties, including fines, product seizures or product recalls and, in certain cases, criminal sanctions.

AxoGen's AxoTouch™ and AcroVal™ products are subject to FDA and other regulatory requirements.

AxoGen's AxoTouch™ and AcroVal™ products are regulated as medical devices under the FD&C Act and subject to premarket notification and clearance requirements under section 510(k) of the FD&C Act, 21 CFR Part 820 (Quality System Regulation) and other FDA regulations. If AxoGen fails to comply with applicable regulatory requirements, the FDA could deny or withdraw 510(k) clearance for these products, or impose civil penalties, including fines, product seizures or product recalls and, in certain cases, criminal sanctions.

Defective AxoGen product could lead to recall or other negative business conditions.

If AxoGen's products are defective or otherwise pose safety risks, the FDA could require their recall or AxoGen may initiate a voluntary recall of its products. The FDA may require recall of a marketed medical device product, such as the AxoGuard® products, in the event that it determines the medical device presents a reasonable probability of serious adverse health consequences or death. However, most device recalls do not rise to this level of health significance and result from voluntary action. The FDA has authority to recall biological products when a batch, lot or other quantity of the product presents an imminent or substantial hazard to the public health. However, in such circumstances, the FDA usually initially requests, voluntary recalls of biological products, such as the Avance® Nerve Graft. If a company does not comply with an FDA request for a recall, the FDA can order one under the above-referenced circumstances or take other enforcement actions, such as product seizure. In addition, manufacturers may, on their own initiative, recall a product to remove or correct a deficiency or to remedy a violation of the FD&C Act that may pose a risk to health. A government-mandated, government-requested or voluntary recall could occur as a result of an unacceptable risk to health, reports of safety issues, failures, manufacturing errors, design or labeling defects or other deficiencies and issues. Recalls and other field corrections for any of AxoGen's products would divert managerial and financial resources and have an adverse effect on its business, results of operations and financial condition. A recall could harm AxoGen's reputation with customers and negatively affect its sales. AxoGen may initiate recalls involving some of its products in the future that it determines do not require notification of the FDA. If the FDA were to disagree with AxoGen's determinations, it could request that it report those actions as recalls, and take regulatory or enforcement action against AxoGen or the product.

If AxoGen's products cause or contribute to a death, a serious injury or any adverse reaction involving a communicable disease related to its products, or malfunction in certain ways, it will be subject to reporting regulations, which can result in voluntary corrective actions or agency enforcement actions. See "Business — Regulation — Education Grants, U.S. Anti-kickback, False Claims and Other Healthcare Fraud and Abuse Laws — Pervasive and False Claims." If AxoGen fails to report these events to the FDA within the required timeframes, or at all, the FDA could take regulatory or enforcement action against AxoGen. Any adverse event involving AxoGen's products could

result in future voluntary corrective actions, such as recalls or customer notifications, or agency action, such as inspection, mandatory recall or other enforcement action. Any corrective action, whether voluntary or involuntary, as well as AxoGen defending itself in a lawsuit, would require the dedication of time and capital, distract management from operating its business, and may harm AxoGen's reputation, business, results of operations and financial condition.

AxoGen's manufacturing operations must comply with FDA and other governmental requirements.

AxoGen's manufacturing operations require it to comply with the FDA's and other governmental authorities' laws and regulations regarding the manufacture and production of medical products, which is costly and could subject AxoGen to enforcement action. See "Business — Government Regulations — Education Grants, U.S. Anti-kickback, False Claims and Other Healthcare Fraud and Abuse Laws — Fraud, Abuse and False Claims". Any of these actions could impair AxoGen's ability to produce its products in a cost-effective and timely manner in order to meet customer demands. AxoGen may also be required to bear other costs or take other actions that may have an adverse impact on its future sales and its ability to generate profits. Furthermore, AxoGen's key material suppliers, licensors and or other contractors may not continue to be in compliance with all applicable regulatory requirements, which could result in AxoGen's failure to produce its products on a timely basis and in the required quantities, if at all.

Sales of AxoGen human tissue products outside the U.S. are subject to foreign regulatory requirements that vary from country to country. In the European Union ("E.U."), human tissue regulations, if applicable, differ from one E.U. member state to the next. Because of the absence of a harmonized regulatory framework and the proposed regulation for advanced therapy medicinal products in the E.U., as well as for other countries, the approval process for human derived cell or tissue based medical products may be extensive, lengthy, expensive and unpredictable. AxoGen products will be subject to E.U. member states' regulations that govern the donation, procurement, testing, coding, traceability, processing, preservation, storage, and distribution of human tissues and cells and cellular or tissue-based products. In addition, some E.U. member states have their own tissue banking regulations. The inability to meet foreign regulatory requirements could materially affect AxoGen's future growth and compliance with such requirements could place a significant financial burden on AxoGen.

In addition, the United Kingdom voted to exit the European Union ("Brexit") and the timing and scope remain unclear. AxoGen's current notified body for its CE Mark for AxoGuard products is in the United Kingdom. To date there is no business disruption, but AxoGen cannot be sure what changes could occur. If the notified body must change to a E.U. member there could be an interruption in sales in the E.U. Cost of regulatory compliance with both the United Kingdom and E.U. could be significant and time consuming.

Clinical trials can be long, expensive and ultimately uncertain which could jeopardize AxoGen's ability to obtain regulatory approval and continue to market its Avance® Nerve Graft product.

AxoGen is required to perform a clinical trial for its Avance® Nerve Graft under FDA's statutory requirements to obtain approval of a BLA for the product. This trial is expensive, is expected to take several years to execute, and is subject to factors within and outside of AxoGen's control. The outcome of this trial is uncertain.

AxoGen submitted an IND for the Avance® Nerve Graft in April 2013 and received FDA approval in March 2015. The phase 3 clinical trial was initiated in the second quarter of 2015. Additionally, AxoGen was audited by the FDA at its processing facility in March 2013, March 2015 and October 2016 and its Distribution Facility in October 2015. The quality system was found to be in compliance with 21 CFR Part 1271. AxoGen is working to ensure compliance with the applicable regulations by having ongoing discussions on the transition of the quality system to 21 CFR Parts 210/211 and 600-610 regulations with the FDA. Final determination of regulatory compliance with 21 CFR Parts 210/211 and 600-610 will be made during FDA's pre-license inspection as part of the BLA review. If the FDA is unable to agree with AxoGen, or AxoGen is unable to meet the standards required of it by the FDA, regarding preclinical studies, clinical studies and CMC, the approval of AxoGen's BLA would not occur or be delayed.

AxoGen continues to work diligently with the FDA and, in this context, continues to distribute the Avance® Nerve Graft products. The FDA will end the period of enforcement discretion upon a final determination of AxoGen's BLA submission or if the FDA finds that AxoGen does not meet the conditions for the transition plan or is not exercising due

diligence in executing the transition (e.g., not progressing toward the IND submission, study completion, or BLA submission in a timely or adequate fashion). If final action on the BLA is negative or AxoGen is found to not meet the conditions for the transition plan or its execution, AxoGen will not be able to continue to distribute the Avance® Nerve Graft, and AxoGen's business and financial condition will be materially adversely affected.

The results of non-clinical studies do not necessarily predict future clinical trial results and predecessor clinical trial results may not be repeated in subsequent clinical trials. Additionally, the FDA may disagree with AxoGen's interpretation of the data from its non-clinical studies and clinical trials and may require the company to pursue additional non-clinical studies or clinical trials, or not approve AxoGen's BLA. If AxoGen is unable to demonstrate the safety and efficacy of its product through its clinical trials, it will be unable to obtain regulatory approval to market the Avance® Nerve Graft and will not be able to continue to sell it.

AxoGen will rely on third parties to conduct its clinical trial and they may not perform as contractually required or expected.

AxoGen will rely on third parties, such as contract research organizations ("CROs"), medical institutions, clinical investigators and contract laboratories to conduct its clinical trial and certain nonclinical studies. AxoGen and its CROs are required to comply with all applicable regulations governing clinical research, including good clinical practice, or GCP. The FDA enforces these regulations through periodic inspections of trial sponsors, principal investigators, CROs and trial sites. If AxoGen or its CROs fail to comply with applicable FDA regulations, the data generated in its clinical trials may be deemed unreliable and the FDA may require AxoGen to perform additional clinical trials before approving its applications. AxoGen cannot be certain that, upon inspection, the FDA and similar foreign regulatory authorities will determine that AxoGen's clinical trial complies or complied with clinical trial regulations, including GCP. In addition, AxoGen's clinical trial must be conducted with product produced under applicable cGMP regulations. Failure to comply with the clinical trial regulations may require AxoGen to repeat clinical trials, which would delay the regulatory approval process. If these third parties do not successfully carry out their contractual duties or regulatory obligations or meet expected deadlines, if these third parties need to be replaced, or if the quality or accuracy of the data they obtain is compromised due to the failure to adhere to AxoGen's clinical protocols or regulatory requirements or for other reasons, AxoGen's non-clinical development activities or clinical trials may be extended, delayed, suspended or terminated, and it would not be able to obtain regulatory approval for its products on a timely basis, if at all, and its business, results of operations, financial condition and growth prospects would be adversely affected. Furthermore, AxoGen's third party clinical trial investigators may be delayed in conducting its clinical trials for reasons outside of their control.

U.S. governmental regulation could restrict the use of AxoGen's Avance® Nerve Graft and Avive™ Soft Tissue Membrane product, restrict AxoGen's procurement of tissue or increase costs.

In addition to the FDA requirements for biological products, the Avance® Nerve Graft will continue to be subject to, as is the Avive™ Soft Tissue Membrane, various requirements for human tissue under 21 CFR Part 1271 controls. Human tissues intended for transplantation have been regulated by the FDA since 1993. In May 2005, three new comprehensive regulations went into effect that address manufacturing activities associated with HCT/P. The first regulation requires that companies that produce and distribute HCT/Ps register with the FDA. The second regulation provides criteria that must be met for donors to be eligible to donate tissues and is referred to as the "Donor Eligibility" rule. The third regulation governs the processing and distribution of the tissues and is often referred to as the "Current Good Tissue Practices" rule. The Current Good Tissue Practices rule covers all stages of allograft processing, from procurement of tissue to distribution of final allografts. Together, the three basic requirements of 21 CFR Part 1271 are designed to ensure that sound, high quality practices are followed to reduce the risk of tissue contamination and of communicable disease transmission to recipients. These regulations increased regulatory scrutiny within the industry in which AxoGen operates and have led to increased enforcement actions, which affects the conduct of its business. Additional regulations or guidance documents may be implemented by the FDA in the future. These changes may require new documentation requirements, process changes or testing that could increase costs and regulatory burden. See "Business — Government Regulations." These regulations can also increase the cost of tissue recovery activities. Additionally, the Avance® Nerve Graft and Avive™ Soft Tissue Membrane are subject to certain state and local regulations, as well as compliance with the standards of the tissue bank industry's accrediting organization, the AATB.

The procurement and transplantation of allograft nerve tissue is also subject to federal law pursuant to the National Organ Transplant Act ("NOTA"), a criminal statute which prohibits the purchase and sale of human organs used in human transplantation, including nerve and related tissue, for "valuable consideration." NOTA only permits reasonable payments associated with the removal, transportation, processing, preservation, quality control, implantation and storage of human nerve tissue. AxoGen makes payments to certain of its clients and tissue banks for their services related to recovering allograft nerve and umbilical cord tissue on its behalf. If NOTA is interpreted or enforced in a manner which prevents AxoGen from receiving payment for services it renders, or which prevents it from paying tissue banks or certain of its clients for the services they render for AxoGen, its business could be materially and adversely affected.

AxoGen has engaged, through its marketing employees, independent sales agents and sales representatives in ongoing efforts designed to educate the medical community as to the benefits of AxoGen products, and AxoGen intends to continue its educational activities. Although AxoGen believes that NOTA permits payments in connection with these educational efforts as reasonable payments associated with the processing, transportation and implantation of AxoGen products, payments in connection with such education efforts are not exempt from NOTA's restrictions and AxoGen's inability to make such payments in connection with its education efforts may prevent it from paying AxoGen sales representatives for their education efforts and could adversely affect AxoGen's business and prospects. No federal agency or court has determined whether NOTA is, or will be, applicable to every allograft nerve tissue-based material which AxoGen's processing technologies may generate. Assuming that NOTA applies to AxoGen's processing of allograft nerve and umbilical cord tissue, AxoGen believes that it complies with NOTA, but there can be no assurance that more restrictive interpretations of, or amendments to, NOTA will not be adopted in the future, which would call into question one or more aspects of AxoGen's method of operations.

Other regulatory entities include state agencies with statutes covering tissue banking. Regulations issued by Florida, New York, California and Maryland, among other states, are particularly relevant to AxoGen's business. Most states do not currently have tissue banking regulations. However, incidents of allograft related infections in the industry may stimulate the development of regulation in other states. It is possible that third parties may make allegations against AxoGen or against donor recovery groups or tissue banks about non-compliance with applicable FDA regulations or other relevant statutes or regulations. Allegations like these could cause regulators or other authorities to take investigative or other action, or could cause negative publicity for AxoGen's business and the industry in which it operates.

Healthcare policy changes may have a material adverse effect on AxoGen.

In March 2010, President Obama signed into law the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Affordability Reconciliation Act, which Act substantially changes the way healthcare is financed by both governmental and private insurers, and encourages improvements in the quality of healthcare items and services. This Act significantly impacts the biotechnology and medical device industries and could have a material adverse impact on numerous aspects of AxoGen's business.

This Act includes, among other things, the following measures:

- a 2.3% excise tax on any entity that manufactures or imports medical devices offered for sale in the U.S., with limited exceptions, beginning in 2013, referred to as the Device Tax, which has been suspended through 2017;
- a new Patient-Centered Outcomes Research Institute to oversee, identify priorities and conduct comparative clinical effectiveness research;
- new reporting and disclosure requirements on healthcare manufacturers for any "transfer of value" made or distributed to physicians and teaching hospitals, as well as reporting of certain physician ownership interests ("Sunshine Act");
- payment system reforms, including a national pilot program on payment bundling to encourage hospitals, physicians and other providers to improve the coordination, quality and efficiency of certain healthcare services through bundled payment models;
- an independent payment advisory board that will submit recommendations to reduce Medicare spending if projected Medicare spending exceeds a specified growth rate; and

- a new abbreviated pathway for the licensure of biologic products that are demonstrated to be biosimilar or interchangeable with a licensed biologic product.

There are also a number of states (such as Vermont, Massachusetts, Minnesota) with their own Sunshine Acts that implement the reporting and disclosure requirements on healthcare manufacturers for any "transfer of value" made or distributed to physicians and teaching hospitals, as well as reporting of certain physician ownership interests.

In the future, there may continue to be additional proposals relating to the reform of the U.S. healthcare system. Certain of these proposals could limit the prices AxoGen is able to charge for its products or the amounts of reimbursement available for its products and could also limit the acceptance and availability of its products. The adoption of some or all of these proposals could have a material adverse effect on AxoGen's business, results of operations and financial condition.

Additionally, initiatives sponsored by government agencies, legislative bodies and the private sector to limit the growth of healthcare costs, including price regulation and competitive pricing, are ongoing in markets where AxoGen does business. AxoGen could experience an adverse impact on operating results due to increased pricing pressure in the U.S. and in other markets. Governments, hospitals and other third party payors could reduce the amount of approved reimbursement for AxoGen's products or deny coverage altogether. Reductions in reimbursement levels or coverage or other cost-containment measures could unfavorably affect AxoGen's future operating results.

Risks Related to AxoGen's Intellectual Property

Failure to protect AxoGen's IP rights could result in costly and time consuming litigation and its loss of any potential competitive advantage.

AxoGen's success will depend, to a large extent, on its ability to successfully obtain and maintain patents, prevent misappropriation or infringement of IP, maintain trade secret protection, and conduct operations without violating or infringing on the IP rights of third parties. See "Business — Intellectual Property." There can be no assurance that AxoGen's patented and patent pending technologies will provide it with a competitive advantage, that AxoGen will be able to develop or acquire additional technology that is patentable, or that third parties will not develop and offer technologies which are similar to AxoGen's. Moreover, AxoGen can provide no assurance that confidentiality agreements with its employees, consultants and other parties, trade secrecy agreements or similar agreements intended to protect unpatented technology will provide the intended protection. IP litigation is extremely expensive and time-consuming, and it is often difficult, if not impossible, to predict the outcome of such litigation. A failure by AxoGen to protect its IP could have a materially adverse effect on its business and operating results and its ability to successfully compete in its industry.

Future protection for AxoGen's proprietary rights is uncertain which may impact its ability to successfully compete in its industry.

The degree of future protection for AxoGen's proprietary rights is uncertain. AxoGen cannot ensure that:

- it, or its licensors, were the first to make the inventions covered by each of AxoGen's patents;
- it, or its licensors, were the first to file patent applications for these inventions;
- others will not independently develop similar or alternative technologies or duplicate any of AxoGen's technologies;
- any of AxoGen's pending patent applications will result in issued patents;
- any of AxoGen's issued patents or those of its licensors will be valid and enforceable;
- any patents issued to AxoGen or its collaborators will provide any competitive advantages or will not be challenged by third parties;
- it will develop additional proprietary technologies that are patentable;
- the patents of others will not have a material adverse effect on its business rights; or
- the measures AxoGen relies on to protect its IP underlying their products may not be adequate to prevent third parties from using its technology, all of which could harm its ability to compete in the market.

AxoGen's commercial success depends in part on its ability and the ability of its collaborators and licensors to avoid infringing patents and proprietary rights of third parties which could expose it to litigation or commercially unfavorable licensing arrangements. Third parties may accuse AxoGen or collaborators and licensors of employing their proprietary technology in AxoGen products, or in the materials or processes used to research or develop AxoGen products, without authorization. Any legal action against AxoGen collaborators, licensors or it claiming damages and/or seeking to enjoin AxoGen's commercial activities relating to the affected products, materials and processes could, in addition to subjecting AxoGen to potential liability for damages, require it or its collaborators and licensors to obtain a license to continue to utilize the affected materials or processes or to manufacture or market the affected products. AxoGen cannot predict whether it or its collaborators and licensors would prevail in any of these actions or whether any license required under any of these patents would be made available on commercially reasonable terms, if at all. If AxoGen were unable to obtain such a license, it and its collaborators and licensors may be unable to continue to utilize the affected materials or processes, or manufacture or market the affected products, or AxoGen may be obligated by a court to pay substantial royalties and/or other damages to the patent holder. Even if AxoGen were able to obtain such a license, the terms of such a license could substantially reduce the commercial value of the affected product or products and impair AxoGen's prospects for profitability. Accordingly, AxoGen cannot predict whether, or to what extent, the commercial value of the affected product or products or AxoGen's prospects for profitability may be harmed as a result of any of the liabilities discussed above. Furthermore, infringement and other IP claims, with or without merit, can be expensive and time-consuming to litigate and can divert management's attention from its core business. AxoGen and its licensors may be unable to obtain and enforce IP rights to adequately protect its products and related IP.

The patent protection for our products may expire before we are able to maximize their commercial value which may subject us to increased competition and reduce or eliminate our opportunity to generate product revenue.

The patents for our commercialized products and products in development have varying expiration dates and, when these patents expire, we may be subject to increased competition and we may not be able to recover our development costs. For example, U.S. patents covering the formulations used in our AxoGuard® product line, which are held by Cook Biotech, are scheduled to expire from August 22, 2017 through November 2018. Although we expect that Cook Biotech is using best efforts to take any action possible to extend the life of these patents, there can be no assurance that any action is possible or action taken will be successful. If these patents expire while we have the right to distribute and market the AxoGuard® products, it could adversely affect our ability to successfully execute our business strategy to maximize the value of AxoGuard® products and could likely negatively impact our future financial condition and results of operations.

Others may claim an ownership interest in AxoGen IP which could expose it to litigation and have a significant adverse effect on its prospects.

A third party may claim an ownership interest in one or more of AxoGen's patents or other IP. A third party could bring legal actions against AxoGen claiming it infringes their patents or proprietary rights, and seek monetary damages and/or enjoin clinical testing, manufacturing and marketing of the affected product or products. While AxoGen believes it owns the right, title and interest in the patents for which it or its licensors have applied and AxoGen's other IP (including that which is licensed from third parties), and is presently unaware of any claims or assertions by third-parties with respect to AxoGen's patents or IP, it cannot guarantee that a third party will not assert a claim or an interest in any of such patents or IP. If AxoGen becomes involved in any litigation, it could consume a substantial portion of AxoGen's resources and cause a significant diversion of effort by AxoGen's technical and management personnel regardless of the outcome of the litigation. If any of these actions were successful, in addition to any potential liability for damages, AxoGen could be required to obtain a license to continue to manufacture or market the affected product, in which case AxoGen may be required to pay substantial royalties or grant cross-licenses to AxoGen's patents. AxoGen cannot, however, assure you that any such license will be available on acceptable terms, if at all. Ultimately, AxoGen could be prevented from commercializing a product or be forced to cease some aspect of its business operations as a result of claims of patent infringement or violation of other IP rights, which could have a material and adverse effect on AxoGen's business, financial condition, and results of operations. Further, the outcome of IP litigation is subject to uncertainties that cannot be adequately quantified in advance, including the demeanor and credibility of witnesses and

the identity of the adverse party. This is especially true in IP cases that may turn on the testimony of experts as to technical facts upon which experts may reasonably disagree.

AxoGen depends on maintenance of exclusive licenses.

AxoGen depends fundamentally on keeping and satisfying the terms of exclusive licenses of its nerve repair technologies from UFRF and UT where the original technologies are purported to have been invented. Though AxoGen makes an effort to follow these agreements strictly, a disagreement between AxoGen and either party could have a negative impact on its ability to operate its business effectively. In addition, AxoGen could learn that the technologies it has licensed from UFRF and UT do not perform as purported, are not efficacious, or are not the property of UFRF or UT, or some similar problem with the license, any of which would have an immediate and negative impact on AxoGen's business.

Risks Related to Our Common Stock

An active trading market in our common stock may not be maintained.

The trading market in our common stock has been extremely volatile. The quotation of our common stock on The NASDAQ Capital Market does not assure that a meaningful, consistent and liquid trading market will exist. We cannot predict whether an active market for our common stock will be maintained in the future. An absence of an active trading market could adversely affect our shareholders' ability to sell our common stock at current market prices in short time periods, or possibly at all. Additionally, market visibility for our common stock may be limited and such lack of visibility may have a depressive effect on the market price for our common stock. As of December 31, 2016, approximately 8.36% of our outstanding shares of common stock was held by our officers, directors, beneficial owners of 5% or more of our securities and their respective affiliates, which adversely affects the liquidity of the trading market for our common stock, in as much as federal securities laws restrict sales of our shares by these shareholders. If our affiliates continue to hold their shares of common stock, there will be limited trading volume in our common stock, which may make it more difficult for investors to sell their shares or increase the volatility of our stock price.

The price of AxoGen's common stock could be highly volatile due to a number of factors, which could lead to losses by investors and costly securities litigation.

Our common stock is listed on the NASDAQ Capital Market under the symbol "AXGN." The stock market in general, and the market for medical device companies in particular, have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The trading price of our common stock has experienced substantial volatility and is likely to continue to be highly volatile in response to a number of factors including, without limitation, the following:

- limited daily trading volume resulting in the lack of a liquid market;
- fluctuations in price and volume due to investor speculation and other factors that may not be tied to the financial performance of AxoGen;
- performance by AxoGen in the execution of its business plan;
- financial viability;
- actual or anticipated variations in our operating results;
- announcements of developments by us or our competitors;
- market conditions in our industry;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital commitments;
- adoption of new accounting standards affecting our industry;
- additions or departures of key personnel;
- introduction of new products by us or our competitors;
- sales of our common stock or other securities in the open market;
- regulatory developments in both the United States and foreign countries;

- performance of products sold and advertised by licensees in the marketplace;
- economic and other external factors;
- period-to-period fluctuations in financial results; and
- other events or factors, including the other factors described in this "Risk Factors" section, many of which are beyond our control.

The stock market is subject to significant price and volume fluctuations. In the past, and several recent situations, following periods of volatility in the market price of a company's securities, securities class action litigation has been initiated against such company. Litigation initiated against us, whether or not successful, could result in substantial costs and diversion of our management's attention and resources, which could harm our business and financial condition.

We do not anticipate paying any cash dividends in the foreseeable future.

The operation and expansion of our business will continue to require funding. In addition, the MC Term Loan Agreement and Revolving Loan Agreement prohibit us from paying cash dividends to our shareholders. Accordingly, we do not anticipate that we will pay any cash dividends on our common stock for the foreseeable future. Any determination to pay dividends in the future will be at the discretion of our Board of Directors and will depend upon results of operations, financial condition, contractual restrictions, restrictions imposed by applicable law and other factors our board of directors deems relevant. Accordingly, if you purchase shares of common stock, realization of a gain on your investment will depend on the appreciation of the price of our common stock, which may never occur. Investors seeking cash dividends in the foreseeable future should not purchase our common stock.

Anti-takeover provisions in Minnesota law may deter acquisition bids for us that you might consider favorable.

We are governed by the provisions of Sections 302A.671, 302A.673 and 302A.675 of the Minnesota Business Corporation Act (the "MBCA"). These provisions may discourage a negotiated acquisition or unsolicited takeover of us and deprive our shareholders of an opportunity to sell their common stock at a premium over the market price.

In general, Section 302A.671 of the MBCA provides that a corporation's shares acquired in a control share acquisition have no voting rights unless voting rights are approved in a prescribed manner. A "control share acquisition" is a direct or indirect acquisition of beneficial ownership of shares that would, when added to all other shares beneficially owned by the acquiring person, entitle the acquiring person to have voting power of 20% or more in the election of directors.

In general, Section 302A.673 of the MBCA prohibits a public Minnesota corporation from engaging in a business combination with an interested shareholder for a period of four years after the date of the transaction in which the person became an interested shareholder, unless the business combination is approved in a prescribed manner. The term "business combination" includes mergers, asset sales and other transactions resulting in a financial benefit to the interested shareholder. An "interested shareholder" is a person who is the beneficial owner, directly or indirectly, of 10% or more of a corporation's voting stock or who is an affiliate or associate of the corporation, and who, at any time within four years before the date in question, was the beneficial owner, directly or indirectly, of 10% or more of the corporation's voting stock. Section 302A.673 does not apply if a committee of our Board of Directors consisting of all of its disinterested directors (excluding current and former officers) approves the proposed transaction or the interested shareholder's acquisition of shares before the interested shareholder becomes an interested shareholder.

If a tender offer is made for our common stock, Section 302A.675 of the MBCA precludes the offeror from acquiring additional shares of stock (including in acquisitions pursuant to mergers, consolidations or statutory share exchanges) within two years following the completion of the tender offer, unless shareholders selling their shares in the later acquisition are given the opportunity to sell their shares on terms that are substantially the same as those contained in the earlier tender offer. Section 302A.675 does not apply if a committee of our Board of Directors consisting of all of its disinterested directors (excluding its current and former officers) approves the proposed acquisition before any shares are acquired pursuant to the earlier tender offer.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

On March 16, 2016, AC entered into the Fourth Amendment to Lease ("Fourth Amendment") with SNH Medical Office Properties Trust ("SNH"). SNH is the landlord of AC's currently leased 11,761 square foot corporate headquarters facility at 13631 Progress Boulevard, Suite 400, Alachua, Florida 32615 (the "Current Premises") pursuant to that certain lease dated as of February 6, 2007, as amended (the "Lease"). The Fourth Amendment expands the Current Premises by 7,050 square feet (the "Expansion Premises"). The Fourth Amendment also provides that the Expiration Date (as defined in the Fourth Amendment) of the Lease will be extended to approximately five years from the Occupancy Date (as defined in the Fourth Amendment) which was June 2016. The original expiration date of the Current Premises remains unchanged; provided, however, that AC shall have the right to extend the Current Premises Term (as defined in the Fourth Amendment) for three additional periods (the "Current Premises Extended Term"), the first such Current Premises Extended Term to commence on November 1, 2018 and end on October 31, 2019, the second such Current Premises Extended Term to commence on November 1, 2019 and end on October 31, 2020, and the third such Current Premises Extended Term to commence on November 1, 2020 and end on the Expiration Date. AC also has the right to extend the term of the then current Leased Premises (as defined in the Fourth Amendment) for an additional period of five years commencing on the day immediately after the Expiration Date.

AxoGen's annual cost of the Current Premises and Expansion Premises ranges from approximately $248,000 to $332,000 per year over the life of the leases.

On January 23, 2017 AC entered into a lease (the "SHN Lease") with SNH Medical Office Properties Trust, a Maryland real estate investment trust ("SNH"), for 1,431 square feet at 13709 Progress Boulevard, Alachua, Florida 32615. Pursuant to the Lease, AC is to use the space for general office and biomedical research uses. SNH is the landlord of AC's currently leased corporate headquarters facility at 13631 Progress Boulevard, Alachua, Florida 32615. The SHN Lease has a term of approximately five years with rent payments commencing on the earlier of April 1, 2017 or the "Substantial Completion Date" (as defined in the Lease). AC's additional annual cost of the Premises will range from approximately $25,800 to $29,000 over the life of the lease.

On October 25, 2013, AC entered into a commercial lease with Ja-Cole L.P. ("Ja-Cole"). Under the terms of the commercial lease AxoGen occupied 5,400 square feet of warehouse/office space in its Distribution Facility until November 30, 2016 at an annual cost of $43,200. On April 21, 2015, AxoGen entered into a new commercial lease, as amended by the addendum on such date (as amended, the "Commercial Lease"), with Ja-Cole. The new commercial lease superseded and replaced the original lease with Ja-Cole dated October 25, 2013. Under the terms of the new Commercial Lease, AxoGen leased an additional 2,100 square feet of warehouse at the Distribution Facility. The Commercial Lease is for a three-year term expiring April 21, 2018. On October 25, 2016, AC, entered into Commercial Lease Amendment 2 (the "Ja-Cole Amendment"), to the Commercial Lease. Under the terms of the Ja-Cole Amendment, AxoGen leased an additional 2,500 square feet of warehouse/office at the Distribution Facility. The Distribution Facility now comprises a total of 10,000 square feet, all of which, pursuant to the Ja-Cole Amendment, will be leased until March 31, 2019. The annual rental cost of the Distribution Facility is now approximately $88,000.

The expanded Distribution facility houses raw material storage and product distribution and allows expansion space as required for AxoGen operations. The Distribution Facility allows AxoGen to fulfill same day orders for both the east and west coasts of the United States.

On August 6, 2015, we entered into the CTS Agreement which provides for the use of certain clean rooms, office space and warehouse space located in Dayton, Ohio. The CTS Agreement has a five year term, subject to earlier termination by either party at any time for cause, or after August 6, 2017 without cause, in either event upon 18 months prior notice. Under the CTS Agreement, AxoGen pays CTS a facility fee for the clean room/manufacturing, storage and office space. CTS also provides services in support of AxoGen's manufacturing such as routine sterilization of daily

supplies, providing disposable supplies, microbial services and office support. The service fee is based on a per donor batch rate.

In addition, AxoGen leases space and maintains records at certain other facilities, including the Company's prior corporate headquarters at 1407 South Kings Highway, Texarkana, Texas 75501.

The aggregate cost of all of the Company's and its subsidiaries' properties is approximately $433,000 per year. AxoGen believes that its facilities will be sufficient to operate its business for the next 12 months and that current lease obligations will not change materially.

ITEM 3. LEGAL PROCEEDINGS

AxoGen and its subsidiaries do not have any active or pending material legal proceedings.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED SHAREHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

AxoGen's common stock is traded on the NASDAQ Capital Market under the symbol "AXGN." On February 24, 2017, the last reported closing sale price of the Company common stock on the NASDAQ Capital Market was $10.65 per share.

The following table sets forth, for each of the calendar periods indicated, the high and low sales price of the Company's common stock on the NASDAQ Capital Market.

	Year Ended December 31, 2016		Year Ended December 31, 2015	
	High	Low	High	Low
First Quarter	$ 5.60	$4.52	$ 4.24	$2.90
Second Quarter	$ 6.88	$4.90	$ 3.59	$2.95
Third Quarter	$ 9.88	$6.41	$ 5.74	$3.04
Fourth Quarter	$ 9.28	$7.65	$ 5.95	$3.90

Dividend Policy

AxoGen currently intends to retain earnings, if any, to finance the growth and development of its business, and does not expect to pay any cash dividends to its shareholders in the foreseeable future. In addition, the MC Term Loan Agreement and Revolving Loan Agreement prohibit AxoGen from paying cash dividends to its shareholders. AxoGen did not declare any cash dividends on its common stock in 2015 and 2016.

Shareholders

As of February 24, 2017, the Company had 33,013,676 shares of common stock outstanding, and approximately 276 common shareholders of record, based upon information received from our stock transfer agent. However, this number does not include beneficial owners whose shares were held of record by nominees or broker dealers. The Company estimates that there are more than 1,000 individual owners.

Stock Performance Graph

Smaller reporting companies are not required to provide the information required by this item. As of June 30, 2016, the date on which our filer status was determined for the year ended December 31, 2016, we are no longer a smaller reporting company. In accordance with Item 10(f)(2)(i) of Regulation S-K, we are permitted to utilize the scaled disclosure requirements applicable to smaller reporting companies in this annual report on Form 10-K. We will be transitioning to the disclosure requirements applicable to accelerated filers beginning with our Quarterly Report on Form 10-Q for the quarterly period ending March 31, 2017.

Purchases of Equity Securities by the Issuer and Affiliated Purchasers

We did not repurchase any of our securities in the fourth quarter of 2016.

Recent Sales of Unregistered Securities

We had no sales of unregistered securities in 2016 that have not been previously disclosed in a Current Report on Form 8-K or Quarterly Reports on Form 10-Q.

ITEM 6. SELECTED FINANCIAL DATA

Not applicable.

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

The following information should be read in conjunction with "Selected Financial Data" contained in Item 6 of this Form 10-K, our consolidated financial statements and the notes thereto contained in Item 8 of this Form 10-K, the "Cautionary Notice Regarding Forward-Looking Statements" contained in Part 1 of this Form 10-K, "Risk Factors" contained in Item 1A of this Form 10-K, and the other information appearing elsewhere in, or incorporated by reference into, in this Form 10-K.

Overview

We are a global leader in innovative surgical solutions for peripheral nerve injuries. We provide products and education to improve surgical treatment algorithms for peripheral nerve injuries. Our portfolio of products includes Avance® Nerve Graft, an off-the-shelf processed human nerve allograft for bridging severed nerves without the comorbidities associated with a second surgical site, AxoGuard® Nerve Connector, a porcine submucosa extracellular matrix ("ECM") coaptation aid for tensionless repair of severed nerves, AxoGuard® Nerve Protector, a porcine submucosa ECM product used to wrap and protect injured peripheral nerves and reinforce the nerve reconstruction while preventing soft tissue attachments and Avive™ Soft Tissue Membrane a minimally processed human umbilical cord membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed. Along with these core surgical products, we also offer the AxoTouch™ Two-Point Discriminator and AcroVal™ Neurosensory and Motor Testing System. These evaluation and measurement tools assist healthcare professionals in detecting changes in sensation, assessing return of sensory, grip and pinch function, evaluating effective treatment interventions, and providing feedback to patients on nerve function. Our portfolio of products is available in the United States, Canada, the United Kingdom and several European and other international countries.

Revenue from the distribution of AxoGen's nerve repair products, the Avance® Nerve Graft, AxoGuard® Nerve Connector and AxoGuard® Nerve Protector, in the United States is the main contributor to AxoGen's total reported sales and has been the key component of its growth to date. AxoGen revenues increased in 2016 compared to 2015 primarily as a result of revenue growth in active accounts, and to a lesser extent, the development and growth of new accounts.

We have experienced that surgeons initially are cautious adopters for nerve repair products. Surgeons typically start with a few cases and then wait and see the results of these initial cases. Active accounts are usually past this wait period and have developed some level of product reorder. These active accounts have typically gone through the committee approval process, have at least one surgeon who has converted a portion of his or her treatment algorithms of nerve repair to the AxoGen portfolio and are ordering AxoGen products at least six times in the last 12 months.

As such, revenue growth primarily occurs from increased purchasing from active accounts, followed by revenue growth from new accounts. Each new period of measurement is thus benefited from growth in active accounts which may include those that were new accounts in the prior measurement period. AxoGen has continued to broaden its sales and marketing focus which is expected to have a positive contribution to its revenue growth in the long term. In 2016 revenue growth exceeded the growth in expenses, demonstrating improved productivity of our commercial strategy.

Results of Operations

Critical Accounting Policies and Estimates

The discussion and analysis of the Company's financial condition and results of operations is based upon the Company's consolidated financial statements which have been prepared in accordance with accounting principles generally accepted in the United States of America. The preparation of these financial statements requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and reported amount of expenses during the period reported. Management bases its estimates and judgments on historical experience, observance of trends in the industry, information provided by outside sources and on various other factors that are believed to be reasonable under the circumstances. Actual results may differ from these estimates under different assumptions or conditions.

We have identified the following policies as critical to our business operations and the understanding of our consolidated results of operations:

Revenue Recognition

Revenue is recognized when persuasive evidence of an arrangement exists, the price is fixed and determinable, delivery has occurred and there is a reasonable assurance of collection of the sales proceeds. Revenues for manufactured products and products sold to a customer or under a distribution agreement are recognized when the product is delivered to the customer or distributor, at which time title passes to the customer or distributor, provided, however, that in the case of revenues from consigned sales delivery is determined when the product is utilized in a surgical procedure. Once a product is delivered, the Company has no further performance obligations. Delivery is defined as delivery to a customer location or segregation of product into a contracted distribution location. At such time, this product cannot be sold to any other customer. Fees charged to customers for shipping are recognized as revenues when products are shipped to the customer, distributor or end user. Revenues from research grants are recognized in the period the associated costs are incurred.

Accounts Receivable and Concentration of Credit Risk — Doubtful Accounts

Trade accounts receivable are recorded at the invoiced amount and do not bear interest. The carrying amount of accounts receivable is reduced by an allowance for doubtful accounts which reflects management's best estimate of the amounts that are uncollectable. In establishing the required allowance, management considers customers' financial condition, credit history and current economic conditions. Account balances are charged off after all means of collection have been exhausted and the potential for recovery is considered remote. Our internal financial operations have primary responsibility for billing and collecting our accounts receivable and utilize various processes and procedures in our collection efforts including monthly statements, written collection notices and telephonic follow-ups. In the event the current conditions as to doubtful accounts negatively change, management will consider increasing the reserve for doubtful accounts. Management judgment as to identifying negative trends is important in its assumption of exposure to uncollectable receivables requiring a reserve and if revenues expand as expected accounts receivable will rise, potentially causing management to reevaluate its underlying assumptions.

Inventories

Inventories are comprised of unprocessed tissue, work-in-process, Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector, Avive™ Soft Tissue Membrane, AcroVal™ Neurosensory and Motor Testing System, AxoTouch™ Two-Point Discriminator and supplies and are valued at the lower of cost (first-in, first-out) or market.

We regularly review the inventory status to determine the expected reserve level required. The Company policy is to monitor the shelf life of its products and reserve amounts based on the expiration date of the finished goods inventory. We also reserve a portion of raw materials based on our historical experience of tissue that fails during the inspection and debridement stage due to medical history, serology compliance or poor quality.

Effective Interest Rate on Note Payable

On November 12, 2014, AxoGen, as borrower, and AC, as guarantor, entered into a term loan agreement (the "Three Peaks Term Loan Agreement") with the lenders party thereto and Three Peaks Capital S.a.r.l. ("Three Peaks"), an indirect wholly-owned subsidiary of Oberland Capital Healthcare Master Fund LP ("Oberland"), as administrative and collateral agent for the lenders. Under the Three Peaks Term Loan Agreement, Three Peaks provided AxoGen a term loan of $25 million which had a six year term and required interest only payments and a final principal payment due at the end of the term. Interest was payable quarterly at 9.00% per annum plus the greater of LIBOR or 1.0% which, as of November 13, 2014, resulted in a 10% rate. In addition, on November 12, 2014, AxoGen entered into a 10 year Revenue Interest Agreement (the "Revenue Interest Agreement") with Three Peaks. Royalty payments were based on a royalty rate of 3.75% of AxoGen's revenues up to a maximum of $30 million in revenues in any 12 month period.

The Three Peaks Term Loan Agreement and Revenue Interest Agreement were used in calculating the effective interest rate. AxoGen recorded interest using its best estimate of the effective interest rate. This estimate took into account both the rate on the Three Peaks Term Loan Agreement and the rate associated with the ten-year Revenue Interest Agreement. The effective interest rate was based on actual payments to date, projected future revenues and the projected royalty payments and the quarterly interest payments due on the Three Peaks Term Loan Agreement. From time to time, AxoGen reevaluated the expected cash flows and adjusted the effective interest rate. Determining the effective interest rate required judgment and was based on significant assumptions related to estimates of the amounts and timing of future revenue streams. Determination of these assumptions was highly subjective and different assumptions could have led to materially different outcomes. The Three Peaks Term Loan Agreement and Revenue Interest Agreement were paid in full on October 26, 2016.

Income Taxes

Deferred income taxes reflect the impact of temporary differences between the reported amounts of assets and liabilities for financial reporting purposes and such amounts as measured by tax laws and regulations. The deferred tax assets and liabilities represent the future tax return consequences of those differences, which will either be taxable or deductible when the assets and liabilities are recovered or settled. A valuation allowance is provided for deferred tax assets when management concludes it is more-likely-than-not that some portion of the deferred tax assets will not be recognized. We have a full valuation allowance established on the deferred tax asset upon management's best estimate of final outcomes based upon estimated future revenue and changes in business capitalization. Factors used to establish the valuation allowance are complicated and could cause variability in application over time.

Comparison of the Years Ended December 31, 2016 and 2015

Revenues

Revenues for the year ended December 31, 2016 increased 50.4% to approximately $41,108,000 as compared to approximately $27,331,000 for the year ended December 31, 2015. This increase was primarily a result of growth in active accounts and to a lesser extent the establishment and growth of new accounts. In addition, the Company received grant revenue of approximately $290,000 in the year ended December 31, 2016, as compared to grant revenue of approximately $433,000 in the year ended December 31, 2015.

Gross Profit

Gross profit for the year ended December 31, 2016 increased 54.1% to approximately $34,640,000 as compared to approximately $22,483,000 for the year ended December 31, 2015. This increase is primarily attributable to the increased revenues in 2016, manufacturing efficiencies, a favorable change in product mix and a product price increase instituted in March 2016. As a result, gross profit margin also improved to 84.3% in 2016 as compared to 82.3% for 2015.

Costs and Expenses

Total cost and expenses increased 34.7% to approximately $42,770,000 for the year ended December 31, 2016 as compared to approximately $31,749,000 for the year ended December 31, 2015. These increases were primarily due to increasing sales activity, expanded surgeon education programs, increases in compensation and increased general expenses associated with increased revenues and greater corporate size. As a percentage of revenue, total cost and expenses decreased to 104% in 2016 compared to 116% in 2015 demonstrating the improved productivity of our business model.

Sales and marketing expenses increased 41.5% to approximately $28,426,000 for the year ended December 31, 2016 as compared to approximately $20,089,000 for the year ended December 31, 2015. This increase was primarily due to: (a) increased compensation expenses related to AxoGen's direct sales force as a result of increased sales and hiring of additional personnel; (b) increased commissions to independent distributors as a result of increased sales; (c) expansion

of the Company's surgeon education program; and (d) increased marketing activity. As a percentage of revenues, sales and marketing expenses were 69.1% for the year ended December 31, 2016 compared to 73.5% for the year ended December 31, 2015. The decrease in sales and marketing expenses as a percentage of revenue was a result of improved productivity of our commercial team, including the improved penetration of active accounts as revenue growth outpaced the related growth of expenses.

General and administrative expenses increased 20.3% to approximately $10,133,000 for the year ended December 31, 2016 as compared to approximately $8,423,000 for the year ended December 31, 2015. The increase was primarily the result of increased professional fees, increased general expenses related to a larger organization and increases in salaries and bonus compensation. As a percentage of revenues, general and administrative expenses were 24.6% for the year ended December 31, 2016 compared to 30.8% for the year ended December 31, 2015.

Research and development expenses increased 30.1% to approximately $4,212,000 in the year ended December 31, 2016 as compared to approximately $3,237,000 for the year ended December 31, 2015. Research and development costs include AxoGen's product development and clinical efforts substantially focused on its BLA for the Avance® Nerve Graft. This activity varies from quarter to quarter due to the timing of certain projects. The increase in expenses for 2016 relate to expenditures for such clinical activity, including preparation for, and the start of, the pivotal clinical trial to support the BLA, and hiring additional personal to support both clinical and product development activity, offset by certain projects that have been completed or are near completion. It is expected that costs associated with the BLA will continue to increase as more patients are enrolled in the trial over approximately the next two years. Although AxoGen's products are developed for sale in their current use, it does conduct product development efforts focused on new products and new applications for existing products. AxoGen is active in pursuing research grants to support research and early product development. AxoGen's product pipeline development contributed to a portion of the research and development expenses in 2016, with grant revenue offsetting a portion of this activity. As a percentage of revenues, research and development expenses declined to 10.2% in 2016 from 11.8% in 2015.

Other Income and Expenses

Interest expense increased 35.0% to approximately $5,386,000 in 2016 as compared to approximately $3,989,000 for the year ended December 31, 2015. This increase was primarily due to the net impact of prepayment fees and the write-off of previously recorded deferred interest charges associated with the extinguishment of the Three Peaks Term Loan Agreement and Revenue Interest Agreement on October 25, 2016. Under the terms of the Three Peaks Term Loan Agreement the Company paid Three Peaks a final payment of approximately $2,447,000 inclusive of prepayment fees and accrued interest through October 25, 2016. As a result of the accounting treatment for the Three Peaks transaction, the Company had previously recorded a total of $747,000 of deferred interest charges which were offset against these prepayment fees. The net impact of these transactions resulted in a net interest charge of approximately $1,700,000 for the fiscal year ended December 31, 2016.

Additionally, interest expense included non-cash, deferred interest charges of approximately $0 and $462,000 for the years ended December 31, 2016 and 2015, respectively, that was expected to be paid in the future based upon the terms of the Three Peaks transaction and increases in AxoGen revenues.

Interest expense — deferred financing costs increased to approximately $875,000 for the year ended December 31, 2016 as compared to approximately $128,000 for the year ended December 31, 2015. This increase is primarily due to the write off of the remaining Three Peaks financing costs of approximately $750,000 in 2016 as the result of the extinguishment of the Three Peaks Term Loan Agreement and Revenue Interest Agreement.

Income Taxes

AxoGen had no income tax expenses or income tax benefit for 2016 or 2015 due to incurrence of net operating loss for the year. AxoGen does not believe there are any additional tax expenses or benefits currently available.

Effect of Inflation

Inflation did not have a significant impact on AxoGen's net sales, revenues or income from continuing operations in 2014, 2015 or 2016.

Liquidity and Capital Resources

Term Loan Agreements and Revenue Interest Agreement

On November 12, 2014 (the "Signing Date"), AxoGen, as borrower, and AC, as guarantor, entered into the Three Peaks Term Loan Agreement. Under the Three Peaks Term Loan Agreement, Three Peaks agreed to lend to AxoGen a term loan of $25 million which had a six year term and required interest only payments and a final principal payment due at the end of the term. Interest was payable quarterly at 9.00% per annum plus the greater of LIBOR or 1.0% which as of November 13, 2014 resulted in a 10% rate. AxoGen had to maintain certain covenants including limiting new indebtedness, restriction of the payment of dividends and maintain certain levels of revenue. Three Peaks had a first perfected security interest in the assets of AxoGen.

In addition, AxoGen entered into the Revenue Interest Agreement with Three Peaks. Royalty payments were based on a royalty rate of 3.75% of AxoGen's revenues up to a maximum of $30 million in revenues in any 12 month period.

Under the Three Peaks Term Loan Agreement, AxoGen had the option at any time to prepay the Term Loan, in whole or in part, and the Revenue Interest Agreement by making the following payment, and Three Peaks had the right to demand the following payment upon a change of control of AxoGen, sale of the majority of AxoGen's assets or a material adverse change to AxoGen: (i) on or prior to the first anniversary of the applicable Signing Date, 120% of the outstanding principal amount of the Term Loan or any portion being prepaid; (ii) after the first anniversary but no later than the second anniversary of the Signing Date, 135% of the outstanding principal amount of the Term Loan or any portion being prepaid; (iii) after the second anniversary but no later than the third anniversary of the applicable Closing Date, 150% of the outstanding principal amount of the Term Loan or any portion being prepaid; or (iv) after the third anniversary of the Signing Date, an amount generating an internal rate of return of 16.25% of the outstanding principal amount of the Three Peaks Term Loan or any portion being prepaid. In all cases, the amount due was reduced by the sum of interest and principal previously paid and all amounts received under the Revenue Interest Agreement. In each such case AxoGen would also owe an additional 3% of the Three Peaks Term Loan amount. Upon payment to Three Peaks, AxoGen had no further obligations to Three Peaks under the Three Peaks Term Loan or the Revenue Interest Agreement. As a result of the prepayment in October 2016, the Company was required to pay 135% of the outstanding principal amount of the Three Peaks Term Loan and 3% of the Three Peaks Term Loan amount reduced by the sum of interest and principal previously paid and all amounts received under the Revenue Interest Agreement totaling approximately $27,447,000, of which approximately $2,447,000 represents the prepayment fee.

Also in connection with the Three Peaks Term Loan and Revenue Interest Agreements, the Company sold 1,375,969 shares of its common stock to Three Peaks for a total of $3.55 million at a price of $2.58 per share.

The Company recorded interest using its best estimate of the effective interest rate. This estimate took into account both the rate on the Three Peaks Term Loan Agreement and the rate associated with the ten year Revenue Interest Agreement with Three Peaks. The effective interest rate was based on actual payments to date, projected future revenues and the projected royalty payments and the quarterly interest payments due on the Three Peaks Term Loan Agreement. From time to time, AxoGen reevaluated the expected cash flows and adjusted the effective interest rate. Determining the effective interest rate required judgment and was based on significant assumptions related to estimates of the amounts and timing of future revenue streams. Determination of these assumptions was highly subjective and different assumptions could have lead to materially different outcomes.

On the Closing Date, AxoGen and AC, each as borrowers, entered into the MC Term Loan Agreement with the lenders party thereto and MidCap, as administrative agent and a lender. Under the MC Term Loan Agreement, MidCap provided the Company a term loan in the aggregate principal amount of $21 million (the "Term Loan") which has a

maturity date of May 1, 2021 and requires interest only payments through December 1, 2018, and thereafter, 30 monthly payments of principal and interest resulting in the Term Loan being fully paid by the maturity date. Interest is payable monthly at 8.00% per annum plus the greater of LIBOR or 0.5%, which, as of the Closing Date, resulted in an 8.5% rate. In addition to the interest charged on the Term Loan, the Company is also obligated to pay certain fees, including an annual agency fee of 0.25% of the aggregate principal amount of the Term Loan.

Under the MC Term Loan Agreement, the Company has the option at any time to prepay the Term Loan in whole or in part, provided that prepayments shall be: (i) in an amount equal to $2,500,000 or a higher integral multiple of $1,000,000; and (ii) accompanied by certain prepayment and exit fees. There can be no more than three partial voluntary prepayments allowed during the term of the MC Term Loan Agreement. MidCap and certain of the lenders have the right to demand prepayment, along with prepayment and exit fees upon an event of default which includes, but is not limited to: (i) default of the Revolving Loan (as defined below); (ii) a change of control of the Company; (iii) sale of the majority of the Company's assets; or (iv) a material adverse change to the Company. The prepayment fee is determined by multiplying the amount being prepaid by the following applicable percentage amount: (a) 3.0% during the first year following the Closing Date; (b) 2.0% during the second year following the Closing Date, and (c) 1.0% thereafter. No prepayment fee is due in the event the prepayment is a result of refinancing the Term Loan and Revolving Loan with MidCap or an affiliate of MidCap. Upon any repayment of any portion of the Term Loan (whether voluntary, involuntary or mandatory), other than scheduled amortization payments, and on the final payment of principal of the Term Loan, an exit fee of 5.0% of the principal amount of the Term Loan is also owed based on the portion of any prepayment made and at maturity upon the original principal amount less any prepayments of the Term Loan. The Company used the aggregate proceeds of $25 million from the MidCap Term Loan and the Revolving Loan to pay the outstanding indebtedness owed to Three Peaks and the other lenders to terminate the Term Loan Agreement and the Revenue Interest Agreement. Expenses and fees of approximately $800,000 to complete the negotiation and documentation of the MidCap Term Loan and the Revolving Loan and prepayment fees of approximately $2.3 million owed to Three Peaks were paid from the Company’s own funds.

On the Closing Date, AxoGen and AC, each as borrowers, also entered into the Revolving Loan Agreement with the lenders party thereto and MidCap, as administrative agent and a lender. Under the Revolving Loan Agreement, MidCap agreed to lend to the Company up to $10 million under a revolving credit facility (the "Revolving Loan") which amount may be drawn down by the Company based upon an available borrowing base which includes certain accounts receivable and inventory. The Revolving Loan may be increased to up to $15 million at the Company’s request and with the approval of MidCap. As of the Closing Date, the Company’s borrowing base under the Revolving Loan provided availability of approximately $5.4 million. As of December 31, 2016, the Company had borrowed $4,025,023 of the Revolving Loan. The maturity date of the Revolving Loan is May 1, 2021. Interest is payable monthly at 4.5% per annum plus the greater of LIBOR or 0.5% on outstanding advances, which, as of the Closing Date and December 31, 2016, resulted in an 5.0% rate. In addition to the interest charged on the Revolving Loan, the Company is also obligated to pay certain fees, including a collateral management fee of 0.5% per annum of the principal amount outstanding on the Revolving Loan from time to time and an unused line fee of 0.5% per annum on the difference between the average amount outstanding on the Revolving Loan minus the total amount of the Revolving Loan commitment. The Revolving Loan is subject to a minimum balance, such that the Company pays the greater of: (i) interest accrued on the actual amount drawn under the Revolving Loan Facility; and (ii) interest accrued on 30% of the average borrowing base. If the Revolving Loan is terminated or permanently reduced prior to the maturity date, MidCap is owed a deferred revolving loan origination fee determined by multiplying the agreed total lending amount by the following applicable percentage amount: (a) 3.0% during the first year following the Closing Date; (b) 2.0% during the second year following the Closing Date, and (c) 1.0% thereafter. No deferred revolving loan origination fee is due in the event the Revolving Loan is paid in full or the termination of the revolving credit facility is a result of refinancing the Term Loan and Revolving Loan with MidCap or an affiliate of MidCap. Termination of the Revolving Loan may occur, at the option of MidCap and certain of the lenders, upon an event of default which includes, but is not limited to: (i) default in payment of the Term Loan; (ii) a change of control of the Company; (iii) sale of the majority of the Company's assets; or (iv) a material adverse change to the Company.

Under the MidCap agreements, the Company must maintain certain covenants including, but not limited to, limiting new indebtedness, restrictions on the payment of dividends and maintaining certain levels of revenue. MidCap, on behalf of the lenders under the Revolving Loan Agreement, has a first perfected security interest in the assets of the Company

to guarantee the payment in full of the MC Term Loan and Revolving Loan. Upon the payment in full to MidCap and the lenders of the MC Term Loan and Revolving Loan, the Company would have no further obligations to MidCap or the lenders under the MC Term Loan or the Revolving Loan or the Revolving Loan Agreement.

The Company used the aggregate proceeds of $25 million from the Term Loan and the Revolving Loan to pay the outstanding indebtedness owed to Three Peaks and the other lenders to terminate the Three Peaks Term Loan Agreement and the Revenue Interest Agreement. Expenses and fees of approximately $800,000 to complete the negotiation and documentation of the Term Loan and the Revolving Loan and prepayment fees of approximately $2.3 million owed to Three Peaks were paid from the Company's own funds.

Commitments for Capital Expenditures

The Company had no material commitments for capital expenditures at December 31, 2016 or 2015.

Public Offering of Common Stock

On February 5, 2015, AxoGen entered into an underwriting agreement with Wedbush Securities Inc., as underwriter (the "Wedbush"), in connection with the offering, issuance and sale of 4,728,000 shares of the Company's common stock, par value $0.01 per share, at a price to the public of $2.75 per share (the "February 2015 Offering"). The Company also granted to Wedbush a 30-day option to purchase up to an aggregate of 709,200 additional shares of common stock to cover over-allotments, if any.

As of February 13, 2015, the February 2015 Offering was completed with the sale of 5,437,200 shares of common stock, which included the full exercise of the over-allotment option, at $2.75 per share, resulting in gross proceeds to AxoGen from the February 2015 Offering of approximately $15.0 million, before deducting underwriting discounts and commissions and other estimated offering expenses payable by AxoGen estimated at approximately $1.4 million. The shares of common stock were listed on the NASDAQ Capital Market. The February 2015 Offering was made pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-195588) previously filed with the SEC on April 30, 2014, and pursuant to the prospectus supplement and the accompanying prospectus describing the terms of the February 2015 Offering, dated February 5, 2015.

On August 26, 2015, the Company entered into the Purchase Agreement with Essex Woodlands Fund IX, L.P. for the purchase of 4,861,111 shares of common stock at a public offering price of $3.60 per share, raising approximately $17.5 million in gross proceeds (the "August 2015 Offering"). The expenses directly related to the August 2015 Offering were approximately $300,000 and were all paid as of December 31, 2015 by the Company. Such expenses include the Company's legal and accounting fees, printing expenses, transfer agent fees and miscellaneous fees and costs related to the August 2015 Offering. Proceeds from the August 2015 Offering will be used for sales and marketing and general working capital purposes. The Company has provided certain demand and "piggy-back" registration rights in connection with this sale of common stock. The August 2015 Offering was made pursuant to the Company's effective shelf registration statement on Form S-3 (Registration No. 333-195588) previously filed with the SEC on April 30, 2014 and pursuant to the prospectus supplement and the accompanying prospectus describing the terms of the August 2015 Offering, dated August 26, 2015.

On October 7, 2016, AxoGen entered into an underwriting agreement with JMP Securities LLC, as representative of the several underwriters (collectively, the "Underwriters"), to issue and sell 2,333,334 shares of the Company's common stock in an underwritten registered public offering (the "2016 Offering") at an offering price of $7.50 per share. Pursuant to the underwriting agreement, the Company also granted the Underwriters a 30-day option to purchase up to an additional 350,000 shares of common stock, which the underwriters exercised in full on October 7, 2016. Five of the Company's directors and officers purchased an aggregate of approximately 32,666 Shares in the 2016 Offering and such purchases were made on the same terms and conditions as purchases by the public in the 2016 Offering. The 2016 Offering closed on October 13, 2016, and the Company received net proceeds of approximately $18.67 million from the sale of 2,683,334 shares of common stock, which includes the additional 350,000 shares of common stock, after deducting the underwriting discounts and commissions and estimated offering expenses. The Company intends to use the net proceeds from this 2016 Offering for general working capital purposes and expanded development of nerve

repair markets and products. However, the Company's management will retain broad discretion over the allocation of the net proceeds. The 2016 Offering was pursuant to a prospectus supplement dated October 7, 2016, which was filed with the SEC in connection with the Company's shelf registration statement on Form S-3 (File No. 333-207829) that was filed with the SEC on November 5, 2015 and declared effective on December 11, 2015 and the related prospectus dated December 11, 2015.

Cash Flow Information

AxoGen had working capital of approximately $32.96 million and a current ratio of 3.97 at December 31, 2016, compared to working capital of $31.34 million and a current ratio of 9.45 at December 31, 2015. The decrease in the current ratio at December 31, 2016 as compared to December 31, 2015 was primarily due to the a portion of the refinanced debt being classified as a current liability. The Company believes it has sufficient cash resources to meet its liquidity requirements for at least the next 12 months.

AxoGen's future capital requirements depend on a number of factors including, without limitation, revenue increases consistent with its business plan, cost of products and acquisition and/or development of new products. AxoGen could face increasing capital needs. Such capital needs could be substantial depending on the extent to which AxoGen is unable to increase revenue.

If AxoGen needs additional capital in the future, it may raise additional funds through public or private equity offerings, debt financings or from other sources. The sale of additional equity would result in dilution to AxoGen's shareholders. There is no assurance that AxoGen will be able to secure funding on terms acceptable to it, or at all. The increasing need for capital could also make it more difficult to obtain funding through either equity or debt. Should additional capital not become available to AxoGen as needed, AxoGen may be required to take certain action, such as slowing sales and marketing expansion, delaying regulatory approvals or reducing headcount.

During the year ended December 31, 2016, the Company had a net increase in cash and cash equivalents of approximately $4,105,000 as compared to a net increase of cash and cash equivalents of approximately $17,694,000 in the year ended December 31, 2015. The Company's principal sources and uses of funds are explained below.

Net Cash used in operating activities

AxoGen used approximately $11,204,000 of cash for operating activities in 2016, as compared to using approximately $13,052,000 of cash for operating activities in 2015.

This decrease in cash used in operating activities is primarily attributed to an increase in accounts payable and accrued expenses partially offset by a higher net loss generated in 2016, (which was primarily due to the impact of refinancing costs in 2016), an increase in accounts receivable and inventory.

Net Cash used in investing activities

Investing activities for 2016 used approximately $1,190,000 of cash as compared to 2015 which used approximately $556,000. This increase in use is principally attributable to the growth in certain fixed assets in 2016 related to expanded capacity of our production facility in Dayton, Ohio and the Distribution Facility as well as expanded capacity at our headquarters office in Alachua, Florida.

Net Cash provided by financing activities

Financing activities in 2016 provided approximately $16,499,000 of cash as compared to providing approximately $31,301,000 of cash in 2015. The decrease was due to less proceeds received in the 2016 Offering when compared to the proceeds received from the February 2015 Offering and August 2015 Offering.

Cash paid for interest was $5,769,372 in 2016 compared to $3,525,978 in 2015. The increase is due to the $2,446,676 final payment to fully repay the Three Peaks Term Loan Agreement and Revenue Interest Agreement, partially offset by lower interest charges on the new debt agreement.

Off-Balance Sheet Arrangements

AxoGen does not have any off-balance sheet arrangements.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board, or FASB, issued a new standard on revenue recognition which outlines a single comprehensive model to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The core principle of the revenue model is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard is designed to create greater comparability for financial statement users across industries and jurisdictions and also requires enhanced disclosures. The guidance will be effective for the Company beginning on January 1, 2018. The standard may be applied retrospectively to each prior period presented or retrospectively with the cumulative effect recognized as of the adoption date. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In June 2014, the FASB issued updated guidance related to stock compensation. The amendment requires that a performance target that affects vesting and that could be achieved after the requisite period, be treated as a performance condition. The updated guidance became effective for annual reporting periods and interim periods within those annual periods beginning after December 15, 2016. The adoption of this guidance did not have a material impact on our consolidated financial statements.

In April 2015, the FASB issued Accounting Standard Update (“ASU”) No. 2015-03, Simplifying the Presentation of Debt Issuance Costs, which changes the presentation of debt issuance costs in financial statements to present such costs as a direct deduction from the related debt liability rather than as an asset. During the first quarter of 2016, we retrospectively adopted this guidance. The implementation of this accounting standard resulted in a reduction of other noncurrent assets and long-term debt of approximately $846,000 in the Consolidated Balance Sheet as of December 31, 2015.

In November 2015, the FASB issued an ASU to simplify the presentation of deferred income taxes. The amendments in this ASU require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The amendments in these ASUs may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented and are effective for interim and annual reporting periods beginning after December 15, 2016. Earlier application is permitted for all entities as of the beginning of an interim or annual reporting period. We are currently evaluating the method of adoption and the impact of the provisions of the ASU.

In February 2016, the FASB issued ASU 2016-02, “Leases (Topic 842)”. This update will increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This update is effective for annual and interim reporting periods beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation - Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting. The ASU was issued as part of the FASB Simplification Initiative and involves several aspects of accounting for shared-based payment transactions, including the income tax consequences, options to elect forfeiture accounting policy either by the number of awards that are expected to vest (current GAAP) or account for forfeitures when they occur, and classification on the statement of cash flows. The guidance is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, Classification of Certain Cash Receipts and Cash Payments (Topic 230). The ASU was issued intended to reduce diversity in practice in how certain cash receipts and cash payments are presented and classified in the Consolidated Statement of Cash Flows by providing guidance on eight specific cash flow issues. The new guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2017 with early adoption permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows (Topic 230), guidance that a statement of cash flows explains the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. The new guidance is effective for fiscal years beginning after December 15, 2017 with early adoption permitted. We are currently evaluating the impact of adoption of this guidance on our Statement of Cash Flows.

The Company's management has reviewed and considered all other recent accounting pronouncements and believe there are none that could potentially have a material impact on the Company's consolidated financial condition, results of operations, or disclosures.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Not applicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

CONTENTS

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and
Board of Directors of
AxoGen, Inc.

We have audited the accompanying consolidated balance sheets of AxoGen, Inc. and Subsidiaries as of December 31, 2016 and 2015, and the related consolidated statements of operations, shareholders' equity, and cash flows for each of the years in the two-year period ended December 31, 2016. AxoGen's management is responsible for these consolidated financial statements. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the consolidated financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of AxoGen, Inc. and Subsidiaries as of December 31, 2016 and 2015, and the results of its operations and its cash flows for each of the years in the two-year period ended December 31, 2016, in conformity with accounting principles generally accepted in the United States of America.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), AxoGen, Inc and Subsidiaries internal control over financial reporting as of December 31, 2016, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 1, 2017, expressed an adverse opinion.

/s/ Lurie, LLP

Minneapolis, Minnesota

March 1, 2017

AXOGEN, INC.
CONSOLIDATED BALANCE SHEETS
December 31, 2016 and 2015

	December 31, 2016	December 31, 2015
Assets		
Current assets:		
Cash and cash equivalents	$ 30,014,405	$ 25,909,500
Accounts receivable, net of allowance for doubtful accounts of approximately $272,000 and $192,000 respectively	8,052,203	4,782,989
Inventory	5,458,840	3,933,960
Prepaid expenses and other	511,804	424,925
Total current assets	44,037,252	35,051,374
Property and equipment, net	1,494,247	970,870
Intangible assets	828,979	678,082
	$ 46,360,478	$ 36,700,326
Liabilities and Shareholders' Equity		
Current liabilities:		
Borrowings under revolving loan agreement	$ 4,025,023	$ —
Accounts payable and accrued expenses	7,002,165	3,695,127
Current maturities of long term obligations	20,899	—
Deferred revenue, current	33,282	14,118
Total current liabilities	11,081,369	3,709,245
Note Payable - Revenue Interest Purchase Agreement, net	—	24,701,693
Long Term Obligations, net of current maturities and deferred financing fees	20,265,745	—
Deferred revenue	92,215	93,797
Total liabilities	31,439,329	28,504,735
Shareholders' equity:		
Common stock, $0.01 par value per share; 50,000,000 shares authorized; 33,008,865 and 29,984,591 shares issued and outstanding	330,088	299,846
Additional paid-in capital	132,474,884	111,368,424
Accumulated deficit	(117,883,823)	(103,472,679)
Total shareholders' equity	14,921,149	8,195,591
	$ 46,360,478	$ 36,700,326

The accompanying notes are an integral part of these consolidated financial statements.

AXOGEN, INC.
CONSOLIDATED STATEMENTS OF OPERATIONS
Years ended December 31, 2016 and 2015

	2016	2015
Revenues	$ 41,107,538	$ 27,331,092
Cost of goods sold	6,467,250	4,848,396
Gross profit	34,640,288	22,482,696
Costs and expenses:		
Sales and marketing	28,425,503	20,089,369
Research and development	4,212,023	3,237,171
General and administrative	10,132,624	8,422,866
Total costs and expenses	42,770,150	31,749,406
Loss from operations	(8,129,862)	(9,266,710)
Other income (expense):		
Interest expense	(5,386,268)	(3,988,619)
Interest expense — deferred financing costs	(875,389)	(127,912)
Other income (expense)	(19,625)	26,816
Total other income (expense)	(6,281,282)	(4,089,715)
Net Loss	(14,411,144)	(13,356,425)
Weighted Average Common Shares outstanding — basic and diluted	30,702,164	26,075,670
Loss Per Common share — basic and diluted	$ (0.47)	$ (0.51)

The accompanying notes are an integral part of these consolidated financial statements.

AXOGEN, INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
Years ended December 31, 2016 and 2015

	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount			
Balance, December 31, 2014	19,488,814	$ 194,888	$ 78,675,686	$ (90,116,254)	$ (11,245,680)
Stock-based compensation	—	—	1,316,509	—	1,316,509
Exercise of stock options	197,466	1,975	510,826	—	512,801
Issuance of common shares	10,298,311	102,983	30,865,403	—	30,968,386
Net loss	—	—	—	(13,356,425)	(13,356,425)
Balance, December 31, 2015	29,984,591	299,846	111,368,424	(103,472,679)	8,195,591
Stock-based compensation	—	—	1,390,277	—	1,390,277
Exercise of stock options	340,940	3,409	1,074,924	—	1,078,333
Issuance of common shares	2,683,334	26,833	18,641,259	—	18,668,092
Net loss	—	—	—	(14,411,144)	(14,411,144)
Balance, December 31, 2016	33,008,865	$ 330,088	$ 132,474,884	$ (117,883,823)	$ 14,921,149

The accompanying notes are an integral part of these consolidated financial statements.

AXOGEN, INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
Years ended December 31, 2016 and 2015

	2016	2015
Cash flows from operating activities:		
Net loss	$ (14,411,144)	$ (13,356,425)
Adjustments to reconcile net loss to net cash used for operating activities:		
Depreciation	361,617	203,140
Amortization of intangible assets	74,871	45,828
Amortization of deferred financing costs	124,915	127,913
Write off of deferred financing costs	750,474	--
Provision for bad debt	79,593	125,371
Stock-based compensation	1,390,277	1,316,509
Interest added to note payable	1,924,279	461,643
Change in assets and liabilities:		
Accounts receivable	(3,348,807)	(2,036,052)
Inventory	(1,524,880)	(720,340)
Prepaid expenses and other	(86,879)	(315,556)
Accounts payable and accrued expenses	3,443,660	1,117,733
Deferred revenue	17,582	(21,583)
Net cash used for operating activities	(11,204,442)	(13,051,819)
Cash flows from investing activities:		
Purchase of property and equipment	(963,787)	(408,782)
Acquisition of intangible assets	(225,768)	(146,736)
Net cash used for investing activities	(1,189,555)	(555,518)
Cash flows from financing activities:		
Proceeds from issuance of common stock	18,668,092	30,968,386
Borrowing on revolving loan	6,684,894	--
Payments on revolving loan	(6,684,894)	--
Repayments of long-term debt	(2,446,676)	--
Debt issuance costs	(800,847)	(180,139)
Proceeds from exercise of stock options	1,078,333	512,799
Net cash provided by financing activities	16,498,902	31,301,046
Net increase in cash and cash equivalents	4,104,905	17,693,709
Cash and cash equivalents, beginning of year	25,909,500	8,215,791
Cash and cash equivalents, end of period	$ 30,014,405	$ 25,909,500
Supplemental disclosures of cash flow activity:		
Cash paid for interest	$ 5,769,372	$ 3,525,978
Supplemental disclosure of non-cash investing and financing activities:		
Payments of fixed assets in accounts payable	$ 32,153	$ 168,775
Payments of long term debt with proceeds from term loan of $21,000,000 and revolver loan of $4,000,000	$ 25,000,000	$ —

The accompanying notes are an integral part of these consolidated financial statements.

AXOGEN, INC.
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
December 31, 2016 and 2015

1. Basis of Presentation

The accompanying consolidated financial statements include the accounts of AxoGen, Inc. (the "Company" or "AxoGen") and its wholly owned subsidiaries, AxoGen Corporation ("AC") and AxoGen Europe GmbH, established in the fourth quarter of 2016, as of December 31, 2016 and December 31, 2015 and for the years then ended. The Company's consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America. All significant intercompany accounts and transactions have been eliminated in consolidation.

2. Organization and Business

We are a global leader in innovative surgical solutions for peripheral nerve injuries. We provide products and education to improve surgical treatment algorithms for peripheral nerve injuries. Our portfolio of products includes Avance® Nerve Graft, an off-the-shelf processed human nerve allograft for bridging severed nerves without the comorbidities associated with a second surgical site, AxoGuard® Nerve Connector, a porcine submucosa extracellular matrix ("ECM") coaptation aid for tensionless repair of severed nerves, AxoGuard® Nerve Protector, a porcine submucosa ECM product used to wrap and protect injured peripheral nerves and reinforce the nerve reconstruction while preventing soft tissue attachments and Avive™ Soft Tissue Membrane is minimally processed human umbilical cord membrane that may be used as a resorbable soft tissue covering to separate tissues and modulate inflammation in the surgical bed. Along with these core surgical products, we also offer the AxoTouch™ Two-Point Discriminator and AcroVal™ Neurosensory and Motor Testing System. These evaluation and measurement tools assist healthcare professionals in detecting changes in sensation, assessing return of sensory, grip and pinch function, evaluating effective treatment interventions, and providing feedback to patients on nerve function. Our portfolio of products is available in the United States, Canada, the United Kingdom and several European and other international countries.

3. Summary of Significant Accounting Policies

Revenue Recognition

Revenue is recognized when persuasive evidence of an arrangement exists, the price is fixed and determinable, delivery has occurred and there is a reasonable assurance of collection of the sales proceeds. Revenues for manufactured products and products sold to a customer or under a distribution agreement are recognized when the product is delivered to the customer or distributor, at which time title passes to the customer or distributor, provided, however, that in the case of revenues from consigned sales delivery is determined when the product is utilized in a surgical procedure. Once a product is delivered, the Company has no further performance obligations. Delivery is defined as delivery to a customer location or segregation of product into a contracted distribution location. At such time, this product cannot be sold to any other customer. Fees charged to customers for shipping are recognized as revenues when products are shipped to the customer, distributor or end user. Revenues from research grants are recognized in the period the associated costs are incurred.

Cash and Cash Equivalents and Concentration

For purposes of the statement of cash flows, the Company considers any highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents. Cash and cash equivalents are maintained at financial institutions and, at times, balances may exceed federally insured limits. The Company has never experienced any losses related to these balances and does not believe it is exposed to any significant credit risk on cash and cash equivalents.

Accounts Receivable and Concentration of Credit Risk

Accounts receivable are carried at the original invoice amount less an estimate made for doubtful accounts based on a review of all outstanding amounts on a monthly basis. Management determines the allowance for doubtful accounts by regularly evaluating individual customer receivables and considering a customer's financial condition, credit history and current economic conditions. Accounts receivable are written off when deemed uncollectible. Recoveries of accounts receivable previously written off are recorded when received.

We regularly review all accounts that exceed 60 days from the invoice date and based on an assessment of current credit worthiness, estimate the portion, if any, of the balance that will not be collected. The analysis excludes certain receivables due to our past successful experience in collectability. Specific accounts that are deemed uncollectible are reserved at 100% of their outstanding balance. In the event that we exhaust all collection efforts and deem an account uncollectible, we would subsequently write off the account. The write off process involves approval by senior management based on the write off amount. The allowance for doubtful accounts reserve balance was approximately $272,000 and $192,000 at December 31, 2016 and 2015, respectively.

Concentrations of credit risk with respect to accounts receivable are limited because a large number of geographically diverse customers make up the Company's customer base, thus spreading the trade credit risk. The Company also controls credit risk through credit approvals and monitoring procedures.

Inventories

Inventories are comprised of unprocessed tissue, work-in-process, Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector, Avive™ Soft Tissue Membrane, AcroVal™ Neurosensory and Motor Testing System, AxoTouch™ Two-Point Discriminator and supplies and are valued at the lower of cost (first-in, first-out) or market.

We regularly review the inventory status to determine the expected reserve level required. The Company policy is to monitor the shelf life of its products and reserve amounts based on the expiration date of the finished goods inventory. We also reserve a portion of raw materials based on our historical experience of tissue that fails during the inspection and debridement stage due to medical history, serology compliance or poor quality.

Property and Equipment

Depreciation and amortization is computed using the straight-line method over the estimated useful lives of the assets as follows:

Furniture and equipment	2 -5	years
Leasehold improvements	5	years (or lease term if less)
Processing equipment	5 -7	years

Major additions and improvements are capitalized, while replacements, maintenance and repairs, which do not improve or extend the life of the respective assets, are expensed as incurred. When assets are retired or otherwise disposed of, related costs and accumulated depreciation and amortization are removed and any gain or loss is reported as other income or expense.

Intangible Assets

Intangible assets consist primarily of license agreements for exclusive rights to use various patented and patent-pending technologies described in Note 5 and other costs related to the license agreements, including patent prosecution and protection costs. Such costs are capitalized and amortized on a straight-line basis over the underlying terms of the license agreements or estimated useful life of patents, ranging from 5 to 20 years.

Impairment of Long-lived Assets, Including License Agreements

The Company reviews its long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to future undiscounted cash flows expected to be generated by the asset. If such assets are considered to be impaired, the impairment to be recognized is measured by the amount by which the carrying amount of the assets exceeds the fair value of the assets. For the years ended December 31, 2016 and 2015, the Company did not record any impairment loss.

Deferred Financing Costs

The Company records as a discount to debt all third party costs incurred, including equity-based payments, associated with the issuance of long-term debt. The costs are amortized to interest expense over the term of the debt using the effective interest method.

Effective Interest Rate on Term Loan Agreement

AxoGen borrowed $25 million under the term loan agreement (the "Three Peaks Term Loan Agreement") dated November 12, 2014, by and among AxoGen, as borrower, AC, as guarantor, the lenders party thereto and Three Peaks Capital S.a.r.l. ("Three Peaks"), an indirect wholly-owned subsidiary of Oberland Capital Healthcare Master Fund LP, as administrative and collateral agent for the lenders. In addition, on November 12, 2014, AxoGen also entered into a ten-year Revenue Interest Agreement (the "Revenue Interest Agreement") with Three Peaks. Royalty payments were based on a royalty rate of 3.75% of AxoGen's revenues up to a maximum of $30 million in revenues in any 12-month period. The Three Peaks Term Loan Agreement and Revenue Interest Agreement were used in calculating the effective interest rate. AxoGen recorded interest using its best estimate of the effective interest rate. This estimate took into account both the rate on the Three Peaks Term Loan Agreement and the rate associated with the Revenue Interest Agreement. The effective interest rate was based on actual payments to date, projected future revenues and the projected royalty payments and the quarterly interest payments due on the Three Peaks Term Loan Agreement. On October 26, 2016, the Three Peak Loan Agreement and Revenue Interest Agreement were paid in full and the Company had no further obligations pursuant to such agreements. From time to time, AxoGen reevaluated the expected cash flows and adjusted the effective interest rate. Determining the effective interest rate required judgment and was based on significant assumptions related to estimates of the amounts and timing of future revenue streams. Determination of these assumptions was highly subjective and different assumptions could have led to materially different outcomes. On October 26, 2016, the Three Peaks Loan Agreement and Revenue Interest Agreement were paid in full and the Company had no further obligations pursuant to such agreements.

Advertising

Advertising costs are expensed as incurred. Advertising costs were $40,000 and $31,000 for the years ended December 31, 2016 and 2015, respectively, and are included in sales and marketing expense on the accompanying consolidated statements of operations.

Research and Development Costs

Research and Development costs are expensed as incurred and were approximately $4,212,000 and $3,237,000 for the years ended December 31, 2016 and 2015, respectively.

Income Taxes

The Company has not recorded current income tax expense due to the generation of net operating losses. Deferred income taxes are accounted for using the balance sheet approach which requires recognition of deferred tax assets and liabilities for the expected future consequences of temporary differences between the financial reporting basis and the tax basis of assets and liabilities. A valuation allowance is provided when it is more likely than not that a deferred tax asset will not be realized. A full valuation allowance has been established on the deferred tax asset as it is more likely

than not that the future tax benefit will not be realized. In addition, future utilization of the available net operating loss carryforward may be limited under Internal Revenue Code Section 382 as a result of changes in ownership.

The Company identifies and evaluates uncertain tax positions, if any, and recognizes the impact of uncertain tax positions for which there is a less than more-likely-than-not probability of the position being upheld when reviewed by the relevant taxing authority. Such positions are deemed to be unrecognized tax benefits and a corresponding liability is established on the balance sheet. The Company has not recognized a liability for uncertain tax positions. If there were an unrecognized tax benefit, the Company would recognize interest accrued related to unrecognized tax benefits in interest expense and penalties in operating expenses. The Company's remaining open tax years subject to examination by the Internal Revenue Service include the years ended December 31, 2013 through 2016; there currently are no examinations in process.

Fair Value of Financial Instruments

The respective carrying value of certain on-balance-sheet financial instruments approximated their fair values due to the short-term nature of these instruments. These financial instruments include cash, accounts receivable, accounts payable and accrued expenses. The fair value of the Company's long-term debt approximates its carrying value based upon current rates available to the Company.

Stock-Based Compensation

The Company measures all employee stock-based compensation awards using a fair value method and records such expense in its consolidated financial statements. The estimated value of the portion of the award that is ultimately expected to vest, taking into consideration estimated forfeitures based on the Company's historical forfeiture rate, is recognized as expense over the requisite service periods in the Company's consolidated statements of operations. The Company estimates the grant date fair value of stock option awards generally on the date of grant using the Black-Scholes option pricing models.

With respect to performance stock units ("PSUs"), the number of shares that vest and are issued to the recipient is based upon the Company's performance as measured against specified targets over the measurement period. The fair value of the PSUs is based on the Company's closing stock price on the grant date and its estimate of achieving such performance targets. See further discussion and disclosures in Note 10, "Stock Incentive Plan."

Earnings (Loss) Per Share of Common Stock

Earnings (loss) per share of common stock (EPS) is calculated for basic EPS by dividing net income (loss) available to common stockholders by the weighted average number of shares of common stock outstanding during the period.

There were no dilutive instruments as of December 31, 2016 and 2015. The basic and diluted weighted average shares outstanding were 30,702,164 and 26,075,670 for the years ended December 31, 2016 and 2015, respectively.

Basic and diluted net loss per commons share for all periods presented is computed by dividing the net loss attributable to common shareholders by the weighted-average number of common shares outstanding and common share equivalents outstanding, when dilutive. Potentially dilutive common share equivalents include common shares which would potentially be issued pursuant to stock warrants and stock options. Common share equivalents are not included in determining the fully diluted loss per share if their effect is antidilutive.

Use of Estimates

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

Recent Accounting Pronouncements

In May 2014, the FASB issued a new standard on revenue recognition which outlines a single comprehensive model to use in accounting for revenue arising from contracts with customers and supersedes most current revenue recognition guidance, including industry-specific guidance. The core principle of the revenue model is that an entity should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard is designed to create greater comparability for financial statement users across industries and jurisdictions and also requires enhanced disclosures. The guidance will be effective for the Company beginning on January 1, 2018. The standard may be applied retrospectively to each prior period presented or retrospectively with the cumulative effect recognized as of the adoption date. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In June 2014, the FASB issued updated guidance related to stock compensation. The amendment requires that a performance target that affects vesting and that could be achieved after the requisite period, be treated as a performance condition. The updated guidance became effective for annual reporting periods and interim periods within those annual periods beginning after December 15, 2016. The adoption of this guidance did not have a material impact on our consolidated financial statements.

In April 2015, the FASB issued Accounting Standard Update ("ASU") No. 2015-03, Simplifying the Presentation of Debt Issuance Costs, which changes the presentation of debt issuance costs in financial statements to present such costs as a direct deduction from the related debt liability rather than as an asset. During the first quarter of 2016, we retrospectively adopted this guidance. The implementation of this accounting standard resulted in a reduction of other noncurrent assets and long-term debt of approximately $846,000 in the Consolidated Balance Sheet as of December 31, 2015.

In November 2015, the FASB issued an ASU to simplify the presentation of deferred income taxes. The amendments in this ASU require that deferred tax liabilities and assets be classified as noncurrent in a classified statement of financial position. The amendments in these ASU may be applied either prospectively to all deferred tax liabilities and assets or retrospectively to all periods presented and are effective for interim and annual reporting periods beginning after December 15, 2016. Earlier application is permitted for all entities as of the beginning of an interim or annual reporting period. We are currently evaluating the method of adoption and the impact of the provisions of the ASU.

In February 2016, the FASB issued ASU 2016-02, "Leases (Topic 842)". This update will increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This update is effective for annual and interim reporting periods beginning after December 15, 2018, including interim periods within those fiscal years. Early adoption is permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, Compensation - Stock Compensation (Topic 718), Improvements to Employee Share-Based Payment Accounting. The ASU was issued as part of the FASB Simplification Initiative and involves several aspects of accounting for shared-based payment transactions, including the income tax consequences, options to elect forfeiture accounting policy either by the number of awards that are expected to vest (current GAAP) or account for forfeitures when they occur, and classification on the statement of cash flows. The guidance is effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. Early adoption is permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In August 2016, the FASB issued ASU No. 2016-15, Classification of Certain Cash Receipts and Cash Payments (Topic 230). The ASU was issued intended to reduce diversity in practice in how certain cash receipts and cash payments are presented and classified in the Consolidated Statement of Cash Flows by providing guidance on eight specific cash flow issues. The new guidance is effective for fiscal years and interim periods within those years beginning after December 15, 2017 with early adoption permitted. We are currently evaluating the impact this standard will have on our consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, Statement of Cash Flows (Topic 230), guidance that a statement of cash flows explains the change during the period in the total of cash, cash equivalents, and amounts generally described as restricted cash or restricted cash equivalents. The new guidance is effective for fiscal years beginning after December 15, 2017 with early adoption permitted. We are currently evaluating the impact of adoption of this guidance on our Statement of Cash Flows.

The Company's management has reviewed and considered all other recent accounting pronouncements and believe there are none that could potentially have a material impact on the Company's consolidated financial condition, results of operations, or disclosures.

4. Inventories

Inventories are comprised of unprocessed tissue, work-in-process, Avance® Nerve Graft, AxoGuard® Nerve Connector, AxoGuard® Nerve Protector, Avive™ Soft Tissue Membrane, AcroVal™ Neurosensory and Motor Testing System, AxoTouch™ Two-Point Discriminator and supplies and are valued at the lower of cost (first-in, first-out) or market and consist of the following:

	December 31, 2016	December 31, 2015
Finished goods	$4,132,036	$2,732,823
Work in process	205,116	237,108
Raw materials	1,121,688	964,029
Inventory, net	$5,458,840	$3,933,960

Inventories are net of reserve of approximately $960,000 and $711,000 at December 31, 2016 and 2015, respectively.

5. Property and Equipment

Property and equipment consist of the following:

	December 31, 2016	December 31, 2015
Furniture and equipment	$ 1,270,173	$ 1,186,815
Leasehold improvements	447,650	346,642
Processing equipment	1,577,561	1,375,759
Less: accumulated depreciation and amortization	(1,801,137)	(1,938,346)
Property and equipment, net	$ 1,494,247	$ 970,870

6. Intangible Assets

The Company's intangible assets consist of the following:

	December 31, 2016	December 31, 2015
License agreements	$ 984,342	$ 897,594
Patents	308,212	179,997
Less: accumulated amortization	(463,575)	(399,509)
Intangible assets, net	$ 828,979	$ 678,082

License agreements are being amortized over periods ranging from 17-20 years. Patent costs were being amortized over three years. As of December 31, 2016, the patents were fully amortized, the remaining patents of $308,212 are pending patent costs and are not amortized until approved. Amortization expense for 2016 and 2015 was approximately $75,000 and $46,000, respectively. As of December 31, 2016, future amortization of license agreements is expected to be $70,000 for 2017 through 2023 and $56,000 for 2024.

License Agreements

The Company has entered into license agreements (the "License Agreements") with the University of Florida Research Foundation ("UFRF") and University of Texas at Austin ("UTA"). Under the terms of the License Agreements, the Company acquired exclusive worldwide licenses for underlying technology used in repairing and regenerating nerves. The licensed technologies include the rights to issued patents and patents pending in the United States and international markets. The effective term of the License Agreements extends through the term of the related patents and the agreements may be terminated by the Company with 60 days prior written notice. Additionally, in the event of default, licensors may terminate an agreement if the Company fails to cure a breach after written notice. The License Agreements contain the key terms listed below:

- AxoGen pays royalty fees ranging from 1% to 3% under the License Agreements based on net sales of licensed products. One of the agreements also contains a minimum royalty of $12,500 per quarter, which may include a credit in future quarters in the same calendar year for the amount the minimum royalty exceeds the royalty fees. Also, when AxoGen pays royalties to more than one licensor for sales of the same product, a royalty stack cap applies, capping total royalties at 3.75%;

- If AxoGen sublicenses technologies covered by the License Agreements to third parties, AxoGen would pay a percentage of sublicense fees received from the third party to the licensor. Currently, AxoGen does not sublicense any technologies covered by License Agreements. The Company is not considered a sub-licensee under the License Agreements and does not owe any sub-licensee fees for its own use of the technologies;

- AxoGen reimburses the licensors for certain legal expenses incurred for patent prosecution and defense of the technologies covered by the License Agreements; and

- Currently, under one of the License Agreements, AxoGen would owe a $15,000 milestone fee upon receiving a Phase II Small Business Innovation Research or Phase II Small Business Technology Transfer grant involving the licensed technology. The Company has not received either grant and does not owe such a milestone fee. A milestone fee to the University of Florida Research Foundation of $2,000 is due if AxoGen receives FDA approval of its Avance® Nerve Graft, a milestone fee of $25,000 is due upon the first commercial use of certain licensed technology to provide services to manufacture products for third parties and a milestone fee of $10,000 is due upon the first use to manufacture products that utilize certain technology that is not currently incorporated into AxoGen products.

Royalty fees were approximately $812,000 and $526,000 during 2016 and 2015 and are included in sales and marketing expense on the accompanying consolidated statements of operations.

7. Accounts Payable and Accrued Expenses

Accounts payable and accrued expenses consists of the following:

	December 31, 2016	December 31, 2015
Accounts Payable and Accrued Expenses	$4,418,706	$2,106,057
Accrued compensation	2,583,459	1,589,070
Accounts Payable and Accrued Expenses	$7,002,165	$3,695,127

8. Term Loan Agreements and Long-Term Debt

Term Loan Agreements and Long Term Debt consist of the following:

	December 31, 2016	December 31, 2015
Term Loan Agreement and Revenue Interest Agreement with Three Peaks Capital S.a.r.l., net of $845,727 of deferred financing fees at December 31, 2015, for a total term loan amount of $25,000,000 which had a six year term and required interest only payments and a final principal payment due at the end of the term. Interest was payable quarterly at 9.00% per annum plus the greater of LIBOR or 1.0% which as of September 30, 2016 and December 31, 2015 resulted in a 10% rate. The Revenue Interest Agreement was for a period of ten years. Royalty payments were based on a royalty rate of 3.75% of revenues up to a maximum of $30 million in revenues in any 12 month period. On October 26, 2016, the Three Peaks Term Loan Agreement and Revenue Interest Agreement were paid in full and the Company had no further obligations pursuant to such agreements.	$ —	$24,701,693
Term Loan Agreement with MidCap Financial for a total of $21,000,000, net of $771,185 of deferred financing fees at December 31, 2016, which has a fifty four month term and requires interest only payments for the first twenty four months, and thereafter, thirty monthly payments of principal and interest until the end of the term. Interest is payable monthly at 8.00% per annum plus the greater of LIBOR or 0.5% which as of December 31, 2016 resulted in a 8.5% rate. In addition to the interest charged on the Term Loan, the Company is also obligated to pay certain fees, including an annual agency fee of 0.25% of the aggregate principal amount of the Term Loan.	20,228,815	—
Revolving Loan Agreement with MidCap Financial for up to $10,000,000 with borrowings based upon eligible accounts receivable and inventory. Interest is payable monthly at 4.50% per annum plus the greater of LIBOR or 0.5% which as of December 31, 2016 resulted in a 5.0% rate. In addition to the interest charged on the Revolving Loan, the Company is also obligated to pay certain fees, including a collateral management fee of 0.5% of the principal amount outstanding on the Revolving Loan and an unused line fee of 0.5% per annum on the difference between the average amount outstanding on the Revolving Loan minus the total amount of the Revolving Loan commitment.	4,025,023	—
Equipment Lease Agreement with Cisco Capital for a total lease amount of $58,875 which has a 36 month term and requires no lease payments for the first three months of the lease and thirty three equal payments of principal and interest until the end of the term. Interest on the lease is payable monthly at 3.50% per annum.	57,829	—
Total	24,311,667	24,701,693
Less current revolving loan	(4,025,023)	—
Less current maturities of long term debt	(20,899)	—
Long-term portion	$20,265,745	$24,701,693

Term Loans

Three Peaks Term Loan Agreement and Revenue Interest Agreement

On November 12, 2014, AxoGen, as borrower, and AC, as guarantor, entered into the Three Peaks Term Loan Agreement. Under the Three Peaks Term Loan Agreement, Three Peaks provided AxoGen a term loan of $25 million

which had a six year term and required interest only payments and a final principal payment due at the end of the term. Interest was payable quarterly at 9.00% per annum plus the greater of LIBOR or 1.0% which as of November 13, 2014 resulted in a 10% rate.

In addition, on November 12, 2014, AxoGen entered into the Revenue Interest Agreement. Royalty payments were based on a royalty rate of 3.75% of AxoGen's revenues up to a maximum of $30 million in revenues in any 12 month period.

On October 26, 2016, the Three Peaks Term Loan Agreement and Revenue Interest Agreement were paid in full and the Company had no further obligations pursuant to such agreements.

MidCap Term Loan Agreement

On October 25, 2016 (the "Closing Date"), AxoGen and AC, each as borrowers, entered into a Credit and Security Agreement (the "MC Term Loan Agreement") with the lenders party thereto and MidCap Financial Trust ("MidCap"), as administrative agent and a lender. Under the MC Term Loan Agreement, MidCap provided the Company a term loan in the aggregate principal amount of $21 million (the "Term Loan") which has a maturity date of May 1, 2021 and requires interest only payments through December 1, 2018, and thereafter, 30 monthly payments of principal and interest resulting in the Term Loan being fully paid by the maturity date. Interest is payable monthly at 8.00% per annum plus the greater of LIBOR or 0.5%, which, as of the Closing Date, resulted in an 8.5% rate. In addition to the interest charged on the Term Loan, the Company is also obligated to pay certain fees, including an annual agency fee of 0.25% of the aggregate principal amount of the Term Loan.

Under the MC Term Loan Agreement, the Company has the option at any time to prepay the Term Loan in whole or in part, provided that prepayments shall be: (i) in an amount equal to $2,500,000 or a higher integral multiple of $1,000,000; and (ii) accompanied by certain prepayment and exit fees. There can be no more than three partial voluntary prepayments allowed during the term of the MC Term Loan Agreement. MidCap and certain of the lenders have the right to demand prepayment, along with prepayment and exit fees upon an event of default which includes, but is not limited to: (i) default of the Revolving Loan (as defined below); (ii) a change of control of the Company; (iii) sale of the majority of the Company's assets; or (iv) a material adverse change to the Company. The prepayment fee is determined by multiplying the amount being prepaid by the following applicable percentage amount: (a) 3.0% during the first year following the Closing Date; (b) 2.0% during the second year following the Closing Date, and (c) 1.0% thereafter. No prepayment fee is due in the event the prepayment is a result of refinancing the Term Loan and Revolving Loan with MidCap or an affiliate of MidCap. Upon any repayment of any portion of the Term Loan (whether voluntary, involuntary or mandatory), other than scheduled amortization payments, and on the final payment of principal of the Term Loan, an exit fee of 5.0% of the principal amount of the Term Loan is also owed based on the portion of any prepayment made and at maturity upon the original principal amount less any prepayments of the Term Loan.

MidCap Revolving Loan Agreement

On the Closing Date, AxoGen and AC, each as borrowers, also entered into a Credit and Security Agreement (the "Revolving Loan Agreement") with the lenders party thereto and MidCap, as administrative agent and a lender. Under the Revolving Loan Agreement, MidCap agreed to lend to the Company up to $10 million under a revolving credit facility (the "Revolving Loan") which amount may be drawn down by the Company based upon an available borrowing base which includes certain accounts receivable and inventory. The Revolving Loan may be increased to up to $15 million at the Company's request and with the approval of MidCap. As of the Closing Date, the Company's borrowing base under the Revolving Loan provided availability of approximately $5.4 million of which the Company borrowed $4 million. As of December 31, 2016, the Company had borrowed $4,025,023 of the Revolving Loan. The maturity date of the Revolving Loan is May 1, 2021. Interest is payable monthly at 4.5% per annum plus the greater of LIBOR or 0.5% on outstanding advances, which, as of the Closing Date and December 31, 2016, resulted in an 5.0% rate. In addition to the interest charged on the Revolving Loan, the Company is also obligated to pay certain fees, including a collateral management fee of 0.5% per annum of the principal amount outstanding on the Revolving Loan from time to time and an unused line fee of 0.5% per annum on the difference between the average amount outstanding on the

Revolving Loan minus the total amount of the Revolving Loan commitment. The Revolving Loan is subject to a minimum balance, such that the Company pays the greater of: (i) interest accrued on the actual amount drawn under the Revolving Loan Facility; and (ii) interest accrued on 30% of the average borrowing base. If the Revolving Loan is terminated or permanently reduced prior to the maturity date, MidCap is owed a deferred revolving loan origination fee determined by multiplying the agreed total lending amount by the following applicable percentage amount: (a) 3.0% during the first year following the Closing Date; (b) 2.0% during the second year following the Closing Date, and (c) 1.0% thereafter. No deferred revolving loan origination fee is due in the event the Revolving Loan is paid in full or the termination of the revolving credit facility is a result of refinancing the Term Loan and Revolving Loan with MidCap or an affiliate of MidCap. Termination of the Revolving Loan may occur, at the option of MidCap and certain of the lenders, upon an event of default which includes, but is not limited to: (i) default in payment of the Term Loan; (ii) a change of control of the Company; (iii) sale of the majority of the Company's assets; or (iv) a material adverse change to the Company.

The MC Term Loan Agreement and the Revolving Loan Agreement each contain covenants that place restrictions on AxoGen's operations, including, without limitation, covenants related to debt restrictions, investment restrictions, dividend restrictions, restrictions on transactions with affiliates and certain revenue covenants. MidCap, on behalf of the lenders under the agreements, has a first perfected security interest in the assets of the Company to guarantee the payment in full of the agreements. Upon the payment in full to MidCap and the lenders of the Term Loan Agreement and Revolving Loan Agreement, the Company would have no further obligations to MidCap or the lenders under the Term Loan Agreement or the Revolving Loan Agreement.

The Company used the aggregate proceeds of $25 million from the Term Loan and the Revolving Loan to pay the outstanding indebtedness owed to Three Peaks and the other lenders to terminate the Three Peaks Term Loan Agreement and the Revenue Interest Agreement. Expenses and fees of approximately $800,000 to complete the negotiation and documentation of the Term Loan and the Revolving Loan and prepayment fees of approximately $2.3 million owed to Three Peaks were paid from the Company's own funds.

Interest expense for the year ended December 31, 2016 was approximately $5,386,000 compared to $3,989,000 for the year ended December 31, 2015. The 2016 amount includes a final payment to Three Peaks of approximately $2,447,000 inclusive of prepayment fees and accrued interest through October 25, 2016. In addition, as a result of the accounting treatment for the Three Peaks transaction, the Company had previously recorded a total of $747,000 of deferred interest charges which were offset against these prepayment fees. The net impact of these transactions resulted in a net interest charge of approximately $1,700,000 in the year which is included in interest expense for the year ended December 31, 2016. Additionally, as the result of the extinguishment of the debt facility with Three Peaks, the Company wrote off approximately $750,000 of prepaid financing fees to interest expense – deferred financing costs in 2016.

Annual maturities of the Company's long-term obligations are as follows:

Year Ending December 31	Amount
2017	$ 20,899
2018	1,421,834
2019	8,415,096
2020	8,400,000
2021	2,800,000
	21,057,829
Less unamortized debt issuance costs	(771,185)
TOTAL	$ 20,286,644

9. Shareholders' Equity (Deficit)

AxoGen, Inc. Classes of Stock

AxoGen, Inc.'s authorized capital stock consists of 50,000,000 shares of common stock, par value $0.01 per share. The authorized capital stock is divisible into the classes and series, has the designation, voting rights, and other rights and preferences and is subject to the restrictions that the AxoGen Board of Directors may from time to time establish. Unless otherwise designated by the AxoGen Board of Directors, all shares are common stock. AxoGen has not designated any shares other than common stock.

Warrants

Pursuant to a retired financing agreement, certain lenders received a ten-year warrant to purchase 89,686 shares of AxoGen's common stock at $2.23 per share. The warrants have an effective date of September 30, 2011. On November 13, 2015, 44,843 of these warrants were exercised in a cashless exchange resulting in 25,903 shares being issued to the warrant holder.

Public Offering

On October 7, 2016, AxoGen entered into an underwriting agreement with JMP Securities LLC, as representative of the several underwriters (collectively, the "Underwriters"), to issue and sell 2,333,334 shares of the Company's common stock in an underwritten registered public offering (the "2016 Offering") at an offering price of $7.50 per share. Pursuant to the underwriting agreement, the Company also granted the Underwriters a 30-day option to purchase up to an additional 350,000 shares of common stock, which the underwriters exercised in full on October 7, 2016. Five of the Company's directors and officers purchased an aggregate of approximately 32,666 Shares in the 2016 Offering and such purchases were made on the same terms and conditions as purchases by the public in the 2016 Offering. The 2016 Offering closed on October 13, 2016, and the Company received net proceeds of approximately $18.67 million from the sale of 2,683,334 shares of common stock, which includes the additional 350,000 shares of common stock, after deducting the underwriting discounts and commissions and estimated offering expenses.

10. Stock Incentive Plan

The Company maintains the AxoGen 2010 Stock Incentive Plan, as amended (the "AxoGen Plan"), which allows for issuance of incentive stock options, non-qualified stock options, performance stock units (PSU) and restricted stock awards (RSU) to employees, directors and consultants at exercise prices not less than the fair market value at the date of grant. At the 2016 Annual Meeting of Shareholders the AxoGen Plan was amended to increase the number of shares of common stock authorized for issuance under the AxoGen Plan to 5,500,000 shares.

Under the terms of the Company's merger with with LecTec Corporation in 2011 (the "Merger"), options granted under the AC 2002 Stock Option Plan (the "AC Plan") were assumed by the Company so that each stock option pursuant to the AC Plan was converted to the AxoGen Plan at a ratio of 1.00 to 0.0372734 for both the number and exercise price of each stock option.

The options to employees typically vest 25% one year after the grant date and 12.5% every six months thereafter for the remaining three-year period until fully vested after four years and those to directors and certain executive officers have vested 25% per quarter over one year or had no vesting period. Options issued to consultants have vesting provisions based on the engagement ranging from no vesting to vesting over the service period ranging from three to ten years. Options have terms ranging from seven to ten years.

The Company recognized stock-based compensation expense of $1,390,277 and $1,316,509 for the years ended December 31, 2016 and 2015, respectively, which consisted of compensation expense related to employee stock options based on the value of share-based payment awards that are ultimately expected to vest during the period.

The Company estimates the fair value of each option award issued under such plans on the date of grant using a Black-Scholes-Merton option-pricing models that use the assumptions noted in the table below. The Company estimates the volatility of its common stock at the date of grant based on the volatility of comparable peer companies which are publicly traded, for the periods prior to the Merger, and based on the Company's common stock for periods subsequent to the Merger. However for options granted on December 29, 2016 the Company began using a Multiple Point Black Scholes option-pricing model which uses a weighted average of historical volatility and peer company volatility. The Company determines the expected life giving consideration to the contractual terms, vesting schedules and post-vesting forfeitures. The Company uses the risk-free interest rate on the implied yield currently available on U.S. Treasury issues with an equivalent remaining term approximately equal to the expected life of the award.

The Company used the following weighted-average assumptions for options granted during the year ended December 31:

Year ended December 31,	2016	2015
Expected term (in years)	4.6	4.0
Expected volatility	59.58 %	69.08 %
Risk free rate	1.72 %	1.40 %
Expected dividends	— %	— %

The average fair value of options granted at market during 2016 and 2015 was $7.67 and $4.31 per option, respectively

The following is a summary of stock option activity:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term(Years)
Outstanding at December 31, 2014:	2,743,818	3.03	5.94
Granted	946,250	4.31	
Forfeited	(290,478)	(3.12)	
Exercised	(171,563)	(2.99)	
Outstanding at December 31, 2015:	3,228,027	3.40	5.43
Granted*	1,529,850	7.67	
Forfeited	(75,938)	(3.74)	
Exercised	(340,942)	(3.16)	
Outstanding at December 31, 2016	4,340,997	4.92	5.93
Exercisable at December 31, 2016	2,219,671	3.19	7.83

*Includes 25,000 options granted during the year ended December 31, 2016 which are contingent upon Optionee's re-election to the Company's Board of Directors at the 2017 Annual Meeting of Shareholders.

The intrinsic value of options exercised during the years ended December 31, 2016 and 2015 was approximately $1,496,000 and $370,000, respectively. The intrinsic value of options outstanding at December 31, 2016 and 2015 was approximately $17,729,000 and $5,167,000, respectively. The intrinsic value of options exercisable at December 31, 2016 and 2015 was approximately $12,894,000 and $4,265,000, respectively.

Total future compensation expense related to nonvested awards is expected to be approximately $5,800,000 at December 31, 2016 which is expected to be recognized over a weighted average period of 2.71 years. The following

table represents non-vested share-based payment activity with employees for the years ended December 31, 2016 and 2015:

	Number of Options	Weighted Average Exercise Price
Nonvested options - December 31, 2014:	1,159,486	3.37
Granted	946,250	4.31
Vested	(635,289)	(3.32)
Forfeited	(290,478)	(3.12)
Nonvested options - December 31, 2015:	1,179,969	4.21
Granted*	1,529,850	7.67
Vested	(512,562)	(4.21)
Forfeited	(75,938)	(3.74)
Nonvested options - December 31, 2016:	2,121,319	6.72

On December 29, 2016, the Compensation Committee of the Board of Directors approved a PSU to certain Company's officers, excluding the Vice President of Sales who received a separate PSU award. The performance measure is based on achieving 2018 specified revenues and the PSUs vest one-third each February 15, 2019, 2020 and 2021. The PSUs have payout opportunities of between 0% and 150%. The performance measure is a target revenue amount for the year ended December 31, 2018.

The Company estimated the fair value of the PSUs based on its closing stock price at the time of grant and its estimate of achieving such performance target and records compensation expense on a graded vesting attribution method, which recognizes compensation cost on a straight-line basis over each separately vesting portion of the award. Over the performance period, the number of shares of common stock that will ultimately vest and be issued and the related compensation expense is adjusted based upon the Company's estimate of achieving such performance target. The number of shares delivered to recipients and the related compensation cost recognized as an expense will be based on the actual performance metrics as set forth in the applicable PSU award agreement.

The December 29, 2016 PSU awards consisted of a total target award of 133,500 shares. The amount actually awarded will be based upon achievement of the performance measure and can range from 0 to 200,250, or up to 150% of the target award. The grant date fair value of the common stock on December 29, 2016 was $8.95. The total unrecognized future compensation expense related to this PSU assuming achievement of 100% of the target award is $1,194,825. Assuming the minimum of 0% and the maximum of 150% payout opportunity for the PSU, the range of total future compensation expense related to this PSU award is between $0 and $1,792,238 as of December 31, 2016.

On December 29, 2016, the Compensation Committee of the Board of Directors approved a separate PSU award to the Company's Vice President of Sales. This award amounted to a target payout of 28,600 shares. The grant date fair value of the common stock on December 29, 2016 was $8.95. The amount actually awarded will be based upon achievement of certain quarterly revenue targets in 2017. Assuming a minimum of 0% and a maximum of 100% payout opportunity for the PSU, the range of future compensation expense related to this PSU award is between $0 and $255,970.

Also on December 29, 2016, the Compensation Committee of the Board of Directors approved a RSU grant consisting of 40,000 shares to the Company's CEO. The shares will vest upon the CEO's continuous employment through January 1, 2020. The Company estimates the fair value of the RSU based on its closing stock price at the time of grant, which was $8.95. The future compensation expense related to this RSU is $358,000 and will be recorded as compensation expense on a straight line basis over the three years ended December 31, 2019.

11. Income Taxes

The Company has temporary differences between the carrying amount of assets and liabilities for financial reporting purposes and their respective income tax basis, as measured by enacted state and federal rates as follows:

December 31	2016	2015
Deferred tax assets:		
Net operating loss carryforwards	$ 38,299,400	$ 33,424,100
Charitable contributions	500	500
Inventory reserves	361,300	267,700
Amortization	89,500	51,400
Allowance for doubtful accounts	102,300	72,300
Stock-based compensation	341,400	260,600
Total deferred tax assets	39,194,400	34,076,600
Deferred tax liabilities:		
Depreciation	(83,300)	(62,400)
Net deferred tax assets	39,111,100	34,014,200
Valuation allowance	$(39,111,100)	$(34,014,200)

As of December 31, 2016, the Company had net operating loss carry forwards of approximately $101.3 million to offset future taxable income which expire in various years through 2036. A valuation allowance is recorded to reduce the deferred tax assets reported if, based on the weight of the evidence, it is more likely than not that a portion or none of the deferred tax assets will be realized. After consideration of all the evidence, including reversal of deferred tax liabilities, future taxable income and other factors, management has determined that a full valuation allowance is necessary as of December 31, 2016 and 2015. The valuation allowance increased by $5,096,900 and $4,452,000 during 2016 and 2015, respectively, to offset the deferred tax benefit in the respective years. The difference between the financial statement income tax and the income tax benefit using statutory rates is primarily due to the increase in the valuation allowance.

The Company had no income tax expense or income tax benefit for 2015 and 2016 due to incurrence of net operating losses. The Company does not believe there are any additional tax refund opportunities currently available.

12. Employee Benefit Plan

The Company adopted the AxoGen Simple IRA plan (the “IRA Plan”) in 2007. All full-time employees who attained the age of 18 were eligible to participate in the Plan. Eligibility was immediate upon employment and enrollment was available any time during employment. Participating employees could make annual pretax contributions to their accounts up to a maximum amount as limited by law. The IRA Plan required the Company to make matching contributions of between 1% and 3% of the employee’s annual salary as long as the employee participated in the IRA Plan. Additionally, the matching was to be at least 3% for three of the first five years of the IRA Plan. Both employee contributions and Company contributions vested immediately. In 2015, the Company match was 3% of the participating employee’s annual salary. The Company contributed $172,089 in matching funds during 2015. The Company terminated this IRA Plan in December 2015.

The Company adopted the AxoGen 401(k) plan (the “401(k) Plan”) in December 2015 with contributions starting in January 2016. All full-time employees who have attained the age of 18 are eligible to participate in the 401(k) Plan. Eligibility is immediate upon employment and enrollment is available any time during employment. Participating employees may make annual pretax contributions to their accounts up to a maximum amount as limited by law. The 401(k) Plan requires the Company to make matching contributions of 3% on the first 3% of the employee’s annual salary and 1% of the next 2% of the employee’s annual salary as long as the employee participates in the 401(k) Plan. Both employee contributions and Company contributions vest immediately. The Company contributed $334,092 in matching funds during 2016.

13. Commitments and Contingencies

Operating Leases

On March 16, 2016 AxoGen entered into the Fourth Amendment to Lease ("Fourth Amendment") with SNH Medical Office Properties Trust ("SNH"). SNH is the landlord of AC's currently leased 11,761 square foot corporate headquarters facility at 13631 Progress Boulevard, Suite 400, Alachua, Florida 32615 (the "Current Premises") pursuant to that certain lease dated as of February 6, 2007, as amended (the "Lease"). The Fourth Amendment expands the Current Premises by 7,050 square feet (the "Expansion Premises"). The Fourth Amendment also provides that the Expiration Date (as defined in the Fourth Amendment) of the Lease will be extended to approximately five years from the Occupancy Date (as defined in the Fourth Amendment) which was June 2016. The original expiration date of the Current Premises remains unchanged; provided, however, that AC shall have the right to extend the Current Premises Term (as defined in the Fourth Amendment) for three additional periods (the "Current Premises Extended Term"), the first such Current Premises Extended Term to commence on November 1, 2018 and end on October 31, 2019, the second such Current Premises Extended Term to commence on November 1, 2019 and end on October 31, 2020, and the third such Current Premises Extended Term to commence on November 1, 2020 and end on the Expiration Date. AC also has the right to extend the term of the then current Leased Premises (as defined in the Fourth Amendment) for an additional period of five years commencing on the day immediately after the Expiration Date. AxoGen's annual cost of such property ranges from approximately $248,000 to $332,000 per year.

On October 25, 2013, AC entered into a commercial lease with Ja-Cole L.P. ("Ja-Cole"). Under the terms of the commercial lease, AxoGen occupied 5,400 square feet of warehouse/office space in its Burleson, Texas Distribution Facility until November 30, 2016 at an annual cost of $43,200. On April 21, 2015, AxoGen entered into a new commercial lease, as amended by the addendum on such date (as amended, the "Commercial Lease"), with Ja-Cole. The new commercial lease superseded and replaced the original lease with Ja-Cole dated October 25, 2013. Under the terms of the Commercial Lease, AxoGen leased an additional 2,100 square feet of warehouse space at the Distribution Facility. The Commercial Lease is for a three-year term expiring April 21, 2018. On October 25, 2016, AC entered into Commercial Lease Amendment 2 (the "Ja-Cole Amendment") to the Commercial Lease. Under the terms of the Ja-Cole Amendment, AxoGen leased an additional 2,500 square feet of warehouse/office space at the Distribution Facility. The Distribution Facility now comprises a total of 10,000 square feet, all of which, pursuant to the Ja-Cole Amendment, will be leased until March 31, 2019. The annual rental cost of the entire Distribution Facility is now approximately $88,000.

On January 23, 2017 AC entered into a lease (the "SHN Lease") with SNH Medical Office Properties Trust, a Maryland real estate investment trust ("SNH"), for 1,431 square feet at 13709 Progress Boulevard, Alachua, Florida 32615. Pursuant to the Lease, AC is to use the space for general office and biomedical research uses. SNH is the landlord of AC's currently leased corporate headquarters facility at 13631 Progress Boulevard, Alachua, Florida 32615. The SHN Lease has a term of approximately five years with rent payments commencing on the earlier of April 1, 2017 or the "Substantial Completion Date" (as defined in the Lease). AC's additional annual cost of the Premises will range from approximately $25,800 to $29,000 over the life of the lease.

The expanded Burleson facility will house raw material storage and product distribution and allow expansion space as required for AxoGen operations. The Burleson facility houses raw material storage and product distribution, allowing AxoGen to fulfill same day orders for both coasts of the United States.

In addition, AxoGen leases space and maintains records at certain other facilities, including the Company's prior corporate headquarters at 1407 South Kings Highway, Texarkana, Texas 75501.

The Company leases its lab space on a month-to-month basis.

Estimated future minimum rental payments on the leases are as follows:

Year Ending December 31	Amount
2017	439,082
2018	437,900
2019	182,251
2020	165,116
2021	86,638
TOTAL	$1,310,987

Total rent expense for the Company's leased office and lab space for the years ended December 31, 2016 and 2015 was approximately $433,000 and $351,000, respectively.

Service Agreements

From 2009 to February 2016, AxoGen processed and packaged Avance® Nerve Graft using its employees and equipment located at LifeNet Health, Virginia Beach, Virginia ("LifeNet Health"). Business requirements of LifeNet Health led to their need for additional space and they notified AxoGen that AxoGen would need to transition out of the Virginia Beach facility on or before February 27, 2016. On August 6, 2015, AxoGen entered into a License and Services Agreement with Community Blood Center (d/b/a Community Tissue Services) ("CTS"), Dayton, Ohio, an FDA registered tissue establishment. Processing of the Avance® Nerve Graft pursuant to the CTS agreement began in February 2016. The CTS agreement is for a five year term, subject to earlier termination by either party for cause, or after August 6, 2017 without cause, upon 18 months' notice. Under the CTS agreement AxoGen pays CTS a facility fee for clean room/manufacturing, storage and office space. CTS also provides services in support of AxoGen's manufacturing such as routine sterilization of daily supplies, providing disposable supplies, microbial services and office support.

In August 2008, the Company entered into an agreement to distribute the AxoGuard® product worldwide in the field of peripheral nerve repair, and the parties subsequently amended the agreement in March, 2012. The agreement expires in August 2022. The Cook Biotech agreement also requires certain minimum purchases, although through mutual agreement the parties have not established such minimums and to date have not enforced such provision, and establishes a formula for the transfer cost of the AxoGuard® products. Under the agreement, AxoGen provides purchase orders to Cook Biotech, and Cook Biotech fulfills the purchase orders.

In December 2011, the Company also entered into a Master Services Agreement for Clinical Research and Related Services. The Company was required to pay $151,318 upon execution of this agreement and the remainder monthly based on activities associated with the execution of AxoGen's phase 3 pivotal clinical trial to support a BLA for Avance® Nerve Graft.

Certain executive officers of the Company are parties to employment contracts. Such contracts have severance payments for certain conditions including change of control.

Concentrations

Vendor

Substantially all of AxoGen's revenue is currently derived from three products, Avance® Nerve Graft, AxoGuard® Nerve Protector and AxoGuard® Nerve Connector. AxoGen has an exclusive distribution agreement with Cook Biotech for the purchase of AxoGuard® which expires August 27, 2022 The Cook Biotech agreement also requires certain minimum purchases, although through mutual agreement the parties have not established such minimums and to date have not enforced such provision, and establishes a formula for the transfer cost of the AxoGuard® products.

The agreement allows for termination provisions for both parties. Although there are products that AxoGen believes it could develop or obtain that would replace the AxoGuard® products, the loss of the ability to sell the AxoGuard®

products could have a material adverse effect on AxoGen's business until other replacement products would be available.

Processor

AxoGen is highly dependent on the continued availability of its processing facilities at CTS and could be harmed if the physical infrastructure of this facility is unavailable for any prolonged period of time. In addition, disruptions could lead to significant costs and reductions in revenues, as well as a potential harm to the AxoGen's business reputation and financial results. The CTS agreement is for a five year term, subject to earlier termination by either party for cause, or after August 6, 2017 without cause, upon 18 months' prior notice. Although AxoGen believes it can find and make operational a new facility in less than six months, the regulatory process for approval of facilities is time-consuming and unpredictable. AxoGen's ability to rebuild or find acceptable lease facilities would take a considerable amount of time and expense and could cause a significant disruption in service to its customers. Although AxoGen has business interruption insurance which would, in instances other than lease termination, cover certain costs, it may not cover all costs nor help to regain AxoGen's standing in the market.

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

Not Applicable.

Item 9A. Controls and Procedures

1. EVALUATION OF DISCLOSURE CONTROLS AND PROCEDURES

The Company maintains "disclosure controls and procedures" as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), that are designed to ensure that information required to be disclosed by us in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, and Board of Directors, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognizes that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable assurance of achieving the desired objectives, and we necessarily are required to apply our judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures.

Our management, including our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of the design and operation of our disclosure controls and procedures as of December 31, 2016. Based on their evaluation, the Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were not effective due to the material weaknesses in internal control over financial reporting described below.

2. MANAGEMENT'S ANNUAL REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING

Our management is responsible for establishing and maintaining internal control over financial reporting, as such term is defined in Rules 13a-15(f) and 15d-15(f) of the Exchange Act. The Company's internal control system is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with accounting principles generally accepted in the United States of America and includes those policies and procedures that:

- Pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets;

- Provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and

- Provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on the consolidated financial statements.

Because of inherent limitations, a system of internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate due to change in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

Our management, including our Chief Executive Officer and Chief Financial Officer, conducted an evaluation of the effectiveness of our internal control over financial reporting using the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in Internal Control-Integrated Framework (2013).

As a result of this evaluation, management determined it has material weaknesses in its internal controls as of December 31, 2016 relating to the design and operation of key controls around the use of judgment and calculations of significant estimates, as well as quarterly cycle count procedures related to consigned inventories. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim consolidated financial statements will not be prevented or detected on a timely basis. Because of these material weaknesses, management concluded that the Company did not maintain effective internal control over financial reporting as of December 31, 2016, based on criteria issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In light of the material weaknesses in our internal control over financial reporting management performed additional analysis and procedures and concluded that the consolidated financial statements included in this report fairly present, in all material respects, the Company's financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America.

Further, during the first quarter of 2017, we reviewed and modified the design of internal controls over financial reporting and will continue to make additional modifications as necessary. The material weaknesses will not be considered remediated until the applicable remedial controls operate for a sufficient period of time and management has concluded, through testing, that these controls are operating effectively.

The Company's independent registered public accounting firm, Lurie, LLP, who audited the consolidated financial statements included in this Annual Report on Form 10-K, has issued an attestation report on the effectiveness of managements internal control over financial reporting as of December 31, 2016. This report states that the internal control over financial reporting was not effective and appears on page 93 of this Annual Report on Form 10-K.

3. ATTESTATION OF THE INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Shareholders and
Board of Directors of
AxoGen, Inc.

We have audited AxoGen, Inc. and Subsidiaries internal control over financial reporting as of December 31, 2016 based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). AxoGen, Inc. and Subsidiaries management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial

Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

A material weakness is a control deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the Company's annual or interim financial statements will not be prevented or detected on a timely basis.

The following material weaknesses have been identified and included in management's assessment. The Company did not maintain effective controls over certain non-routine and routine transactions. Specifically, we identified material weaknesses relating to the design and operation of key controls around the use of judgment and calculations of significant estimates, as well as quarterly cycle count procedures related to consigned inventories.

These material weaknesses were considered in determining the nature, timing, and extent of audit tests applied in our audit of the 2016 consolidated financial statements, and this report does not affect our report dated March 1, 2017, on those consolidated financial statements.

In our opinion, because of the effect of the material weaknesses described above on the achievement of the objectives of the control criteria, AxoGen, Inc. and Subsidiaries have not maintained effective internal control over financial reporting as of December 31, 2016, based on criteria established in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets and the related consolidated statements of operations, stockholders' equity and cash flows of AxoGen, Inc. and Subsidiaries as of and for the year ended December 31, 2016, and our report dated March 1, 2017, expressed an unqualified opinion on those consolidated financial statements.

/s/ LURIE, LLP

Minneapolis, Minnesota
March 1, 2017

CHANGES IN INTERNAL CONTROLS OVER FINANCIAL REPORTING

During the year ended December 31, 2016, there were no changes in the Company's internal control over financial reporting (as defined in Rule 13a-15(f) and 15d—15(f) under the Exchange Act) that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE.

Information required by this item concerning our directors will be set forth under the caption "Election of Directors" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

Information required by this item concerning compliance with Section 16(a) of the Exchange Act, as amended, will be set forth under the caption "Section 16(a) Beneficial Ownership Reporting Compliance" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

Information required by this item concerning the audit committee of the Company, the audit committee financial expert of the Company and any material changes to the way in which security holders may recommend nominees to the Company's Board of Directors will be set forth under the caption "Corporate Governance" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

The Board of Directors adopted a Code of Ethics, which is posted on our website http://ir.axogeninc.com/governance.cfm that is applicable to all employees and directors. We will provide copies of our Code of Business Conduct and Ethics without charge upon request. To obtain a copy, please visit our website or send your written request to Investors Relations, 13631 Progress Blvd., Suite 400, Alachua, FL 32615. With respect to any amendments or waivers of this Code of Business Conduct and Ethics (to the extent applicable to the Company's chief executive officer, principal accounting officer or controller, or persons performing similar functions) the Company intends to either post such amendments or waivers on its website or disclose such amendments or waivers pursuant to a Current Report on Form 8-K.

ITEM 11. EXECUTIVE COMPENSATION.

Information required by this item will be set forth under the caption "Executive Compensation" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED SHAREHOLDER MATTERS

Information required by this item concerning ownership will be set forth under the caption "Security Ownership of Certain Beneficial Owners", "Security Ownership of Directors and Executive Officers" and "Equity Compensation Plan Information" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

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

Information required by this item concerning ownership will be set forth under the caption "Corporate Governance — Director Independence" and "Certain Relationships and Related Transactions" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by this item concerning ownership will be set forth under the caption "Ratification of Appointment of Independent Registered Public Accounting Firm" in our definitive proxy statement for our 2017 annual meeting, and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this Report

(1) The following financial statements are filed herewith in Item 8 of Part II of this annual report on Form 10-K:

(i) Consolidated Balance Sheets
(ii) Consolidated Statement of Operations
(iii) Consolidated Statements of Shareholders' Equity
(iv) Consolidated Statements of Cash Flows
(v) Notes to Consolidated Financial Statements

(2) Exhibits

Exhibit Number	Description
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 Exhibit 3.1 to the Current Report on Form 8-K filed on August 26, 2015).
4.1	Warrants to purchase Common Stock of Company attached as exhibits to 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 (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed on October 6, 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 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*10.2.1	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. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.2.2	Second Amendment to the Amended and Restated Standard Exclusive License Agreement No. A5140, effective as of July 5, 2016, by and between AxoGen Corporation and the University of Florida Research Foundation, Inc. (incorporated by reference to Exhibit 10.2.1 to the Company's Current Report on Form 8-K filed on July 11, 2016).
*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. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*10.4.1	Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*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 (incorporated by reference to Exhibit 10.4.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).

Exhibit Number	Description
*10.4.3	Third Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of March 12, 2012, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
*10.4.4	Fourth Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of September 8, 2014, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, filed on November 13, 2014).
*10.5.1	Distribution Agreement, dated as of August 27, 2008, by and between AxoGen, Inc. and Cook Biotech Incorporated (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.5.2	Amendment No. 1 to Distribution Agreement, dated as of February 24, 2012, by and between AxoGen, Inc. and Cook Biotech Incorporated (incorporated by reference to Exhibit 10.5.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
**10.6	AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016 (incorporated by reference to Appendix A to the Company's Proxy Statement filed on April 8, 2016).
**10.7.1	Executive Employment Agreement, effective as of October 15, 2007, by and between AxoGen Corporation and Karen Zaderej (incorporated by reference to Exhibit 10.8.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.7.2	Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and Karen Zaderej (incorporated by reference to Exhibit 10.8.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.8.1	Executive Employment Agreement, effective as of May 6, 2003, by and between AxoGen Corporation and John P. Engels (incorporated by reference to Exhibit 10.9.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.8.2	Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and John P. Engels (incorporated by reference to Exhibit 10.9.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.9.1	Lease dated as of February 6, 2007, by and between AxoGen Corporation and WIGSHAW, LLC (incorporated by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, filed on November 14, 2011).
10.9.2	Second Amendment to Lease, dated as of February 27, 2013 to lease dated as of February 6, 2007, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.23 to the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed on March 12, 2013).
10.9.3	Third Amendment to Lease, dated November 12, 2013 to lease dated as of February 6, 2007, by and between AxoGen Corporation and SHN Medical Office Properties Trust (incorporated by reference to Exhibit 10.10.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013, filed on March 6, 2014).

Exhibit Number	Description
10.9.4	Fourth Amendment to Lease, dated as of March 16, 2016, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.10.4 to the Company's Current Report on Form 8-K filed on March 18, 2016).
**10.10.1	Form of Employee Incentive Stock Option Agreement (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K filed on September 26, 2007).
+**10.10.2	Amended Form of Employee Incentive Stock Option Agreement pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.
**10.11.1	Executive Employment Agreement, effective as of October 1, 2011, by and between AxoGen, Inc. and Gregory Freitag (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
**10.11.2	Amendment No. 1 to Executive Employment Agreement, dated as of May 11, 2014, by and between AxoGen, Inc. and Greg Freitag (incorporated by reference to Exhibit 10.16.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, filed on August 4, 2014).
**10.11.3	Amendment No. 2 to Employment Agreement, dated as of August 6, 2015, by and between Gregory G. Freitag and AxoGen, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
**10.11.4	Amendment No. 3 to Employment Agreement, dated as of June 1, 2016, by and between Greg Freitag and AxoGen, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 31, 2016).
10.12.1	Commercial Lease, dated April 21, 2015, by and between AxoGen Corporation and Ja-Cole, L.P. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 22, 2015).
10.12.2	Addendum to Commercial Lease, dated April 21, 2015 by and between AxoGen Corporation and Ja-Cole, L.P. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on April 22, 2015).
10.12.3	Commercial Lease Amendment 2, dated as of October 25, 2016, by and between AxoGen Corporation and Ja-Cole L.P. (incorporated by reference to Exhibit 10.2.1 to the Company's Current Report on Form 8-K filed on October 31, 2016).
10.13	License and Services Agreement, dated as of August 6, 2015, by and between AxoGen Corporation and Community Blood Center (d/b/a Community Tissue Services) (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
**10.14	Executive Employment Agreement, effective as of February 25, 2013, by and between AxoGen, Inc. and Shawn McCarrey (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013, filed on April 30, 2013).
10.15	Securities Purchase Agreement dated as of November 12, 2014, between AxoGen, Inc., and PDL BioPharma, Inc. (incorporated by reference to Exhibit 10.4 to Amendment No. 1 on Form 8-K/A to the Company's Current Report on Form 8-K filed on November 13, 2014, filed on February 4, 2015).

Exhibit Number	Description
10.16	Securities Purchase Agreement, dated as of August 26, 2015, between AxoGen, Inc and Essex Woodlands Fund IX, L.P. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
10.17	Development, License & Option Agreement, dated as of November 3, 2014, by and between AxoGen Corporation and Sensory Management Services LLC (incorporated by reference to Exhibit 10.2 to the Company's annual report on Form 10-K for the year ended December 31, 2015, filed on March 5, 2015.
**10.18	Executive Employment Agreement, dated as of February 25, 2016, by and between AxoGen Corporation and Peter Mariani (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, filed on May 4, 2016).
**10.19	Executive Employment Agreement, dated as of March 11, 2016, by and between AxoGen Corporation and Kevin Leach (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 14, 2016).
+ *** 10.20	Credit and Security Agreement (Term Loan), dated as of October 25, 2016, by and among AxoGen, Inc., AxoGen Corporation, MidCap Financial Trust, MidCap Funding XIII Trust and MidCap Funding V Trust.
+ *** 10.21	Credit and Security Agreement (Revolving Loan), dated as of October 25, 2016, by and among AxoGen, Inc., AxoGen Corporation and MidCap Financial Trust.
+10.22	Form of Non-Incentive Stock Option Agreement pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.
+*10.23	Form of Performance Stock Unit Award Agreement pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.
+**10.24	Retention Stock Unit Award Agreement, dated December 29, 2016, by and between AxoGen, Inc. and Karen Zaderej, pursuant to AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.
10.25	Lease, dated as of January 23, 2017, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 26, 2017).
+21.1	Subsidiaries of the Registrant.
+23.1	Consent of Lurie, LLP.
++24.1	Power of Attorney.
+31.1	Certification of Principal Executive Officer.
+31.2	Certification of Principal Financial Officer.
+++32.1	Chief Executive Officer and Chief Financial Officer Certifications pursuant to 18 U.S.C. 1350, as adopted pursuant to section 906 of the Sarbanes-Oxley Act of 2002.
+101.INS	XBRL Instance Document.
+101.SCH	XBRL Taxonomy Extension Schema Document.

Exhibit Number	Description
+101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document.
+101.DEF	XBRL Taxonomy Extension Definition Linkbase Document.
+101.LAB	XBRL Extension Labels Linkbase.
+101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document.

* Confidential treatment has been granted for portions of this Exhibit pursuant to Rule 24b-2 under the Securities Exchange Act of 1934 as amended. The confidential portions have been deleted and filed separately with the United States Securities and Exchange Commission.

** Management contract or compensatory plan or arrangement.

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

\+ Filed herewith.

++ Included on signature page.

+++ Furnished herewith.

ITEM 16. Form 10-K Summary

None

SIGNATURES

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

AXOGEN, INC

/s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer
March 1, 2017

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Karen Zaderej (with full power to act alone), as his or her true and lawful attorney-in-fact and agent, with full powers of substitution and re-substitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all amendments to the Annual Report on Form 10-K of AxoGen, Inc., and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorney-in-fact and agent full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorney-in-fact and agent, or their substitute or substitutes, lawfully do or cause to be done by virtue hereof.

In accordance with the Exchange Act, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

/s/ Karen Zaderej — March 1, 2017
Karen Zaderej Chief Executive Officer and Director
(Principal Executive Officer)

/s/ Peter Mariani — March 1, 2017
Peter Mariani, CFO
(Principal Financial Officer)
(Principal Accounting Officer)

/s/ Gregory G. Freitag — March 1, 2017
Gregory G. Freitag, General Counsel, SVP Business Development and Director

/s/ Jamie M. Grooms — March 1, 2017
Jamie M. Grooms
Director

/s/ Robert J. Rudelius — March 1, 2017
Robert J. Rudelius
Director

/s/ Dr. Mark Gold — March 1, 2017
Mark Gold, M.D.
Director

/s/ Guido J. Neels — March 1, 2017
Guido J. Neels
Director

/s/ Amy Wendell — March 1, 2017
Amy Wendell
Director

EXHIBIT INDEX

Exhibit Number	Description
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 Exhibit 3.1 to the Current Report on Form 8-K filed on August 26, 2015).
4.1	Warrants to purchase Common Stock of Company attached as exhibits to 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 (incorporated by reference to Exhibit 10.6 to the Company's Current Report on Form 8-K filed on October 6, 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 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*10.2.1	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. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.2.2	Second Amendment to the Amended and Restated Standard Exclusive License Agreement No. A5140, effective as of July 5, 2016, by and between AxoGen Corporation and the University of Florida Research Foundation, Inc. (incorporated by reference to Exhibit 10.2.1 to the Company's Current Report on Form 8-K filed on July 11, 2016).
*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. (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*10.4.1	Amended and Restated Nerve Tissue Processing Agreement, dated as of February 27, 2008, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*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 (incorporated by reference to Exhibit 10.4.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
*10.4.3	Third Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of March 12, 2012, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
*10.4.4	Fourth Amendment to Amended and Restated Nerve Tissue Processing Agreement, dated as of September 8, 2014, by and between AxoGen Corporation and LifeNet Health (incorporated by reference to Exhibit 10.4.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2014, filed on November 13, 2014).

Exhibit Number	Description
*10.5.1	Distribution Agreement, dated as of August 27, 2008, by and between AxoGen, Inc. and Cook Biotech Incorporated (incorporated by reference to Exhibit 10.5 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.5.2	Amendment No. 1 to Distribution Agreement, dated as of February 24, 2012, by and between AxoGen, Inc. and Cook Biotech Incorporated (incorporated by reference to Exhibit 10.5.2 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
**10.6	AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016 (incorporated by reference to Appendix A to the Company's Proxy Statement filed on April 8, 2016).
**10.7.1	Executive Employment Agreement, effective as of October 15, 2007, by and between AxoGen Corporation and Karen Zaderej (incorporated by reference to Exhibit 10.8.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.7.2	Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and Karen Zaderej (incorporated by reference to Exhibit 10.8.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.8.1	Executive Employment Agreement, effective as of May 6, 2003, by and between AxoGen Corporation and John P. Engels (incorporated by reference to Exhibit 10.9.1 to the Company's Current Report on Form 8-K filed on October 6, 2011).
**10.8.2	Amendment to Executive Employment Agreement, effective as of September 29, 2011, by and between AxoGen Corporation and John P. Engels (incorporated by reference to Exhibit 10.9.2 to the Company's Current Report on Form 8-K filed on October 6, 2011).
10.9.1	Lease dated as of February 6, 2007, by and between AxoGen Corporation and WIGSHAW, LLC (incorporated by reference to Exhibit 10.10 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2011, filed on November 14, 2011).
10.9.2	Second Amendment to Lease, dated as of February 27, 2013 to lease dated as of February 6, 2007, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.23 to the Company's Annual Report on Form 10-K for the year ended December 31, 2012, filed on March 12, 2013).
10.9.3	Third Amendment to Lease, dated November 12, 2013 to lease dated as of February 6, 2007, by and between AxoGen Corporation and SHN Medical Office Properties Trust (incorporated by reference to Exhibit 10.10.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013, filed on March 6, 2014).
10.9.4	Fourth Amendment to Lease, dated as of March 16, 2016, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.10.4 to the Company's Current Report on Form 8-K filed on March 18, 2016).
**10.10.1	Form of Employee Incentive Stock Option Agreement (incorporated by reference to Exhibit 99.2 to the Company's Current Report on Form 8-K filed on September 26, 2007).
+**10.10.2	Amended Form of Employee Incentive Stock Option Agreement pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.

Exhibit Number	Description
**10.11.1	Executive Employment Agreement, effective as of October 1, 2011, by and between AxoGen, Inc. and Gregory Freitag (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2011, filed on March 15, 2012).
**10.11.2	Amendment No. 1 to Executive Employment Agreement, dated as of May 11, 2014, by and between AxoGen, Inc. and Greg Freitag (incorporated by reference to Exhibit 10.16.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016, filed on August 4, 2014).
**10.11.3	Amendment No. 2 to Employment Agreement, dated as of August 6, 2015, by and between Gregory G. Freitag and AxoGen, Inc. (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
**10.11.4	Amendment No. 3 to Employment Agreement, dated as of June 1, 2016, by and between Greg Freitag and AxoGen, Inc. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on May 31, 2016).
10.12.1	Commercial Lease, dated April 21, 2015, by and between AxoGen Corporation and Ja-Cole, L.P. (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on April 22, 2015).
10.12.2	Addendum to Commercial Lease, dated April 21, 2015 by and between AxoGen Corporation and Ja-Cole, L.P. (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed on April 22, 2015).
10.12.3	Commercial Lease Amendment 2, dated as of October 25, 2016, by and between AxoGen Corporation and Ja-Cole L.P. (incorporated by reference to Exhibit 10.2.1 to the Company's Current Report on Form 8-K filed on October 31, 2016).
10.13	License and Services Agreement, dated as of August 6, 2015, by and between AxoGen Corporation and Community Blood Center (d/b/a Community Tissue Services) (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
**10.14	Executive Employment Agreement, effective as of February 25, 2013, by and between AxoGen, Inc. and Shawn McCarrey (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2013, filed on April 30, 2013).
10.15	Securities Purchase Agreement dated as of November 12, 2014, between AxoGen, Inc., and PDL BioPharma, Inc. (incorporated by reference to Exhibit 10.4 to Amendment No. 1 on Form 8-K/A to the Company's Current Report on Form 8-K filed on November 13, 2014, filed on February 4, 2015).
10.16	Securities Purchase Agreement, dated as of August 26, 2015, between AxoGen, Inc and Essex Woodlands Fund IX, L.P. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015, filed on November 5, 2015).
10.17	Development, License & Option Agreement, dated as of November 3, 2014, by and between AxoGen Corporation and Sensory Management Services LLC (incorporated by reference to Exhibit 10.2 to the Company's annual report on Form 10-K for the year ended December 31, 2015, filed on March 5, 2015.
**10.18	Executive Employment Agreement, dated as of February 25, 2016, by and between AxoGen Corporation and Peter Mariani (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016, filed on May 4, 2016).

Exhibit Number	Description
**10.19	Executive Employment Agreement, dated as of March 11, 2016, by and between AxoGen Corporation and Kevin Leach (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on March 14, 2016).
+ *** 10.20	Credit and Security Agreement (Term Loan), dated as of October 25, 2016, by and among AxoGen, Inc., AxoGen Corporation, MidCap Financial Trust, MidCap Funding XIII Trust and MidCap Funding V Trust.
+ *** 10.21	Credit and Security Agreement (Revolving Loan), dated as of October 25, 2016, by and among AxoGen, Inc., AxoGen Corporation and MidCap Financial Trust.
+10.22	Form of Non-Incentive Stock Option Agreement pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated as of March 23, 2016.
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10.25	Lease, dated as of January 23, 2017, by and between AxoGen Corporation and SNH Medical Office Properties Trust (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed on January 26, 2017).
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** Management contract or compensatory plan or arrangement.

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

+ Filed herewith.

++ Included on signature page.

+++ Furnished herewith.

Exhibit 10.10.2

Amended as of 12-29-2016

AXOGEN, INC.
INCENTIVE STOCK OPTION AGREEMENT

This **Incentive Stock Option Agreement** (this "*Agreement*"), effective as of [.], 20[.] (the "*Effective Date*"), by and between AxoGen, Inc., a Minnesota corporation (the " *Company*"), and [.] ("*Optionee*").

WHEREAS, the Company wishes to grant this stock option to Optionee pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated (the "*Plan*").

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

1. **Grant of Option**.

(a) The Company hereby grants to Optionee the right and option (the " *Option*") to purchase all or any part of an aggregate **[.]** shares (the "*Shares*") of the common stock, par value $0.01 per share (the "*Common Stock*"), of the Company at the exercise price of **$[.]** per Share on the terms and conditions set forth herein. It is understood and agreed that such price is not less than 100% of the Fair Market Value (as defined in the Plan) of each such Share on the Effective Date.

(b) The Option is designated as an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "*Code*") and, as described in Section 5 below. However, if and to the extent the Option exceeds the limits for an incentive stock option, as described in Section 5, the Option shall be a nonqualified stock option.

2. **Duration and Exercisability**.

(a) The Option may not be exercised by Optionee except as set forth herein, and the Option shall in all events terminate ten (10) years from the Effective Date, unless it is terminated at an earlier date pursuant to the provisions of this Agreement or the Plan. Subject to the other terms and conditions set forth herein, the Option shall vest and may be exercised by Optionee in cumulative installments as follows, which cannot exceed 100% of the Shares subject to the Option:

[.]

If the foregoing schedule would produce fractional Shares, the number of Shares for which the Option becomes exercisable shall be rounded down to the nearest whole Share. Except as otherwise described in Section 3(c) of this Agreement, during the lifetime of Optionee, the Option shall be exercisable only by Optionee. The vesting of the Option is subject to acceleration under the circumstances described in Sections 2(b), 3 and 4.

(b) Notwithstanding the provisions of subparagraph 2(a) above, if a Change of Control occurs, the Option shall automatically accelerate and become fully exercisable in the event that within twelve months following the change of control the employee is terminated without Cause or leaves the Company for Good Reason. Good Reason shall mean the occurrence of any one or more of the following:

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

II. a reduction by the Company in Optionee's base salary as in effect on the date hereof and as the same shall be increased from time to time hereafter; or

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

3. **Effect of Termination of Employment with the Company** .

(a) In the event that Optionee shall cease to be employed by the Company or its subsidiaries, for any reason other than by the Company or its subsidiaries for Cause (as defined below) or due to Optionee's death or Disability (as defined below), Optionee shall have the right to exercise the Option at any time within 90 days after such termination of employment to the extent of the full number of Shares Optionee was entitled to purchase under the Option on the date of termination, subject to the condition that the Option shall not be exercisable after the expiration of its term.

(b) In the event that Optionee shall cease to be employed by or provide services to the Company or its subsidiaries by reason of Optionee's termination by the Company or its subsidiaries for Cause, the Option shall automatically terminate and shall not be exercisable thereafter. In addition, notwithstanding the prior provisions of this Section 3, if Optionee engages in conduct that constitutes Cause after Optionee's employment or service with the Company or its subsidiaries terminates, the Option shall immediately terminate.

(c) In the event that Optionee shall die while employed by the Company or its subsidiaries, or within 90 days after termination of his employment with the Company or its subsidiaries for any reason other than by the Company or its subsidiaries for Cause, or if Optionee's employment with the Company or its subsidiaries is terminated on account of Optionee's Disability, and Optionee shall not have fully exercised the Option, the Option may be exercised at any time within 12 months after the date of Optionee's death or termination of

employment because of Disability by the legal representative or, if applicable, guardian of Optionee or by any person to whom the Option is transferred by will or the applicable laws of descent and distribution to the extent of the full number of Shares Optionee was entitled to purchase under the Option on the date of death (or termination of his employment, if earlier) or termination of Optionee's employment because of Disability and subject to the condition that the Option shall not be exercisable after the expiration of its term.

4. **Definitions**.

(a) For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to have occurred if:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")) shall, together with his, her or its " *Affiliates*" and "*Associates*" (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), become the "*Beneficial Owner*" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities (any such person being hereinafter referred to as an "*Acquiring Person*");

(ii) the "Continuing Directors" (as hereinafter defined) shall cease to constitute a majority of the Company's Board of Directors during a 12-month period; or

(iii) there should occur (A) any consolidation or merger involving the Company and the Company shall not be the continuing or surviving corporation or the shares of the Company's capital stock shall be converted into cash, securities or other property; *provided, however*, that this subclause (A) shall not apply to a merger or consolidation in which (i) the Company is the surviving corporation and (ii) the stockholders of the Company immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company.

(b) For purposes of this Agreement, a " *Continuing Director*" shall mean any person who is a member of the Board of Directors of the Company, while such person is a member of the Board of Directors, who is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a representative of an Acquiring Person or of any such Affiliate or Associate and who (i) was a member of the Company's Board of Directors on the date of grant of the Option, or (ii) subsequently became a member of the Board of Directors, upon the nomination or recommendation, or with the approval of, a majority of the Continuing Directors.

(c) For purposes of this Agreement, termination by the Company of Optionee's employment for "Cause" shall mean termination upon (i) the willful and continued failure by Optionee to substantially perform his duties with the Company (other than any such failure resulting from his Disability), after a demand for substantial performance is delivered to Optionee that specifically identifies the manner in which the Company believes that Optionee has not substantially performed his duties, and Optionee has failed to resume substantial performance of his duties on a continuous basis within 30 days of receiving such demand, (ii) the willful engaging

by Optionee in conduct which is demonstrably and materially injurious to the Company, monetarily or otherwise or (iii) Optionee's conviction of a felony. For purposes of this Section 4(c), no act, or failure to act, on Optionee's part shall be deemed "willful" unless done, or omitted to be done, by Optionee not in good faith and without reasonable belief that his action or omission was in the best interest of the Company. Failure to perform duties with the Company during any period of Disability shall not constitute Cause.

(d) For purposes of this Agreement, the term "Disability" shall be defined in accordance with the meaning proscribed in Section 22(e)(3) of the Code.

5. **Designation as Incentive Stock Option**

(a) This Option is designated as an incentive stock option under Section 422 of the Code. If the aggregate Fair Market Value of the stock on the date of the grant with respect to which incentive stock options are exercisable for the first time by Optionee during any calendar year, under the Plan or any other stock option plan of the Company or a parent or subsidiary, exceeds $100,000, then the Option, as to the excess, shall be treated as a nonqualified stock option that does not meet the requirements of Section 422. If and to the extent that the Option fails to qualify as an incentive stock option under the Code, the Option shall remain outstanding according to its terms as a nonqualified stock option.

(b) Optionee understands that favorable incentive stock option tax treatment is available only if the Option is exercised while Optionee is an employee of the Company or a parent or subsidiary of the Company or within a period of time specified in the Code after Optionee ceases to be an employee. Optionee understands that Optionee is responsible for the income tax consequences of the Option, and, among other tax consequences, Optionee understands that he or she may be subject to the alternative minimum tax under the Code in the year in which the Option is exercised. Optionee will consult with his or her tax adviser regarding the tax consequences of the Option.

(c) Optionee agrees that Optionee shall immediately notify the Company in writing if Optionee sells or otherwise disposes of any Shares acquired upon the exercise of the Option and such sale or other disposition occurs on or before the later of (i) two years after the Effective Date, or (ii) one year after the exercise of the Option. Optionee also agrees to provide the Company with any information requested by the Company with respect to such sale or other disposition.

6. **Manner of Exercise**.

(a) The Option may only be exercised by Optionee or other proper party within the option term by delivering written notice of exercise to the Company at its principal executive office. The notice shall state the number of Shares as to which the Option is being exercised and shall be accompanied by payment in full of the exercise price for all of the Shares designated in the notice.

(b) Payment of the exercise price shall be made by:

- certified or bank cashier's check payable to the Company;

- by tender of shares of the Company's Common Stock, which, unless the Committee (as defined in the Plan), provides its consent, must have been, previously owned by Optionee, having a fair market value on the date of exercise equal to the exercise price of the Option, or a combination of cash and shares equal to such exercise price;
- attestation of the Company's Common Stock valued at Fair Market Value as of the date of exercise of the Option equal to the exercise price of the Option, or a combination of cash and shares equal to such exercise price; or
- net settlement of the Option, using a portion of the Shares to be obtained on exercise in payment of the exercise price of the Option (and, if applicable, any required minimum tax withholding or such greater amount permitted under FASB Accounting Standards Codification Topic 718, Compensation—Stock Compensation, and amendments thereto, for equity-classified awards).

7 . **Adjustments**. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split-up, spin-off, combination, repurchase or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company or other similar corporate transaction or event affects the Common Stock such that an adjustment is necessary pursuant to Section 4(c) of the Plan in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, and all or any portion of the Option shall then be unexercised and not yet expired, then appropriate adjustments in the outstanding Option shall be made as determined by the Committee in accordance with the provisions of Section 4(c) of the Plan in order to prevent dilution or enlargement of Option rights.

8. **Miscellaneous**

(a) *Plan Provisions Control.* This grant is made pursuant to the Plan, the terms of which are incorporated herein by reference. In the event that any provision of this Agreement conflicts with or is inconsistent in any respect with the terms of the Plan, the terms of the Plan shall control. The Committee shall have the authority to interpret and construe the Option pursuant to the terms of this Agreement and the Plan, and its decisions shall be conclusive as to any questions arising hereunder.

(b) *No Rights of Shareholders.* Neither Optionee, Optionee's legal representative nor a permissible assignee of this Option shall have any of the rights and privileges of a shareholder of the Company with respect to the Shares, unless and until such Shares have been issued in the name of Optionee, Optionee's legal representative or permissible assignee, as applicable.

(c) *No Right to Continuance of Employment or Service.* This Agreement shall not confer on Optionee any right with respect to the continuance of any employment or service with the Company or any subsidiary of the Company, nor will it interfere in any way with the right of the Company to terminate such employment or service at any time.

(d) *Governing Law.* The validity, construction and effect of the Plan and this Agreement, and any rules and regulations relating to the Plan and this Agreement, shall be determined in accordance with the laws of the State of Minnesota.

(e) *Severability.* If any provision of this Agreement is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or would disqualify this Agreement or the Option under any law deemed applicable by the Committee, such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or this Agreement, such provision shall be stricken as to such jurisdiction or this Agreement, and the remainder of this Agreement shall remain in full force and effect.

(f) *No Trust or Fund Created.* Neither the Plan nor this Agreement shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any affiliate of the Company and Optionee or any other person.

(g) *Headings.* Headings are given to the sections and subsections of this Agreement solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Agreement or any provision thereof.

(h) *Conditions Precedent to Issuance of Shares.* Shares shall not be issued pursuant to the exercise of the Option unless such exercise and the issuance and delivery of the applicable Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, the requirements of the NASDAQ Global Market or any other applicable stock exchange and the Minnesota Business Corporation Act. As a condition to the exercise of the Option, the Company may require that the person exercising or paying the exercise price represent and warrant that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation and warranty is required by law.

(i) *Withholding.* In order to provide the Company with the opportunity to claim the benefit of any income tax deduction which may be available to it upon the exercise of the Option and in order to comply with all applicable federal or state income tax laws or regulations, the Company may take such action as it deems appropriate to assure that, if necessary, all applicable federal or state payroll, withholding, income or other taxes are withheld or collected from Optionee.

(j) *Consultation with Professional Tax and Investment Advisors.* Optionee acknowledges that the grant, exercise, vesting or any payment with respect to this Option, and the sale or other taxable disposition of the Shares acquired pursuant to the exercise thereof, may have tax consequences pursuant to the Code or under local, state or international tax laws. Optionee further acknowledges that such Optionee is relying solely and exclusively on Optionee's own professional tax and investment advisors with respect to any and all such matters (and is not relying, in any manner, on the Company or any of its employees or representatives). Finally, Optionee understands and agrees that any and all tax consequences resulting from this Option and its grant, exercise, vesting or any payment with respect thereto, and the sale or other taxable disposition of the Shares acquired pursuant to the Plan, is solely and exclusively the responsibility of Optionee without any expectation or understanding that the Company or any of its employees or representatives will pay or reimburse such holder for such taxes or other items.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date.

AXOGEN, INC.

By: _____

Name:

Title:

Date:

OPTIONEE

By: _____

Name:

Date:

EXHIBIT 10.20

Execution Version

Pursuant to 17 CFR 240.24b-2, confidential information has been omitted in places marked "*" and has been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Application filed with the Commission.**

CREDIT AND SECURITY AGREEMENT (TERM LOAN)

dated as of October 25, 2016

by and among

AXOGEN, INC. and AXOGEN CORPORATION,

and any additional person that hereafter becomes party hereto as a "Borrower",

each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

CREDIT AND SECURITY AGREEMENT (TERM LOAN)

THIS CREDIT AND SECURITY AGREEMENT (TERM LOAN) (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of October 25, 2016 by and among **AXOGEN, INC.**, a Minnesota corporation ("**AxoGen**"), **AXOGEN CORPORATION**, a Delaware corporation ("**AxoGen Corp**", and together with AxoGen and each other Person that from time to time becomes a borrower under this Agreement in accordance with the terms hereof, and each of their successors and permitted assigns, collectively, the "**Borrowers**" and individually, a "**Borrower**"), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent for the several financial institutions from time to time party to this Agreement (collectively, the "**Lenders**" and individually each a "**Lender**") and for itself as a Lender.

RECITALS

Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, and/or (b) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of a majority of the outstanding equity interests of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, (c) a merger or consolidation

or any other combination with another Person or (d) the acquisition (including through licensing, but excluding Permitted Annual IP Acquisitions) of any Product or Intellectual Property of or from any other Person.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" means that certain Credit and Security Agreement (Revolving Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MCF, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a revolving credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the date hereof between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, 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.

"**Applicable Margin**" means eight percent (8.0%).

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party of any asset.

"**AxoGen**" has the meaning set forth in the introductory paragraph hereto.

"**AxoGen Corp**" has the meaning set forth in the introductory paragraph hereto.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (Eastern time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error.

"**Base Rate**" means a per annum rate of interest equal to the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) 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) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means AxoGen, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" has the meaning set forth in the Affiliated Credit Agreement.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

"**Change in Control**" means any of the following events: (a) any Person other than Borrower or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of any Borrower (or other securities convertible into such voting stock) representing 40% or more of the combined voting power of all voting stock of any Borrower or (b) AxoGen ceases to own, directly or indirectly, 100% of the

capital stock of any of its Subsidiaries with the exception of any Subsidiaries permitted to be dissolved or merged to the extent otherwise expressly permitted by this Agreement; or (c) the occurrence of a "Change of Control" or "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

"**Closing Date**" means the date of this Agreement.

"**CMS**" means the federal Centers for Medicare and Medicaid Services (formerly the federal Health Care Financing Administration), and any successor Governmental Authority.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**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 Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto. Notwithstanding anything to the contrary contained herein, Collateral shall not include "Excluded Property."

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Term Loan Commitments and of any other Obligations that remains outstanding; *provided, however,* that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means (a) each Borrower, (b) each Guarantor, and (c) each other Person, whether now existing or hereafter acquired or formed (i) that grants a Lien on all or substantially all of its assets to secure payment of the Obligations or (ii) all of the equity interests of which is pledged to Agent for the benefit of the Lenders; *provided, however,* that in no event shall any Excluded Foreign Subsidiary be a "Credit Party" for purposes of this Agreement or the other Financing Documents.

"**DEA**" means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation, fringe benefit plans or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defined Period**" has the meaning set forth in Section 6.1.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account (other than an Excluded Account), which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which

Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Domestic Subsidiary**" means a direct or indirect Subsidiary of a Borrower organized under the laws of the United States of America, any State or commonwealth thereof or the District of Columbia or any territory of the United States of America.

"**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.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or,

in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Account**" means (a) payroll, withholding, tax, escrow, employee benefit or wage payments, trust or other similar accounts, *provided* that, in each case, the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any requirement of Law with respect to such accounts), (b) zero balance accounts; provided that such accounts have been identified to Agent by Borrowers as such, (c) deposit accounts held with financial institutions outside of the United States, with respect to which the aggregate amount on deposit, collectively for all such accounts of Borrowers or their Subsidiaries, does not exceed $50,000 at any time, and (d) deposit accounts located in the United States with respect to which the aggregate amount on deposit, individually for all such accounts and collectively for all such accounts of Borrowers or their Subsidiaries, does not exceed $50,000 at any time.

"**Excluded Foreign Subsidiary**" means (a) AxoGen Europe GmbH, a limited liability corporation with its corporate seat in Vienna, Austria and (b) each other Subsidiary of Borrower not organized under the laws of the United States, a state thereof, or the District of Columbia that Agent may agree (in its sole discretion) in writing from time to time after the Closing Date to designate as an "Excluded Foreign Subsidiary" for purposes of this Agreement; unless and until, in each case, such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 4.11.

"**Excluded Property**" means:

(a) any lease, license, contract, permit, letter of credit, instrument, or agreement to which Borrower is a party or any of its rights or interests thereunder if and to the extent that the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Borrower therein or (ii) result in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, permit, agreement or other property right (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law); *provided*, *however*, that such security interest or lien (x) shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied, (y) to the extent severable, shall attach immediately to each term of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above and (z) shall attach immediately to each such lease, license, contract, property rights or agreement to which the account debtor or Borrower's counterparty has consented to such attachment;

(a) more than 65% of the voting stock of each Excluded Foreign Subsidiary directly held by any Borrower, if the grant of a security interest in excess of such percentage to secure the Obligations would cause material adverse tax consequences for such Borrower under the Code; *provided* that immediately upon any amendment of the Code that would allow the pledge of a greater percentage of such voting stock without material adverse tax consequences to such Borrower, "Collateral" shall automatically and without further action required by, and without notice to, any Person include such greater percentage of voting stock of such Excluded Foreign Subsidiary from that time forward;

(b) any intent to use U.S. trademark applications for which a statement of use has not been filed and duly accepted by the United States Patent and Trademark Office (provided, that upon such filing and acceptance, such intent-to-use application shall be included in the definition of Collateral); and

(c) Excluded Accounts;

provided, that Excluded Property shall not, in any case, include any proceeds, substitutions or replacements of Excluded Property (unless such proceeds, substitutions or replacement would itself constitute Excluded Property).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent or a Lender or required to be withheld or deducted from a payment to Agent or a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Agent or such Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or (ii) such Lender changes its lending office, (c) Taxes attributable to such Agent's or such Lender's failure to comply with Section 2.8(c) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"**Exit Fee**" has the meaning set forth in Section 2.2(h).

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**FATCA"** means Sections 1471, 1472, 1473 and 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), current or future United States Treasury Regulations promulgated thereunder and published guidance with respect thereto, any applicable agreements entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements (and related official administrative guidance) with respect 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.

"**Fee Letter**" means each agreement, including without limitation the Success Fee Letter, between Agent and Borrower relating to fees payable to Agent, for its own account, in connection with the execution of this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary and that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, as set forth in 21 C.F.R. Parts 210 and 211.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials

containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any drug, medical device, clinical laboratory service, food, dietary supplement, or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.), Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. §263a et seq) and its implementing regulations (42 C.F.R. Part 493) and similar state or foreign laws, controlled substances laws, pharmacy laws, consumer product safety laws, Medicare, Medicaid, and all laws, policies, procedures, requirements and regulations pursuant to which Permits are issued, in each case, as the same may be amended from time to time.

"**Indemnified Taxes"** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrowers under any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means 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.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, Product, business line or product line, division or other unit operation of any Person or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one half of one percent (0.5%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period,*by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Term Loan and each and every advance under the Term Loan. All references herein to the "making" of a Loan or words of similar import shall mean, with respect to the Term Loan, the making of any advance in respect of a Term Loan.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business, properties of any of the Credit Parties, taken as a whole, (b) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document, (e) the value of any material Collateral, or (f) the prospect of repayment of any portion of the Obligations.

"**Material Contracts**" means (a) the Subordinated Debt Documents, (b) the agreements listed on Schedule 3.17, and (c) any other agreement or contract to which a Credit Party or its Subsidiaries is a party the termination of which would reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (i) Borrower's Intellectual Property and (ii) license or sublicense agreements or other agreements with respect to rights in Intellectual Property, in each case that are material to the condition (financial or other), business or operations of Borrower, as reasonably determined by Agent.

"**Maturity Date**" means May 1, 2021.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means the medical assistance programs administered by state agencies and approved by CMS pursuant to the terms of Title XIX of the Social Security Act, codified at 42 U.S.C. 1396 et seq.

"**Medicare**" means the program of health benefits for the aged and disabled administered by CMS pursuant to the terms of Title XVIII of the Social Security Act, codified at 42 U.S.C. 1395 et seq.

"**Monthly Cash Burn Amount**" means, with respect to Borrowers, an amount equal to Borrowers' change in cash and cash equivalents, without giving effect to any increase resulting from contributions or proceeds of financings, for either (a) the immediately preceding six (6) month period as determined as of the last day of the month immediately preceding the proposed consummation of the Permitted Acquisition and based upon the financial statements delivered to Agent in accordance with this Agreement for such period or (b) the immediately succeeding six (6) month period based upon the Transaction Projections, using whichever calculation as between clause (a) and clause (b) demonstrates a higher burn rate (or, in other words, more cash used), in either case, divided by six (6).

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Cash Proceeds**" means: with respect to any sale or disposition by any Credit Party or any of its Subsidiaries of assets permitted by this Agreement, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of the Credit Parties or their Subsidiaries, in connection therewith after deducting therefrom only (i) the amount of any Debt secured by any Permitted Lien on any asset (other than (A) Debt owing to Agent or any Lender under this Agreement or the other Financing Documents and (B) Debt assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by such Credit Party or such Subsidiary in connection with such sale or disposition and (iii) taxes paid or payable to any taxing authorities by such Credit Party or such Subsidiary in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of any Credit Party or any of its Subsidiaries, and are properly attributable to such transaction.

"**Net Insurance/Condemnation Proceeds**" means an amount equal to: (i) any cash payments or proceeds received by any Credit Party or any of its Subsidiaries (a) under any casualty, business interruption or "key man" insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of any Credit Party or any of its Subsidiaries by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, *minus* (ii) (a) any actual and reasonable costs incurred by any Credit Party or any of its Subsidiaries in connection with the adjustment or settlement of any claims of such Credit Party or such Subsidiary in respect thereof, and (b) any bona fide direct costs incurred in connection with any sale of such assets as referred to in clause (i)(b) of this definition to the extent paid or payable to non-Affiliates, including income taxes payable as a result of any gain recognized in connection therewith.

"**Net Revenue**" has the meaning set forth in Section 6.1.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**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.

"**Operative Documents**" means the Financing Documents and the Subordinated Debt Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party and undertaken in good faith and in consideration of strategic growth and development of such Credit Party and not for the purpose of evading any term, provision or restriction of this Agreement, the other Financing Documents or any Material Contract.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Other Connection Taxes**" means, with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between Agent or such Lender and the jurisdiction imposing such Tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to,

performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(f) or (g)).

"**Participant Register**" has the meaning set for in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**Payment Notification**" means a written notification substantially in the form of Exhibit F hereto.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, drug or device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party 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. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"Permitted Acquisition" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable governmental authorizations;

(c) in the case of the Acquisition of capital stock, all of the capital stock acquired or otherwise issued by such Person or any newly formed Subsidiary of a Credit Party in connection with such Acquisition shall be owned 100% by such Credit Party;

(d) the Acquisition shall be consensual (not "hostile") and, if applicable, shall have been approved by the board of directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired;

(e) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;

(f) all actions necessary for the Agent, for the benefit of the Lenders, to be granted a perfected first priority Lien in all assets acquired pursuant to such Permitted Acquisition shall, to the extend required to be taken prior to or simultaneously with such Permitted Acquisition, have been taken in accordance with Section 4.11;

(g) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as Agent may agree, in writing) prior to the closing of such proposed Acquisition: (i) a description of the proposed Acquisition; (ii) to the extent available, a due diligence package (including, to the extent available, a quality of earnings report), in each case, subject to execution by the Agent of any required non-disclosure and/or "non-reliance" or similar letters to the extent reasonably requested by Borrower Representative; and (iii) executed counterparts or final drafts of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated, any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and to the extent required under the related acquisition agreement, all required regulatory and third party approvals;

(h) concurrently with delivery of the notice referred to in clause (g) of this definition (or such shorter period as Agent may agree, in writing), the applicable Credit Party shall have delivered to the Agent, in form and substance reasonably satisfactory to the Agent, a certificate of a Responsible Officer (i) certifying that before and after giving effect to the Acquisition and the transactions contemplated thereby, the Borrower and its Subsidiaries shall be in compliance with all of the terms of this definition of "Permitted Acquisition" and (ii) demonstrating, on a pro forma basis after giving effect to the consummation of such Acquisition, that Borrowers are in compliance with the financial covenants set forth in Article 6;

(i) in the case of an Acquisition that will be consummated by way of a merger with a Credit Party, such Credit Party shall be the surviving Person;

(j) the assets acquired in such Acquisition are for use in the same line of business as the Credit Parties are currently engaged or a line of business reasonably related thereto;

(k) unless Agent shall agree otherwise in writing, such Acquisition shall not involve the creation or acquisition of any Foreign Subsidiary;

(l) Agent has received, prior to the consummation of such Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**") and such other evidence as Agent may reasonably request demonstrating that Borrowers have, immediately before and immediately after giving effect to the consummation of such Acquisition, unrestricted cash in one or more Deposit Accounts, that in each case are subject to a first priority perfected security interest in favor Agent, in an aggregate amount equal to or greater than the positive value of the product of (x) twelve (12)

multiplied by (y) the Monthly Cash Burn Amount, as determined as of the last day of the month immediately preceding such Acquisition; and

(m) the total cash consideration paid or payable (including, without limitation, deferred purchase price, seller notes, earnouts and other similar liabilities) for such Acquisition, and together with all other Permitted Acquisitions, (i) shall be funded with cash on hand of the Borrowers or the net proceeds from the incurrence of Subordinated Debt, which cash consideration, in all cases, shall not exceed an amount equal to $5,000,000 (or such greater amount as may be agreed to be Required Lenders) in the aggregate during the term of this Agreement or (ii) shall be funded with net cash proceeds received by Borrowers from the issuance of common stock of AxoGen following the Closing Date ("**New Equity Proceeds**"); *provided*, in each case, that Agent shall have received reasonably satisfactory evidence of Credit Parties receipt of such New Equity Proceeds.

"**Permitted Annual IP Acquisitions** " means the acquisition (including through licensing) by a Credit Party of any Product or Intellectual Property of or from any other Person in the Ordinary Course of Business; *provided* that total cash consideration paid or payable (including, without limitation, deferred purchase price, seller notes, and other similar liabilities, but excluding any royalty, milestone payments or other similar payments, in each case, to be made based on future performance by the Credit Parties) for all such acquisitions made in any twelve (12) month period shall be in an amount not to exceed $1,000,000 in the aggregate.

"**Permitted Asset Dispositions**" means the following Asset Dispositions, *provided, however,* that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries or that it is obsolete, worn out or surplus to the business of such Borrower or its Subsidiary;

(c) to the extent constituting an Asset Disposition, Permitted Investments;

(d) dispositions of Accounts receivable to third parties in connection with the sales of inventory or with the collection or compromise thereof in the Ordinary Course of Business exclusive of factoring or similar arrangements;

(e) the entering into of any Permitted License;

(f) dispositions of assets acquired pursuant to a Permitted Acquisition consummated within 12 months after the date of the Permitted Acquisition so long as (i) the assets to be so disposed are not necessary in connection with the business of the Credit Parties and their Subsidiaries, taken as a whole, (ii) the assets to be so disposed are readily identifiable as assets acquired pursuant to such Permitted Acquisition and (iii) the Credit Parties shall have provided written notice to Agent of its plan to dispose of such assets prior to the applicable Permitted Acquisition;

(g) the abandonment or non-renewal, in the Ordinary Course of Business, of Intellectual Property rights (other than with respect to any Material Intangible Assets) that are no longer used or useful in the business of the Credit Parties;

(h) to the extent constituting an "Asset Disposition", the occurrence of any a casualty event; and

(i) other disposition approved by Agent, in writing, from time to time.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided*, *however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers' and its Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower's or its Subsidiary's intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $500,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations of Credit Parties with respect to obligations of other Credit Parties; *provided* that the obligation of such other Credit Party is permitted under this Agreement; and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $500,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and their Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) Debt in an aggregate principal amount not to exceed $2,000,000 at any time with respect to (i) capital leases; *provided* that any such Debt shall be secured only by the assets subject to such capital lease and (ii) purchase money Debt; *provided* that any such Debt shall only be secured by the assets acquired in connection with the incurrence of such Debt;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than Permitted Refinancings);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums financed through the applicable insurance company incurred in the Ordinary Course of Business;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt of the Credit Parties incurred under the Affiliated Financing Documents;

(i) Subordinated Debt;

(j) intercompany Debt arising from loans made (i) by a Borrower or Secured Guarantor to another Borrower or Secured Guarantor, (ii) by a non-Credit Party Subsidiary of a Borrower to another non-Credit Party Subsidiary of a Borrower, or (iii) any non-Credit Party Subsidiary to a Credit

Party (so long as such Debt is subordinated to the Obligations owed by the Credit Parties under the Financing Documents);

(k) Debt consisting of Permitted Contingent Obligations;

(l) Debt of any Credit Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business;

(m) unsecured earn-out obligations and other similar contingent purchase price obligations incurred in connection with a Permitted Acquisition to the extent earned and payable and permitted pursuant to the definition of Permitted Acquisition and the other terms of this Agreement;

(n) Debt in respect of self-insurance obligations, performance bonds, export or import indemnities or similar instruments, customs bonds, surety, appeal or similar bonds and completion guarantees provided by a Credit Party in the Ordinary Course of Business;

(o) Debt in respect of workers compensation claims, health, disability or other employee benefits (other than ERISA);

(p) unsecured Debt incurred in respect of corporate credit cards issued to officers and employees for, and constituting, business-related expenses incurred in the Ordinary Course of Business in an aggregate amount not to exceed $700,000 outstanding at any time with respect to all Credit Parties; and

(q) unsecured Debt not included in clauses (a) through (p) above to the extent that the aggregate outstanding at any time does not exceed $1,000,000 at any time.

"**Permitted Distributions**" means:

(a) dividends by any Subsidiary of any Borrower to such parent Borrower;

(b) dividends payable solely in common stock;

(c) payment of cash dividends and issuance of stock options and share grants and repurchases or other acquisitions of capital stock deemed to occur upon the exercise of stock options, warrants, restricted capital stock or other rights to purchase capital stock or other convertible securities and any other equity issuances and distributions to members, managers, employees, officers, directors or consultants of the Credit Parties under the 2010 Stock Option Plan of the Borrowers; *provided* that any such repurchases do not exceed $250,000 in the aggregate per fiscal year;

(d) cash or equity bonuses payable to members, managers, employees, officers, directors or consultants of the Credit Parties made in the Ordinary Course of Business;

(e) the distribution of rights pursuant to any shareholder rights plan or the redemption of such for de minimis consideration in accordance with the terms of any shareholder rights plan approved by Agent, in its reasonable discretion; and

(f) to the extent constituting a Distribution, the issuance of any common stock of AxoGen as consideration for a Permitted Acquisition.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) cash and cash equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding pursuant to this clause (d) may not exceed $250,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Investments consisting of deposit accounts in which Agent has received a Deposit Account Control Agreement;

(h) Investments by any Borrower in any Subsidiary now owned or hereafter created by such Borrower but only to the extent that such Subsidiary is itself a Borrower or a Secured Guarantor;

(i) solely to the extent permitted pursuant to Section 9.2(f), Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(j) Investments in non-cash consideration received in connection with Permitted Asset Dispositions;

(k) Permitted Acquisitions;

(l) Permitted Ventures;

(m) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, the entering into any Swap Contract, *provided, however*, that such Swap Contract is entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(n) Investments consisting of non-cash loans made by a Borrower to officers, directors and employees of a Credit Party which loans are used in their entirety by such Persons to purchase simultaneously capital stock of a AxoGen;

(o) to the extent constituting an Investment, Permitted Licenses entered into by a Credit Party;

(p) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Permitted Annual IP Acquisitions; and

(q) other Investments consisting of cash and cash equivalents or the issuance of AxoGen's common stock in an amount not exceeding $500,000 in the aggregate during the term of this Agreement.

"**Permitted License**" means any non-exclusive license of Intellectual Property rights of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"**Permitted Liens**" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's, landlord's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens, other than on Collateral that is part of the Borrowing Base, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral, other than on Collateral that is part of the Borrowing Base, for sums not exceeding $500,000 in the aggregate arising in connection with court proceedings; *provided*, *however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens on property acquired pursuant to a Permitted Acquisition to the extent such Liens were approved in writing by Agent prior to the consummation of the applicable Permitted Acquisition;

(g) Liens on property acquired pursuant to a Permitted Venture to the extent such Liens were approved in writing by Agent prior to the consummation of the applicable Permitted Venture;

(h) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or

marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(i) Liens and encumbrances in favor of Agent under the Financing Documents;

(j) Liens existing on the date hereof and set forth onSchedule 5.2; *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 5.1 and the definition of Permitted Debt, and (iii) any renewal or extension of the obligations secured or benefited thereby is permitted by this Agreement;

(k) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(l) to the extent constituting a Lien, financing statements filed under the UCC or other similar filing for precautionary purposes in connection with operating leases or consignment of goods in the Ordinary Course of Business;

(m) customary Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law or in the Ordinary Course of Business, encumbering deposits;

(n) to the extent constituting a Lien, a Permitted License;

(o) Liens solely on any cash earnest money deposits made by a Credit Party or any of its Subsidiaries, in an amount not to exceed $250,000, in connection with any letter of intent or purchase agreement with respect to any Permitted Acquisition;

(p) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority as to the use of real property which was not incurred in connection with Debt and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(q) Liens consisting of prepayments and security deposits in connection with leases, subleases, licenses, sublicenses, use and occupancy agreements, utility services and similar transactions entered into by the applicable Credit Party or Subsidiary of a Credit Party in the Ordinary Course of Business and not required as a result of any breach of any agreement or default in payment of any obligation;

(r) Liens on up to $250,000 of cash or cash equivalents securing Debt permitted by clause (p) of the definition of Permitted Debt; *provided* that such cash and cash equivalents are held in segregated cash collateral accounts;

(s) Liens securing financing of insurance premiums which such Liens attach solely to the insurance policies financed in connection with such Debt and the proceeds thereof; and

(t) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not adversely affect the rights and interests of Agent or Lenders or be otherwise prohibited pursuant to the terms of this Agreement.

"**Permitted Refinancing**" means Debt constituting a refinancing, replacement or extension of Debt and that (a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended, (b) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (c) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, and (d) the obligors of which are the same as the obligors of the Debt being refinanced or extended.

"**Permitted Venture**" means Investments, solely in the form of cash, cash equivalents or the issuance of common stock of Axogen, by a Credit Party in a joint venture, partnership, or other Person by so long as, in each case, (a) there exists no Event of Default both immediately before and immediately after giving effect to such transaction, (b) the total amount paid or payable, in either cash or equity or both, by Credit Parties for all such Permitted Ventures in any twelve (12) month period does not exceed $1,000,000, (c) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days' prior written notice of the closing such transaction, (d) no Debt or Liens shall be assumed or created under such transaction other than Permitted Liens and Permitted Debt and, (e) all actions necessary for the Agent, for the benefit of the Lenders, to be granted a perfected first priority Lien in all assets acquired pursuant to such transaction, including all equity interests, shall be taken in accordance with Section 4.11 hereof.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**Prepayment Fee**" has the meaning set forth in Section 2.2.

"**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 8.2(a) (as updated from time to time in accordance with Section 4.15); *provided*, that, for the avoidance of doubt, any new Product not disclosed on Schedule 8.2(a) shall still constitute a "Product" as herein defined.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make advances in respect of a Term Loan and such Lender's right to receive payments of principal and interest with respect to the Term Loans, the Term Loan Commitment Percentage of such Lender in respect of such Term Loan, and (b) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Term Loan Commitment Amount of such Lender (or, in the event the Term Loan Commitment shall have been terminated, such Lender's then outstanding principal advances of such Lender under the Term Loan), *by* (ii) the sum of the Term Loan Commitment (or, in the event the Term Loan Commitment shall have been terminated, the then outstanding principal advances of such Lenders under the Term Loan) of all Lenders.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.17.

"**Regulatory Required Permit**" means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any 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.

"**Required Lenders**" means at any time Lenders holding (a) more than fifty percent (50%) of the sum of the Term Loan Commitment (taken as a whole), or (b) if the Term Loan Commitment has been terminated, more than fifty percent (50%) of the then aggregate outstanding principal balance of the Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**SEC**" means the United States Securities and Exchange Commission.

"**Secured Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver to Agent, any Guarantee of all or any portion of the Obligations, the obligations under which are secured by all or substantially all of its property of the type described in Schedule 9.1 hereto (other than Excluded Property).

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means any agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Success Fee Letter**" means that certain letter agreement, dated as of the date hereof, between Agent and Borrower relating to the "Success Fee" (as defined therein) payable to Agent, for its own account, in connection with the execution of this Agreement.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Termination Date**" means the earlier to occur of (a) the Maturity Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" has the meaning set forth in Section 2.1(a).

"**Term Loan Commitment**" means the sum of each Lender's Term Loan Commitment Amount, which is equal to $21,000,000.

"**Term Loan Commitment Amount**" means, (a) as to any Lender that is a Lender on the Closing Date, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Amount", as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loans outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) as to any Lender that becomes a Lender after the Closing Date, the amount of the "Term Loan Commitment Amount(s)" of other Lender(s) assigned to such new Lender pursuant to the terms of the effective assignment agreement(s) pursuant to which such new Lender shall become a Lender, as such amount may be adjusted from time to time by any amounts assigned (with respect to such Lender's portion of the Term Loans outstanding and its commitment to make advances in respect of the Term Loan) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party.

"**Term Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Term Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Term Loan Commitment Amount of such Lender on such date *divided by* the Term Loan Commitment on such date.

"**Third Party Payor**" means Medicare, Medicaid, TRICARE, and other state or federal health care program, Blue Cross and/or Blue Shield, private insurers, managed care plans and any other Person or entity which presently or in the future maintains Third Party Payor Programs.

"**Third Party Payor Programs**" means all payment and reimbursement programs, sponsored by a Third Party Payor, in which a Borrower participates.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or would reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Term Loans.

(i) Term Loan Amounts. On the terms and subject to the conditions set forth herein and in the other Financing Documents, the Lenders severally hereby agree to make to Borrowers a term loan in an original aggregate principal amount equal to the Term Loan Commitment (the "**Term Loans**"). Each Lender's obligation to fund the Term Loan shall be limited to such Lender's Term Loan Commitment Percentage, and no Lender shall have any obligation to fund any portion of any Term Loan required to be funded by any other Lender, but not so funded. No Borrower shall have any right to reborrow any portion of the Term Loan that is repaid or prepaid from time to time. The Term Loan shall be funded in one advance on the Closing Date. Borrowers shall deliver to Agent a Notice of Borrowing with respect to the proposed Term Loan advance, such Notice of Borrowing to be delivered on the Closing Date.

(ii) Scheduled Repayments; Mandatory Prepayments; Optional Prepayments.

(A) Scheduled Repayments. There shall become due and payable, and Borrowers shall repay the Term Loan through, scheduled payments as set forth on Schedule 2.1 attached hereto. Notwithstanding the payment schedule set forth above, the outstanding principal amount of the Term Loan shall become immediately due and payable in full on the Termination Date.

(B) Mandatory Prepayments. There shall become due and payable and Borrowers shall prepay the Term Loan in the following amounts and at the following times:

(i) Unless Agent shall otherwise consent in writing, within ten (10) days after the date on which any Credit Party (or Agent as loss payee or assignee) receives any Net Insurance/Condemnation Proceeds in excess of $500,000, an amount equal to one hundred percent (100%) of such Net Insurance/Condemnation Proceeds, or such lesser portion of such proceeds as Agent shall elect to apply to the Obligations;

(ii) an amount equal to any interest that is deemed to be in excess of the Maximum Lawful Rate (as defined below) and is required to be applied to the reduction of the principal balance of the Loans by any Lender as provided for in Section 2.7;

(iii) unless Agent shall otherwise consent in writing, within ten (10) days after the date on which any Credit Party receives Net Cash Proceeds in excess of $500,000 from any Asset Disposition by a Credit Party (excluding (x) sales to another Credit Party, (y) sales of obsolete, worn-out or replaced equipment and (z) sales of capital stock in AxoGen, in each case to the extent permitted pursuant to this Agreement) that is not made in the Ordinary Course of Business or that pertains to any Collateral upon which the Borrowing Base is calculated, an amount equal to one hundred percent (100%) of such Net Cash Proceeds of such Asset Disposition or such lesser portion as Agent shall elect to apply to the Obligations;

(iv) [Reserved]; and

(v) upon the termination of all Revolving Loan Commitments (as defined in the Affiliated Credit Agreement) and the payment of the then

existing aggregate outstanding principal amount of the Revolving Loans, the aggregate outstanding Obligations.

Notwithstanding the foregoing and so long as no Event of Default or Default then exists: (1) any such Net Insurance/Condemnation Proceeds in excess of $500,000 may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to replace or repair any assets in respect of which such proceeds were paid so long as (x) prior to the receipt of such proceeds, Borrowers have delivered to Agent a reinvestment plan detailing such replacement or repair acceptable to Agent in its reasonable discretion and (y) such proceeds are deposited into an account that is subject to a Deposit Account Control Agreement; and (2) any such Net Cash Proceeds of Asset Dispositions in excess of $500,000 may be used by Borrowers within one hundred eighty (180) days from the receipt of such proceeds to purchase new or replacement assets of comparable value, *provided, however*, that such proceeds are deposited into an account that is subject to a Deposit Account Control Agreement upon receipt by such Borrower.

(C) Optional Prepayments. Borrowers may from time to time, with at least five (5) Business Days' prior delivery to Agent of an appropriately completed Payment Notification, prepay the Term Loan in whole or in part; *provided, however*, that (1) each such prepayment (other than a prepayment in whole) shall be in an amount equal to $2,500,000 or a higher integral multiple of $1,000,000 and shall be accompanied by any prepayment fees and exit fees required hereunder, (2) each such Payment Notification shall be irrevocable and (3) there shall be no more than three (3) partial voluntary prepayments of the Term Loan allowed during the term of this Agreement.

(iii) All Prepayments. Except as this Agreement may specifically provide otherwise, all prepayments of the Term Loan shall be applied by Agent to the Obligations in inverse order of maturity. The monthly payments required under Schedule 2.1 shall continue in the same amount (for so long as the Term Loan and/or (if applicable) any advance thereunder shall remain outstanding) notwithstanding any partial prepayment, whether mandatory or optional, of the Term Loan.

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, the Term Loan shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any Eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in

each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, and/or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to maintain Loans bearing interest based upon the LIBOR Rate or to continue such maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender, (I) in the case of the pro rata share of the Term Loan held by such Lender and then outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such portion of the Term Loan, and interest upon such portion thereafter shall accrue interest at the Base Rate *plus* the Applicable Margin, and (II) such portion of the Term Loan shall continue to accrue interest at the Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Term Loan at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire Eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(b) Reserved.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a five (5) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(b) Reserved.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in each Fee Letter.

(d) Reserved.

(e) Reserved.

(f) Origination Fee. Contemporaneous with Borrowers execution of this Agreement, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to $105,000. All fees payable pursuant to this paragraph shall be deemed fully earned when due and payable and non-refundable as of the Closing Date.

(g) Reserved.

(h) Exit Fee. Borrowers shall pay to Agent, for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of making funds available to Borrowers under this Agreement an exit fee (the "**Exit Fee**") calculated in accordance with this subsection and upon the date or dates required under this subsection. The Exit Fee shall be an amount equal to five percent (5.0%) *multiplied by* the aggregate principal amount of the Term Loan advanced to Borrower under this Agreement. Upon any repayment of any portion of the Term Loan (whether voluntary, involuntary or mandatory) other than scheduled amortization payments (if any) and the final payment of principal in respect of the Term Loan, a portion of the Exit Fee shall be due in the following amount: that percentage which is obtained by dividing the amount prepaid by the then outstanding principal balance of the Term Loan. Any remaining unpaid amount of the Exit Fee shall be due and payable on the Termination Date. All fees payable pursuant to this paragraph shall be deemed fully accrued and earned as of the Closing Date.

(i) Prepayment Fee. If any advance under the Term Loan is prepaid at any time, in whole or in part, for any reason (whether by voluntary prepayment by Borrowers, by reason of the occurrence of an Event of Default or the acceleration of the Term Loan, or otherwise), or if the Term Loan shall become accelerated and due and payable in full, or if the Lenders' funding obligations in respect of any unfunded portion of the Term Loan shall terminate prior to the Maturity Date, Borrowers shall pay to Agent**,** for the benefit of all Lenders committed to make Term Loan advances, as compensation for the costs of such Lenders making funds available to Borrowers under this Agreement, a prepayment fee (the "**Prepayment Fee**") calculated in accordance with this subsection. The Prepayment Fee shall be equal to the amount determined by multiplying the amount being prepaid by the following applicable percentage amount: (x) three percent (3.0%) during the first year following the Closing Date**.** , (y) two percent (2.0%) during the second year following the Closing Date, and (z) one percent (1.0%) thereafter. The Prepayment Fee shall not apply to or be assessed upon any prepayment made by Borrowers if such payments were required by Agent to be made pursuant to Section 2.1(a)(ii)(B) subpart (i) (relating to Net Insurance/Condemnation Proceeds), or subpart (ii) (relating to payments exceeding the Maximum Lawful Rate). Notwithstanding the foregoing, in no event shall any fee under this Section 2.2(i) be due and payable if the Term Loan prepaid in full as a result of a refinancing of each of the Obligations and the Affiliated Obligations by Agent or an Affiliate thereof. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(j) Agency Fee. On the Closing Date and on each annual anniversary thereof, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, an administrative fee of an amount equal to one quarter of one percent (0.25%) *multiplied by* the aggregate principal amount of the Term Loan advanced to Borrower under this Agreement. The administrative fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(k) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers; *provided*, that notwithstanding the foregoing, so long

as no Event of Default has occurred and is continuing, Borrowers shall not be required to reimburse Agent for more than two (2) such audits or inspections per fiscal year.

(l) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(m) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) Business Days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(n) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(o) Automated Clearing House Payments. If Agent (or its designated servicer) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Term Loan Commitments.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments

received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing 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, each 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, such excess amount shall be applied to the reduction of the principal balance of the Loans 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 Borrowers. 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.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any withholding or deduction from any payment to be made by any Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then Borrowers will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Agent an official receipt or other documentation satisfactory to Agent evidencing such payment to such authority; and (iii) if such Tax is an Indemnified Tax, pay to Agent for the account of Agent and Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. The Borrower shall indemnify Agent and each Lender, within 10

days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by Agent or such Lender or required to be withheld or deducted from a payment to Agent or such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(b) Reserved.

(c)

(i) Each Lender that is not U.S. person as defined in Section 7701(a)(30) of the Code and (A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall execute and deliver to each of Borrowers and Agent (x) one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from withholding or deduction of Taxes, (y) in the case of a Foreign Lender claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding Tax) or any successor form and a certificate in form and substance acceptable to Borrower certifying that such Foreign Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, or (x) any other applicable document prescribed by the IRS certifying as to the entitlement of such Foreign Lender to such exemption from United States withholding Tax or reduced rate with respect to all payments to be made to such Foreign Lender under the Financing Documents . Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in law.

(ii) Each Lender other than a Foreign Lender ("**U.S. Lender**") shall (A) on or prior to the date such U.S. Lender becomes a party under this Agreement, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c)(ii) and (D) from time to time if requested by the Borrowers or Agent (or, in the case of a participant, the relevant Lender), provide Agent and the Borrowers (or, in the case of a participant, the relevant Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender is not subject to U.S. backup withholding Tax) or any successor form.

(iii) If a payment made to a Foreign Lender would be subject to United States federal withholding Tax imposed by FATCA if such Foreign Lender fails to comply with the applicable reporting requirements of FATCA, such Foreign Lender shall deliver to Agent and the Borrowers any documentation under any law or reasonably requested by Agent or the Borrowers sufficient for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Foreign Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment under FATCA, if any. Solely for the purposes

of this clause (c)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(d) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (d) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (d), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(f) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans

hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(g) If any Lender requests indemnification pursuant to Section 2.8 or if additional amounts are to be paid pursuant to Section 2.8 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.8(f), then Borrowers may, at their sole expense and effort, upon notice to such Lender, require such Lender to assign and delegate, without recourse, all of its interests, rights (other than its existing rights to payments pursuant to Section 2.8) and obligations under this Agreement and the related Financing Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) in the case of any such assignment resulting from a claim for indemnification under Section 2.8, such assignment will result in a reduction in such indemnification or payments thereafter; (ii) such assignment does not conflict with applicable law; and (iii) Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, give instructions with respect to the disbursement of the proceeds of the Loans , giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, , in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) with written notice to Borrower Representative, renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided, however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided, further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by

reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to $0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Reserved.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) Business Days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.2 and the terms of any fee letter. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2(h) and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

ARTICLE 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified on Schedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits would not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority, and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties (other than AxoGen) and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties (other than AxoGen) as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party (other than AxoGen), other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2015, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation. Except as set forth on Schedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's

knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision would reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is 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, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) 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 (B) 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.

Section 3.13 Taxes. All federal and material state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all federal and material state and local tax returns (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and material state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the material amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, would result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except as disclosed on Schedule 3.15 on the Closing Date and fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Schedule 3.17 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Schedule 3.19 shall be prepared by Borrower in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens. Each patent is valid and enforceable and no part of the Material Intangible Assets 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.

Section 3.20 Solvency. After giving effect to any Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, each Borrower (after giving effect to all

rights of such Borrower arising by virtue of Section 2.10(b) and (e) and any other rights of contribution or similar rights of such Borrower) is Solvent and the Borrowers and their Subsidiaries, on a consolidated basis, are Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided*, *however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 Interest Rate. The rate of interest paid under the Notes and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Operative Documents.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Reserved.

Section 3.25 Accuracy of Schedules. All information set forth in the Schedules to this Agreement (including Schedule 3.19 and Schedule 8.2(a)) is true, accurate and complete as of the Closing Date, the date of delivery of the last quarterly Compliance Certificate and any other subsequent date in which Borrower is requested to update such Schedules. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date and any other subsequent date in which Borrower is requested to update such certificate.

ARTICLE 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, commencing with the month ending November 30, 2016, (i) a company prepared consolidated balance sheet and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, certified by a Responsible Officer and in a form acceptable to Agent and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(b) as soon as available, but no later than forty-five (45) days after the last day of each of the first three fiscal quarters of the Borrowers' fiscal year, (i) a company prepared consolidated balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(c) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, (i) 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 reasonably acceptable to Agent in its reasonable discretion and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(d) to the extent not publicly available via EDGAR at the SEC's website www.sec.gov, within ten (10) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that would reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Five Hundred Thousand Dollars ($500,000) or more;

(f) within one hundred twenty days (120) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(g) promptly (and in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request; *provided*, *however*, that reporting related to Regulatory Required Permits and/or Regulatory Reporting Events shall be governed by Section 4.17; and

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), except to the extent subject to a Permitted Contest, pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted.

If all or any part of the Collateral useful or necessary in its business becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within ten (10) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least thirty (30) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral *provided*, that such insurance coverage shall contain such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Borrower operates. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases

insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply would not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon a material portion of the assets of any such Person in favor of any Governmental Authority.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially 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; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective 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 Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or Event of Default. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrowers shall not be required to reimburse Agent for more than two (2) such visits per fiscal year.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the payment in full on the Closing Date of certain existing Debt, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent which, so long as no Event of Default has occurred and is continuing, shall be limited to one (1) such request per fiscal year of Borrowers, Borrowers, within twenty (20) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default; *provided* that Agent shall have provided the Register to Borrower, upon Borrower's request, prior to Borrower being required to furnish such statement to Agent. After written request by Agent, which, so long as no Event of Default has occurred and is continuing, shall be limited to one (1) such request per fiscal year of Borrowers, Borrowers, within twenty (20) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing

Documents, as updated pursuant to such certificate, are true, accurate and complete in all material respects as of the date of such certificate.

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) Borrower shall provide ten (10) Business Days (i) written notice to Agent of Borrower (1) executing and delivering any amendment, consent, waiver or other modification to any Material Contract which is material and adverse to such Material Contract or which would reasonably be expected to have a Material Adverse Effect or (2) receiving or delivering any notice of termination or default or similar notice in connection with any Material Contract and (ii) together with delivery of the next Compliance Certificate (included as an update to the such any schedule delivered therewith) with the quarterly financial statements in Section 4.1(b), the execution of any new Material Contract and/or any new material amendment, consent, waiver or other modification to any Material Contract not previously disclosed.

(b) Borrowers will give prompt written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Borrower becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that would reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its business is infringing on the Intellectual Property rights of others, and (v) of all returns, recoveries, disputes and claims that involve more than $500,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with evidence of financial assurance to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment would reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers (other than Excluded Foreign Subsidiaries) to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least fifteen (15) days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary (except to the extent such shares constitute Excluded Property) owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary (other than an Excluded Foreign Subsidiary) to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and

personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing cause such new Subsidiary (other than an Excluded Foreign Subsidiary) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing (as required by Section 4.11(d)(i)-(iii)) the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent. Without limiting the foregoing, no Credit Parties shall be permitted to make any Investment or other contribution into any such Subsidiary other than Permitted Investments, which, in each case, are made after such time such time as Borrower has satisfied the requirements of this section 4.11(d).

(e) Each Borrower further agrees to ensure that the total amount of cash and cash equivalents held by the Excluded Foreign Subsidiaries (collectively) shall not at any time exceed $50,000 in the aggregate.

(f) Following (a) the occurrence and continuation of an Event of Default and (b) the exercise by Agent of any right, option or remedy provided for hereunder, under any Financing Document or at law or in equity, Credit Parties shall cause each Excluded Foreign Subsidiary to declare and pay to the applicable Credit Party the maximum amount of dividends and other distributions in respect of its capital stock or other equity interest legally permitted to be paid by each such Excluded Foreign Subsidiary; provided that such Excluded Foreign Subsidiary shall be able to retain for working capital purposes such other amounts used by such Excluded Foreign Subsidiaries in the Ordinary Course of Business and as are reasonable necessary for its operations based on its current projections, as provided to the Agent pursuant to Section 4.1.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than five (5) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than five (5) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Reserved.

Section 4.15 Schedule Updates. Borrower shall, in the event of any information in the Schedules becoming materially outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next Compliance Certificate required to be delivered under this Agreement after such event a proposed update to such Schedule correcting all materially outdated, inaccurate, incomplete or misleading information; *provided*, *however*, (i) with respect to any proposed updates to the Schedules involving Permitted Liens, Permitted Debt or Permitted Investments, Agent will replace the respective Schedule attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Debt or Permitted Investments and (ii) with respect to any proposed updates to such Schedule involving other matters, Agent will replace the applicable portion of such Schedule attached hereto with such proposed update upon Agent's approval thereof.

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1(b) to the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, or (B) Borrower enters into or becomes bound by any additional in-bound license or sublicense agreement, any additional exclusive out-bound license or sublicense agreement or other agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (C) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19 together with such Compliance Certificate, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications, which are addressed below), Borrower shall notify Agent in the Compliance Certificate delivered pursuant to Section 4.1(b) and promptly thereafter execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain, if possible, a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) Except as otherwise provided with respect to the Material Contract consents set forth on Schedule 7.4, Borrower shall take such commercially reasonable steps as Agent 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 it that might otherwise 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 Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all its Registered Intellectual Property to be 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 Effect. Borrower shall at all times conduct its business without infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of

its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a claim of material infringement by Borrower on the Intellectual Property rights of others; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material exclusive license or other material 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.

Section 4.17 Regulatory Reporting and Covenants.

(a) Borrower shall notify Agent and each Lender promptly, and in any event within ten (10) Business Days of receiving, becoming aware of or determining that, (each, a "**Regulatory Reporting Event**" and collectively, the "**Regulatory Reporting Events**"): (i) any Governmental Authority, specifically including the FDA is conducting or has conducted (A) if applicable, any of Borrower's or its Subsidiaries' manufacturing facilities and processes for any Product which investigation has disclosed any material deficiencies or violations of Laws and/or the Regulatory Required Permits related to such thereto or (B) an investigation or review of any Regulatory Required Permit (other than routine reviews in the Ordinary Course of Business associated with the renewal of a Regulatory Required Permit and which would not reasonably be expected to result in a Material Adverse Effect), (ii) development, testing, and/or manufacturing of any Product should cease which have or would reasonably be expected to result in a Material Adverse Effect, (iii) if a material Product has been approved for marketing and sale, any marketing or sales of such Product should cease or such Product should be withdrawn from the marketplace, (iv) any Regulatory Required Permit has been revoked or withdrawn which have or would reasonably be expected to result in a Material Adverse Effect, (v) adverse clinical test results with respect to any Product which have or would reasonably be expected to result in a Material Adverse Effect, (vi) any Product recalls or voluntary Product withdrawals from any market (other than discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) or (vii) any significant failures in the manufacturing of any Product such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to Borrower therefor in any month shall decrease significantly with respect to the quantities of such Product and payments produced in the prior month. Borrower shall provide to Agent or any Lender such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any such Regulatory Reporting Event.

(b) Borrower shall, and shall cause each Credit Party to, obtain all Regulatory Required Permits necessary for compliance in all material respects with Laws with respect to testing, manufacturing, developing, selling or marketing of Products and shall, and shall cause each Credit Party to, maintain and comply fully and completely in all respects with all such Regulatory Required Permits, the noncompliance with which would have a Material Adverse Effect. In the event Borrower or any Credit Party obtains any new Regulatory Required Permit or any information on Schedule 8.2(a) becomes materially outdated, inaccurate, incomplete or misleading, Borrower shall, together with the next Compliance Certificate required to be delivered under this Agreement after such event, provide Agent with an updated Schedule 8.2(a) including such updated information.

ARTICLE 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any

Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or into any other Person other than (i) consolidations or mergers among Borrowers where a Borrower is the surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(a) except for Permitted Ventures, engage or enter into any agreement to engage in any joint venture or partnership with any other Person;

(b) make or enter into any agreement to make an Acquisition other than Permitted Acquisitions;

(c) without limiting the foregoing with respect to Acquisitions, acquire or enter into any agreement to acquire any other assets other than in the Ordinary Course of Business or as otherwise permitted under the definition of Permitted Investments; or

(d) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, and except for transactions which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower. Without limiting the foregoing, AxoGen Corp. shall not, without the prior written consent of Agent, transfer the University of Florida License or any of its rights thereunder to AxoGen, Inc. or any Affiliate thereof.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) would reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same in any material respect; or (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Borrower or any Subsidiary.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, materially change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Joint Ventures.

(a) No Credit Party will, nor will it permit any Subsidiary to, commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any joint venture or partnership; *provided* that, for the avoidance of doubt, nothing in this Section 5.12(a) shall prohibit (i) a Credit Party from entering into Permitted Licenses with a joint venture, or (ii) a Permitted Venture, in each case, to the extent otherwise permitted under this Agreement.

(b) No Credit Party will, nor will it permit any Subsidiary to, enter into or own any interest in a joint venture partnership that is not itself a corporation or limited liability company or other legal entity in respect of which the equity holders are not liable for the obligations of such entity as a matter of law.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person (other than another Borrower or a Secured Guarantor) whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. Except for Excluded Accounts, no Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account (other than an Excluded Account). Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date. At all times that any Obligations or Affiliated Obligations remain outstanding, the Credit Parties shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers 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 Borrowers and their principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person 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. No Borrower will, or will permit any Subsidiary 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.

Section 5.16 Change in Accounting. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party without the prior written consent of Agent, not to be unreasonably withheld, conditioned or delayed.

ARTICLE 6 - FINANCIAL COVENANTS

Section 6.1 Additional Defined Terms. The following additional definitions are hereby appended to Section 1.1 of this Agreement:

"**Defined Period**" means, for purposes of calculating the minimum Net Revenue, for any given calendar month, the twelve (12) month period immediately preceding any such calendar month.

"**Net Revenue**" means, for any period, (a)the consolidated gross revenues of Borrowers and their Subsidiaries generated solely through the commercial sale of Products by Borrowers and their Subsidiaries during such period, less (b)(i) trade, quantity and cash discounts allowed by Borrower, (ii) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (iii) product returns and allowances, (iv) allowances for shipping or other distribution expenses, (iv) set-offs and counterclaims, and (v) any other similar and customary deductions used by Borrower in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and in the Ordinary Course of Business.

Section 6.2 Minimum Net Revenue. Borrower shall not permit its consolidated Net Revenue for any Defined Period, as tested monthly, to be less than the minimum amount set forth on Schedule 6.2 for such Defined Period. A breach of a financial covenant contained in this Section 6.2 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, together with the monthly financial reporting required of Borrowers in this Agreement, a Compliance Certificate as evidence of Borrowers' compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent and in connection with the delivery of the Compliance Certificate pursuant to Section 4.1, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

ARTICLE 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit E, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(b) since December 31, 2015, the absence of any Material Adverse Effect;

(c) the receipt of a Notice of Borrowing, prepared as of the Closing Date; and

(d) evidence confirming receipt by Three Peaks Capital S.a.r.l. of funds from Borrowers in an amount equal to $2,699,682.01 in respect of the payoff of Debt owed by Borrowers to Three Peaks Capital S.a.r.l. on the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction of the following additional conditions:

(a) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(b) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(c) immediately before and after such advance, (i) no Default or Event of Default shall have occurred and be continuing; (ii) the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; *provided*, *however*, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; (iii) no Material Adverse Effect shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement; and (iv) Borrowers shall be in compliance with Article 8 hereof and, unless Agent shall elect otherwise from time to time, to waive such compliance.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 Searches. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 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.

ARTICLE 8 – REGULATORY MATTERS

Section 8.1 Reserved.

Section 8.2 Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make credit accommodations contemplated hereby, Borrowers hereby represent and warrant that all of the information regarding the Borrowers set forth in Schedule 8.2(a) is true, complete and correct as of the Closing Date, and that, except as disclosed in Schedule 8.2(b), the following statements are true, complete and correct as of the date hereof, and Borrowers hereby covenant and agree to notify Agent within five (5) Business Days (but in any event prior to Borrowers submitting any requests for advances of reserves or escrows or fundings of credit facility proceeds under this Agreement) following the occurrence of any facts, events or circumstances known to a Borrower, whether threatened, existing or pending, that would make any of the following representations and warranties untrue, incomplete or incorrect (together with such supporting data and information as shall be necessary to fully explain to Agent the scope and nature of the fact, event or circumstance), and shall provide to Agent within five (5) Business Days of Agent's request, such additional information as Agent shall request regarding such disclosure:

(a) Disclosure. All of Borrower's Products are listed on Schedule 8.2(a) (as updated from time to time pursuant to Section 4.15).

(b) Permits. Borrowers have (i) each Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the business or the assets of any Borrower, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Permit. Borrower has delivered to Agent a copy of all Permits requested by Agent as of the date hereof or to the extent requested by Agent pursuant to Section 4.17. All such Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits, except where failure to be in such compliance or for a Permit to be valid and in full force and effect would not have a Material Adverse Effect.

(c) Regulatory Required Permits. With respect to any Product or service, (i) Borrower and its Subsidiaries have received, and such Product or service is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product or conduct of such service as currently being conducted by or on behalf of Borrowers, and have provided Agent and each Lender with all notices and other information required by Section 4.17, and no Borrower has 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 Regulatory Required Permit or approval or that any such Regulatory 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 or conduct of such service cease or that such Product or service be withdrawn from the marketplace (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, in material compliance with all applicable Laws and Regulatory Required Permits, and 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 (A) Borrower's manufacturing facilities and processes for such Product which have disclosed any material deficiencies or violations of Laws (including Healthcare Laws) and/or the Regulatory Required Permits related to the manufacture of such Product, or (B) any such Regulatory Required Permit or that any such Regulatory Required Permit has been revoked or withdrawn, nor has any such Governmental Authority issued any order or recommendation stating that the development, testing and/or manufacturing of such Product by Borrower should cease.

(d) Healthcare and Regulatory Events.

(i) None of the Borrowers are in violation of any Healthcare Laws, except where any such violation would not have a Material Adverse Effect.

(ii) As of the Closing Date, there have been no Regulatory Reporting Events.

(iii) No Borrower is participating in any Third Party Payor Program

(iv) None of the Borrower's officers, directors, employees, shareholders, their agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(v) Borrower has not received any written notice that any Governmental Authority, including without limitation the FDA, the DEA, the Office of the Inspector General of HHS or the United States Department of Justice has commenced or threatened to initiate any action against a Credit Party, any action to enjoin a Credit Party, their officers, directors, employees, shareholders or their agents and Affiliates, from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action.

(vi) Borrower has not received from the FDA or the DEA, a Warning Letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth allegedly objectionable observations or alleged violations of laws and regulations enforced by the FDA or the DEA, or any comparable correspondence from any state or local authority responsible for regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA or DEA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the manufacture, processing, packing, or holding thereof.

(vii) Borrower has not engaged in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products.

(viii) Each Product (a) is not adulterated or misbranded within the meaning of the FDCA; (b) is not an article prohibited from introduction into interstate commerce under the provisions of Sections 404, 505 or 512 of the FDCA; (c) each Product has been and/or shall be manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed and each service has been conducted in accordance with all applicable Permits and Laws; and (d) each Product has been and/or shall be manufactured in accordance with Good Manufacturing Practices.

(e) Proceedings. No Borrower is subject to any proceeding, suit or, to Borrowers' knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body (including the Office of the Inspector General of the United States Department of Health and Human Services): (i) which may result in the imposition of a fine, alternative, interim or final sanction, a lower reimbursement rate for services rendered to eligible patients which has not been provided for on their respective financial statements, or which would have a Material Adverse Effect on any Borrower; or (ii) which would result in the revocation, transfer, surrender, suspension or other impairment of the Permits of Borrower.

(f) Ancillary Laws. Borrowers have received no notice, and are not aware, of any violation of applicable antitrust laws, employment or landlord-tenant laws of any federal, state or local government or quasi-governmental body, agency, board or other authority with respect to the Borrowers.

Section 8.3 Healthcare Operations.

(a) Borrower will:

(i) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all notifications, reports, submissions, Permit renewals and reports (other than cost reports as provided in Section 8.3(a)(ii) below) of every kind whatsoever required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled); and

(ii) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all cost reports required by Healthcare Laws, which reports shall be materially accurate and complete in all respects and not misleading in any material respect and which shall not remain open or unsettled, except in accordance with applicable settlement appeals procedures that are timely and diligently pursued and except for any processing delays of any Governmental Authority.

(b) Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date.

(c) Borrower will not suffer or permit to occur any of the following:

(i) any transfer of a Permit or rights thereunder to any Person (other than Borrowers or Agent);

(ii) any pledge or hypothecation of any Permit as collateral security for any indebtedness other than Debt to Agent and each Lender under this Agreement and the other Financing Documents and the Affiliated Financing Documents; or

(iii) any rescission, withdrawal, revocation, amendment or modification of or other alteration to the nature, tenor or scope of any Permit.

(d) In connection with the development, testing, manufacture, marketing or sale of each and any Product by any Borrower, Borrower shall comply in all material respects with all Regulatory Required Permits at all times issued by any Governmental Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, and, subject only to the Affiliated

Intercreditor Agreement, a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, subject to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2 (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) As of the Closing Date, Schedule 9.2 sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral or any of Borrower's assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2 indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1(b) above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property, in each case, in excess of $500,000. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least twenty (20) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral in excess of $500,000 to or place any Collateral in excess of $500,000 on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper in excess of $500,000 and all Instruments in excess of $500,000 and documents in excess of $500,000 owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any

such Instruments. Upon the request of Agent, Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit in excess of $500,000 on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may reasonably request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim in excess of $500,000 that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect to such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) No Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral or any of the Borrower's assets, liabilities, business operations or financial condition shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent and the receipt by Agent, of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory to Agent prior to the commencement of such lease or of such possession or control (as applicable); *provided,* that, except as otherwise provided pursuant to Section 4.11, prior written notice to Agent and/or the delivery of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers shall not be required for Collateral in transit and with respect to locations at which less than $500,000 of Collateral is maintained. Borrowers shall, upon the request of Agent, notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon the reasonable request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible

Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay any principal, interest or other scheduled payment when due or pay any other premium, fee or other amount payable under any Financing Document within three (3) Business Days of when due, (ii) there shall occur any default in the performance of or compliance with Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Article 5 or Article 6 of this Agreement, or (iii) there shall occur any default in the performance of or compliance with Section 4.16, Section 4.17 or Article 8 of this Agreement and, solely in the case of this clause (iii), such default is not remedied by the Credit Party or waived by Agent within five (5) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt

by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $500,000 or having an aggregate principal amount in excess of $500,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any material breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group would be required to make a contribution to such Pension Plan, or would incur a liability or obligation to such Pension Plan, in excess of $500,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that would reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $500,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $500,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) any Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of any fact, event or circumstance that would reasonably be expected to result in a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category Product which, in each case, would reasonably be expected to result in Material Adverse Effect, (ii) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, would reasonably be expected to result in Material Adverse Effect, (iii) the commencement of any enforcement action against Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by DEA, FDA, or any other Governmental Authority which would reasonably be expected to result in a Material Adverse Effect, or (iv) the occurrence of adverse test results in connection with a Product which would result in Material Adverse Effect;

(p) any Credit Party defaults under or breaches any Material Contract (after any applicable grace period contained therein), or a Material Contract shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Contract to which it is a party, in each case which could reasonably be expected to result in a Material Adverse Effect; or

(q) there shall occur any default or event of default under the Affiliated Financing Documents.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Term Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Term Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Term Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Agent;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and 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 Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are three percent (3.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each 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 such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers 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.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may

direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) 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.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement

operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction (including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be

created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Term Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the

Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the UCC in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent.

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, 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 endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. 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 Financing 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 paragraph.

(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 Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 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.

Section 11.13 Payment and Sharing of Payment.

(a) Reserved.

(b) Term Loan Payments. Payments of principal, interest and fees in respect of the Term Loans will be settled on the date of receipt if received by Agent on the last Business Day of a month or on the Business Day immediately following the date of receipt if received on any day other than the last Business Day of a month.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or

warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided, however*, any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (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 of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Term Loan Commitment, Term Loan Commitment Amount, Term Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. 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) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) 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. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning

Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest effort, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; *provided*, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, 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.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any

transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Article VII or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall not fund the Term Loan due to the non-satisfaction of one or more conditions to funding Loans set forth in Article VII or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Term Loans outstanding in excess of $0; *provided, however,* that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Term Loan Commitment Amount as in effect immediately before such Lender becomes a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Term Loan Commitment Amount of each Non-Funding Lender shall be deemed to be $0.

(c) Reserved.

(d) The Term Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Term Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate principal amount outstanding under the Term Loans of all Non-Funding Lenders as of such date.

Section 11.19 Reserved.

Section 11.20 Definitions. As used in this Article 11, the following terms have the following meanings:

"**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.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**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, (x) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume any unfunded portion of the Term Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Term Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 and any provision in any other Financing Document expressly stated to survive shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the

provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved from time to time by Agent, *provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the

examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER 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 NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, 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. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland. Nothing in this Section 12.8(c) shall amend or modify Sections 12.8(a) or (b) in any respect.

Section 12.9 **WAIVER OF JURY TRIAL. EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.**

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will 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 MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, 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 MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF 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, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 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.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") 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 Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, 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 Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or

any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence, fraud, bad faith or willful misconduct of such Indemnitee, as determined by a final non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence 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.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification. Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Cross Default and Cross Collateralization.

(a) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Financing Documents shall be a Default under the Affiliated Financing Documents.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(c) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, as permitted in accordance with the terms of this Agreement and in such order as Lender shall determine, in its sole discretion; and

(vii) assign the Affiliated Financing Documents in whole or in part

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

BORROWERS:

AXOGEN, INC.

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: President and CEO

AXOGEN CORPORATION

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: President and CEO

Address:

AxoGen, Inc.
13631 Progress Boulevard, Suite 400
Alachua, FL 32615
Attention: Peter J. Mariani and Greg Freitag
Facsimile: (386) 462-6801
E-Mail: pmariani@axogeninc.com;
gregfreitag@gmail.com

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AxoGen transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: 121-000-248
Account Name: MidCap Funding IV Trust – Collections
Account #: 2000036282803
Attention: AxoGen Facility

LENDER:

MIDCAP FUNDING XIII TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AxoGen transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

LENDER:

MIDCAP FUNDING V TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AxoGen transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	Reserved
Exhibit B	Form of Compliance Certificate
Exhibit C	Reserved
Exhibit D	Form of Notice of Borrowing
Exhibit E	Form of Closing Checklist
Exhibit F	Form of Payment Notification

SCHEDULES

Schedule 2.1	Amortization
Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
Schedule 3.6	Litigation
Schedule 3.15	Brokers
Schedule 3.17	Material Contracts
Schedule 3.18	Environmental Compliance
Schedule 3.19	Intellectual Property
Schedule 4.9	Litigation, Governmental Proceedings and Other Notice Events
Schedule 5.1	Debt; Contingent Obligations
Schedule 5.2	Liens
Schedule 5.7	Permitted Investments
Schedule 5.8	Affiliate Transactions
Schedule 5.11	Business Description
Schedule 5.14	Deposit Accounts and Securities Accounts
Schedule 6.2	Net Revenue
Schedule 7.4	Post-Closing Obligations
Schedule 8.2(a)	Products
Schedule 8.2(b)	Exceptions to Healthcare Representations and Warranties
Schedule 9.1	Collateral
Schedule 9.2	Location of Collateral

Annex A to Credit Agreement (Commitment Annex)

Lender	Term Loan Commitment Amount	Term Loan Commitment Percentage
MidCap Funding XIII Trust	$15,000,000	71.42857%
MidCap Funding V Trust	$6,000,000	28.57142%
TOTALS	$21,000,000	100%

Exhibit A to Credit Agreement (Reserved)

Exhibit B to Credit Agreement (Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of **AxoGen, Inc.** (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of October 25, 2016 among the Borrower Representative, **AxoGen Corporation**, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in **Schedule 1** hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) Net Revenue of Borrowers and Guarantor for the relevant Defined Period is equal to $_____. Borrowers and Guarantor are in compliance with the covenant contained in Article 6 of the Credit Agreement and in each Guarantee constituting a part of the Financing Documents, each as demonstrated by the calculation of such covenant attached hereto, which calculation is true, correct and complete.

(e) **[**Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts or investment accounts maintained by Borrowers and Guarantors;][1]

(f) [except as noted on **Schedule 2** attached hereto, Schedule 9.2 to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names

[1]To be delivered quarterly

under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantors conduct business;][2]

(g) [except as noted on **Schedule 3** attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral, or (ii) any failure of any Borrower or any Guarantors to make required payments of withholding or other tax obligations of any Borrower or any Guarantors during the accounting period to which the attached statements pertain or any subsequent period;][3]

(h) [except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against the Borrowers or any Guarantors, (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of Borrowers or any Guarantors, or (iii) default by Borrowers or any Guarantors under any Material Contract to which it is a party, which in each case, which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document;][4]

(i) [except as noted on **Schedule 5** attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any **Schedule 5** to any previous Compliance Certificate delivered by Borrower to Agent;][5]

(j) [except as noted on **Schedule 6** attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any **Schedule 6** to any previous Compliance Certificate delivered by Borrower Representative to Agent;][6] and

(k) [except as noted on **Schedule 7** attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.] [7]

The foregoing certifications and computations are made as of _____, 20__ (end of month/quarter/year) and as of _____, 20__.

[2]To be delivered quarterly.
[3]To be delivered quarterly.
[4]To be delivered quarterly.
[5]To be delivered quarterly.
[6]To be delivered quarterly.
[7]To be delivered quarterly.

Sincerely,

AXOGEN, INC.

By: _____
Name: _____
Title: _____

Exhibit C to Credit Agreement (Reserved)

Exhibit D to Credit Agreement (Form of Notice of Borrowing)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of **AxoGen, Inc.** (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of October 25, 2016 among the Borrower Representative, **AxoGen Corporation**, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow $_____ of the Term Loan on _____, 201__.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

AXOGEN INC.

By: _____
Name: _____
Title: _____

Exhibit E to Credit Agreement (Form of Closing Checklist)

[See Attached]

Exhibit F to Credit Agreement (Form of Payment Notification)

PAYMENT NOTIFICATION

This Payment Notification is given by _____, Responsible Officer of **AxoGen, Inc.** (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of October 25, 2016 among the Borrower Representative, **AxoGen Corporation**, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

Please be advised that funds in the amount of $_____ will be wire transferred to Agent on _____, 201_. Such funds shall constitute [an optional] [a mandatory] prepayment of the Term Loans, with such prepayments to be applied in the manner specified in Section 2.1(a)(iii). [Such mandatory prepayment is being made pursuant to Section _____ of the Credit Agreement.]

Fax to MCF Operations 301-941-1450 no later than noon Eastern time.

Note: Funds must be received in the Payment Account by no later than noon Eastern time for same day application

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Payment Notification this ____ day of _____, 201__.

Sincerely,

[BORROWER REPRESENTATIVE]

By: _____
Name: _____
Title: _____

Schedule 2.1 - Amortization

With respect to each advance under the Term Loan, commencing on December 1, 2018, and continuing on the same day of each month thereafter until the advance is repaid in full, Borrowers shall pay to Agent as a principal payment under the Term Loan an amount equal to (a) the amount of such advance *divided by* (b) thirty (30).

Notwithstanding anything to the contrary contained in the foregoing, the entire remaining outstanding principal balance under each of the Term Loans shall mature and be due and payable upon the Termination Date.

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Credit Party/ Borrower	Prior Names	Type of Entity / State of Formation	States Qualified	State Org. ID Number	Federal Tax ID Number	Location of Borrower (address)
AxoGen, Inc.	n/a	Minnesota	None.	2Z-782	41-1301878	13631 Progress Boulevard Suite 400 Alachua, FL 32615
AxoGen Corporation	n/a	Delaware	Alabama Florida Kansas Kentucky Maine New York	295902 F06000004632 4294591 0867874 20090961 F 3908099	55-0805988	13631 Progress Boulevard Suite 400 Alachua, FL 32615

Schedule 3.4 – Capitalization

Credit Party	Shares of Common Stock Authorized	Options and Warrants	Shares of Common Stock Issued and Outstanding	Additional Information
AxoGen, Inc.	50,000,000	3,509,264 (Options) 44,843 (Warrant)	32,898,115	Essex Woodlands Registration Rights Agreement whereby it has a participation right in offerings.
AxoGen Corporation	1,000	-	1,000	AxoGen, Inc. is the sole shareholder of AxoGen Corporation.

Schedule 3.6 – Litigation

None.

Schedule 3.15 – Brokers

A broker's fee in an amount equal to $310,000, paid on the Closing Date pursuant to the Exclusive Placement Agreement by and between AxoGen, Inc. and Trump Securities LLC and Credo 180, LLC, the broker-dealer is Trump Securities LLC and Credo 180, LLC.

Schedule 3.17 – Material Contracts

Credit Party	Other Party to Contract	Title/Date of Contract
AxoGen Corporation	Community Blood Center (d/b/a Community Tissue Services)	License and Services Agreement dated August 6, 2015.
AxoGen Corporation	University of Florida Research Foundation, Inc.	Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms dated February 21, 2006, as amended to date.
AxoGen Corporation	The Board of Regents of the University of Texas System	Patent License Agreement dated August 2, 2005, as amended to date.
AxoGen, Inc.	Cook Biotech Incorporated	Distribution Agreement dated August 27, 2008 as amended to date.

Schedule 3.18 – Environmental Compliance

None.

Schedule 3.19 – Intellectual Property

INTANGIBLE ASSETS SCHEDULE

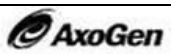
INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AxoGen Nerve Regeneration - Nerve Recovery Training Video.	Copyright	PAu003375221	2009	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video & 4 other titles.	Copyright	V3622D050	2012	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video & 4 other titles (copyright) / Reg. V3608D804.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) & 7 other titles.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration -nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video. PAu 3-375-221.	Copyright	V3608D804	2011	
AxoGen Corporation	AxoGen Nerve Regeneration--Nerve Recovery Training Video. PAu 3-375-221.	Copyright	V3586D387	2010	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video. PAu3375221.	Copyright	V3622D050	2012	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video / Reg. PA3375221.	Copyright	V9918D288	2014	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent	US 14/036,405	9/25/2013	NA
AxoGen, Inc.	Connector and Wrap for End-to-Side Nerve Coaptation	Patent Application	US 62/251901	11/6/2015	NA
AxoGen, Inc.	Implant Devices With a Pre-Set Pulley System	Patent Application	US 62/247,938	10/29/2015	NA
AxoGen, Inc.	Quantitative Structural Assay of a Nerve Graft	Patent Application	US 14/724,359	5/28/2015	NA
AxoGen, Inc.	Two-Point Disciminator Sensory Measurement Device	Design Patent Application	US 29/531,797	6/30/2015	NA
AxoGen, Inc.	Organotypic DRG-Peripheral Nerve Cuture System	Patent Application	US 14/724,365	5/28/2015	NA
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	US 8,545,485 PCT/US2009/041266 WO 2009/132012	4/21/2009	5/8/32
AxoGen, Inc. and AxoGen Corporation	Antiviral Patch	Patent Application	US2007/0026056 PCT/US2004/000392 WO2004062600 US 11/535,214 US 09/688,445	9/26/2006	NA
LecTec Corporation	Hand Sanitizing Patch	Patent Application	US2011/0105976 PCT/US2009/01407 WO2009111040 US 12/921,253	12/20/2010	NA

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
LecTec Corporation	Hand Sanitizing Patch Having an Integrally Bonded Antimicrobial	Patent Application	US 2011/0293681 PCT/US2011/026319 WO2011106700 US 13/035,535	2/25/2011	NA
LecTec Corporation	Acne Patch	Patent	US 6,495,158	1/19/2001	NA
LecTec Corporation	Antipruritic Patch	Patent	US 6,469,227 PCT/US2000/012970 WO2001041745	5/12/2000	NA
LecTec Corporation	Anti-itch Patch	Patent Application	PCT/US2000/033498 WO2001041746	12/11/200	NA
LecTec Corporation	Therapeutic Method for Treating Acne or Isolated Pimples and Adhesive Patch Therefor	Patent	US 6,455,065 PCT/US2000/013539 WO2000069405	5/18/1999	NA
LecTec Corporation	Aqueous Gel Would Dressing and Package	Patent Application	PCT/US1992/008403 WO1993006802	NA	NA
LecTec Corporation	Aqueous Gel and Package For a Wound Dressing and Method	Patent	US 6,406,712 US 07/774,064 US 08/328,619	10/25/1994	NA
LecTec Corporation	Biologically Active Aqueous Gel Wound Dressing	Patent	US 5,804,213 US 07/914751	7/15/1992	NA
LecTec Corporation	Mixing and Dispensing Package for a Wound Dressing	Patent	US 6,620,436 US 08/345,215 US 07/913,151 US 07/774,064	11/28/1994	NA

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
LecTec Corporation	Inhalation Therapy Decongestant With Foraminous Carrier	Patent	US 6,090,403 US 09/135,104	8/17/1998	NA
LecTec Corporation	Treating Traumatic Burns or Blisters of the Skin	Patent	US 6,348,212 US 09/314,271 US 2001/0055608	5/18/1999	NA
LecTec Corporation	Psoriasis Patch	Patent	US 6,830,758 US 2003/0077316 US 09/824,533	4/2/2001	8/8/21
LecTec Corporation	Treating Viral Infection at Smallpox Vaccination Site	Patent	US 7,288,265 US 09/688,445 US 10/228,809	1/8/2003	5/6/22
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	CA 2721945 PCT/US2009/041266 WO2009/132012	4/21/2009	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	EP2900292	9/25/2013	NA
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	EP2276410	4/21/2009	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	2013/80049387.3	9/25/2013	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	16100027.9	9/25/2013	NA
AxoGen Corporation	AVIVE	US Trademark	86758930	9/16/2015	
AxoGen Corporation	AVIVE SOFT TISSUE BARRIER	US Trademark	86831990	11/25/2015	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation		US Trademark	86832049	11/25/2015	
AxoGen Corporation	ACROVAL	US Trademark	86800802	10/27/2015	
AxoGen Corporation		US Trademark	86832476	11/25/2015	
AxoGen Corporation	AXOGUARD	Canada Trademark	1436230	4/28/2009	
AxoGen Corporation		Canada Trademark	1436230	4/28/2009	
AxoGen Corporation		Canada Trademark	1778914	4/22/2016	
AxoGen Corporation	AxoGen	Canada Trademark	1339181 TMA763833	3/13/2007 4/9/2010	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AVANCE	Canada Trademark	1778915	4/22/2016	
AxoGen Corporation		Canada Trademark	1778917	4/22/2016	
AxoGen Corporation	AVANCE NERVE GRAFT	Canada Trademark	1339356 TMA763791	3/14/2007 4/9/2010	
AxoGen Corporation		Europe Trademark	005791521	3/13/2007	
AxoGen Corporation	AVANCE NERVE GRAFT	Europe Trademark	005783352	3/14/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Japan Trademark	2007-37127 5165944	4/13/2007 9/12/2018	
AxoGen Corporation	AVANCE NERVE GRAFT	Japan Trademark	2007-37128 5131894	4/13/2007 4/25/2008	
AxoGen Corporation	AVANCE NERVE GRAFT	Mexico Trademark	0843615 1016747	3/21/2007 12/7/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	0843618 1013259	3/21/2007 11/26/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	08543617	3/21/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	08543619	3/21/2007	
AxoGen, Inc.	AXOGUARD	US Trademark	77604199	10/20/2008	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen, Inc.	AXOGUARD	US Trademark	77604196	10/30/2008	
AxoGen, Inc.	AXOGEN	US Trademark	78980974	9/14/2006	
AxoGen, Inc.	AXOGEN	US Trademark	78974174	9/14/2006	
AxoGen, Inc.	AxoGen	US Trademark	77976702	11/20/2006	
AxoGen, Inc.	AxoGen	US Trademark	77047475	11/20/2006	
AxoGen, Inc.	AVANCE	US Trademark	78974529	9/14/2006	
AxoGen, Inc.	Avance	US Trademark	77100843	11/27/2007	
AxoGen, Inc.	Ranger	US Trademark	85589906	9/18/2012	
AxoGen, Inc.	RANGER	US Trademark	85598373	9/18/2012	
AxoGen Corporation	ACROPINCH	US Trademark	86875586	1/14/2016	
AxoGen Corporation	ACROGRIP	US Trademark	86874592	1/13/2016	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	PSSD	US Trademark	86875647	1/14/2016	
AxoGen Corporation	PRESSURE SPECIFIED SENSORY DEVICE	US Trademark	86843224	12/8/2015	
AxoGen, Inc.		US Trademark	86381110	8/29/2014	
AxoGen, Inc.	AXOTOUCH	US Trademark	86338751	7/17/2014	
AxoGen, Inc.	"Nerve Connector"	US Trademark			
AxoGen, Inc.	"Nerve Protector"	US Trademark			
AxoGen Corporation	"Nerve Matters"	US Trademark	87124496	8/2/2016	

INTANGIBLE ASSETS SCHEDULE (*CONTINUED*)

LICENSE AND SIMILAR AGREEMENTS

INBOUND LICENSE # 1				
Name and Date of License Agreement:	Patent License Agreement with an effective date of July 19, 2005, as amended .			
Borrower that is Licensee:	AxoGen Corporation			
Name and address of Licensor:	The Board of Regents of the University of Texas System, an agency of the State of Texas 201 West 7th Street Austin, Texas 78701			
Expiration Date of License	Upon expiration of the last to expire of the Licensed Patents.			
Exclusive License [Y/N]?	Yes			
Restrictions on:	**Right to Grant a Lien [Y/N]?**	No		
	Right to Assign [Y/N]?	No		
	Right to Sublicense [Y/N]?	No, subject to conditions.		
Does Default or Termination Affect Agent's Ability to sell [Y/N]?	No.			
Describe Licensed Intellectual Property For This License				
Name / Identifier of IP	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/ Publication or Application Number**	**Filing Date**	
Cell-Free Tissue Replacement For Tissue Engineering	Patent	US 7,402,319 US 2005/0043819 US 10/672,689	9/26/2003	

Cell-Free Tissue Replacement for Tissue Engineering	Patent Application	US 2014/0248325 US 14/274,156	5/9/2014
Cell-Free Tissue Replacement for Tissue Engineering	Patent	US 8,758,794 US 2009/0030269 US 12/135,772	6/9/2008
Biodegradable, Electrically Conducting Polymer For Tissue Engineering Applications	Patent	US 6,696,575 US 2003/0066987 PCT/US2002/009514 WO2002076288 US 10/107,705	3/27/2002

INBOUND LICENSE # 2		
Name and Date of License Agreement:	First Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms dated February 21, 2006, as amended on July 5, 2016.	
Borrower that is Licensee:	AxoGen Corporation	
Name and address of Licensor:	University of Florida Research Foundation, Inc. (UNRF) 223 Grinter Hall Gainesville, Florida 32611	
Expiration Date of License	Until the earlier of the date that no Licensed Patent remains enforceable or the payment of earned royalties ceases for more than four (4) calendar quarters on all Licensed Products and Processes.	
Exclusive License [Y/N]?	Exclusive for 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; AND A Non-exclusive license, limited to the Licensed Field and Licensed Territory under Licensed Know-How to make, have made, use and sell, offer to sell, have sold and import Licensed Products and/or Licensed Processes. UNRF reserves the right, solely for research (including research funded by 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 party by any claims of any Improvements.	
Restrictions on:	**Right to Grant a Lien [Y/N]?**	No
	Right to Assign [Y/N]?	Yes, 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.
	Right to Sublicense [Y/N]?	No

Does Default or Termination Affect Agent's Ability to sell [Y/N]?	No		
Describe Licensed Intellectual Property For This License			
Name / Identifier of IP	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/ Publication or Application Number**	**Filing Date**
Method for Decellularization of Nerve Allografts	Patent Application	US 2016/0030636 PCT/US14/30688 US 14/776,765	9/15/2015
Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and In Vitro Nerve Tissue Culture	Patent	US 6,972,168 US 2003/0040112 US 10/218,864	8/13/2002
Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and In Vitro Nerve Tissue Culture	Patent	US 7,732,200 US 2004/0180434 US 10/812,776	3/29/2004
Materials and Methods For Nerve Grafting	Patent Application	US 2013/0337549 US 13/776,606	2/25/2013
Materials and Methods For Nerve Grafting	Patent Application	US 2008/0299536 US 12/190,359	8/12/2008
Materials and Methods For Nerve Repair	Patent	US 8,986,733 US 2011/0082482 US 12/966,540	12/13/2010
Methods for Nerve Repair	Patent	US 7,851,447 US 2003/0072749 US 10/218,316	8/13/2002
Materials and Methods To Promote Repair of Nerve Tissue	Patent Application	PCT/US2002/025922 WO2003015612	8/13/2002
Materials and Methods To Promote Repair of Nerve Tissue	Patent	EP1425390 EP20020763451	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	EP14763757.3	3/17/2014

Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296 009 PCT/US2002/025922 PA/a/2004/001334	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296020 PCT/US2002/025922 MX/a/2007/012379	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296021 PCT/US2002/025922 MX/a/2007/012379	8/13/2002
Materials and Methods For Nerve Grafting Comprising Degrading Chondoitin Sulfate Proteoglycan	Patent	CA 2455827	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296019 PCT/US2002/025922 MX/a/2007/012382	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	JP2016-503443	3/17/2014
Materials and Methods for Promoting Nerve Tissue Repair	Patent	JP 4749667 JP2003520377	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	P1425390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	DE 60242143.8	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	ES1425390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	FR142390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	GB1425390	8/13/2002

Materials and Methods for Promoting Nerve Tissue Repair	Patent	IT 502012902027579	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	SE 1425390	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	2754-2015	3/17/2014
Method for Decellularization of Nerve Allografts	Patent Application	2014/80026804.7	3/17/2014
Method for Decellularization of Nerve Allografts	Patent Application	2015-7028784	3/17/2014

Schedule 4.9 – Litigation, Governmental Proceedings and Other Notice Events

None.

Schedule 5.1 – Permitted Debt; Permitted Contingent Obligations

None.

Schedule 5.2 – Permitted Liens

Credit Party Debtor	Name of Holder/Secured Party of Lien/Encumbrance	Description of Property Encumbered
AxoGen Corporation	Ja-Cole, LP – Lessor of Burleson facility	All nonexempt, per the definition of lease, personal property at Burleson
AxoGen Corporation	WIGSHAW, LLC (and SNH Medical Office Properties Trust as successor in interest) – Lessor of Progress Corporate Park facility	Tenant's property (but expressly excluding any of Tenant's interests in intellectual property, product inventory, raw materials, and human tissue in any form), now or hereafter located upon the Leased Premises
AxoGen Corporation	Cisco Systems Capital Corp.	Certain equipment leased and financed by AxoGen Corporation under Contact No. 25406089 as evidenced by the UCC-1 Financing Statement No. 2016-087-6512X filed with the Florida Secured Transaction Registry on September 6, 2016

Schedule 5.7 – Permitted Investments

None.

Schedule 5.8 – Affiliate Transactions

None.

Schedule 5.11 –Business Description

Manufacturer, developer, seller and distributor of medical products.

Schedule 5.14 – Deposit Accounts and Securities Accounts

"***"

Schedule 6.2 – Minimum Net Revenue Schedule

“*”**

Schedule 7.4 – Post Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within two (2) Business Days after the Closing Date (or such later date as Agent may agree in its sole discretion), Borrowers shall ensure that each Deposit Account of Borrowers maintained at Silicon Valley Bank on the Closing Date shall be subject to a Deposit Account Control Agreement.

2. With respect to the Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms, by and among the University of Florida Research Foundation, Inc. and AxoGen Corp, dated as of February 21, 2006 (as the same has been amended, supplemented or otherwise modified from time to time, the "**University of Florida License**") Borrower shall use commercially reasonable efforts to, within ninety (90) days of the Closing Date (or such later date as Agent may agree in its sole discretion), cause to be delivered to Agent the consent of, or waiver by, any person whose consent or waiver is necessary for (x) the University of Florida License to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise 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 Financing Documents.

3. Borrowers shall, by the date that is sixty (60) days following the Closing Date (or such later date as Agent may agree in writing), provide Agent with an executed landlord's agreement, which shall be reasonably satisfactory in form and substance to Agent (it being understood and agreed that a landlord's agreement substantially in the form of the "Landlord's Subordination and Waiver of Lien" executed in favor of Three Peaks Capital S.a.r.l. in connection with Debt owed by Borrowers to Three Peaks Capital S.a.r.l. and paid off on the Closing Date, shall be satisfactory to Agent), for the location at 13631 Progress Boulevard, Suites 400 & 600, Alachua, FL 32615.

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 8.2(a) –Products

1. Avance® Nerve Graft
2. AxoGuard® Nerve Connector
3. AxoGuard® Nerve Protector
4. AxoTouch™ Two-Point Discriminator
5. AcroVal™ Neurosensory and Motor Testing System.

Schedule 8.2(b) – Exceptions to Healthcare Representations and Warranties

None.

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's assets, including without limitation, all of each Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

(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, securities accounts, fixtures, letter 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;

(b) all of Borrowers' books and records relating to any of the foregoing; and

(c) 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.

Notwithstanding anything to the contrary of the foregoing, Collateral shall not include Excluded Property.

Schedule 9.2 – Collateral Information

Chief Executive Office and Principal Place of Business:

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	13631 Progress Boulevard, Suite 400, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust.

Location of books and records (if different from the above):

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	N/A	

Locations of owned, leased, or occupied real property:

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	13631 Progress Boulevard, Suite 400 and 600, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust
AxoGen Corporation	Boone Business Park, 300 Boone Rd., Suites A-2, 3 and 4, Burleson Texas Johnson County	Leased business location operated by Borrower(s). Lessor: Ja-Cole, LP
AxoGen Corporation	349 South Main Street, Dayton, Ohio 45402	
AxoGen, Inc.	1407 South Kings Highway, Texarkana, Texas 75501 – Record Storage (AxoGen, Inc. leases space and maintains records at this facility, which is the prior corporate headquarters)	
AxoGen Corporation	12085 Research Drive, Lab 170, Alachua, FL 32615	Licensed space at the Sid Martin Biotechnology Development Institute. Licensor: University of Florida Research Foundation, Inc.

Locations of inventory, equipment, or other property:

Credit Party/ Borrower	Address	Nature of Location
AxoGen Corporation	13631 Progress Boulevard, Suite 400 and 600, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust
AxoGen Corporation	Boone Business Park, 300 Boone Rd., Suites A-2, 3 and 4, Burleson Texas Johnson County	Leased business location operated by Borrower(s). Lessor: Ja-Cole, LP
AxoGen Corporation	349 South Main Street, Dayton, Ohio 45402	
AxoGen Corporation	12085 Research Drive, Lab 170, Alachua, FL 32615	Licensed space at the Sid Martin Biotechnology Development Institute. Licensor: University of Florida Research Foundation, Inc.

Exhibit 10.21

Execution Version

Pursuant to 17 CFR 240.24b-2, confidential information has been omitted in places marked "*" and has been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Application filed with the Commission.**

CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

dated as of October 25, 2016

by and among

AXOGEN, INC. and AXOGEN CORPORATION,

and any additional person that hereafter becomes party hereto as a "Borrower",
each as Borrower, and collectively as Borrowers,

and

MIDCAP FINANCIAL TRUST,

as Agent and as a Lender,

and

THE ADDITIONAL LENDERS

FROM TIME TO TIME PARTY HERETO

CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN)

THIS CREDIT AND SECURITY AGREEMENT (REVOLVING LOAN) (as the same may be amended, supplemented, restated or otherwise modified from time to time, the "**Agreement**") is dated as of October 25, 2016 by and among **AXOGEN, INC.**, a Minnesota corporation ("**AxoGen**") , **AXOGEN CORPORATION**, a Delaware corporation ("**AxoGen Corp**", and together with AxoGen and each other Person that from time to time becomes a borrower under this Agreement in accordance with the terms hereof, and each of their successors and permitted assigns, collectively, the "**Borrowers**" and individually, a "**Borrower**"), **MIDCAP FINANCIAL TRUST**, a Delaware statutory trust, individually as a Lender, and as Agent for the several financial institutions from time to time party to this Agreement (collectively, the "**Lenders**" and individually each a "**Lender**") and for itself as a Lender.

RECITALS

Borrowers have requested that Lenders make available to Borrowers the financing facilities as described herein. Lenders are willing to extend such credit to Borrowers under the terms and conditions herein set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, Borrowers, Lenders and Agent agree as follows:

ARTICLE 1 - DEFINITIONS

Section 1.1 Certain Defined Terms. The following terms have the following meanings:

"**Acceleration Event**" means the occurrence of an Event of Default (a) in respect of which Agent has declared all or any portion of the Obligations to be immediately due and payable pursuant to Section 10.2, (b) pursuant to Section 10.1(a), and in respect of which Agent has suspended or terminated the Revolving Loan Commitment pursuant to Section 10.2, and/or (c) pursuant to either Section 10.1(e) and/or Section 10.1(f).

"**Account Debtor**" means "account debtor", as defined in Article 9 of the UCC, and any other obligor in respect of an Account.

"**Accounts**" means, collectively, (a) any right to payment of a monetary obligation, whether or not earned by performance, (b) without duplication, any "account" (as defined in the UCC), any accounts receivable (whether in the form of payments for services rendered or goods sold, rents, license fees or otherwise), any "health-care-insurance receivables" (as defined in the UCC), any "payment intangibles" (as defined in the UCC) and all other rights to payment and/or reimbursement of every kind and description, whether or not earned by performance, (c) all accounts, "general intangibles" (as defined in the UCC), Intellectual Property, rights, remedies, Guarantees, "supporting obligations" (as defined in the UCC), "letter-of-credit rights" (as defined in the UCC) and security interests in respect of the foregoing, all rights of enforcement and collection, all books and records evidencing or related to the foregoing, and all rights under the Financing Documents in respect of the foregoing, (d) all information and data compiled or derived by any Borrower or to which any Borrower is entitled in respect of or related to the foregoing, and (e) all proceeds of any of the foregoing.

"**Acquisition**" means any transaction or series of related transactions for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any

business or division of a Person, (b) the acquisition of a majority of the outstanding equity interests of any Person or otherwise causing any Person to become a Subsidiary of a Borrower, (c) a merger or consolidation or any other combination with another Person or (d) the acquisition (including through licensing, but excluding Permitted Annual IP Acquisitions) of any Product or Intellectual Property of or from any other Person.

"**Additional Titled Agents**" has the meaning set forth in Section 11.15.

"**Additional Tranche**" means an additional amount of Revolving Loan Commitment equal to $5,000,000 (it being acknowledged that multiple Additional Tranches are permitted pursuant to Section 2.1(c) in minimum amounts of $1,000,000 each, up to, in the aggregate, the amount of this Additional Tranche).

"**Affiliate**" means, with respect to any Person, (a) any Person that directly or indirectly controls such Person, (b) any Person which is controlled by or is under common control with such controlling Person, and (c) each of such Person's (other than, with respect to any Lender, any Lender's) officers or directors (or Persons functioning in substantially similar roles) and the spouses, parents, descendants and siblings of such officers, directors or other Persons. As used in this definition, the term "control" of a Person means the possession, directly or indirectly, of the power to vote five percent (5%) or more of any class of voting securities of such Person or to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Affiliated Credit Agreement**" means that certain Credit and Security Agreement (Term Loan) (as the same may be amended, restated, supplemented or otherwise modified from time to time), among MCF, as Agent and a lender, the other lenders party thereto and Borrowers pursuant to which such Agent and lenders have extended a term loan credit facility to Borrowers.

"**Affiliated Financing Agent**" means the "Agent" under and as defined in the Affiliated Credit Agreement.

"**Affiliated Financing Documents**" means the "**Financing Documents**" as defined in the Affiliated Credit Agreement.

"**Affiliated Intercreditor Agreement**" means that certain Intercreditor Agreement dated as of the date hereof between Agent and the Affiliated Financing Agent, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"**Affiliated Obligations**" means all "Obligations", as such term is defined in the Affiliated Financing Documents.

"**Agent**" means MCF, in its capacity as administrative agent for itself and for Lenders hereunder, as such capacity is established in, and subject to the provisions of, Article 11, and the successors and assigns of MCF in such capacity.

"**Anti-Terrorism Laws**" means any Laws relating to terrorism or money laundering, including, without limitation, 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.

"**Applicable Margin**" means four and one half percent (4.5%).

"**Asset Disposition**" means any sale, lease, license, transfer, assignment or other consensual disposition by any Credit Party of any asset.

"**AxoGen**" has the meaning set forth in the introductory paragraph hereto.

"**AxoGen Corp**" has the meaning set forth in the introductory paragraph hereto.

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy", as the same may be amended, modified or supplemented from time to time, and any successor statute thereto.

"**Base LIBOR Rate**" means, for each Interest Period, the rate per annum, determined by Agent in accordance with its customary procedures, and utilizing such electronic or other quotation sources as it considers appropriate (rounded upwards, if necessary, to the next 1/100%), to be the rate at which Dollar deposits (for delivery on the first day of such Interest Period or, if such day is not a Business Day on the preceding Business Day) in the amount of $1,000,000 are offered to major banks in the London interbank market on or about 11:00 a.m. (Eastern time) two (2) Business Days prior to the commencement of such Interest Period, for a term comparable to such Interest Period, which determination shall be conclusive in the absence of manifest error.

"**Base Rate**" means a per annum rate of interest equal to the rate of interest announced, from time to time, within Wells Fargo Bank, National Association ("**Wells Fargo**") at its principal office in San Francisco as its "prime rate," with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate; *provided, however,* that Agent may, upon prior written notice to Borrower, choose a reasonably comparable index or source to use as the basis for the Base Rate.

"**Blocked Person**" means any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) 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) with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list or is named as a "listed person" or "listed entity" on other lists made under any Anti-Terrorism Law.

"**Borrower**" and "**Borrowers**" has the meaning set forth in the introductory paragraph hereto.

"**Borrower Representative**" means AxoGen, in its capacity as Borrower Representative pursuant to the provisions of Section 2.9, or any successor Borrower Representative selected by Borrowers and approved by Agent.

"**Borrowing Base**" means:

(a) the product of (i) eighty-five percent (85%)*multiplied by* (ii) the aggregate net amount at such time of the Eligible Accounts; *plus*

(b) the lesser of (i) forty percent (40%)*multiplied by* the Orderly Liquidation Value of the Eligible Inventory and (ii) forty percent (40%) *multiplied by* the value of the Eligible Inventory, valued at the lower of first-in-first-out cost or market cost, and after factoring in all rebates, discounts and

other incentives or rewards associated with the purchase of the applicable Inventory;*provided* that the amount of this clause (b) shall not exceed the lesser of (x) thirty percent (30%) of the aggregate amount of the Borrowing Base and (y) $2,000,000; *minus*

(c) the amount of any reserves and/or adjustments (if any) provided for in this Agreement.

"**Borrowing Base Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit C hereto.

"**Business Day**" means any day except a Saturday, Sunday or other day on which either the New York Stock Exchange is closed, or on which commercial banks in Washington, DC and New York City are authorized by law to close.

"**CERCLA**" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 *et seq.*, as the same may be amended from time to time.

"**Change in Control**" means any of the following events: (a) any Person other than Borrower or two or more Persons acting in concert shall have acquired beneficial ownership, directly or indirectly, of, or shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation, will result in its or their acquisition of or control over, voting stock of any Borrower (or other securities convertible into such voting stock) representing 40% or more of the combined voting power of all voting stock of any Borrower or (b) AxoGen ceases to own, directly or indirectly, 100% of the capital stock of any of its Subsidiaries with the exception of any Subsidiaries permitted to be dissolved or merged to the extent otherwise expressly permitted by this Agreement; or (c) the occurrence of a "Change of Control" or "Change in Control", or terms of similar import under any document or instrument governing or relating to Debt of or equity in such Person. As used herein, "beneficial ownership" shall have the meaning provided in Rule 13d-3 of the Securities and Exchange Commission under the Securities Exchange Act of 1934.

"**Closing Date**" means the date of this Agreement.

"**CMS**" means the federal Centers for Medicare and Medicaid Services (formerly the federal Health Care Financing Administration), and any successor Governmental Authority.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**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 Security Documents, including, without limitation, all of the property described in Schedule 9.1 hereto. Notwithstanding anything to the contrary contained herein, Collateral shall not include "Excluded Property."

"**Collections Account Post-Closing Period**" means the period beginning on the Closing Date and ending on the earlier of (a) December 15, 2016 (or such later date as Agent may agree in writing) and (b) the date on which Borrowers satisfied the requirements of clause 2 Schedule 7.4.

"**Commitment Annex**" means Annex A to this Agreement.

"**Compliance Certificate**" means a certificate, duly executed by a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit B hereto.

"**Consolidated Subsidiary**" means, at any date, any Subsidiary the accounts of which would be consolidated with those of "parent" Borrower (or any other Person, as the context may require hereunder) in its consolidated financial statements if such statements were prepared as of such date.

"**Contingent Obligation**" means, with respect to any Person, any direct or indirect liability of such Person: (a) with respect to any Debt of another Person (a "**Third Party Obligation**") if the purpose or intent of such Person incurring such liability, or the effect thereof, is to provide assurance to the obligee of such Third Party Obligation that such Third Party Obligation will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Third Party Obligation will be protected, in whole or in part, against loss with respect thereto; (b) with respect to any undrawn portion of any letter of credit issued for the account of such Person or as to which such Person is otherwise liable for the reimbursement of any drawing; (c) under any Swap Contract, to the extent not yet due and payable; (d) to make take-or-pay or similar payments if required regardless of nonperformance by any other party or parties to an agreement; or (e) for any obligations of another Person pursuant to any Guarantee or pursuant to any agreement to purchase, repurchase or otherwise acquire any obligation or any property constituting security therefor, to provide funds for the payment or discharge of such obligation or to preserve the solvency, financial condition or level of income of another Person. The amount of any Contingent Obligation shall be equal to the amount of the obligation so Guaranteed or otherwise supported or, if not a fixed and determinable amount, the maximum amount so Guaranteed or otherwise supported.

"**Controlled Group**" means all members of any group of corporations and all members of a group of trades or businesses (whether or not incorporated) under common control which, together with any Borrower, are treated as a single employer under Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

"**Correction**" means repair, modification, adjustment, relabeling, destruction or inspection (including patient monitoring) of a product without its physical removal to some other location.

"**Credit Exposure**" means, at any time, any portion of the Revolving Loan Commitmentand of any other Obligations that remains outstanding; *provided, however,* that no Credit Exposure shall be deemed to exist solely due to the existence of contingent indemnification liability, absent the assertion of a claim, or the known existence of a claim reasonably likely to be asserted, with respect thereto.

"**Credit Party**" means (a) each Borrower, (b) each Guarantor, and (c) each other Person, whether now existing or hereafter acquired or formed (i) that grants a Lien on all or substantially all of its assets to secure payment of the Obligations or (ii) all of the equity interests of which is pledged to Agent for the benefit of the Lenders; *provided, however,* that in no event shall any Excluded Foreign Subsidiary be a "Credit Party" for purposes of this Agreement or the other Financing Documents.

"**DEA**" means the Drug Enforcement Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"**Debt**" of a Person means at any date, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business, (d) all capital leases of such Person, (e) all non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument, (f) all equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person, (g) all obligations secured by a Lien on any asset of such Person, whether or not such

obligation is otherwise an obligation of such Person, (h) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts, (i) all Debt of others Guaranteed by such Person, (j) off-balance sheet liabilities and/or Pension Plan or Multiemployer Plan liabilities of such Person, (k) obligations arising under non-compete agreements, and (l) obligations arising under bonus, deferred compensation, incentive compensation, fringe benefit plans or similar arrangements, other than those arising in the Ordinary Course of Business. Without duplication of any of the foregoing, Debt of Borrowers shall include any and all Loans.

"**Default**" means any condition or event which with the giving of notice or lapse of time or both would, unless cured or waived, become an Event of Default.

"**Defined Period**" has the meaning set forth in Section 6.1.

"**Deposit Account**" means a "deposit account" (as defined in Article 9 of the UCC), an investment account, or other account in which funds are held or invested for credit to or for the benefit of any Borrower.

"**Deposit Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any Borrower and each financial institution in which such Borrower maintains a Deposit Account (other than an Excluded Account), which agreement provides that (a) such financial institution shall comply with instructions originated by Agent directing disposition of the funds in such Deposit Account without further consent by the applicable Borrower, and (b) such financial institution shall agree that it shall have no Lien on, or right of setoff or recoupment against, such Deposit Account or the contents thereof, other than in respect of usual and customary service fees and returned items for which Agent has been given value, in each such case expressly consented to by Agent, and containing such other terms and conditions as Agent may require, including as to any such agreement pertaining to any Lockbox Account, providing that such financial institution shall wire, or otherwise transfer, in immediately available funds, on a daily basis to the Payment Account (or, prior to the time of the initial borrowing of the Revolving Loans, such Deposit Account of Borrower, as Agent may direct in its sole discretion) all funds received or deposited into such Lockbox or Lockbox Account.

"**Distribution**" means as to any Person (a) any dividend or other distribution (whether in cash, securities or other property) on any equity interest in such Person (except those payable solely in its equity interests of the same class), (b) any payment by such Person on account of (i) the purchase, redemption, retirement, defeasance, surrender, cancellation, termination or acquisition of any equity interests in such Person or any claim respecting the purchase or sale of any equity interest in such Person, or (ii) any option, warrant or other right to acquire any equity interests in such Person, (c) any management fees, salaries or other fees or compensation to any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower (other than reasonable and customary (i) payments of salaries to individuals, (ii) directors fees, and (iii) advances and reimbursements to employees or directors, all in the Ordinary Course of Business), an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower, (d) any lease or rental payments to an Affiliate or Subsidiary of a Borrower, or (e) repayments of or debt service on loans or other indebtedness held by any Person holding an equity interest in a Borrower or a Subsidiary of a Borrower, an Affiliate of a Borrower or an Affiliate of any Subsidiary of a Borrower unless permitted under and made pursuant to a Subordination Agreement applicable to such loans or other indebtedness.

"**Dollars**" or "**$**" means the lawful currency of the United States of America.

"**Domestic Subsidiary**" means a direct or indirect Subsidiary of a Borrower organized under the laws of the United States of America, any State or commonwealth thereof or the District of Columbia or any territory of the United States of America.

"**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 Account**" means, subject to the criteria below, an account receivable of a Borrower, which was generated in the Ordinary Course of Business, which was generated originally in the name of a Borrower and not acquired via assignment or otherwise, and which Agent, in its good faith credit judgment and discretion, deems to be an Eligible Account. The net amount of an Eligible Account at any time shall be (a) the face amount of such Eligible Account as originally billed *minus* all cash collections and other proceeds of such Account received from or on behalf of the Account Debtor thereunder as of such date and any and all returns, rebates, discounts (which may, at Agent's option, be calculated on shortest terms), credits, allowances or excise taxes of any nature at any time issued, owing, claimed by Account Debtors, granted, outstanding or payable in connection with such Accounts at such time, and (b) adjusted by applying percentages (known as "**liquidity factors**") by payor and/or payor class based upon the applicable Borrower's actual recent collection history for each such payor and/or payor class in a manner consistent with Agent's underwriting practices and procedures. Such liquidity factors may be adjusted by Agent from time to time as warranted by Agent's underwriting practices and procedures and using Agent's good faith credit judgment. Without limiting the generality of the foregoing, no Account shall be an Eligible Account if:

(a) the Account remains unpaid more than ninety (90) days past the claim or invoice date (but in no event more than one hundred and twenty (120) days after the applicable goods or services have been rendered or delivered);

(b) the Account is subject to any defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment of any kind (but only to the extent of such defense, set-off, recoupment, counterclaim, deduction, discount, credit, chargeback, freight claim, allowance, or adjustment), or the applicable Borrower is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial process;

(c) if the Account arises from the sale of goods, any part of any goods the sale of which has given rise to the Account has been returned, rejected, lost, or damaged (but only to the extent that such goods have been so returned, rejected, lost or damaged);

(d) if the Account arises from the sale of goods, the sale was not an absolute, bona fide sale, or the sale was made on consignment or on approval or on a sale-or-return or bill-and-hold or progress billing basis, or the sale was made subject to any other repurchase or return agreement, or the goods have not been shipped to the Account Debtor or its designee or the sale was not made in compliance with applicable Laws;

(e) if the Account arises from the performance of services, the services have not actually been performed or the services were undertaken in violation of any law or the Account represents a progress billing for which services have not been fully and completely rendered;

(f) the Account is subject to a Lien (other than Permitted Liens), or Agent does not have a first priority, perfected Lien on such Account;

(g) the Account is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment, unless such Chattel Paper or Instrument has been delivered to Agent;

(h) the Account Debtor is an Affiliate or Subsidiary of a Credit Party, or if the Account Debtor holds any Debt of a Credit Party;

(i) more than fifty percent (50%) of the aggregate balance of all Accounts owing from the Account Debtor obligated on the Account are ineligible under subclause (a) above (in which case all Accounts from such Account Debtor shall be ineligible);

(j) without limiting the provisions of clause (i) above, fifty percent (50%) or more of the aggregate unpaid Accounts from the Account Debtor obligated on the Account are not deemed Eligible Accounts under this Agreement for any reason;

(k) the total unpaid Accounts of the Account Debtor obligated on the Account exceed twenty percent (20%) of the net amount of all Eligible Accounts owing from all Account Debtors (but only the amount of the Accounts of such Account Debtor exceeding such twenty percent (20%) limitation shall be considered ineligible);

(l) any covenant, representation or warranty contained in the Financing Documents with respect to such Account has been breached in any material respect;

(m) the Account is unbilled or has not been invoiced to the Account Debtor in accordance with the procedures and requirements of the applicable Account Debtor;

(n) the Account is an obligation of an Account Debtor that is the federal, state or local government or any political subdivision thereof, unless Agent has agreed to the contrary in writing and Agent has received from the Account Debtor the acknowledgement of Agent's notice of assignment of such obligation pursuant to this Agreement;

(o) the Account is an obligation of an Account Debtor that has suspended business, made a general assignment for the benefit of creditors, is unable to pay its debts as they become due or as to which a petition has been filed (voluntary or involuntary) under any law relating to bankruptcy, insolvency, reorganization or relief of debtors, or the Account is an Account as to which any facts, events or occurrences exist which would reasonably be expected to impair the validity, enforceability or collectability of such Account or reduce the amount payable or delay payment thereunder;

(p) the Account Debtor has its principal place of business or executive office outside the United States;

(q) the Account is payable in a currency other than United States dollars;

(r) the Account Debtor is an individual;

(s) the Borrower owning such Account has not signed and delivered to Agent notices, in the form requested by Agent, directing the Account Debtors to make payment to the applicable Lockbox Account;

(t) the Account includes late charges or finance charges (but only such portion of the Account shall be ineligible); or

(u) the Account arises out of the sale of any Inventory upon which any other Person holds, claims or asserts a Lien (other than Liens in favor of Agent or the Affiliated Financing Agent).

"**Eligible Inventory**" means Inventory owned by a Borrower and acquired and dispensed by such Borrower in the Ordinary Course of Business that Agent, in its good faith credit judgment and discretion,

deems to be Eligible Inventory. Without limiting the generality of the foregoing, no Inventory shall be Eligible Inventory if:

(a) such Inventory is not owned by a Borrower free and clear of all Liens and rights of any other Person (including the rights of a purchaser that has made progress payments and the rights of a surety that has issued a bond to assure such Borrower's performance with respect to that Inventory);

(b) such Inventory is placed on consignment or is in transit;

(c) such Inventory is covered by a negotiable document of title, unless such document has been delivered to Agent with all necessary endorsements, free and clear of all Liens except those in favor of Agent;

(d) such Inventory is excess, obsolete, unsalable, shopworn, seconds, damaged, unfit for sale, unfit for further processing, is of substandard quality or is not of good and merchantable quality, free from any defects;

(e) such Inventory consists of marketing materials, display items or packing or shipping materials, manufacturing supplies or Work-In-Process;

(f) such Inventory is not subject to a first priority Lien in favor of Agent;

(g) such Inventory consists of goods that can be transported or sold only with licenses that are not readily available or of any substances defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic substance, or similar term, by any environmental law or any Governmental Authority applicable to Borrowers or their business, operations or assets;

(h) such Inventory is not covered by casualty insurance reasonably acceptable to Agent;

(i) any covenant, representation or warranty contained in the Financing Documents with respect to such Inventory has been breached in any material respect;

(j) such Inventory is located (i) outside of the continental United States or (ii) on premises where the aggregate amount of all Inventory (valued at cost) of Borrowers located thereon is less than $10,000;

(k) such Inventory is located on premises with respect to which Agent has not received a landlord, warehouseman, bailee or mortgagee letter acceptable in form and substance to Agent;

(l) such Inventory consists of (A) discontinued items, (B) slow-moving or excess items held in inventory, or (C) used items held for resale;

(m) such Inventory does not consist of finished goods;

(n) such Inventory does not meet, in all material respects, all standards imposed by any Governmental Authority, including with respect to its production, acquisition or importation (as the case may be);

(o) such Inventory has an expiration date within the next three (3) months;

(p) such Inventory is held for rental or lease by or on behalf of Borrowers; or

(q) such Inventory is subject to any licensing, patent, royalty, trademark, trade name or copyright agreement with any third parties, which agreement restricts the ability of Agent or any Lender to sell or otherwise dispose of such Inventory.

Agent and Borrowers agree that Inventory shall be subject to periodic appraisal by Agent and that, after reasonable discussion among the Borrower Representative, the Agent and/or the appraisers, the valuation of Inventory may be subject to adjustment pursuant to the results of such appraisal. Notwithstanding the foregoing, the valuation of Inventory shall be subject to any legal limitations on sale and transfer of such Inventory.

"**Environmental Laws**" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, standards, policies and other governmental directives or requirements, as well as common law, pertaining to the environment, natural resources, pollution, health (including any environmental clean-up statutes and all regulations adopted by any local, state, federal or other Governmental Authority, and any statute, ordinance, code, order, decree, law rule or regulation all of which pertain to or impose liability or standards of conduct concerning medical waste or medical products, equipment or supplies), safety or clean-up that apply to any Borrower and relate to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. § 11001 *et seq.*), the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. § 4851 *et seq.*), any analogous state or local laws, any amendments thereto, and the regulations promulgated pursuant to said laws, together with all amendments from time to time to any of the foregoing and judicial interpretations thereof.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as the same may be amended, modified or supplemented from time to time, and any successor statute thereto, and any and all rules or regulations promulgated from time to time thereunder.

"**ERISA Plan**" means any "employee benefit plan", as such term is defined in Section 3(3) of ERISA (other than a Multiemployer Plan), which any Borrower maintains, sponsors or contributes to, or, in the case of an employee benefit plan which is subject to Section 412 of the Code or Title IV of ERISA, to which any Borrower or any member of the Controlled Group may have any liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five (5) years, or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

"**Event of Default**" has the meaning set forth in Section 10.1.

"**Excluded Account**" means (a) payroll, withholding, tax, escrow, employee benefit or wage payments, trust or other similar accounts, *provided* that, in each case, the aggregate balance in such accounts does not exceed the amount necessary to make the immediately succeeding payroll, payroll tax or benefit payment (or such minimum amount as may be required by any requirement of Law with respect to such accounts), (b) zero balance accounts; provided that such accounts have been identified to Agent by Borrowers as such, (c) deposit accounts held with financial institutions outside of the United States, with respect to which the aggregate amount on deposit, collectively for all such accounts of Borrowers or their

Subsidiaries, does not exceed $50,000 at any time, and (d) deposit accounts located in the United States with respect to which the aggregate amount on deposit, individually for all such accounts and collectively for all such accounts of Borrowers or their Subsidiaries, does not exceed $50,000 at any time.

"**Excluded Foreign Subsidiary**" means (a) AxoGen Europe GmbH, a limited liability corporation with its corporate seat in Vienna, Austria and (b) each other Subsidiary of Borrower not organized under the laws of the United States, a state thereof, or the District of Columbia that Agent may agree (in its sole discretion) in writing from time to time after the Closing Date to designate as an "Excluded Foreign Subsidiary" for purposes of this Agreement; unless and until, in each case, such Subsidiary has been made a Credit Party hereunder in accordance with the provisions set forth in Section 4.11.

"**Excluded Property**" means:

(a) any lease, license, contract, permit, letter of credit, instrument, or agreement to which Borrower is a party or any of its rights or interests thereunder if and to the extent that the grant of such security interest shall constitute or result in (i) the abandonment, invalidation or unenforceability of any right, title or interest of any Borrower therein or (ii) result in a breach or termination pursuant to the terms of, or a default under, any such lease, license, contract, permit, agreement or other property right (other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408 or 9-409 of the UCC of any relevant jurisdiction or any other applicable law); *provided*, *however*, that such security interest or lien (x) shall attach immediately at such time as the condition causing such abandonment, invalidation or unenforceability shall be remedied, (y) to the extent severable, shall attach immediately to each term of such lease, license, contract, property rights or agreement that does not result in any of the consequences specified in (i) or (ii) above and (z) shall attach immediately to each such lease, license, contract, property rights or agreement to which the account debtor or Borrower's counterparty has consented to such attachment;

(b) more than 65% of the voting stock of each Excluded Foreign Subsidiary directly held by any Borrower, if the grant of a security interest in excess of such percentage to secure the Obligations would cause material adverse tax consequences for such Borrower under the Code; *provided* that immediately upon any amendment of the Code that would allow the pledge of a greater percentage of such voting stock without material adverse tax consequences to such Borrower, "Collateral" shall automatically and without further action required by, and without notice to, any Person include such greater percentage of voting stock of such Excluded Foreign Subsidiary from that time forward;

(c) any intent to use U.S. trademark applications for which a statement of use has not been filed and duly accepted by the United States Patent and Trademark Office (provided, that upon such filing and acceptance, such intent-to-use application shall be included in the definition of Collateral); and

(d) Excluded Accounts;

provided, that Excluded Property shall not, in any case, include any proceeds, substitutions or replacements of Excluded Property (unless such proceeds, substitutions or replacement would itself constitute Excluded Property).

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Agent or a Lender or required to be withheld or deducted from a payment to Agent or a Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Agent or such Lender being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the

case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or (ii) such Lender changes its lending office, (c) Taxes attributable to such Agent's or such Lender's failure to comply with Section 2.8(c) and (d) any U.S. federal withholding Taxes imposed under FATCA.

"**FDA**" means the Food and Drug Administration of the United States of America, any comparable state or local Governmental Authority, any comparable Governmental Authority in any non-United States jurisdiction, and any successor agency of any of the foregoing.

"FATCA" means Sections 1471, 1472, 1473 and 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), current or future United States Treasury Regulations promulgated thereunder and published guidance with respect thereto, any applicable agreements entered into pursuant to Section 1471(b)(1) of the Code, and any applicable intergovernmental agreements (and related official administrative guidance) with respect 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.

"**Fee Letter**" means each agreement between Agent and Borrower relating to fees payable to Agent, for its own account, in connection with the execution of this Agreement.

"**Financing Documents**" means this Agreement, any Notes, the Security Documents, each Fee Letter, the Affiliated Intercreditor Agreement, each subordination or intercreditor agreement pursuant to which any Debt and/or any Liens securing such Debt is subordinated to all or any portion of the Obligations and all other documents, instruments and agreements related to the Obligations and heretofore executed, executed concurrently herewith or executed at any time and from time to time hereafter, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Foreign Subsidiary**" means any Subsidiary that is not a Domestic Subsidiary and that is a "controlled foreign corporation" within the meaning of Section 957 of the Code.

"**GAAP**" means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the United States accounting profession), which are applicable to the circumstances as of the date of determination.

"**General Intangible**" means any "general intangible" as defined in Article 9 of the UCC, and any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas or other minerals before extraction, but including payment intangibles and software.

"**Good Manufacturing Practices**" means current good manufacturing practices, as set forth in 21 C.F.R. Parts 210 and 211.

"**Governmental Authority**" means any nation or government, any state, local or other political subdivision thereof, and any agency, department or Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any corporation or other Person

owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

"**Guarantee**" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep-well, to purchase assets, goods, securities or services, to take-or-pay, or to maintain financial statement conditions or otherwise), or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part), *provided*, *however*, that the term Guarantee shall not include endorsements for collection or deposit in the Ordinary Course of Business. The term "**Guarantee**" used as a verb has a corresponding meaning.

"**Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver, any Guarantee of any portion of the Obligations.

"**Hazardous Materials**" means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives, flammable materials; radioactive materials; polychlorinated biphenyls and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which is prohibited by any Environmental Laws; toxic mold, any substance that requires special handling; and any other material or substance now or in the future defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic pollutant," "contaminant," "pollutant" or other words of similar import within the meaning of any Environmental Law, including: (a) any "hazardous substance" defined as such in (or for purposes of) CERCLA, or any so-called "superfund" or "superlien" Law, including the judicial interpretation thereof; (b) any "pollutant or contaminant" as defined in 42 U.S.C.A. § 9601(33); (c) any material now defined as "hazardous waste" pursuant to 40 C.F.R. Part 260; (d) any petroleum or petroleum by-products, including crude oil or any fraction thereof; (e) natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel; (f) any "hazardous chemical" as defined pursuant to 29 C.F.R. Part 1910; (g) any toxic or harmful substances, wastes, materials, pollutants or contaminants (including, without limitation, asbestos, polychlorinated biphenyls, flammable explosives, radioactive materials, infectious substances, materials containing lead-based paint or raw materials which include hazardous constituents); and (h) any other toxic substance or contaminant that is subject to any Environmental Laws or other past or present requirement of any Governmental Authority.

"**Hazardous Materials Contamination**" means contamination (whether now existing or hereafter occurring) of the improvements, buildings, facilities, personalty, soil, groundwater, air or other elements on or of the relevant property by Hazardous Materials, or any derivatives thereof, or on or of any other property as a result of Hazardous Materials, or any derivatives thereof, generated on, emanating from or disposed of in connection with the relevant property.

"**Healthcare Laws**" means all applicable Laws relating to the procurement, development, provision, clinical and non-clinical evaluation or investigation, product approval or clearance, manufacture, production, analysis, distribution, dispensing, importation, exportation, use, handling, quality, reimbursement, sale, labeling, advertising, promotion, or postmarket requirements of any drug, medical device, clinical laboratory service, food, dietary supplement, or other product (including, without limitation, any ingredient or component of, or accessory to, the foregoing products) subject to regulation under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. et seq.), Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. §263a et seq) and its implementing regulations (42 C.F.R. Part 493) and similar state or

foreign laws, controlled substances laws, pharmacy laws, consumer product safety laws, Medicare, Medicaid, and all laws, policies, procedures, requirements and regulations pursuant to which Permits are issued, in each case, as the same may be amended from time to time.

"**Indemnified Taxes"** means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrowers under any Financing Document and (b) to the extent not otherwise described in (a), Other Taxes.

"**Instrument**" means "instrument", as defined in Article 9 of the UCC.

"**Intellectual Property**" means 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.

"**Interest Period**" means any period commencing on the first day of a calendar month and ending on the last day of such calendar month.

"**Inventory**" means "inventory" as defined in Article 9 of the UCC.

"**Investment**" means, with respect to any Person, directly or indirectly, (a) to purchase or acquire any stock or stock equivalents, or any obligations or other securities of, or any interest in, any Person, including the establishment or creation of a Subsidiary, (b) to make or commit to make any acquisition (including through licensing) of (i) of all or substantially all of the assets of another Person, or (ii) any business, Product, business line or product line, division or other unit operation of any Person or (c) make or purchase any advance, loan, extension of credit or capital contribution to, or any other investment in, any Person.

"**Laws**" means any and all federal, state, provincial, territorial, local and foreign statutes, laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, codes, injunctions, permits, governmental agreements and governmental restrictions, whether now or hereafter in effect, which are applicable to any Credit Party in any particular circumstance. "**Laws**" includes, without limitation, Healthcare Laws and Environmental Laws.

"**Lender**" means each of (a) MCF, in its capacity as a lender hereunder, (b) each other Person party hereto in its capacity as a lender hereunder, (c) each other Person that becomes a party hereto as Lender pursuant to Section 11.17, and (d) the respective successors of all of the foregoing, and "**Lenders**" means all of the foregoing.

"**LIBOR Rate**" means, for each Loan, a per annum rate of interest equal to the greater of (a) one half of one percent (0.5%) and (b) the rate determined by Agent (rounded upwards, if necessary, to the next 1/100th%) by *dividing* (i) the Base LIBOR Rate for the Interest Period,*by* (ii) the sum of one *minus* the daily average during such Interest Period of the aggregate maximum reserve requirement (expressed as a decimal) then imposed under Regulation D of the Board of Governors of the Federal Reserve System (or any successor thereto) for "Eurocurrency Liabilities" (as defined therein).

"**Lien**" means, with respect to any asset, any mortgage, lien, pledge, charge, security interest or encumbrance of any kind, in respect of such asset. For the purposes of this Agreement and the other Financing Documents, any Borrower or any Subsidiary shall be deemed to own subject to a Lien any asset which it has acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"**Litigation**" means any action, suit or proceeding before any court, mediator, arbitrator or Governmental Authority.

"**Loan Account**" has the meaning set forth in Section 2.6(b).

"**Loan(s)**" means the Revolving Loans.

"**Lockbox**" has the meaning set forth in Section 2.11.

"**Lockbox Account**" means an account or accounts maintained at the Lockbox Bank into which collections of Accounts are paid, which account or accounts shall be, if requested by Agent, opened in the name of Agent (or a nominee of Agent).

"**Lockbox Bank**" has the meaning set forth in Section 2.11.

"**Lockbox Post-Closing Period**" means the period beginning on the Closing Date and ending on the earlier of (a) sixty (60) days after the Closing Date (or such later date as Agent may agree in writing) and (b) the date on which Borrowers shall have established a Lockbox and related Lockbox Accounts into which all collections of Accounts shall be deposited and shall have executed with the Lockbox Bank a Deposit Account Control Agreement or such other agreements related to such Lockbox as Agent may require.

"**Market Withdrawal**" means a Person's Removal or Correction of a distributed product which involves a minor violation that would not be subject to legal action by the FDA or which involves no violation, e.g., normal stock rotation practices, routine equipment adjustments and repairs, etc.

"**Material Adverse Effect**" means with respect to any event, act, condition or occurrence of whatever nature (including any adverse determination in any litigation, arbitration, or governmental investigation or proceeding), whether singly or in conjunction with any other event or events, act or acts, condition or conditions, occurrence or occurrences, whether or not related, a material adverse change in, or a material adverse effect upon, any of (a) the condition (financial or otherwise), operations, business, properties of any of the Credit Parties, taken as a whole, (b) the rights and remedies of Agent or Lenders under any Financing Document, or the ability of any Credit Party to perform any of its obligations under any Financing Document to which it is a party, (c) the legality, validity or enforceability of any Financing Document, (d) the existence, perfection or priority of any security interest granted in any Financing Document, (e) the value of any material Collateral, or (f) the prospect of repayment of any portion of the Obligations.

"**Material Contracts**" means (a) the Subordinated Debt Documents, (b) the agreements listed on Schedule 3.17, and (c) any other agreement or contract to which a Credit Party or its Subsidiaries is a party the termination of which would reasonably be expected to result in a Material Adverse Effect.

"**Material Intangible Assets**" means all of (i) Borrower's Intellectual Property and (ii) license or sublicense agreements or other agreements with respect to rights in Intellectual Property, in each case that

are material to the condition (financial or other), business or operations of Borrower, as reasonably determined by Agent.

"**Maturity Date**" means May 1, 2021.

"**Maximum Lawful Rate**" has the meaning set forth in Section 2.7.

"**MCF**" means MidCap Financial Trust, a Delaware statutory trust, and its successors and assigns.

"**Medicaid**" means the medical assistance programs administered by state agencies and approved by CMS pursuant to the terms of Title XIX of the Social Security Act, codified at 42 U.S.C. 1396 et seq.

"**Medicare**" means the program of health benefits for the aged and disabled administered by CMS pursuant to the terms of Title XVIII of the Social Security Act, codified at 42 U.S.C. 1395 et seq.

"**Minimum Balance**" means, at any time, an amount that equals the product of: (i) the average Borrowing Base (or, if less on any given day, the Revolving Loan Commitment) during the immediately preceding month *multiplied by* (ii) the Minimum Balance Percentage for such month.

"**Minimum Balance Fee**" means a fee equal to (a) the positive difference, if any, remaining after subtracting (i) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month (without giving effect to the clearance day calculations referenced in Section 2.2(a) from (ii) the Minimum Balance *multiplied by* (b) the highest interest rate applicable to the Revolving Loans during such month (or, during the existence of an Event of Default, the default rate of interest set forth in Section 10.5(a)).

"**Minimum Balance Percentage**" means thirty percent (30%).

"**Monthly Cash Burn Amount**" means, with respect to Borrowers, an amount equal to Borrowers' change in cash and cash equivalents, without giving effect to any increase resulting from contributions or proceeds of financings, for either (a) the immediately preceding six (6) month period as determined as of the last day of the month immediately preceding the proposed consummation of the Permitted Acquisition and based upon the financial statements delivered to Agent in accordance with this Agreement for such period or (b) the immediately succeeding six (6) month period based upon the Transaction Projections, using whichever calculation as between clause (a) and clause (b) demonstrates a higher burn rate (or, in other words, more cash used), in either case, divided by six (6).

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) of ERISA to which any Borrower or any other member of the Controlled Group (or any Person who in the last five years was a member of the Controlled Group) is making or accruing an obligation to make contributions or has within the preceding five plan years (as determined on the applicable date of determination) made contributions.

"**Net Revenue**" has the meaning set forth in Section 6.1.

"**Notes**" has the meaning set forth in Section 2.3.

"**Notice of Borrowing**" means a notice of a Responsible Officer of Borrower Representative, appropriately completed and substantially in the form of Exhibit D hereto.

"**Obligations**" means all obligations, liabilities and indebtedness (monetary (including, without limitation, the payment of interest and other amounts arising after the commencement of any case with respect to any Credit Party under the Bankruptcy Code or any similar statute which would accrue and become due but for the commencement of such case, whether or not such amounts are allowed or allowable in whole or in part in such case) or otherwise) of each Credit Party under this Agreement or any other Financing Document, in each case howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereafter existing, or due or to become due.

"**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.

"**Operative Documents**" means the Financing Documents and the Subordinated Debt Documents.

"**Ordinary Course of Business**" means, in respect of any transaction involving any Credit Party, the ordinary course of business of such Credit Party and undertaken in good faith and in consideration of strategic growth and development of such Credit Party and not for the purpose of evading any term, provision or restriction of this Agreement, the other Financing Documents or any Material Contract.

"**Orderly Liquidation Value**" means the net amount (after all costs of sale), expressed in terms of money, which Agent, in its good faith discretion, estimates can be realized from a sale, as of a specific date, given a reasonable period to find a purchaser(s), with the seller being compelled to sell on an as-is/where-is basis.

"**Organizational Documents**" means, with respect to any Person other than a natural person, the documents by which such Person was organized (such as a certificate of incorporation, certificate of limited partnership or articles of organization, and including, without limitation, any certificates of designation for preferred stock or other forms of preferred equity) and which relate to the internal governance of such Person (such as by-laws, a partnership agreement or an operating agreement, joint venture agreement, limited liability company agreement or members agreement), including any and all shareholder agreements or voting agreements relating to the capital stock or other equity interests of such Person.

"**Other Connection Taxes**" means, with respect to Agent or any Lender, Taxes imposed as a result of a present or former connection between Agent or such Lender and the jurisdiction imposing such Tax (other than connections arising from Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Financing Document, or sold or assigned an interest in any Loan or Financing Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Financing Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.8(f) or (g)).

"**Participant Register**" has the meaning set for in Section 11.17(a)(iii).

"**Payment Account**" means the account specified on the signature pages hereof into which all payments by or on behalf of each Borrower to Agent under the Financing Documents shall be made, or such other account as Agent shall from time to time specify by notice to Borrower Representative.

"**PBGC**" means the Pension Benefit Guaranty Corporation and any Person succeeding to any or all of its functions under ERISA.

"**Pension Plan**" means any ERISA Plan that is subject to Section 412 of the Code or Title IV of ERISA.

"**Perfection Certificate**" means the Perfection Certificate delivered to Agent as of the Closing Date, together with any amendments thereto required under this Agreement.

"**Permit**" means all licenses, certificates, accreditations, product clearances or approvals, provider numbers or provider authorizations, supplier numbers, marketing authorizations, drug or device authorizations and approvals, other authorizations, franchises, qualifications, accreditations, registrations, permits, consents and approvals of a Credit Party 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. Without limiting the generality of the foregoing, "**Permit**" includes any Regulatory Required Permit.

"Permitted Acquisition" means any Acquisition by a Borrower, in each case, to the extent that each of the following conditions shall have been satisfied:

(a) at the time of such Acquisition and after giving effect thereto, no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with all applicable Laws and in conformity with all applicable governmental authorizations;

(c) in the case of the Acquisition of capital stock, all of the capital stock acquired or otherwise issued by such Person or any newly formed Subsidiary of a Credit Party in connection with such Acquisition shall be owned 100% by such Credit Party;

(d) the Acquisition shall be consensual (not "hostile") and, if applicable, shall have been approved by the board of directors or other governing body or controlling Person of the Person acquired or the Person from whom such assets or division is acquired;

(e) no Debt or Liens are assumed or created (other than Permitted Liens and Permitted Debt) in connection with such Acquisition;

(f) all actions necessary for the Agent, for the benefit of the Lenders, to be granted a perfected first priority Lien in all assets acquired pursuant to such Permitted Acquisition shall, to the extend required to be taken prior to or simultaneously with such Permitted Acquisition, have been taken in accordance with Section 4.11;

(g) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days (or such shorter period as Agent may agree, in writing) prior to the closing of such proposed Acquisition: (i) a description of the proposed Acquisition; (ii) to the extent available, a due

diligence package (including, to the extent available, a quality of earnings report), in each case, subject to execution by the Agent of any required non-disclosure and/or "non-reliance" or similar letters to the extent reasonably requested by Borrower Representative; and (iii) executed counterparts or final drafts of the respective agreements, documents or instruments pursuant to which such Acquisition is to be consummated, any schedules to such agreements, documents or instruments and all other material ancillary agreements, instruments and documents to be executed or delivered in connection therewith, and to the extent required under the related acquisition agreement, all required regulatory and third party approvals;

(h) concurrently with delivery of the notice referred to in clause (g) of this definition (or such shorter period as Agent may agree, in writing), the applicable Credit Party shall have delivered to the Agent, in form and substance reasonably satisfactory to the Agent, a certificate of a Responsible Officer (i) certifying that before and after giving effect to the Acquisition and the transactions contemplated thereby, the Borrower and its Subsidiaries shall be in compliance with all of the terms of this definition of "Permitted Acquisition" and (ii) demonstrating, on a pro forma basis after giving effect to the consummation of such Acquisition, that Borrowers are in compliance with the financial covenants set forth in Article 6;

(i) in the case of an Acquisition that will be consummated by way of a merger with a Credit Party, such Credit Party shall be the surviving Person;

(j) the assets acquired in such Acquisition are for use in the same line of business as the Credit Parties are currently engaged or a line of business reasonably related thereto;

(k) unless Agent shall agree otherwise in writing, such Acquisition shall not involve the creation or acquisition of any Foreign Subsidiary;

(l) Agent has received, prior to the consummation of such Acquisition, updated financial projections, in form and substance reasonably satisfactory to Agent, for the immediately succeeding twelve (12) months following the proposed consummation of the Acquisition beginning with the month during which the Acquisition is to be consummated (the "**Transaction Projections**") and such other evidence as Agent may reasonably request demonstrating that Borrowers have, immediately before and immediately after giving effect to the consummation of such Acquisition, unrestricted cash in one or more Deposit Accounts, that in each case are subject to a first priority perfected security interest in favor Agent, in an aggregate amount equal to or greater than the positive value of the product of (x) twelve (12) *multiplied by* (y) the Monthly Cash Burn Amount, as determined as of the last day of the month immediately preceding such Acquisition; and

(m) the total cash consideration paid or payable (including, without limitation, deferred purchase price, seller notes, earnouts and other similar liabilities) for such Acquisition, and together with all other Permitted Acquisitions, (i) shall be funded with cash on hand of the Borrowers or the net proceeds from the incurrence of Subordinated Debt, which cash consideration, in all cases, shall not exceed an amount equal to $5,000,000 (or such greater amount as may be agreed to be Required Lenders) in the aggregate during the term of this Agreement or (ii) shall be funded with net cash proceeds received by Borrowers from the issuance of common stock of AxoGen following the Closing Date ("**New Equity Proceeds**"); *provided*, in each case, that Agent shall have received reasonably satisfactory evidence of Credit Parties receipt of such New Equity Proceeds.

Notwithstanding the foregoing, no Accounts or Inventory acquired by a Credit Party in a Permitted Acquisition shall be included as Eligible Accounts or Eligible Inventory until a field examination (and, if required by Agent, an Inventory appraisal) with respect thereto has been completed to the satisfaction of Agent, including the establishment of reserves required in Agent's sole discretion; *provided* that field examinations and appraisals in connection with Permitted Acquisitions shall not count against the limited number of field examinations or appraisals for which expense reimbursement may be sought.

"**Permitted Annual IP Acquisitions**" means the acquisition (including through licensing) by a Credit Party of any Product or Intellectual Property of or from any other Person in the Ordinary Course of Business; *provided* that total cash consideration paid or payable (including, without limitation, deferred purchase price, seller notes, and other similar liabilities, but excluding any royalty, milestone payments or other similar payments, in each case, to be made based on future performance by the Credit Parties) for all such acquisitions made in any twelve (12) month period shall be in an amount not to exceed $1,000,000 in the aggregate.

"**Permitted Asset Dispositions**" means the following Asset Dispositions, *provided, however,* that at the time of such Asset Disposition, no Default or Event of Default exists or would result from such Asset Disposition:

(a) dispositions of Inventory in the Ordinary Course of Business and not pursuant to any bulk sale;

(b) dispositions of furniture, fixtures and equipment in the Ordinary Course of Business that the applicable Borrower or Subsidiary determines in good faith is no longer used or useful in the business of such Borrower and its Subsidiaries or that it is obsolete, worn out or surplus to the business of such Borrower or its Subsidiary;

(c) to the extent constituting an Asset Disposition, Permitted Investments;

(d) dispositions of Accounts receivable to third parties in connection with the sales of inventory or with the collection or compromise thereof in the Ordinary Course of Business exclusive of factoring or similar arrangements;

(e) the entering into of any Permitted License;

(f) dispositions of assets acquired pursuant to a Permitted Acquisition consummated within 12 months after the date of the Permitted Acquisition so long as (i) the assets to be so disposed are not necessary in connection with the business of the Credit Parties and their Subsidiaries, taken as a whole, (ii) the assets to be so disposed are readily identifiable as assets acquired pursuant to such Permitted Acquisition and (iii) the Credit Parties shall have provided written notice to Agent of its plan to dispose of such assets prior to the applicable Permitted Acquisition;

(g) the abandonment or non-renewal, in the Ordinary Course of Business, of Intellectual Property rights (other than with respect to any Material Intangible Assets) that are no longer used or useful in the business of the Credit Parties;

(h) to the extent constituting an "Asset Disposition", the occurrence of any a casualty event; and

(i) other disposition approved by Agent, in writing, from time to time.

"**Permitted Contest**" means, with respect to any tax obligation or other obligation allegedly or potentially owing from any Borrower or its Subsidiary to any governmental tax authority or other third party, a contest maintained in good faith by appropriate proceedings promptly instituted and diligently conducted and with respect to which such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made on the books and records and financial statements of the applicable Credit Party(ies); *provided*, *however*, that (a) compliance with the obligation that is the subject of such contest is effectively stayed during such challenge; (b) Borrowers' and its Subsidiaries' title to, and its right to use, the Collateral is not adversely affected thereby and Agent's Lien and priority on the Collateral are not adversely affected, altered or impaired thereby; (c) Borrowers have given prior written notice to Agent of a Borrower's or its Subsidiary's intent to so contest the obligation; (d) the Collateral or any part thereof or any interest therein shall not be in any danger of being sold, forfeited or lost by reason of such contest by Borrowers or its Subsidiaries; (e) Borrowers have given Agent notice of the commencement of such contest and upon request by Agent, from time to time, notice of the status of such contest by Borrowers and/or confirmation of the continuing satisfaction of this definition; and (f) upon a final determination of such contest, Borrowers and its Subsidiaries shall promptly comply with the requirements thereof.

"**Permitted Contingent Obligations**" means

(a) Contingent Obligations arising in respect of the Debt under the Financing Documents;

(b) Contingent Obligations resulting from endorsements for collection or deposit in the Ordinary Course of Business;

(c) Contingent Obligations outstanding on the date of this Agreement and set forth on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to the indebtedness underlying such Contingent Obligations other than extensions of the maturity thereof without any other change in terms);

(d) Contingent Obligations incurred in the Ordinary Course of Business with respect to surety and appeal bonds, performance bonds and other similar obligations not to exceed $500,000 in the aggregate at any time outstanding;

(e) Contingent Obligations arising under indemnity agreements with title insurers to cause such title insurers to issue to Agent mortgagee title insurance policies;

(f) Contingent Obligations arising with respect to customary indemnification obligations in favor of purchasers in connection with dispositions of personal property assets permitted under Section 5.6;

(g) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Contingent Obligations existing or arising under any Swap Contract, *provided*, *however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(h) Contingent Obligations of Credit Parties with respect to obligations of other Credit Parties; *provided* that the obligation of such other Credit Party is permitted under this Agreement; and

(i) other Contingent Obligations not permitted by clauses (a) through (h) above, not to exceed $500,000 in the aggregate at any time outstanding.

"**Permitted Debt**" means:

(a) Borrowers' and their Subsidiaries' Debt to Agent and each Lender under this Agreement and the other Financing Documents;

(b) Debt incurred as a result of endorsing negotiable instruments received in the Ordinary Course of Business;

(c) Debt in an aggregate principal amount not to exceed $2,000,000 at any time with respect to (i) capital leases; *provided* that any such Debt shall be secured only by the assets subject to such capital lease and (ii) purchase money Debt; *provided* that any such Debt shall only be secured by the assets acquired in connection with the incurrence of such Debt;

(d) Debt existing on the date of this Agreement and described on Schedule 5.1 (but not including any refinancings, extensions, increases or amendments to such Debt other than Permitted Refinancings);

(e) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Debt existing or arising under any Swap Contract, *provided, however*, that such obligations are (or were) entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(f) Debt in the form of insurance premiums financed through the applicable insurance company incurred in the Ordinary Course of Business;

(g) trade accounts payable arising and paid on a timely basis and in the Ordinary Course of Business;

(h) Debt of the Credit Parties incurred under the Affiliated Financing Documents;

(i) Subordinated Debt;

(j) intercompany Debt arising from loans made (i) by a Borrower or Secured Guarantor to another Borrower or Secured Guarantor, (ii) by a non-Credit Party Subsidiary of a Borrower to another non-Credit Party Subsidiary of a Borrower, or (iii) any non-Credit Party Subsidiary to a Credit Party (so long as such Debt is subordinated to the Obligations owed by the Credit Parties under the Financing Documents);

(k) Debt consisting of Permitted Contingent Obligations;

(l) Debt of any Credit Party arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the Ordinary Course of Business;

(m) unsecured earn-out obligations and other similar contingent purchase price obligations incurred in connection with a Permitted Acquisition to the extent earned and payable and permitted pursuant to the definition of Permitted Acquisition and the other terms of this Agreement;

(n) Debt in respect of self-insurance obligations, performance bonds, export or import indemnities or similar instruments, customs bonds, surety, appeal or similar bonds and completion guarantees provided by a Credit Party in the Ordinary Course of Business;

(o) Debt in respect of workers compensation claims, health, disability or other employee benefits (other than ERISA);

(p) unsecured Debt incurred in respect of corporate credit cards issued to officers and employees for, and constituting, business-related expenses incurred in the Ordinary Course of Business in an aggregate amount not to exceed $700,000 outstanding at any time with respect to all Credit Parties; and

(q) unsecured Debt not included in clauses (a) through (p) above to the extent that the aggregate outstanding at any time does not exceed $1,000,000 at any time.

"**Permitted Distributions**" means:

(a) dividends by any Subsidiary of any Borrower to such parent Borrower;

(b) dividends payable solely in common stock;

(c) payment of cash dividends and issuance of stock options and share grants and repurchases or other acquisitions of capital stock deemed to occur upon the exercise of stock options, warrants, restricted capital stock or other rights to purchase capital stock or other convertible securities and any other equity issuances and distributions to members, managers, employees, officers, directors or consultants of the Credit Parties under the 2010 Stock Option Plan of the Borrowers; *provided* that any such repurchases do not exceed $250,000 in the aggregate per fiscal year;

(d) cash or equity bonuses payable to members, managers, employees, officers, directors or consultants of the Credit Parties made in the Ordinary Course of Business;

(e) the distribution of rights pursuant to any shareholder rights plan or the redemption of such for de minimis consideration in accordance with the terms of any shareholder rights plan approved by Agent, in its reasonable discretion; and

(f) to the extent constituting a Distribution, the issuance of any common stock of AxoGen as consideration for a Permitted Acquisition.

"**Permitted Investments**" means:

(a) Investments shown on Schedule 5.7 and existing on the Closing Date;

(b) cash and cash equivalents;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;

(d) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the Ordinary Course of Business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrowers or their Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrowers' Board of Directors (or other governing body), but the aggregate of all such loans outstanding pursuant to this clause (d) may not exceed $250,000 at any time;

(e) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the Ordinary Course of Business;

(f) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the Ordinary Course of Business, *provided, however*, that this subpart (f) shall not apply to Investments of Borrowers in any Subsidiary;

(g) Investments consisting of deposit accounts in which Agent has received a Deposit Account Control Agreement;

(h) Investments by any Borrower in any Subsidiary now owned or hereafter created by such Borrower but only to the extent that such Subsidiary is itself a Borrower or a Secured Guarantor;

(i) solely to the extent permitted pursuant to Section 9.2(f), Investments consisting of extensions of credit in the nature of Accounts or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;

(j) Investments in non-cash consideration received in connection with Permitted Asset Dispositions;

(k) Permitted Acquisitions;

(l) Permitted Ventures;

(m) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, the entering into any Swap Contract, *provided, however*, that such Swap Contract is entered into by Borrower or an Affiliate in the Ordinary Course of Business for the purpose of directly mitigating risks associated with liabilities, commitments, investments, assets, or property held or reasonably anticipated by such Person and not for purposes of speculation;

(n) Investments consisting of non-cash loans made by a Borrower to officers, directors and employees of a Credit Party which loans are used in their entirety by such Persons to purchase simultaneously capital stock of a AxoGen;

(o) to the extent constituting an Investment, Permitted Licenses entered into by a Credit Party;

(p) so long as there exists no Event of Default both immediately before and immediately after giving effect to any such transaction, Permitted Annual IP Acquisitions; and

(q) other Investments consisting of cash and cash equivalents or the issuance of AxoGen's common stock in an amount not exceeding $500,000 in the aggregate during the term of this Agreement.

"**Permitted License**" means any non-exclusive license of Intellectual Property rights of Borrower or its Subsidiaries so long as all such Permitted Licenses are granted to third parties in the Ordinary Course of Business, do not result in a legal transfer of title to the licensed property, and have been granted in exchange for fair consideration.

"**Permitted Liens**" means:

(a) deposits or pledges of cash to secure obligations under workmen's compensation, social security or similar laws, or under unemployment insurance (but excluding Liens arising under ERISA or, with respect to any Pension Plan or Multiemployer Plan, the Code) pertaining to a Borrower's or its Subsidiary's employees, if any;

(b) deposits or pledges of cash to secure bids, tenders, contracts (other than contracts for the payment of money or the deferred purchase price of property or services), leases, statutory obligations, surety and appeal bonds and other obligations of like nature arising in the Ordinary Course of Business;

(c) carrier's, warehousemen's, mechanic's, workmen's, materialmen's, landlord's or other like Liens on Collateral, other than any Collateral which is part of the Borrowing Base, arising in the Ordinary Course of Business with respect to obligations which are not due, or which are being contested pursuant to a Permitted Contest;

(d) Liens, other than on Collateral that is part of the Borrowing Base, for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or the subject of a Permitted Contest;

(e) attachments, appeal bonds, judgments and other similar Liens on Collateral, other than on Collateral that is part of the Borrowing Base, for sums not exceeding $500,000 in the aggregate arising in connection with court proceedings; *provided*, *however*, that the execution or other enforcement of such Liens is effectively stayed and the claims secured thereby are the subject of a Permitted Contest;

(f) Liens on property acquired pursuant to a Permitted Acquisition to the extent such Liens were approved in writing by Agent prior to the consummation of the applicable Permitted Acquisition;

(g) Liens on property acquired pursuant to a Permitted Venture to the extent such Liens were approved in writing by Agent prior to the consummation of the applicable Permitted Venture;

(h) with respect to real estate, easements, rights of way, restrictions, minor defects or irregularities of title, none of which, individually or in the aggregate, materially interfere with the benefits of the security intended to be provided by the Security Documents, materially affect the value or marketability of the Collateral, impair the use or operation of the Collateral for the use currently being made thereof or impair Borrowers' ability to pay the Obligations in a timely manner or impair the use of the Collateral or the ordinary conduct of the business of any Borrower or any Subsidiary and which, in the case of any real estate that is part of the Collateral, are set forth as exceptions to or subordinate matters in the title insurance policy accepted by Agent insuring the lien of the Security Documents;

(i) Liens and encumbrances in favor of Agent under the Financing Documents;

(j) Liens existing on the date hereof and set forth on Schedule 5.2; *provided* that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 5.1 and the definition of Permitted Debt, and (iii) any renewal or extension of the obligations secured or benefited thereby is permitted by this Agreement;

(k) any Lien on any equipment securing Debt permitted under subpart (c) of the definition of Permitted Debt, *provided*, *however*, that such Lien attaches concurrently with or within twenty (20) days after the acquisition thereof;

(l) to the extent constituting a Lien, financing statements filed under the UCC or other similar filing for precautionary purposes in connection with operating leases or consignment of goods in the Ordinary Course of Business;

(m) customary Liens (including the right of set-off) in favor of a bank or other depository institution arising as a matter of law or in the Ordinary Course of Business, encumbering deposits;

(n) to the extent constituting a Lien, a Permitted License;

(o) Liens solely on any cash earnest money deposits made by a Credit Party or any of its Subsidiaries, in an amount not to exceed $250,000, in connection with any letter of intent or purchase agreement with respect to any Permitted Acquisition;

(p) any zoning, building or similar laws or rights reserved to or vested in any Governmental Authority as to the use of real property which was not incurred in connection with Debt and which do not in the aggregate materially impair their use in the operation of the business of such Person;

(q) Liens consisting of prepayments and security deposits in connection with leases, subleases, licenses, sublicenses, use and occupancy agreements, utility services and similar transactions entered into by the applicable Credit Party or Subsidiary of a Credit Party in the Ordinary Course of Business and not required as a result of any breach of any agreement or default in payment of any obligation;

(r) Liens on up to $250,000 of cash or cash equivalents securing Debt permitted by clause (p) of the definition of Permitted Debt; *provided* that such cash and cash equivalents are held in segregated cash collateral accounts;

(s) Liens securing financing of insurance premiums which such Liens attach solely to the insurance policies financed in connection with such Debt and the proceeds thereof; and

(t) Liens and encumbrances in favor of the holders of the Affiliated Financing Documents.

"**Permitted Modifications**" means (a) such amendments or other modifications to a Borrower's or Subsidiary's Organizational Documents as are required under this Agreement or by applicable Law and fully disclosed to Agent within thirty (30) days after such amendments or modifications have become effective, and (b) such amendments or modifications to a Borrower's or Subsidiary's Organizational Documents (other than those involving a change in the name of a Borrower or Subsidiary or involving a reorganization of a Borrower or Subsidiary under the laws of a different jurisdiction) that would not

adversely affect the rights and interests of Agent or Lenders or be otherwise prohibited pursuant to the terms of this Agreement.

"**Permitted Refinancing**" means Debt constituting a refinancing, replacement or extension of Debt and that (a) has an aggregate outstanding principal amount not greater than the aggregate principal amount of the Debt being refinanced or extended, (b) has a weighted average maturity (measured as of the date of such refinancing or extension) and maturity no shorter than that of the Debt being refinanced or extended, (c) is not secured by a Lien on any assets other than the collateral securing the Debt being refinanced or extended, and (d) the obligors of which are the same as the obligors of the Debt being refinanced or extended.

"**Permitted Venture**" means Investments, solely in the form of cash, cash equivalents or the issuance of common stock of Axogen, by a Credit Party in a joint venture, partnership, or other Person by so long as, in each case, (a) there exists no Event of Default both immediately before and immediately after giving effect to such transaction, (b) the total amount paid or payable, in either cash or equity or both, by Credit Parties for all such Permitted Ventures in any twelve (12) month period does not exceed $1,000,000, (c) the Borrower Representative shall have delivered to Agent at least ten (10) Business Days' prior written notice of the closing such transaction, (d) no Debt or Liens shall be assumed or created under such transaction other than Permitted Liens and Permitted Debt and, (e) all actions necessary for the Agent, for the benefit of the Lenders, to be granted a perfected first priority Lien in all assets acquired pursuant to such transaction, including all equity interests, shall be taken in accordance with Section 4.11 hereof.

"**Person**" means any natural person, corporation, limited liability company, professional association, limited partnership, general partnership, joint stock company, joint venture, association, company, trust, bank, trust company, land trust, business trust or other organization, whether or not a legal entity, and any Governmental Authority.

"**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 8.2(a) (as updated from time to time in accordance with Section 4.15); *provided*, that, for the avoidance of doubt, any new Product not disclosed on Schedule 8.2(a) shall still constitute a "Product" as herein defined.

"**Pro Rata Share**" means (a) with respect to a Lender's obligation to make Revolving Loans, the Revolving Loan Commitment Percentage of such Lender, (b) with respect to a Lender's right to receive payments of principal and interest with respect to Revolving Loans, such Lender's Revolving Loan Exposure with respect thereto; and (c) for all other purposes (including, without limitation, the indemnification obligations arising under Section 11.6) with respect to any Lender, the percentage obtained by *dividing* (i) the Revolving Loan Commitment Amount of such Lender (or, in the event the Revolving Loan Commitment shall have been terminated, such Lender's then existing Revolving Loan Outstandings), *by* (ii) the sum of the Revolving Loan Commitment (or, in the event the Revolving Loan Commitment shall have been terminated, the then existing Revolving Loan Outstandings) of all Lenders.

"**Recall**" means a Person's Removal or Correction of a marketed product that the FDA considers to be in violation of the laws it administers and against which the FDA would initiate legal action, e.g., seizure.

"**Registered Intellectual Property**" means any patent, registered trademark or servicemark, registered copyright, registered mask work, or any pending application for any of the foregoing.

"**Regulatory Reporting Event**" has the meaning set forth in Section 4.17.

"**Regulatory Required Permit**" means any and all licenses, approvals and permits issued by the FDA, DEA or any other applicable Governmental Authority, including without limitation Drug Applications, necessary for the testing, manufacture, marketing or sale of any Product by any applicable Borrower(s) and its Subsidiaries as such activities are being conducted by such Borrower and its Subsidiaries with respect to such Product at such time and any 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.

"**Required Lenders**" means at any time Lenders holding (a) more than fifty percent (50%) of the sum of the Revolving Loan Commitment (taken as a whole), or (b) if the Revolving Loan Commitment has been terminated, more than fifty percent (50%) of the then aggregate outstanding principal balance of the Loans.

"**Responsible Officer**" means any of the Chief Executive Officer, Chief Financial Officer or any other officer of the applicable Borrower acceptable to Agent.

"**Revolving Lender**" means each Lender having a Revolving Loan Commitment Amount in excess of $0 (or, in the event the Revolving Loan Commitment shall have been terminated at any time, each Lender at such time having Revolving Loan Outstandings in excess of $0).

"**Revolving Loan Commitment**" means, as of any date of determination, the aggregate Revolving Loan Commitment Amounts of all Lenders as of such date.

"**Revolving Loan Commitment Amount**" means, as to any Lender, the dollar amount set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Amount" (if such Lender's name is not so set forth thereon, then the dollar amount on the Commitment Annex for the Revolving Loan Commitment Amount for such Lender shall be deemed to be $0), as such amount may be adjusted from time to time by (a) any amounts assigned (with respect to such Lender's portion of Revolving Loans outstanding and its commitment to make Revolving Loans) pursuant to the terms of any and all effective assignment agreements to which such Lender is a party, and (b) any Additional Tranche(s) activated by Borrowers. For the avoidance of doubt, the aggregate Revolving Loan Commitment Amount of all Lenders on the Closing Date shall be $10,000,000 and if the Additional Tranche is fully activated by Borrowers pursuant to the terms of the Agreement such amount shall increase to $15,000,000.

"**Revolving Loan Commitment Percentage**" means, as to any Lender, (a) on the Closing Date, the percentage set forth opposite such Lender's name on the Commitment Annex under the column "Revolving Loan Commitment Percentage" (if such Lender's name is not so set forth thereon, then, on the Closing Date, such percentage for such Lender shall be deemed to be zero), and (b) on any date following the Closing Date, the percentage equal to the Revolving Loan Commitment Amount of such Lender on such date *divided by* the Revolving Loan Commitment on such date.

"**Revolving Loan Exposure**" means, with respect to any Lender on any date of determination, the percentage equal to the amount of such Lender's Revolving Loan Outstandings on such date *divided by* the aggregate Revolving Loan Outstandings of all Lenders on such date.

"**Revolving Loan Limit**" means, at any time, the lesser of (a) the Revolving Loan Commitment and (b) the Borrowing Base.

"**Revolving Loan Outstandings**" means, at any time of calculation, (a) the then existing aggregate outstanding principal amount of Revolving Loans, and (b) when used with reference to any single Lender, the then existing outstanding principal amount of Revolving Loans advanced by such Lender.

"**Revolving Loans**" has the meaning set forth in Section 2.1(b).

"**SEC**" means the United States Securities and Exchange Commission.

"**Secured Guarantor**" means any Credit Party that has executed or delivered, or shall in the future execute or deliver to Agent, any Guarantee of all or any portion of the Obligations, the obligations under which are secured by all or substantially all of its property of the type described in Schedule 9.1 hereto (other than Excluded Property).

"**Securities Account**" means a "securities account" (as defined in Article 9 of the UCC), an investment account, or other account in which investment property or securities are held or invested for credit to or for the benefit of any Borrower.

"**Securities Account Control Agreement**" means an agreement, in form and substance satisfactory to Agent, among Agent, any applicable Borrower and each securities intermediary in which such Borrower maintains a Securities Account pursuant to which Agent shall obtain "control" (as defined in Article 9 of the UCC) over such Securities Account.

"**Security Document**" means this Agreement and any other agreement, document or instrument executed concurrently herewith or at any time hereafter pursuant to which one or more Credit Parties or any other Person either (a) Guarantees payment or performance of all or any portion of the Obligations, and/or (b) provides, as security for all or any portion of the Obligations, a Lien on any of its assets in favor of Agent for its own benefit and the benefit of the Lenders, as any or all of the same may be amended, supplemented, restated or otherwise modified from time to time.

"**Solvent**" means, with respect to any Person, that such Person (a) owns and will own assets the fair saleable value of which are (i) greater than the total amount of its debts and liabilities (including subordinated and Contingent Obligations), and (ii) greater than the amount that will be required to pay the probable liabilities of its then existing debts as they become absolute and matured considering all financing alternatives and potential asset sales reasonably available to it; (b) has capital that is not unreasonably small in relation to its business as presently conducted or after giving effect to any contemplated transaction; and (c) does not intend to incur and does not believe that it will incur debts beyond its ability to pay such debts as they become due.

"**Stated Rate**" has the meaning set forth in Section 2.7.

"**Subordinated Debt**" means any Debt of Borrowers incurred pursuant to the terms of the Subordinated Debt Documents and with the prior written consent of Agent, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there is no Subordinated Debt.

"**Subordinated Debt Documents**" means any documents evidencing and/or securing Debt governed by a Subordination Agreement, all of which documents must be in form and substance acceptable to Agent in its sole discretion. As of the Closing Date, there are no Subordinated Debt Documents.

"**Subordination Agreement**" means any agreement between Agent and another creditor of Borrowers, as the same may be amended, supplemented, restated or otherwise modified from time to time

in accordance with the terms thereof, pursuant to which the Debt owing from any Borrower(s) and/or the Liens securing such Debt granted by any Borrower(s) to such creditor are subordinated in any way to the Obligations and the Liens created under the Security Documents, the terms and provisions of such Subordination Agreements to have been agreed to by and be acceptable to Agent in the exercise of its sole discretion.

"**Subsidiary**" means, with respect to any Person, (a) any corporation of which an aggregate of more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether, at the time, capital stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) is at the time, directly or indirectly, owned legally or beneficially by such Person or one or more Subsidiaries of such Person, or with respect to which any such Person has the right to vote or designate the vote of more than fifty percent (50%) of such capital stock whether by proxy, agreement, operation of law or otherwise, and (b) any partnership or limited liability company in which such Person and/or one or more Subsidiaries of such Person shall have an interest (whether in the form of voting or participation in profits or capital contribution) of more than fifty percent (50%) or of which any such Person is a general partner or may exercise the powers of a general partner. Unless the context otherwise requires, each reference to a Subsidiary shall be a reference to a Subsidiary of a Borrower.

"**Swap Contract**" means any "swap agreement", as defined in Section 101 of the Bankruptcy Code, that is obtained by Borrower to provide protection against fluctuations in interest or currency exchange rates, but only if Agent provides its prior written consent to the entry into such "swap agreement".

"**Taxes**" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Termination Date**" means the earlier to occur of (a) the Maturity Date, (b) any date on which Agent accelerates the maturity of the Loans pursuant to Section 10.2, or (c) the termination date stated in any notice of termination of this Agreement provided by Borrowers in accordance with Section 2.12.

"**Term Loan**" has the meaning set forth in the Affiliated Credit Agreement.

"**Third Party Payor**" means Medicare, Medicaid, TRICARE, and other state or federal health care program, Blue Cross and/or Blue Shield, private insurers, managed care plans and any other Person or entity which presently or in the future maintains Third Party Payor Programs.

"**Third Party Payor Programs**" means all payment and reimbursement programs, sponsored by a Third Party Payor, in which a Borrower participates.

"**TRICARE**" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes.

"**UCC**" means the Uniform Commercial Code of the State of New York or of any other state the laws of which are required to be applied in connection with the perfection of security interests in any Collateral.

"**United States**" means the United States of America.

"**Work-In-Process**" means Inventory that is not a product that is finished and approved by a Borrower in accordance with applicable Laws and such Borrower's normal business practices for release and delivery to customers.

Section 1.2 Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted, all accounting determinations hereunder (including, without limitation, determinations made pursuant to the exhibits hereto) shall be made, and all financial statements required to be delivered hereunder shall be prepared on a consolidated basis in accordance with GAAP applied on a basis consistent with the most recent audited consolidated financial statements of each Borrower and its Consolidated Subsidiaries delivered to Agent and each of the Lenders on or prior to the Closing Date. If at any time any change in GAAP would affect the computation of any financial ratio or financial requirement set forth in any Financing Document, and either Borrowers or the Required Lenders shall so request, Agent, the Lenders and Borrowers shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); *provided*, *however*, that until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (b) Borrowers shall provide to Agent and the Lenders financial statements and other documents required under this Agreement which include a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Statement of Financial Accounting Standards 159 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value", as defined therein.

Section 1.3 Other Definitional and Interpretive Provisions. References in this Agreement to "Articles", "Sections", "Annexes", "Exhibits", or "Schedules" shall be to Articles, Sections, Annexes, Exhibits or Schedules of or to this Agreement unless otherwise specifically provided. Any term defined herein may be used in the singular or plural. "Include", "includes" and "including" shall be deemed to be followed by "without limitation". Except as otherwise specified or limited herein, references to any Person include the successors and assigns of such Person. References "from" or "through" any date mean, unless otherwise specified, "from and including" or "through and including", respectively. Unless otherwise specified herein, the settlement of all payments and fundings hereunder between or among the parties hereto shall be made in lawful money of the United States and in immediately available funds. References to any statute or act shall include all related current regulations and all amendments and any successor statutes, acts and regulations. All amounts used for purposes of financial calculations required to be made herein shall be without duplication. References to any statute or act, without additional reference, shall be deemed to refer to federal statutes and acts of the United States. References to any agreement, instrument or document shall include all schedules, exhibits, annexes and other attachments thereto. As used in this Agreement, the meaning of the term "material" or the phrase "in all material respects" is intended to refer to an act, omission, violation or condition which reflects or would reasonably be expected to result in a Material Adverse Effect. References to capitalized terms that are not defined herein, but are defined in the UCC, shall have the meanings given them in the UCC. All references herein to times of day shall be references to daylight or standard time, as applicable.

Section 1.4 Time is of the Essence. Time is of the essence in Borrower's and each other Credit Party's performance under this Agreement and all other Financing Documents.

ARTICLE 2 - LOANS

Section 2.1 Loans.

(a) Reserved.

(b) Revolving Loans.

(i) Revolving Loans and Borrowings. On the terms and subject to the conditions set forth herein, each Lender severally agrees to make revolving loans to Borrowers from time to time as set forth herein (each a "**Revolving Loan**", and collectively, "**Revolving Loans**") equal to such Lender's Revolving Loan Commitment Percentage of Revolving Loans requested by Borrowers hereunder, *provided*, *however*, that after giving effect thereto, the Revolving Loan Outstandings shall not exceed the Revolving Loan Limit. Borrowers shall deliver to Agent a Notice of Borrowing with respect to each proposed borrowing of a Revolving Loan, such Notice of Borrowing to be delivered before 1:00 p.m. (Eastern time) two (2) Business Days prior to the date of such proposed borrowing. Each Borrower and each Revolving Lender hereby authorizes Agent to make Revolving Loans on behalf of Revolving Lenders, at any time in its sole discretion, to pay principal owing in respect of the Loans and interest, fees, expenses and other charges payable by any Credit Party from time to time arising under this Agreement or any other Financing Document. The Borrowing Base shall be determined by Agent based on the most recent Borrowing Base Certificate delivered to Agent in accordance with this Agreement and such other information as may be available to Agent. Without limiting any other rights and remedies of Agent hereunder or under the other Financing Documents, the Revolving Loans shall be subject to Agent's continuing right to withhold from the Borrowing Base reserves, and to increase and decrease such reserves from time to time, if and to the extent that in Agent's good faith credit judgment and discretion, such reserves are necessary.

(ii) Mandatory Revolving Loan Repayments and Prepayments.

(A) The Revolving Loan Commitment shall terminate on the Termination Date. On such Termination Date, there shall become due, and Borrowers shall pay, the entire outstanding principal amount of each Revolving Loan, together with accrued and unpaid Obligations pertaining thereto incurred to, but excluding the Termination Date; *provided, however,* that such payment is made not later than 12:00 Noon (Eastern time) on the Termination Date.

(B) If at any time the Revolving Loan Outstandings exceed the Revolving Loan Limit, then, on the next succeeding Business Day, Borrowers shall repay the Revolving Loans, in an aggregate amount equal to such excess.

(C) Principal payable on account of Revolving Loans shall be payable by Borrowers to Agent (I) immediately upon the receipt by any Borrower or Agent of any payments on or proceeds from any of the Accounts, to the extent of such payments or proceeds, as further described in Section 2.11 below, and (II) in full on the Termination Date.

(iii) Optional Prepayments. Borrowers may from time to time prepay the Revolving Loans in whole or in part; *provided*, *however*, that any such partial prepayment shall be in an amount equal to $100,000 or a higher integral multiple of $25,000. For the avoidance of doubt, nothing in this clause shall permit termination of the Revolving Loan Commitment by Borrower other than in accordance with Section 2.12(b).

(iv) LIBOR Rate.

(A) Except as provided in subsection (C) below, Revolving Loans shall accrue interest at the LIBOR Rate *plus* the Applicable Margin.

(B) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any Eurodollar deposits or increased costs, in each case, due to changes in applicable Law occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding loans bearing interest based upon the LIBOR Rate; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued. In any such event, the affected Lender shall give Borrowers and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (I) require such Lender to furnish to Borrowers a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, and/or (II) repay the Loans bearing interest based upon the LIBOR Rate with respect to which such adjustment is made.

(C) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation of application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain Loans bearing interest based upon the LIBOR Rate or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrowers and Agent promptly shall transmit the notice to each other Lender and (I) in the case of any outstanding Loans of such Lender bearing interest based upon the LIBOR Rate, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such Loans, and interest upon such Lender's Loans thereafter shall accrue interest at Base Rate *plus* the Applicable Margin, and (II) such Loans shall continue to accrue interest at Base Rate *plus* the Applicable Margin until such Lender determines that it would no longer be unlawful or impractical to maintain such Loans at the LIBOR Rate.

(D) Anything to the contrary contained herein notwithstanding, neither Agent nor any Lender is required actually to acquire Eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues based on the LIBOR Rate.

(v) Restriction on Termination. Notwithstanding any prepayment of the Revolving Loan Outstandings or any other termination of Lenders' Credit Exposure under this

Agreement, Agent and Lenders shall have no obligation to release any of the Collateral securing the Obligations under this Agreement while any portion of the Affiliated Obligations shall remain outstanding.

(c) Additional Tranches. After the Closing Date, so long as no Default or Event of Default exists and subject to the terms of this Agreement, with the prior written consent of Agent and all Lenders in their good faith sole discretion, the Revolving Loan Commitment may be increased upon the written request of Borrower Representative (which such request shall state the aggregate amount of the Additional Tranche requested and shall be made at least thirty (30) days prior to the proposed effective date of such Additional Tranche) to Agent to activate an Additional Tranche; *provided, however*, that Agent and Lenders shall have no obligation to consent to any requested activation of an Additional Tranche and the written consent of Agent and all Lenders shall be required in order to activate an Additional Tranche. Upon activating an Additional Tranche, each Lender's Commitment shall increase by a proportionate amount so as to maintain the same Pro Rata Share of the Revolving Loan Commitment as such Lender held immediately prior to such activation.

Section 2.2 Interest, Interest Calculations and Certain Fees.

(a) Interest. From and following the Closing Date, except as expressly set forth in this Agreement, Loans and the other Obligations shall bear interest at the sum of the LIBOR Rate *plus* the Applicable Margin. Interest on the Loans shall be paid in arrears on the first (1st) day of each month and on the maturity of such Loans, whether by acceleration or otherwise. Interest on all other Obligations shall be payable upon demand. For purposes of calculating interest, all funds transferred to the Payment Account for application to any Revolving Loans shall be subject to a five (5) Business Day clearance period and all interest accruing on such funds during such clearance period shall accrue for the benefit of Agent, and not for the benefit of the Lenders.

(b) Unused Line Fee. From and following the Closing Date, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) (A) the Revolving Loan Commitment *minus* (B) the average daily balance of the sum of the Revolving Loan Outstandings during the preceding month, *multiplied by* (ii) one half of one percent (0.5%) per annum. Such fee is to be paid monthly in arrears on the first day of each month. The unused line fee shall be paid monthly in arrears on the first day of each month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(c) Fee Letter. In addition to the other fees set forth herein, the Borrowers agree to pay Agent the fees set forth in each Fee Letter.

(d) Minimum Balance Fee. On the first day of each month, commencing on December 1, 2016, the Borrowers agree to pay to Agent, for the ratable benefit of all Lenders, the sum of the Minimum Balance Fees due for the prior month. The Minimum Balance Fee shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(e) Collateral Management Fee. From and following the Closing Date, Borrowers shall pay Agent, for its own account and not for the benefit of any other Lenders, a fee in an amount equal to the product obtained by *multiplying* (i) the greater of (A) the average end-of-day principal balance of Revolving Loans outstanding during the immediately preceding month and (B) the Minimum Balance, *by* (ii) one half of one percent (0.5%) per annum. For purposes of calculating the average end-of-day principal balance of Revolving Loans, all funds paid into the Payment Account (or which were required to be paid into the Payment Account hereunder) or otherwise received by Agent for the account of Borrowers shall be subject to a five (5) Business Day clearance period. The collateral management fee shall be payable

monthly in arrears on the first day of each calendar month and shall be deemed fully earned when due and payable and, once paid, shall be non-refundable.

(f) Origination Fee. Contemporaneous with Borrowers' execution of this Agreement, Borrowers shall pay Agent, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, in accordance with their respective Pro Rata Shares, a fee in an amount equal to (i) the Revolving Loan Commitment, *multiplied by* (ii) one half of one percent (0.5%).

(g) Deferred Revolving Loan Origination Fee. If Lenders' funding obligations in respect of the Revolving Loan Commitment under this Agreement terminate or are permanently reduced for any reason (whether by voluntary termination by Borrowers, by reason of the occurrence of an Event of Default or otherwise) prior to the Maturity Date, Borrowers shall pay to Agent on the date of such reduction, for the benefit of all Lenders committed to make Revolving Loans on the Closing Date, a fee as compensation for the costs of such Lenders being prepared to make funds available to Borrowers under this Agreement, equal to an amount determined by *multiplying* the amount of the Revolving Loan Commitment so terminated or permanently reduced *by* the following applicable percentage amount: three percent (3.0 %) during the first year following the Closing Date, two percent (2.0%) during the second year following the Closing Date, and one percent (1.0%) thereafter. Notwithstanding the foregoing, in no event shall any fee under this Section 2.2(g) be due and payable if the Revolving Loans are prepaid in full and the Revolving Loan Commitments are terminated as a result of a refinancing of each of the Obligations and the Affiliated Obligations by Agent or an Affiliate thereof. All fees payable pursuant to this paragraph shall be deemed fully earned and non-refundable as of the Closing Date.

(h) Reserved.

(i) Reserved.

(j) Reserved.

(k) Audit Fees. Borrowers shall pay to Agent, for its own account and not for the benefit of any other Lenders, all reasonable fees and expenses in connection with audits and inspections of Borrowers' books and records, audits, valuations or appraisals of the Collateral, audits of Borrowers' compliance with applicable Laws and such other matters as Agent shall deem appropriate, which shall be due and payable on the first Business Day of the month following the date of issuance by Agent of a written request for payment thereof to Borrowers; *provided*, that notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrowers shall not be required to reimburse Agent for more than two (2) such audits or inspections per fiscal year.

(l) Wire Fees. Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, on written demand, fees for incoming and outgoing wires made for the account of Borrowers, such fees to be based on Agent's then current wire fee schedule (available upon written request of the Borrowers).

(m) Late Charges. If payments of principal (other than a final installment of principal upon the Termination Date), interest due on the Obligations, or any other amounts due hereunder or under the other Financing Documents are not timely made and remain overdue for a period of five (5) Business Days, Borrowers, without notice or demand by Agent, promptly shall pay to Agent, for its own account and not for the benefit of any other Lenders, as additional compensation to Agent in administering the Obligations, an amount equal to five percent (5.0%) of each delinquent payment.

(n) Computation of Interest and Related Fees. All interest and fees under each Financing Document shall be calculated on the basis of a 360-day year for the actual number of days elapsed. The date of funding of a Loan shall be included in the calculation of interest. The date of payment of a Loan shall be excluded from the calculation of interest. If a Loan is repaid on the same day that it is made, one (1) day's interest shall be charged.

(o) Automated Clearing House Payments. If Agent (or its designated servicer) so elects, monthly payments of principal, interest, fees, expenses or any other amounts due and owing from Borrower to Agent hereunder shall be paid to Agent by Automated Clearing House debit of immediately available funds from the financial institution account designated by Borrower Representative in the Automated Clearing House debit authorization executed by Borrowers or Borrower Representative in connection with this Agreement, and shall be effective upon receipt. Borrowers shall execute any and all forms and documentation necessary from time to time to effectuate such automatic debiting. In no event shall any such payments be refunded to Borrowers.

Section 2.3 Notes. The portion of the Loans made by each Lender shall be evidenced, if so requested by such Lender, by one or more promissory notes executed by Borrowers on a joint and several basis (each, a "**Note**") in an original principal amount equal to such Lender's Revolving Loan Commitment Amount. Upon activation of the Additional Tranche in accordance with Section 2.1(c) hereof, Borrowers shall deliver to each Lender to whom Borrowers previously delivered a Note, a restated Note evidencing such Lender's Revolving Loan Commitment Amount.

Section 2.4 Reserved.

Section 2.5 Reserved.

Section 2.6 General Provisions Regarding Payment; Loan Account.

(a) All payments to be made by each Borrower under any Financing Document, including payments of principal and interest made hereunder and pursuant to any other Financing Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim. If any payment hereunder becomes due and payable on a day other than a Business Day, such payment shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension (it being understood and agreed that, solely for purposes of calculating financial covenants and computations contained herein and determining compliance therewith, if payment is made, in full, on any such extended due date, such payment shall be deemed to have been paid on the original due date without giving effect to any extension thereto). Any payments received in the Payment Account before 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on such date, and any payments received in the Payment Account at or after 12:00 Noon (Eastern time) on any date shall be deemed received by Agent on the next succeeding Business Day.

(b) Agent shall maintain a loan account (the "**Loan Account**") on its books to record Loans and other extensions of credit made by the Lenders hereunder or under any other Financing Document, and all payments thereon made by each Borrower. All entries in the Loan Account shall be made in accordance with Agent's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded in Agent's books and records at any time shall be conclusive and binding evidence of the amounts due and owing to Agent by each Borrower absent manifest error; *provided*, *however*, that any failure to so record or any error in so recording shall not limit or otherwise affect any Borrower's duty to pay all amounts owing hereunder or under any other Financing Document. Agent shall endeavor to provide Borrowers with a monthly statement regarding the Loan Account (but

neither Agent nor any Lender shall have any liability if Agent shall fail to provide any such statement). Unless any Borrower notifies Agent of any objection to any such statement (specifically describing the basis for such objection) within ninety (90) days after the date of receipt thereof, it shall be deemed final, binding and conclusive upon Borrowers in all respects as to all matters reflected therein.

Section 2.7 Maximum Interest. In no event shall the interest charged with respect to the Loans or any other Obligations of any Borrower under any Financing Document exceed the maximum amount permitted under the laws of the State of New York or of any other applicable jurisdiction. Notwithstanding anything to the contrary herein or elsewhere, if at any time the rate of interest payable hereunder or under any Note or other Financing 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, each 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, such excess amount shall be applied to the reduction of the principal balance of the Loans 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 Borrowers. 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.

Section 2.8 Taxes; Capital Adequacy.

(a) All payments of principal and interest on the Loans and all other amounts payable hereunder shall be made free and clear of and without deduction for any Taxes, except as required by applicable law. If any withholding or deduction from any payment to be made by any Borrower hereunder is required in respect of any Taxes pursuant to any applicable Law, then Borrowers will: (i) pay directly to the relevant authority the full amount required to be so withheld or deducted; (ii) promptly forward to Agent an official receipt or other documentation satisfactory to Agent evidencing such payment to such authority; and (iii) if such Tax is an Indemnified Tax, pay to Agent for the account of Agent and Lenders such additional amount or amounts as is necessary to ensure that the net amount actually received by Agent and each Lender will equal the full amount Agent and such Lender would have received had no such withholding or deduction been required. The Borrower shall indemnify Agent and each Lender, within 10 days after demand therefor, for the full amount of any Indemnified Taxes payable or paid by Agent or such Lender or required to be withheld or deducted from a payment to Agent or such Lender and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender or by the Agent on its own behalf or on behalf of a Lender shall be conclusive absent manifest error.

(b) Reserved.

(c)

(i) Each Lender that is not U.S. person as defined in Section 7701(a)(30) of the Code and (A) is a party hereto on the Closing Date or (B) purports to become an assignee of an interest as a Lender under this Agreement after the Closing Date (unless such Lender was already a Lender hereunder immediately prior to such assignment) (each such Lender a "**Foreign Lender**") shall execute and deliver to each of Borrowers and Agent (x) one or more (as Borrowers or Agent may reasonably request) United States Internal Revenue Service Forms W-8ECI, W-8BEN, W-8BEN-E, W-8IMY (as applicable) and other applicable forms, certificates or documents prescribed by the United States Internal Revenue Service or reasonably requested by Agent certifying as to such Lender's entitlement to a complete exemption from withholding or deduction of Taxes, (y) in the case of a Foreign Lender claiming exemption under Sections 871(h) or 881(c) of the Code, Form W-8BEN or W-8BEN-E (claiming exemption from U.S. withholding Tax) or any successor form and a certificate in form and substance acceptable to Borrower certifying that such Foreign Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, or (x) any other applicable document prescribed by the IRS certifying as to the entitlement of such Foreign Lender to such exemption from United States withholding Tax or reduced rate with respect to all payments to be made to such Foreign Lender under the Financing Documents . Borrowers shall not be required to pay additional amounts to any Lender pursuant to this Section 2.8 with respect to United States withholding and income Taxes to the extent that the obligation to pay such additional amounts would not have arisen but for the failure of such Lender to comply with this paragraph other than as a result of a change in law.

(ii) Each Lender other than a Foreign Lender ("**U.S. Lender**") shall (A) on or prior to the date such U.S. Lender becomes a party under this Agreement, (B) on or prior to the date on which any such form or certification expires or becomes obsolete, (C) after the occurrence of any event requiring a change in the most recent form or certification previously delivered by it pursuant to this clause (c)(ii) and (D) from time to time if requested by the Borrowers or Agent (or, in the case of a participant, the relevant Lender), provide Agent and the Borrowers (or, in the case of a participant, the relevant Lender) with two completed originals of Form W-9 (certifying that such U.S. Lender is not subject to U.S. backup withholding Tax) or any successor form.

(iii) If a payment made to a Foreign Lender would be subject to United States federal withholding Tax imposed by FATCA if such Foreign Lender fails to comply with the applicable reporting requirements of FATCA, such Foreign Lender shall deliver to Agent and the Borrowers any documentation under any law or reasonably requested by Agent or the Borrowers sufficient for Agent or Borrowers to comply with their obligations under FATCA and to determine that such Foreign Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment under FATCA, if any. Solely for the purposes of this clause (c)(iii), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(d) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.8 (including by the payment of additional amounts pursuant to this Section 2.8), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (d) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such

indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (d), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (d) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(e) If any Lender shall determine in its commercially reasonable judgment that the adoption or taking effect of, or any change in, any applicable Law regarding capital adequacy, in each instance, after the Closing Date, or any change after the Closing Date in the interpretation, administration or application thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation, administration or application thereof, or the compliance by any Lender or any Person controlling such Lender with any request, guideline or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency adopted or otherwise taking effect after the Closing Date, has or would have the effect of reducing the rate of return on such Lender's or such controlling Person's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such controlling Person could have achieved but for such adoption, taking effect, change, interpretation, administration, application or compliance (taking into consideration such Lender's or such controlling Person's policies with respect to capital adequacy) then from time to time, upon written demand by such Lender (which demand shall be accompanied by a statement setting forth the basis for such demand and a calculation of the amount thereof in reasonable detail, a copy of which shall be furnished to Agent), Borrowers shall promptly pay to such Lender such additional amount as will compensate such Lender or such controlling Person for such reduction, so long as such amounts have accrued on or after the day which is two hundred seventy (270) days prior to the date on which such Lender first made demand therefor; *provided, however,* that notwithstanding anything in this Agreement to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in applicable Law", regardless of the date enacted, adopted or issued.

(f) If any Lender requires compensation under Section 2.8(d), or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), then, upon the written request of Borrower Representative, such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder (subject to the terms of this Agreement) to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or materially reduce amounts payable pursuant to any such subsection, as the case may be, in the future, and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender (as determined in its sole discretion). Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(g) If any Lender requests indemnification pursuant to Section 2.8 or if additional amounts are to be paid pursuant to Section 2.8 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.8(f), then Borrowers may, at their sole expense and effort, upon notice to such Lender, require such Lender to assign and delegate, without

recourse, all of its interests, rights (other than its existing rights to payments pursuant to Section 2.8) and obligations under this Agreement and the related Financing Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that: (i) in the case of any such assignment resulting from a claim for indemnification under Section 2.8, such assignment will result in a reduction in such indemnification or payments thereafter; (ii) such assignment does not conflict with applicable law; and (iii) Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling Borrowers to require such assignment and delegation cease to apply.

Section 2.9 Appointment of Borrower Representative.

(a) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent and attorney-in-fact to request and receive Loans in the name or on behalf of such Borrower and any other Borrowers, deliver Notices of Borrowing, and Borrowing Base Certificates, give instructions with respect to the disbursement of the proceeds of the Loans, giving and receiving all other notices and consents hereunder or under any of the other Financing Documents and taking all other actions (including in respect of compliance with covenants) in the name or on behalf of any Borrower or Borrowers pursuant to this Agreement and the other Financing Documents. Agent and Lenders may disburse the Loans to such bank account of Borrower Representative or a Borrower or otherwise make such Loans to a Borrower, , in each case as Borrower Representative may designate or direct, without notice to any other Borrower. Notwithstanding anything to the contrary contained herein, Agent may at any time and from time to time require that Loans to or for the account of any Borrower be disbursed directly to an operating account of such Borrower.

(b) Borrower Representative hereby accepts the appointment by Borrowers to act as the agent and attorney-in-fact of Borrowers pursuant to this Section 2.9. Borrower Representative shall ensure that the disbursement of any Loans that are at any time requested by or to be remitted to or for the account of a Borrower, shall be remitted or issued to or for the account of such Borrower.

(c) Each Borrower hereby irrevocably appoints and constitutes Borrower Representative as its agent to receive statements on account and all other notices from Agent, Lenders with respect to the Obligations or otherwise under or in connection with this Agreement and the other Financing Documents.

(d) Any notice, election, representation, warranty, agreement or undertaking made or delivered by or on behalf of any Borrower by Borrower Representative shall be deemed for all purposes to have been made or delivered by such Borrower, as the case may be, and shall be binding upon and enforceable against such Borrower to the same extent as if made or delivered directly by such Borrower.

(e) No resignation by or termination of the appointment of Borrower Representative as agent and attorney-in-fact as aforesaid shall be effective, except after ten (10) Business Days' prior written notice to Agent. If the Borrower Representative resigns under this Agreement, Borrowers shall be entitled to appoint a successor Borrower Representative (which shall be a Borrower and shall be reasonably acceptable to Agent as such successor). Upon the acceptance of its appointment as successor Borrower Representative hereunder, such successor Borrower Representative shall succeed to all the rights, powers and duties of the retiring Borrower Representative and the term "Borrower Representative" means such successor Borrower Representative for all purposes of this Agreement and the other Financing Documents, and the retiring or terminated Borrower Representative's appointment, powers and duties as Borrower Representative shall be thereupon terminated.

Section 2.10 Joint and Several Liability; Rights of Contribution; Subordination and Subrogation.

(a) Borrowers are defined collectively to include all Persons named as one of the Borrowers herein; *provided, however*, that any references herein to "any Borrower", "each Borrower" or similar references, shall be construed as a reference to each individual Person named as one of the Borrowers herein. Each Person so named shall be jointly and severally liable for all of the obligations of Borrowers under this Agreement. Each Borrower, individually, expressly understands, agrees and acknowledges, that the credit facilities would not be made available on the terms herein in the absence of the collective credit of all of the Persons named as the Borrowers herein, the joint and several liability of all such Persons, and the cross-collateralization of the collateral of all such Persons. Accordingly, each Borrower individually acknowledges that the benefit to each of the Persons named as one of the Borrowers as a whole constitutes reasonably equivalent value, regardless of the amount of the credit facilities actually borrowed by, advanced to, or the amount of collateral provided by, any individual Borrower. In addition, each entity named as one of the Borrowers herein hereby acknowledges and agrees that all of the representations, warranties, covenants, obligations, conditions, agreements and other terms contained in this Agreement shall be applicable to and shall be binding upon and measured and enforceable individually against each Person named as one of the Borrowers herein as well as all such Persons when taken together. By way of illustration, but without limiting the generality of the foregoing, the terms of Section 10.1 of this Agreement are to be applied to each individual Person named as one of the Borrowers herein (as well as to all such Persons taken as a whole), such that the occurrence of any of the events described in Section 10.1 of this Agreement as to any Person named as one of the Borrowers herein shall constitute an Event of Default even if such event has not occurred as to any other Persons named as the Borrowers or as to all such Persons taken as a whole.

(b) Notwithstanding any provisions of this Agreement to the contrary, it is intended that the joint and several nature of the liability of each Borrower for the Obligations and the Liens granted by Borrowers to secure the Obligations, not constitute a Fraudulent Conveyance (as defined below). Consequently, Agent, Lenders and each Borrower agree that if the liability of a Borrower for the Obligations, or any Liens granted by such Borrower securing the Obligations would, but for the application of this sentence, constitute a Fraudulent Conveyance, the liability of such Borrower and the Liens securing such liability shall be valid and enforceable only to the maximum extent that would not cause such liability or such Lien to constitute a Fraudulent Conveyance, and the liability of such Borrower and this Agreement shall automatically be deemed to have been amended accordingly. For purposes hereof, the term "**Fraudulent Conveyance**" means a fraudulent conveyance under Section 548 of Chapter 11 of Title II of the Bankruptcy Code or a fraudulent conveyance or fraudulent transfer under the applicable provisions of any fraudulent conveyance or fraudulent transfer law or similar law of any state, nation or other governmental unit, as in effect from time to time.

(c) Agent is hereby authorized, without notice or demand (except as otherwise specifically required under this Agreement) and without affecting the liability of any Borrower hereunder, at any time and from time to time, to (i) with written notice to Borrower Representative, renew, extend or otherwise increase the time for payment of the Obligations; (ii) with the written agreement of any Borrower, change the terms relating to the Obligations or otherwise modify, amend or change the terms of any Note or other agreement, document or instrument now or hereafter executed by any Borrower and delivered to Agent for any Lender; (iii) accept partial payments of the Obligations; (iv) take and hold any Collateral for the payment of the Obligations or for the payment of any guaranties of the Obligations and exchange, enforce, waive and release any such Collateral; (v) apply any such Collateral and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine; and (vi) settle, release, compromise, collect or otherwise liquidate the Obligations and any Collateral therefor in any manner, all guarantor and surety defenses being hereby waived by each Borrower. Without limitations of the

foregoing, with respect to the Obligations, each Borrower hereby makes and adopts each of the agreements and waivers set forth in each Guarantee, the same being incorporated hereby by reference. Except as specifically provided in this Agreement or any of the other Financing Documents, Agent shall have the exclusive right to determine the time and manner of application of any payments or credits, whether received from any Borrower or any other source, and such determination shall be binding on all Borrowers. All such payments and credits may be applied, reversed and reapplied, in whole or in part, to any of the Obligations that Agent shall determine, in its sole discretion, without affecting the validity or enforceability of the Obligations of the other Borrower.

(d) Each Borrower hereby agrees that, except as hereinafter provided, its obligations hereunder shall be unconditional, irrespective of (i) the absence of any attempt to collect the Obligations from any obligor or other action to enforce the same; (ii) the waiver or consent by Agent with respect to any provision of any instrument evidencing the Obligations, or any part thereof, or any other agreement heretofore, now or hereafter executed by a Borrower and delivered to Agent; (iii) failure by Agent to take any steps to perfect and maintain its security interest in, or to preserve its rights to, any security or collateral for the Obligations; (iv) the institution of any proceeding under the Bankruptcy Code, or any similar proceeding, by or against a Borrower or Agent's election in any such proceeding of the application of Section 1111(b)(2) of the Bankruptcy Code; (v) any borrowing or grant of a security interest by a Borrower as debtor-in-possession, under Section 364 of the Bankruptcy Code; (vi) the disallowance, under Section 502 of the Bankruptcy Code, of all or any portion of Agent's claim(s) for repayment of any of the Obligations; or (vii) any other circumstance other than payment in full of the Obligations which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety.

(e) Borrowers hereby agree, as between themselves, that to the extent that Agent, on behalf of Lenders, shall have received from any Borrower any Recovery Amount (as defined below), then the paying Borrower shall have a right of contribution against each other Borrower in an amount equal to such other Borrower's contributive share of such Recovery Amount; *provided, however*, that in the event any Borrower suffers a Deficiency Amount (as defined below), then the Borrower suffering the Deficiency Amount shall be entitled to seek and receive contribution from and against the other Borrowers in an amount equal to the Deficiency Amount; and *provided, further*, that in no event shall the aggregate amounts so reimbursed by reason of the contribution of any Borrower equal or exceed an amount that would, if paid, constitute or result in Fraudulent Conveyance. Until all Obligations have been paid and satisfied in full, no payment made by or for the account of a Borrower including, without limitation, (i) a payment made by such Borrower on behalf of the liabilities of any other Borrower, or (ii) a payment made by any other Guarantor under any Guarantee, shall entitle such Borrower, by subrogation or otherwise, to any payment from such other Borrower or from or out of such other Borrower's property. The right of each Borrower to receive any contribution under this Section 2.10(e) or by subrogation or otherwise from any other Borrower shall be subordinate in right of payment to the Obligations and such Borrower shall not exercise any right or remedy against such other Borrower or any property of such other Borrower by reason of any performance of such Borrower of its joint and several obligations hereunder, until the Obligations have been indefeasibly paid and satisfied in full, and no Borrower shall exercise any right or remedy with respect to this Section 2.10(e) until the Obligations have been indefeasibly paid and satisfied in full. As used in this Section 2.10(e), the term "**Recovery Amount**" means the amount of proceeds received by or credited to Agent from the exercise of any remedy of the Lenders under this Agreement or the other Financing Documents, including, without limitation, the sale of any Collateral. As used in this Section 2.10(e), the term "**Deficiency Amount**" means any amount that is less than the entire amount a Borrower is entitled to receive by way of contribution or subrogation from, but that has not been paid by, the other Borrowers in respect of any Recovery Amount attributable to the Borrower entitled to contribution, until the Deficiency Amount has been reduced to $0 through contributions and reimbursements made under the terms of this Section 2.10(e) or otherwise.

Section 2.11 Collections and Lockbox Account.

(a) Borrowers shall, at all times following the Lockbox Post-Closing Period, maintain a lockbox (the "**Lockbox**") with a United States depository institution designated from time to time by Agent (the "**Lockbox Bank**"), subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require. At all times following the Lockbox Post-Closing Period, Borrowers shall have directed each Account Debtor to make payments in respect of the Accounts (and shall use commercially reasonable efforts to ensure that all collections of Accounts are paid directly from such Account Debtors) (i) into the Lockbox for deposit into the Lockbox Account and/or (ii) directly into the Lockbox Account; *provided, however*, upon Borrowers' actual knowledge of the failure of such collections to be deposited into the Lockbox Account, Borrowers shall promptly notify Agent and immediately deposit such proceeds to the Lockbox Account; *provided, further, however*, Borrowers shall be permitted, upon obtaining Agent's prior written consent, to cause Account Debtors who are individuals to pay Accounts directly to Borrowers, which Borrowers shall then administer and apply in the manner required below. At all times during the Collections Account Post-Closing Period, Borrowers shall use commercially reasonable efforts to ensure that at the end of each calendar week beginning with October 30, 2016, all proceeds received from any Account Debtor during such calendar week are transferred into the Payment Account. At all times following the Collections Account Post-Closing Period, funds deposited into a Lockbox Account shall be transferred into the Payment Account by the close of each Business Day. At all times during the Lockbox Post-Closing Period, Borrowers shall use commercially reasonable efforts to ensure that all proceeds received from any Account Debtor are deposited into the Lockbox Account within three (3) Business Days of when such proceeds are received.

(b) Reserved**.**

(c) Notwithstanding anything in any lockbox agreement or Deposit Account Control Agreement to the contrary, Borrowers agree that they shall be liable for any fees and charges in effect from time to time and charged by the Lockbox Bank in connection with the Lockbox, the Lockbox Account, and that Agent shall have no liability therefor. Borrowers hereby indemnify and agree to hold Agent harmless from any and all liabilities, claims, losses and demands whatsoever, including reasonable attorneys' fees and expenses, arising from or relating to actions of Agent or the Lockbox Bank pursuant to this Section or any lockbox agreement or Deposit Account Control Agreement or similar agreement, except to the extent of such losses arising solely from Agent's gross negligence or willful misconduct.

(d) Agent shall apply, on a daily basis, all funds transferred into the Payment Account pursuant to this Section 2.11 to reduce the outstanding Revolving Loans in such order of application as Agent shall elect. If as the result of collections of Accounts pursuant to the terms and conditions of this Section, a credit balance exists with respect to the Loan Account, such credit balance shall not accrue interest in favor of Borrowers, but Agent shall transfer such funds into an account designated by Borrower Representative for so long as no Event of Default exists.

(e) To the extent that any collections of Accounts or proceeds of other Collateral are not sent directly to the Lockbox or Lockbox Account but are received by any Borrower, such collections shall be held in trust for the benefit of Agent pursuant to an express trust created hereby and immediately remitted, in the form received, to applicable Lockbox or Lockbox Account. No such funds received by any Borrower shall be commingled with other funds of the Borrowers. If any funds received by any Borrower are commingled with other funds of the Borrowers, or are required to be deposited to a Lockbox or Lockbox Account and are not so deposited within five (5) Business Days, then Borrowers shall pay to Agent, for its own account and not for the account of any other Lenders, a compliance fee equal to $500 for each day that any such conditions exist.

(f) Borrowers acknowledge and agree that compliance with the terms of this Section is essential, and that Agent and Lenders will suffer immediate and irreparable injury and have no adequate remedy at law, if any Borrower, through acts or omissions, causes or permits Account Debtors to send payments other than to the Lockbox or Lockbox Accounts or if any Borrower fails to promptly deposit collections of Accounts or proceeds of other Collateral in the Lockbox Account as herein required. Accordingly, in addition to all other rights and remedies of Agent and Lenders hereunder, Agent shall have the right to seek specific performance of the Borrowers' obligations under this Section, and any other equitable relief as Agent may deem necessary or appropriate, and Borrowers waive any requirement for the posting of a bond in connection with such equitable relief.

(g) Borrowers shall not, and Borrowers shall not suffer or permit any Credit Party to, (i) withdraw any amounts from any Lockbox Account, (ii) change the procedures or sweep instructions under the agreements governing any Lockbox Accounts, or (iii) send to or deposit in any Lockbox Account any funds other than payments made with respect to and proceeds of Accounts or other Collateral. Borrowers shall, and shall cause each Credit Party to, cooperate with Agent in the identification and reconciliation on a daily basis of all amounts received in or required to be deposited into the Lockbox Accounts. If more than five percent (5%) of the collections of Accounts received by Borrowers during any given fifteen (15) day period is not identified or reconciled to the reasonable satisfaction of Agent within fifteen (15) Business Days of receipt, Agent shall not be obligated to make further advances under this Agreement until such amount is identified or is reconciled to the reasonable satisfaction of Agent, as the case may be. In addition, if any such amount cannot be identified or reconciled to the reasonable satisfaction of Agent, Agent may utilize its own staff or, if it deems necessary, engage an outside auditor, in either case at Borrowers' expense (which in the case of Agent's own staff shall be in accordance with Agent's then prevailing customary charges (*plus* expenses)), to make such examination and report as may be necessary to identify and reconcile such amount.

(h) If any Borrower breaches its obligation to direct payments of the proceeds of the Collateral to the Lockbox Account, Agent, as the irrevocably made, constituted and appointed true and lawful attorney for Borrowers, may, by the signature or other act of any of Agent's authorized representatives (without requiring any of them to do so), direct any Account Debtor to pay proceeds of the Collateral to Borrowers by directing payment to the Lockbox Account.

Section 2.12 Termination; Restriction on Termination.

(a) Termination by Lenders. In addition to the rights set forth in Section 10.2, Agent may, and at the direction of Required Lenders shall, terminate this Agreement upon or after the occurrence and during the continuance of an Event of Default.

(b) Termination by Borrowers. Upon at least ten (10) Business Days' prior written notice and pursuant to payoff documentation in form and substance satisfactory to Agent and Lenders, Borrowers may, at their option, terminate this Agreement; *provided, however,* that no such termination shall be effective until Borrowers have complied with Section 2.2 and the terms of any fee letter and paid in full all of the Affiliated Obligations in immediately available funds and terminated the Affiliated Financing Documents. Any notice of termination given by Borrowers shall be irrevocable unless all Lenders otherwise agree in writing and no Lender shall have any obligation to make any Loans on or after the termination date stated in such notice. Borrowers may elect to terminate this Agreement in its entirety only. No section of this Agreement or type of Loan available hereunder may be terminated singly.

(c) Effectiveness of Termination. All of the Obligations shall be immediately due and payable upon the Termination Date. All undertakings, agreements, covenants, warranties and representations of Borrowers contained in the Financing Documents shall survive any such termination

and Agent shall retain its Liens in the Collateral and Agent and each Lender shall retain all of its rights and remedies under the Financing Documents notwithstanding such termination until all Obligations and Affiliated Obligations have been discharged or paid, in full, in immediately available funds, including, without limitation, all Obligations under Section 2.2(g) and the terms of any fee letter resulting from such termination. Notwithstanding the foregoing or the payment in full of the Obligations, Agent shall not be required to terminate its Liens in the Collateral unless, with respect to any loss or damage Agent may incur as a result of dishonored checks or other items of payment received by Agent from Borrower or any Account Debtor and applied to the Obligations, Agent shall, at its option, (i) have received a written agreement satisfactory to Agent, executed by Borrowers and by any Person whose loans or other advances to Borrowers are used in whole or in part to satisfy the Obligations, indemnifying Agent and each Lender from any such loss or damage or (ii) have retained cash Collateral or other Collateral for such period of time as Agent, in its discretion, may deem necessary to protect Agent and each Lender from any such loss or damage.

Article 3 - REPRESENTATIONS AND WARRANTIES

To induce Agent and Lenders to enter into this Agreement and to make the Loans and other credit accommodations contemplated hereby, each Borrower hereby represents and warrants to Agent and each Lender that:

Section 3.1 Existence and Power. Each Credit Party (a) is an entity as specified onSchedule 3.1, (b) is duly organized, validly existing and in good standing under the laws of the jurisdiction specified on Schedule 3.1 and no other jurisdiction, (c) has the same legal name as it appears in such Credit Party's Organizational Documents and an organizational identification number (if any), in each case as specified on Schedule 3.1, (d) has all powers and all Permits necessary or desirable in the operation of its business as presently conducted or as proposed to be conducted, except where the failure to have such Permits would not reasonably be expected to have a Material Adverse Effect, and (e) is qualified to do business as a foreign entity in each jurisdiction in which it is required to be so qualified, which jurisdictions as of the Closing Date are specified on Schedule 3.1, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Except as set forth on Schedule 3.1, no Credit Party (x) has had, over the five (5) year period preceding the Closing Date, any name other than its current name, or (y) was incorporated or organized under the laws of any jurisdiction other than its current jurisdiction of incorporation or organization.

Section 3.2 Organization and Governmental Authorization; No Contravention. The execution, delivery and performance by each Credit Party of the Operative Documents to which it is a party (a) are within its powers, (b) have been duly authorized by all necessary action pursuant to its Organizational Documents, (c) require no further action by or in respect of, or filing with, any Governmental Authority, and (d) do not violate, conflict with or cause a breach or a default under (i) any Law applicable to any Credit Party, (ii) any of the Organizational Documents of any Credit Party, or (iii) any agreement or instrument binding upon it, except for such violations, conflicts, breaches or defaults as would not, with respect to this clause (iii), reasonably be expected to have a Material Adverse Effect.

Section 3.3 Binding Effect. Each of the Operative Documents to which any Credit Party is a party constitutes a valid and binding agreement or instrument of such Credit Party, enforceable against such Credit Party in accordance with its respective terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws relating to the enforcement of creditors' rights generally and by general equitable principles.

Section 3.4 Capitalization. The authorized equity securities of each of the Credit Parties as of the Closing Date are as set forth on Schedule 3.4. All issued and outstanding equity securities of each of

the Credit Parties are duly authorized and validly issued, fully paid, nonassessable, free and clear of all Liens other than those in favor of Agent for the benefit of Agent and Lenders, and such equity securities were issued in compliance with all applicable Laws. The identity of the holders of the equity securities of each of the Credit Parties (other than AxoGen) and the percentage of their fully-diluted ownership of the equity securities of each of the Credit Parties (other than AxoGen) as of the Closing Date is set forth on Schedule 3.4. No shares of the capital stock or other equity securities of any Credit Party (other than AxoGen), other than those described above, are issued and outstanding as of the Closing Date. Except as set forth on Schedule 3.4, as of the Closing Date there are no preemptive or other outstanding rights, options, warrants, conversion rights or similar agreements or understandings for the purchase or acquisition from any Credit Party of any equity securities of any such entity.

Section 3.5 Financial Information. All information delivered to Agent and pertaining to the financial condition of any Credit Party fairly presents the financial position of such Credit Party as of such date in conformity with GAAP (and as to unaudited financial statements, subject to normal year-end adjustments and the absence of footnote disclosures). Since December 31, 2015, there has been no material adverse change in the business, operations, properties, prospects or condition (financial or otherwise) of any Credit Party.

Section 3.6 Litigation. Except as set forth onSchedule 3.6 as of the Closing Date, and except as hereafter disclosed to Agent in writing, there is no Litigation pending against, or to such Borrower's knowledge threatened against or affecting, any Credit Party or, to such Borrower's knowledge, any party to any Operative Document other than a Credit Party. There is no Litigation pending in which an adverse decision would reasonably be expected to have a Material Adverse Effect or which in any manner draws into question the validity of any of the Operative Documents.

Section 3.7 Ownership of Property. Each Borrower and each of its Subsidiaries is the lawful owner of, has good and marketable title to and is in lawful possession of, or has valid leasehold interests in, all properties, accounts and other assets (real or personal, tangible, intangible or mixed) purported or reported to be owned or leased (as the case may be) by such Person.

Section 3.8 No Default. No Event of Default, or to such Borrower's knowledge, Default, has occurred and is continuing. No Credit Party is in breach or default under or with respect to any contract, agreement, lease or other instrument to which it is a party or by which its property is bound or affected, which breach or default would reasonably be expected to have a Material Adverse Effect.

Section 3.9 Labor Matters. As of the Closing Date, there are no strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party. Hours worked and payments made to the employees of the Credit Parties have not been in violation of the Fair Labor Standards Act or any other applicable Law dealing with such matters. All payments due from the Credit Parties, or for which any claim may be made against any of them, on account of wages and employee and retiree health and welfare insurance and other benefits have been paid or accrued as a liability on their books, as the case may be. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which it is a party or by which it is bound.

Section 3.10 Regulated Entities. No Credit Party is an "investment company" or a company "controlled" by an "investment company" or a "subsidiary" of an "investment company," all within the meaning of the Investment Company Act of 1940.

Section 3.11 Margin Regulations. None of the proceeds from the Loans have been or will be used, directly or indirectly, for the purpose of purchasing or carrying any "margin stock" (as defined in

Regulation U of the Federal Reserve Board), for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase or carry any "margin stock" or for any other purpose which might cause any of the Loans to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board.

Section 3.12 Compliance With Laws; Anti-Terrorism Laws.

(a) Each Credit Party is in compliance with the requirements of all applicable Laws, except for such Laws the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

(b) None of the Credit Parties and, to the knowledge of the Credit Parties, none of their Affiliates (i) is 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, (iii) is a Blocked Person, or is controlled by a Blocked Person, (iv) is acting or will act for or on behalf of a Blocked Person, (v) is associated with, or will become associated with, a Blocked Person or (vi) is providing, or will provide, material, financial or technical support or other services to or in support of acts of terrorism of a Blocked Person. No Credit Party nor, to the knowledge of any Credit Party, any of its Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (A) 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 (B) 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.

Section 3.13 Taxes. All federal and material state and local tax returns, reports and statements required to be filed by or on behalf of each Credit Party have been filed with the appropriate Governmental Authorities in all jurisdictions in which such returns, reports and statements are required to be filed and, except to the extent subject to a Permitted Contest, all federal and material state and local tax returns (including real property Taxes) and other charges shown to be due and payable in respect thereof have been timely paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof. Except to the extent subject to a Permitted Contest, all material state and local sales and use Taxes required to be paid by each Credit Party have been paid. All federal and material state returns have been filed by each Credit Party for all periods for which returns were due with respect to employee income tax withholding, social security and unemployment taxes, and, except to the extent subject to a Permitted Contest, the material amounts shown thereon to be due and payable have been paid in full or adequate provisions therefor have been made.

Section 3.14 Compliance with ERISA.

(a) Each ERISA Plan (and the related trusts and funding agreements) complies in form and in operation with, has been administered in compliance with, and the terms of each ERISA Plan satisfy, the applicable requirements of ERISA and the Code in all material respects. Each ERISA Plan which is intended to be qualified under Section 401(a) of the Code is so qualified, and the United States Internal Revenue Service has issued a favorable determination letter with respect to each such ERISA Plan which may be relied on currently. No Credit Party has incurred liability for any material excise tax under any of Sections 4971 through 5000 of the Code.

(b) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, each Borrower and each Subsidiary is in compliance with the applicable provisions of ERISA and the provision of the Code relating to ERISA Plans and the regulations and

published interpretations therein. During the thirty-six (36) month period prior to the Closing Date or the making of any Loan (i) no steps have been taken to terminate any Pension Plan, and (ii) no contribution failure has occurred with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code and no event has occurred that would give rise to a Lien under Section 4068 of ERISA. No condition exists or event or transaction has occurred with respect to any Pension Plan which would result in the incurrence by any Credit Party of any material liability, fine or penalty. No Credit Party has incurred liability to the PBGC (other than for current premiums) with respect to any employee Pension Plan. All contributions (if any) have been made on a timely basis to any Multiemployer Plan that are required to be made by any Credit Party or any other member of the Controlled Group under the terms of the plan or of any collective bargaining agreement or by applicable Law; no Credit Party nor any member of the Controlled Group has withdrawn or partially withdrawn from any Multiemployer Plan, incurred any withdrawal liability with respect to any such plan or received notice of any claim or demand for withdrawal liability or partial withdrawal liability from any such plan, and no condition has occurred which, if continued, would result in a withdrawal or partial withdrawal from any such plan, and no Credit Party nor any member of the Controlled Group has received any notice that any Multiemployer Plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise tax, that any such plan is or has been funded at a rate less than that required under Section 412 of the Code, that any such plan is or may be terminated, or that any such plan is or may become insolvent.

Section 3.15 Consummation of Operative Documents; Brokers. Except as disclosed on Schedule 3.15 on the Closing Date and fees payable to Agent and/or Lenders, no broker, finder or other intermediary has brought about the obtaining, making or closing of the transactions contemplated by the Operative Documents, and no Credit Party has or will have any obligation to any Person in respect of any finder's or brokerage fees, commissions or other expenses in connection herewith or therewith.

Section 3.16 Reserved.

Section 3.17 Material Contracts. Schedule 3.17 contains a true, correct and complete list of all the Material Contracts in effect on the Closing Date. The consummation of the transactions contemplated by the Financing Documents will not give rise to a right of termination in favor of any party to any Material Contract (other than any Credit Party), except for such Material Contracts the noncompliance with which would not reasonably be expected to have a Material Adverse Effect.

Section 3.18 Compliance with Environmental Requirements; No Hazardous Materials. Except in each case as set forth on Schedule 3.18:

(a) no notice, notification, demand, request for information, citation, summons, complaint or order has been issued, no complaint has been filed, no penalty has been assessed and no investigation or review is pending, or to such Borrower's knowledge, threatened by any Governmental Authority or other Person with respect to any (i) alleged violation by any Credit Party of any Environmental Law, (ii) alleged failure by any Credit Party to have any Permits required in connection with the conduct of its business or to comply with the terms and conditions thereof, (iii) any generation, treatment, storage, recycling, transportation or disposal of any Hazardous Materials, or (iv) release of Hazardous Materials; and

(b) no property now owned or leased by any Credit Party and, to the knowledge of each Borrower, no such property previously owned or leased by any Credit Party, to which any Credit Party has, directly or indirectly, transported or arranged for the transportation of any Hazardous Materials, is listed or, to such Borrower's knowledge, proposed for listing, on the National Priorities List promulgated pursuant to CERCLA, or CERCLIS (as defined in CERCLA) or any similar state list or is the subject of

federal, state or local enforcement actions or, to the knowledge of such Borrower, other investigations which may lead to claims against any Credit Party for clean-up costs, remedial work, damage to natural resources or personal injury claims, including, without limitation, claims under CERCLA.

For purposes of this Section 3.18, each Credit Party shall be deemed to include any business or business entity (including a corporation) that is, in whole or in part, a predecessor of such Credit Party.

Section 3.19 Intellectual Property and License Agreements. A list of all Registered Intellectual Property of each Credit Party and all in-bound license or sublicense agreements, exclusive out-bound license or sublicense agreements, or other rights of any Credit Party to use Intellectual Property (but excluding in-bound licenses of over-the-counter software that is commercially available to the public), as of the Closing Date and, as updated pursuant to Section 4.15, is set forth on Schedule 3.19. Schedule 3.19 shall be prepared by Borrower in the form provided by Agent and contain all information required in such form. Except for Permitted Licenses, each Credit Party is the sole owner of its Intellectual Property free and clear of any Liens. Each patent is valid and enforceable and no part of the Material Intangible Assets 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.

Section 3.20 Solvency. After giving effect to any Loan advance and the liabilities and obligations of each Borrower under the Operative Documents, each Borrower (after giving effect to all rights of such Borrower arising by virtue of Section 2.10(b) and (e) and any other rights of contribution or similar rights of such Borrower) is Solvent and the Borrowers and their Subsidiaries, on a consolidated basis, are Solvent.

Section 3.21 Full Disclosure. None of the written information (financial or otherwise) furnished by or on behalf of any Credit Party to Agent or any Lender in connection with the consummation of the transactions contemplated by the Operative Documents, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading in light of the circumstances under which such statements were made. All financial projections delivered to Agent and the Lenders by Borrowers (or their agents) have been prepared on the basis of the assumptions stated therein. Such projections represent each Borrower's best estimate of such Borrower's future financial performance and such assumptions are believed by such Borrower to be fair and reasonable in light of current business conditions; *provided*, *however*, that Borrowers can give no assurance that such projections will be attained.

Section 3.22 Interest Rate. The rate of interest paid under the Notes and the method and manner of the calculation thereof do not violate any usury or other law or applicable Laws, any of the Organizational Documents, or any of the Operative Documents.

Section 3.23 Subsidiaries. Borrowers do not own any stock, partnership interests, limited liability company interests or other equity securities or Subsidiaries except for Permitted Investments.

Section 3.24 Reserved.

Section 3.25 Accuracy of Schedules. All information set forth in the Schedules to this Agreement (including Schedule 3.19 and Schedule 8.2(a)) is true, accurate and complete as of the Closing Date, the date of delivery of the last quarterly Compliance Certificate and any other subsequent date in which Borrower is requested to update such Schedules. All information set forth in the Perfection Certificate is true, accurate and complete as of the Closing Date and any other subsequent date in which Borrower is requested to update such certificate.

Article 4 - AFFIRMATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 4.1 Financial Statements and Other Reports. Each Borrower will deliver to Agent:

(a) as soon as available, but no later than thirty (30) days after the last day of each month, commencing with the month ending November 30, 2016, (i) a company prepared consolidated balance sheet and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, certified by a Responsible Officer and in a form acceptable to Agent and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(b) as soon as available, but no later than forty-five (45) days after the last day of each of the first three fiscal quarters of the Borrowers' fiscal year, (i) a company prepared consolidated balance sheet, cash flow and income statement covering Borrowers' and its Consolidated Subsidiaries' consolidated operations during the period, prepared under GAAP, consistently applied, certified by a Responsible Officer and in a form acceptable to Agent and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(c) as soon as available, but no later than one hundred twenty (120) days after the last day of Borrower's fiscal year, (i) 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 reasonably acceptable to Agent in its reasonable discretion and (ii) a duly completed Compliance Certificate signed by a Responsible Officer setting forth calculations showing compliance with the financial covenants set forth in this Agreement;

(d) to the extent not publicly available via EDGAR at the SEC's website www.sec.gov, within ten (10) days of delivery or filing thereof, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt and copies of all reports and other filings made by Borrower with any stock exchange on which any securities of any Borrower are traded and/or the SEC;

(e) a prompt written report of any legal actions pending or threatened against any Borrower or any of its Subsidiaries that would reasonably be expected to result in damages or costs to any Borrower or any of its Subsidiaries of Five Hundred Thousand Dollars ($500,000) or more;

(f) within one hundred twenty days (120) days after the start of each fiscal year, projections for the forthcoming two fiscal years, on a quarterly basis for the current year and on an annual basis for the subsequent year;

(g) promptly (and in any event within ten (10) days of any request therefor) such readily available other budgets, sales projections, operating plans and other financial information and information, reports or statements regarding the Borrowers, their business and the Collateral as Agent may from time to time reasonably request; *provided*, *however*, that reporting related to Regulatory Required Permits and/or Regulatory Reporting Events shall be governed by Section 4.17; and

(h) (i) if Borrowers did not borrow any Revolving Loans during the prior calendar month, within ten (10) days and (ii) otherwise, within thirty (30) days after the last day of each month, a duly completed Borrowing Base Certificate signed by a Responsible Officer, with aged listings of accounts

receivable and accounts payable (by invoice date) and a summary of Inventory by location and type with a supporting perpetual Inventory report, in each case, accompanied by such supporting detail and documentation as shall be requested by Agent in its reasonable discretion.

Section 4.2 Payment and Performance of Obligations. Each Borrower (a) will pay and discharge, and cause each Subsidiary to pay and discharge, on a timely basis as and when due, all of their respective obligations and liabilities, except for such obligations and/or liabilities (i) that may be the subject of a Permitted Contest, and (ii) the nonpayment or nondischarge of which could not reasonably be expected to have a Material Adverse Effect or result in a Lien against any Collateral, except for Permitted Liens, (b) without limiting anything contained in the foregoing clause (a), except to the extent subject to a Permitted Contest, pay all amounts due and owing in respect of Taxes (including without limitation, payroll and withholdings tax liabilities) on a timely basis as and when due, and in any case prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for nonpayment thereof, (c) will maintain, and cause each Subsidiary to maintain, in accordance with GAAP, appropriate reserves for the accrual of all of their respective obligations and liabilities, and (d) will not breach or permit any Subsidiary to breach, or permit to exist any default under, the terms of any lease, commitment, contract, instrument or obligation to which it is a party, or by which its properties or assets are bound, except for such breaches or defaults which could not reasonably be expected to have a Material Adverse Effect.

Section 4.3 Maintenance of Existence. Each Borrower will preserve, renew and keep in full force and effect and in good standing, and will cause each Subsidiary to preserve, renew and keep in full force and effect and in good standing, (a) their respective existence and (b) their respective rights, privileges and franchises necessary or desirable in the normal conduct of business.

Section 4.4 Maintenance of Property; Insurance.

(a) Each Borrower will keep, and will cause each Subsidiary to keep, all property useful and necessary in its business in good working order and condition, ordinary wear and tear excepted. If all or any part of the Collateral useful or necessary in its business, or upon which any Borrowing Base is calculated, becomes damaged or destroyed, each Borrower will, and will cause each Subsidiary to, promptly and completely repair and/or restore the affected Collateral in a good and workmanlike manner, regardless of whether Agent agrees to disburse insurance proceeds or other sums to pay costs of the work of repair or reconstruction.

(b) Upon completion of any Permitted Contest, Borrowers shall, and will cause each Subsidiary to, promptly pay the amount due, if any, and deliver to Agent proof of the completion of the contest and payment of the amount due, if any.

(c) Each Borrower will maintain (i) casualty insurance on all real and personal property on an all risks basis (including the perils of flood, windstorm and quake), covering the repair and replacement cost of all such property and coverage, business interruption and rent loss coverages with extended period of indemnity (for the period required by Agent from time to time) and indemnity for extra expense, in each case without application of coinsurance and with agreed amount endorsements, (ii) general and professional liability insurance (including products/completed operations liability coverage), and (iii) such other insurance coverage, in each case against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons; *provided*, *however*, that, in no event shall such insurance be in amounts or with coverage less than, or with carriers with qualifications inferior to, any of the insurance or carriers in existence as of the Closing Date (or required to be in existence after the Closing Date under a Financing Document). All such insurance shall be provided by insurers having an A.M. Best policyholders rating reasonably acceptable to Agent.

(d) On or prior to the Closing Date, and at all times thereafter, each Borrower will cause Agent to be named as an additional insured, assignee and lender loss payee (which shall include, as applicable, identification as mortgagee), as applicable, on each insurance policy required to be maintained pursuant to this Section 4.4 pursuant to endorsements in form and substance acceptable to Agent. Borrowers shall deliver to Agent and the Lenders (i) on the Closing Date, a certificate from Borrowers' insurance broker dated such date showing the amount of coverage as of such date, and that such policies will include effective waivers (whether under the terms of any such policy or otherwise) by the insurer of all claims for insurance premiums against all loss payees and additional insureds and all rights of subrogation against all loss payees and additional insureds, and that if all or any part of such policy is canceled, terminated or expires, the insurer will forthwith give notice thereof to each additional insured, assignee and loss payee and that no cancellation, reduction in amount or material change in coverage thereof shall be effective until at least thirty (30) days after receipt by each additional insured, assignee and loss payee of written notice thereof, (ii) on an annual basis, and upon the request of any Lender through Agent from time to time full information as to the insurance carried, (iii) within ten (10) days of receipt of notice from any insurer, a copy of any notice of cancellation, nonrenewal or material change in coverage from that existing on the date of this Agreement, (iv) forthwith, notice of any cancellation or nonrenewal of coverage by any Borrower, and (v) at least thirty (30) days prior to expiration of any policy of insurance, evidence of renewal of such insurance upon the terms and conditions herein required.

(e) In the event any Borrower fails to provide Agent with evidence of the insurance coverage required by this Agreement, Agent may purchase insurance at Borrowers' expense to protect Agent's interests in the Collateral *provided*, that such insurance coverage shall contain such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where such Borrower operates. This insurance may, but need not, protect such Borrower's interests. The coverage purchased by Agent may not pay any claim made by such Borrower or any claim that is made against such Borrower in connection with the Collateral. Such Borrower may later cancel any insurance purchased by Agent, but only after providing Agent with evidence that such Borrower has obtained insurance as required by this Agreement. If Agent purchases insurance for the Collateral, Borrowers will be responsible for the costs of that insurance to the fullest extent provided by law, including interest and other charges imposed by Agent in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to the Obligations. The costs of the insurance may be more than the cost of insurance such Borrower is able to obtain on its own.

Section 4.5 Compliance with Laws and Material Contracts. Each Borrower will comply, and cause each Subsidiary to comply, with the requirements of all applicable Laws and Material Contracts, except to the extent that failure to so comply would not reasonably be expected to (a) have a Material Adverse Effect, or (b) result in any Lien upon either (i) a material portion of the assets of any such Person in favor of any Governmental Authority, or (ii) any Collateral which is part of the Borrowing Base.

Section 4.6 Inspection of Property, Books and Records. Each Borrower will keep, and will cause each Subsidiary to keep, proper books of record substantially 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; and will permit, and will cause each Subsidiary to permit, at the sole cost of the applicable Borrower or any applicable Subsidiary, representatives of Agent and of any Lender to visit and inspect any of their respective properties, to examine and make abstracts or copies from any of their respective books and records, to conduct a collateral audit and analysis of their respective 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 Borrowers and to discuss their respective affairs, finances and accounts with their respective officers, employees and independent public accountants as often as may reasonably be desired. In the absence of a Default or an Event of Default, Agent or any Lender exercising any rights

pursuant to this Section 4.6 shall give the applicable Borrower or any applicable Subsidiary commercially reasonable prior notice of such exercise. No notice shall be required during the existence and continuance of any Default or Event of Default. Notwithstanding the foregoing, so long as no Event of Default has occurred and is continuing, Borrowers shall not be required to reimburse Agent for more than two (2) such visits per fiscal year.

Section 4.7 Use of Proceeds. Borrowers shall use the proceeds of the Loans solely for (a) transaction fees incurred in connection with the Financing Documents and the payment in full on the Closing Date of certain existing Debt, and (b) for working capital needs of Borrowers and their Subsidiaries. No portion of the proceeds of the Loans will be used for family, personal, agricultural or household use.

Section 4.8 Estoppel Certificates. After written request by Agent which, so long as no Event of Default has occurred and is continuing, shall be limited to one (1) such request per fiscal year of Borrowers, Borrowers, within twenty (20) days and at their expense, will furnish Agent with a statement, duly acknowledged and certified, setting forth (a) the amount of the original principal amount of the Notes, and the unpaid principal amount of the Notes, (b) the rate of interest of the Notes, (c) the date payments of interest and/or principal were last paid, (d) any offsets or defenses to the payment of the Obligations, and if any are alleged, the nature thereof, (e) that the Notes and this Agreement have not been modified or if modified, giving particulars of such modification, and (f) that there has occurred and is then continuing no Default or if such Default exists, the nature thereof, the period of time it has existed, and the action being taken to remedy such Default; *provided* that Agent shall have provided the Register to Borrower, upon Borrower's request, prior to Borrower being required to furnish such statement to Agent. After written request by Agent, which, so long as no Event of Default has occurred and is continuing, shall be limited to one (1) such request per fiscal year of Borrowers, Borrowers, within twenty (20) days and at their expense, will furnish Agent with a certificate, signed by a Responsible Officer of Borrowers, updating all of the representations and warranties contained in this Agreement and the other Financing Documents and certifying that all of the representations and warranties contained in this Agreement and the other Financing Documents, as updated pursuant to such certificate, are true, accurate and complete in all material respects as of the date of such certificate.

Section 4.9 Notices of Material Contracts, Litigation and Defaults.

(a) Borrower shall provide ten (10) Business Days (i) written notice to Agent of Borrower (1) executing and delivering any amendment, consent, waiver or other modification to any Material Contract which is material and adverse to such Material Contract or which would reasonably be expected to have a Material Adverse Effect or (2) receiving or delivering any notice of termination or default or similar notice in connection with any Material Contract and (ii) together with delivery of the next Compliance Certificate (included as an update to the such any schedule delivered therewith) with the quarterly financial statements in Section 4.1(b), the execution of any new Material Contract and/or any new material amendment, consent, waiver or other modification to any Material Contract not previously disclosed.

(b) Borrowers will give prompt written notice to Agent (i) of any litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document, (ii) upon any Borrower becoming aware of the existence of any Default or Event of Default, (iii) of any strikes or other labor disputes pending or, to any Borrower's knowledge, threatened against any Credit Party, (iv) if there is any infringement or claim of infringement by any other Person with respect to any Intellectual Property rights of any Credit Party that would reasonably be expected to have a Material Adverse Effect, or if there is any claim by any other Person that any Credit Party in the conduct of its

business is infringing on the Intellectual Property rights of others, and (v) of all returns, recoveries, disputes and claims that involve more than $500,000. Borrowers represent and warrant that Schedule 4.9 sets forth a complete list of all matters existing as of the Closing Date for which notice could be required under this Section and all litigation or governmental proceedings pending or threatened (in writing) against Borrowers or other Credit Party as of the Closing Date.

(c) Borrower shall, and shall cause each Credit Party, to provide such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any of the events or notices described in clauses (a) and (b) above. From the date hereof and continuing through the termination of this Agreement, Borrower shall, and shall cause each Credit Party to, make available to Agent and each Lender, without expense to Agent or any Lender, each Credit Party's officers, employees and agents and books, to the extent that Agent or any Lender may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Agent or any Lender with respect to any Collateral or relating to a Credit Party.

Section 4.10 Hazardous Materials; Remediation.

(a) If any release or disposal of Hazardous Materials shall occur or shall have occurred on any real property or any other assets of any Borrower or any other Credit Party, such Borrower will cause, or direct the applicable Credit Party to cause, the prompt containment and removal of such Hazardous Materials and the remediation of such real property or other assets as is necessary to comply with all Environmental Laws and Healthcare Laws and to preserve the value of such real property or other assets. Without limiting the generality of the foregoing, each Borrower shall, and shall cause each other Credit Party to, comply with each Environmental Law and Healthcare Law requiring the performance at any real property by any Borrower or any other Credit Party of activities in response to the release or threatened release of a Hazardous Material.

(b) Borrowers will provide Agent within thirty (30) days after written demand therefor with evidence of financial assurance to the reasonable satisfaction of Agent that sufficient funds are available to pay the cost of removing, treating and disposing of any Hazardous Materials or Hazardous Materials Contamination and discharging any assessment which may be established on any property as a result thereof, such demand to be made, if at all, upon Agent's reasonable business determination that the failure to remove, treat or dispose of any Hazardous Materials or Hazardous Materials Contamination, or the failure to discharge any such assessment would reasonably be expected to have a Material Adverse Effect.

Section 4.11 Further Assurances.

(a) Each Borrower will, and will cause each Subsidiary to, at its own cost and expense, promptly and duly take, execute, acknowledge and deliver all such further acts, documents and assurances as may from time to time be necessary or as Agent or the Required Lenders may from time to time reasonably request in order to carry out the intent and purposes of the Financing Documents and the transactions contemplated thereby, including all such actions to (i) establish, create, preserve, protect and perfect a first priority Lien (subject only to the Affiliated Intercreditor Agreement and to Permitted Liens) in favor of Agent for itself and for the benefit of the Lenders on the Collateral (including Collateral acquired after the date hereof), and (ii) unless Agent shall agree otherwise in writing, cause all Subsidiaries of Borrowers (other than Excluded Foreign Subsidiaries) to be jointly and severally obligated with the other Borrowers under all covenants and obligations under this Agreement, including the obligation to repay the Obligations.

(b) Upon receipt of an affidavit of an authorized representative of Agent or a Lender as to the loss, theft, destruction or mutilation of any Note or any other Financing Document which is not of public record, and, in the case of any such mutilation, upon surrender and cancellation of such Note or other applicable Financing Document, Borrowers will issue, in lieu thereof, a replacement Note or other applicable Financing Document, dated the date of such lost, stolen, destroyed or mutilated Note or other Financing Document in the same principal amount thereof and otherwise of like tenor.

(c) Upon the request of Agent, Borrowers shall obtain a landlord's agreement or mortgagee agreement, as applicable, from the lessor of each leased property or mortgagee of owned property with respect to any business location where any portion of the Collateral included in or proposed to be included in the Borrowing Base, or the records relating to such Collateral and/or software and equipment relating to such records or Collateral, is stored or located, which agreement or letter shall be reasonably satisfactory in form and substance to Agent. Borrowers shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location where any Collateral, or any records related thereto, is or may be located.

(d) Borrower shall provide Agent with at least fifteen (15) days (or such shorter period as Agent may accept in its sole discretion) prior written notice of its intention to create (or to the extent permitted under this Agreement, acquire) a new Subsidiary. Upon the formation (or to the extent permitted under this Agreement, acquisition) of a new Subsidiary, Borrowers shall (i) pledge, have pledged or cause or have caused to be pledged to Agent pursuant to a pledge agreement in form and substance satisfactory to Agent, all of the outstanding shares of equity interests or other equity interests of such new Subsidiary (except to the extent such shares constitute Excluded Property) owned directly or indirectly by any Borrower, along with undated stock or equivalent powers for such certificates, executed in blank; (ii) unless Agent shall agree otherwise in writing, cause the new Subsidiary (other than an Excluded Foreign Subsidiary) to take such other actions (including entering into or joining any Security Documents) as are necessary or advisable in the reasonable opinion of Agent in order to grant Agent, acting on behalf of the Lenders, a first priority Lien (subject to the Affiliated Intercreditor Agreement) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property, which first priority Liens are required to be granted pursuant to this Agreement; (iii) unless Agent shall agree otherwise in writing cause such new Subsidiary (other than an Excluded Foreign Subsidiary) to either (at the election of Agent) become a Borrower hereunder with joint and several liability for all obligations of Borrowers hereunder and under the other Financing Documents pursuant to a joinder agreement or other similar agreement in form and substance satisfactory to Agent or to become a Guarantor of the obligations of Borrowers hereunder and under the other Financing Documents pursuant to a guaranty and suretyship agreement in form and substance satisfactory to Agent; and (iv) cause the new Subsidiary to deliver certified copies of such Subsidiary's certificate or articles of incorporation, together with good standing certificates, by-laws (or other operating agreement or governing documents), resolutions of the Board of Directors or other governing body, approving and authorizing (as required by Section 4.11(d)(i)-(iii)) the execution and delivery of the Security Documents, incumbency certificates and to execute and/or deliver such other documents and legal opinions or to take such other actions as may be requested by Agent, in each case, in form and substance satisfactory to Agent. Without limiting the foregoing, no Credit Parties shall be permitted to make any Investment or other contribution into any such Subsidiary other than Permitted Investments, which, in each case, are made after such time such time as Borrower has satisfied the requirements of this section 4.11(d).

(e) Each Borrower further agrees to ensure that the total amount of cash and cash equivalents held by the Excluded Foreign Subsidiaries (collectively) shall not at any time exceed $50,000 in the aggregate.

(f) Following (a) the occurrence and continuation of an Event of Default and (b) the exercise by Agent of any right, option or remedy provided for hereunder, under any Financing Document or at law or in equity, Credit Parties shall cause each Excluded Foreign Subsidiary to declare and pay to the applicable Credit Party the maximum amount of dividends and other distributions in respect of its capital stock or other equity interest legally permitted to be paid by each such Excluded Foreign Subsidiary; provided that such Excluded Foreign Subsidiary shall be able to retain for working capital purposes such other amounts used by such Excluded Foreign Subsidiaries in the Ordinary Course of Business and as are reasonable necessary for its operations based on its current projections, as provided to the Agent pursuant to Section 4.1.

Section 4.12 Reserved.

Section 4.13 Power of Attorney. Each of the authorized representatives of Agent is hereby irrevocably made, constituted and appointed the true and lawful attorney for Borrowers (without requiring any of them to act as such) with full power of substitution to do the following: (a) endorse the name of Borrowers upon any and all checks, drafts, money orders, and other instruments for the payment of money that are payable to Borrowers and constitute collections on Borrowers' Accounts; (b) so long as Agent has provided not less than five (5) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, execute in the name of Borrowers any schedules, assignments, instruments, documents, and statements that Borrowers are obligated to give Agent under this Agreement; (c) after the occurrence and during the continuance of an Event of Default, take any action Borrowers are required to take under this Agreement; (d) so long as Agent has provided not less than five (5) Business Days' prior written notice to Borrower to perform the same and Borrower has failed to take such action, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce any Account or other Collateral or perfect Agent's security interest or Lien in any Collateral; and (e) after the occurrence and during the continuance of an Event of Default, do such other and further acts and deeds in the name of Borrowers that Agent may deem necessary or desirable to enforce its rights with regard to any Account or other Collateral. This power of attorney shall be irrevocable and coupled with an interest.

Section 4.14 Borrowing Base Collateral Administration.

(a) All data and other information relating to Accounts and other intangible Collateral shall at all times be kept by Borrowers, at their respective principal offices and shall not be moved from such locations without (i) providing prior written notice to Agent, and (ii) obtaining the prior written consent of Agent, which consent shall not be unreasonably withheld.

(b) Borrowers shall provide prompt written notice to each Person who either is currently an Account Debtor or becomes an Account Debtor at any time following the date of this Agreement that directs each Account Debtor to make payments into the Lockbox, and hereby authorizes Agent, upon Borrowers' failure to send such notices within ten (10) Business Days after the expiration of the Lockbox Post-Closing Period (or ten (10) Business Days after the Person becomes an Account Debtor), to send any and all similar notices to such Person. Agent reserves the right to notify Account Debtors that Agent has been granted a Lien upon all Accounts.

(c) (i) Borrowers will conduct a physical count of its onsite Inventory at least once per year (which may be conducted by Borrower's independent public accountants in connection Borrowers' annual audit and delivered together with the financial states pursuant to Section 4.1(c)) and, upon the occurrence and during the continuance of an Event of Default, at such other times as Agent requests, and (ii) Borrowers shall provide to Agent a written accounting of such physical count in form and substance satisfactory to Agent. Each Borrower will use commercially reasonable efforts to at all

times keep its Inventory in good and marketable condition. In addition to the foregoing, from time to time, Agent may require Borrowers to obtain and deliver to Agent appraisal reports in form and substance and from appraisers reasonably satisfactory to Agent stating the then current fair market values of all or any portion of Inventory owned by each Borrower or any Subsidiary.

Section 4.15 Schedule Updates. Borrower shall, in the event of any information in the Schedules becoming materially outdated, inaccurate, incomplete or misleading, deliver to Agent, together with the next Compliance Certificate required to be delivered under this Agreement after such event a proposed update to such Schedule correcting all materially outdated, inaccurate, incomplete or misleading information; *provided*, *however*, (i) with respect to any proposed updates to the Schedules involving Permitted Liens, Permitted Debt or Permitted Investments, Agent will replace the respective Schedule attached hereto with such proposed update only if such updated information is consistent with the definitions of and limitations herein pertaining to Permitted Liens, Permitted Debt or Permitted Investments and (ii) with respect to any proposed updates to such Schedule involving other matters, Agent will replace the applicable portion of such Schedule attached hereto with such proposed update upon Agent's approval thereof.

Section 4.16 Intellectual Property and Licensing.

(a) Together with each Compliance Certificate required to be delivered pursuant to Section 4.1(b) to the extent (A) Borrower acquires and/or develops any new Registered Intellectual Property, or (B) Borrower enters into or becomes bound by any additional in-bound license or sublicense agreement, any additional exclusive out-bound license or sublicense agreement or other agreement with respect to rights in Intellectual Property (other than over-the-counter software that is commercially available to the public), or (C) there occurs any other material change in Borrower's Registered Intellectual Property, in-bound licenses or sublicenses or exclusive out-bound licenses or sublicenses from that listed on Schedule 3.19 together with such Compliance Certificate, deliver to Agent an updated Schedule 3.19 reflecting such updated information. With respect to any updates to Schedule 3.19 involving exclusive out-bound licenses or sublicenses, such licenses shall be consistent with the definitions of and limitations herein pertaining to Permitted Licenses.

(b) If Borrower obtains any Registered Intellectual Property (other than copyrights, mask works and related applications, which are addressed below), Borrower shall notify Agent in the Compliance Certificate delivered pursuant to Section 4.1(b) and promptly thereafter execute such documents and provide such other information (including, without limitation, copies of applications) and take such other actions as Agent shall request in its good faith business judgment to perfect and maintain, if possible, a first priority perfected security interest in favor of Agent, for the ratable benefit of Lenders, in such Registered Intellectual Property.

(c) Except as otherwise provided with respect to the Material Contract consents set forth on Schedule 7.4, Borrower shall take such commercially reasonable steps as Agent 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 it that might otherwise 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 Financing Documents.

(d) Borrower shall own, or be licensed to use or otherwise have the right to use, all Material Intangible Assets. Borrower shall cause all its Registered Intellectual Property to be 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 Effect. Borrower shall at all times conduct its business without infringement of any Intellectual Property rights of others. Borrower shall (i) protect, defend and maintain the validity and enforceability of its Material Intangible Assets (ii) promptly advise Agent in writing of material infringements of its Material Intangible Assets, or of a claim of material infringement by Borrower on the Intellectual Property rights of others; and (iii) not allow any of Borrower's Material Intangible Assets to be abandoned, invalidated, forfeited or dedicated to the public or to become unenforceable. Borrower shall not become a party to, nor become bound by, any material exclusive license or other material 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.

Section 4.17 Regulatory Reporting and Covenants.

(a) Borrower shall notify Agent and each Lender promptly, and in any event within ten (10) Business Days of receiving, becoming aware of or determining that, (each, a "**Regulatory Reporting Event**" and collectively, the "**Regulatory Reporting Events**"): (i) any Governmental Authority, specifically including the FDA is conducting or has conducted (A) if applicable, any of Borrower's or its Subsidiaries' manufacturing facilities and processes for any Product which investigation has disclosed any material deficiencies or violations of Laws and/or the Regulatory Required Permits related to such thereto or (B) an investigation or review of any Regulatory Required Permit (other than routine reviews in the Ordinary Course of Business associated with the renewal of a Regulatory Required Permit and which would not reasonably be expected to result in a Material Adverse Effect), (ii) development, testing, and/or manufacturing of any Product should cease which have or would reasonably be expected to result in a Material Adverse Effect, (iii) if a material Product has been approved for marketing and sale, any marketing or sales of such Product should cease or such Product should be withdrawn from the marketplace, (iv) any Regulatory Required Permit has been revoked or withdrawn which have or would reasonably be expected to result in a Material Adverse Effect, (v) adverse clinical test results with respect to any Product which have or would reasonably be expected to result in a Material Adverse Effect, (vi) any Product recalls or voluntary Product withdrawals from any market (other than discrete batches or lots that are not material in quantity or amount and are not made in conjunction with a larger recall) or (vii) any significant failures in the manufacturing of any Product such that the amount of such Product successfully manufactured in accordance with all specifications thereof and the required payments to be made to Borrower therefor in any month shall decrease significantly with respect to the quantities of such Product and payments produced in the prior month. Borrower shall provide to Agent or any Lender such further information (including copies of such documentation) as Agent or any Lender shall reasonably request with respect to any such Regulatory Reporting Event.

(b) Borrower shall, and shall cause each Credit Party to, obtain all Regulatory Required Permits necessary for compliance in all material respects with Laws with respect to testing, manufacturing, developing, selling or marketing of Products and shall, and shall cause each Credit Party to, maintain and comply fully and completely in all respects with all such Regulatory Required Permits, the noncompliance with which would have a Material Adverse Effect. In the event Borrower or any Credit Party obtains any new Regulatory Required Permit or any information on Schedule 8.2(a) becomes materially outdated, inaccurate, incomplete or misleading, Borrower shall, together with the next Compliance Certificate required to be delivered under this Agreement after such event, provide Agent with an updated Schedule 8.2(a) including such updated information.

Article 5 - NEGATIVE COVENANTS

Each Borrower agrees that, so long as any Credit Exposure exists:

Section 5.1 Debt; Contingent Obligations. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, incur, assume, guarantee or otherwise become or remain directly or indirectly liable with respect to, any Debt, except for Permitted Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume, incur or suffer to exist any Contingent Obligations, except for Permitted Contingent Obligations.

Section 5.2 Liens. No Borrower will, or will permit any Subsidiary to, directly or indirectly, create, assume or suffer to exist any Lien on any asset now owned or hereafter acquired by it, except for Permitted Liens.

Section 5.3 Distributions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Distribution, except for Permitted Distributions.

Section 5.4 Restrictive Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) enter into or assume any agreement (other than the Financing Documents, the Affiliated Financing Documents, and any agreements for purchase money debt permitted under clause (c) of the definition of Permitted Debt) prohibiting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or (b) create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction of any kind (except as provided by the Financing Documents and the Affiliated Financing Documents) on the ability of any Subsidiary to: (i) pay or make Distributions to any Borrower or any Subsidiary; (ii) pay any Debt owed to any Borrower or any Subsidiary; (iii) make loans or advances to any Borrower or any Subsidiary; or (iv) transfer any of its property or assets to any Borrower or any Subsidiary.

Section 5.5 Payments and Modifications of Subordinated Debt. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) declare, pay, make or set aside any amount for payment in respect of Subordinated Debt, except for payments made in full compliance with and expressly permitted under the Subordination Agreement, (b) amend or otherwise modify the terms of any Subordinated Debt, except for amendments or modifications made in full compliance with the Subordination Agreement, (c) declare, pay, make or set aside any amount for payment in respect of any Debt hereinafter incurred that, by its terms, or by separate agreement, is subordinated to the Obligations, except for payments made in full compliance with and expressly permitted under the subordination provisions applicable thereto, or (d) amend or otherwise modify the terms of any such Debt if the effect of such amendment or modification is to (i) increase the interest rate or fees on, or change the manner or timing of payment of, such Debt, (ii) accelerate or shorten the dates upon which payments of principal or interest are due on, or the principal amount of, such Debt, (iii) change in a manner adverse to any Credit Party or Agent any event of default or add or make more restrictive any covenant with respect to such Debt, (iv) change the prepayment provisions of such Debt or any of the defined terms related thereto, (v) change the subordination provisions thereof (or the subordination terms of any guaranty thereof), or (vi) change or amend any other term if such change or amendment would materially increase the obligations of the obligor or confer additional material rights on the holder of such Debt in a manner adverse to Borrowers, any Subsidiaries, Agent or Lenders. Borrowers shall, prior to entering into any such amendment or modification, deliver to Agent reasonably in advance of the execution thereof, any final or execution form copy thereof.

Section 5.6 Consolidations, Mergers and Sales of Assets; Change in Control. No Borrower will, or will permit any Subsidiary to, directly or indirectly (a) consolidate or merge or amalgamate with or

into any other Person other than (i) consolidations or mergers among Borrowers where a Borrower is the surviving entity, (ii) consolidations or mergers among a Guarantor and a Borrower so long as the Borrower is the surviving entity, (iii) consolidations or mergers among Guarantors, and (iv) consolidations or mergers among Subsidiaries that are not Credit Parties, or (b) consummate any Asset Dispositions other than Permitted Asset Dispositions. No Borrower will suffer or permit to occur any Change in Control with respect to itself, any Subsidiary or any Guarantor.

Section 5.7 Purchase of Assets, Investments. No Borrower will, or will permit any Subsidiary to, directly or indirectly:

(a) except for Permitted Ventures, engage or enter into any agreement to engage in any joint venture or partnership with any other Person;

(b) make or enter into any agreement to make an Acquisition other than Permitted Acquisitions;

(c) without limiting the foregoing with respect to Acquisitions, acquire or enter into any agreement to acquire any other assets other than in the Ordinary Course of Business or as otherwise permitted under the definition of Permitted Investments; or

(d) acquire or own or enter into any agreement to acquire or own any Investment in any Person other than Permitted Investments.

Section 5.8 Transactions with Affiliates. Except as otherwise disclosed on Schedule 5.8, and except for transactions which contain terms that are no less favorable to the applicable Borrower or any Subsidiary, as the case may be, than those which might be obtained from a third party not an Affiliate of any Credit Party, no Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of any Borrower. Without limiting the foregoing, AxoGen Corp. shall not, without the prior written consent of Agent, transfer the University of Florida License or any of its rights thereunder to AxoGen, Inc. or any Affiliate thereof.

Section 5.9 Modification of Organizational Documents. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Organizational Documents of such Person, except for Permitted Modifications.

Section 5.10 Modification of Certain Agreements. No Borrower will, or will permit any Subsidiary to, directly or indirectly, amend or otherwise modify any Material Contract, which amendment or modification in any case: (a) is contrary to the terms of this Agreement or any other Financing Document; (b) would reasonably be expected to be adverse to the rights, interests or privileges of Agent or the Lenders or their ability to enforce the same in any material respect; or (c) results in the imposition or expansion in any material respect of any obligation of or restriction or burden on any Borrower or any Subsidiary.

Section 5.11 Conduct of Business. No Borrower will, or will permit any Subsidiary to, directly or indirectly, engage in any line of business other than those businesses engaged in on the Closing Date and described on Schedule 5.11 and businesses reasonably related thereto. No Borrower will, or will permit any Subsidiary to, other than in the Ordinary Course of Business, materially change its normal billing payment and reimbursement policies and procedures with respect to its Accounts (including, without limitation, the amount and timing of finance charges, fees and write-offs).

Section 5.12 Joint Ventures.

(a) No Credit Party will, nor will it permit any Subsidiary to, commingle any of its assets (including any bank accounts, cash or cash equivalents) with the assets of any joint venture or partnership; *provided* that, for the avoidance of doubt, nothing in this Section 5.12(a) shall prohibit (i) a Credit Party from entering into Permitted Licenses with a joint venture, or (ii) a Permitted Venture, in each case, to the extent otherwise permitted under this Agreement.

(b) No Credit Party will, nor will it permit any Subsidiary to, enter into or own any interest in a joint venture partnership that is not itself a corporation or limited liability company or other legal entity in respect of which the equity holders are not liable for the obligations of such entity as a matter of law.

Section 5.13 Limitation on Sale and Leaseback Transactions. No Borrower will, or will permit any Subsidiary to, directly or indirectly, enter into any arrangement with any Person (other than another Borrower or a Secured Guarantor) whereby, in a substantially contemporaneous transaction, any Borrower or any Subsidiaries sells or transfers all or substantially all of its right, title and interest in an asset and, in connection therewith, acquires or leases back the right to use such asset.

Section 5.14 Deposit Accounts and Securities Accounts; Payroll and Benefits Accounts. Except for Excluded Accounts, no Borrower will, or will permit any Subsidiary to, directly or indirectly, establish any new Deposit Account or Securities Account without prior written notice to Agent, and unless Agent, such Borrower or such Subsidiary and the bank, financial institution or securities intermediary at which the account is to be opened enter into a Deposit Account Control Agreement or Securities Account Control Agreement prior to or concurrently with the establishment of such Deposit Account or Securities Account (other than an Excluded Account). Borrowers represent and warrant that Schedule 5.14 lists all of the Deposit Accounts and Securities Accounts of each Borrower as of the Closing Date. At all times that any Obligations or Affiliated Obligations remain outstanding, the Credit Parties shall maintain one or more separate Deposit Accounts to hold any and all amounts to be used for payroll, payroll taxes and other employee wage and benefit payments, and shall not commingle any monies allocated for such purposes with funds in any other Deposit Account.

Section 5.15 Compliance with Anti-Terrorism Laws. Agent hereby notifies Borrowers 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 Borrowers and their principals, which information includes the name and address of each Borrower and its principals and such other information that will allow Agent to identify such party in accordance with Anti-Terrorism Laws. No Borrower will, or will permit any Subsidiary to, directly or indirectly, knowingly enter into any Material Contracts with any Blocked Person or any Person listed on the OFAC Lists. Each Borrower shall immediately notify Agent if such Borrower has knowledge that any Borrower, any additional Credit Party or any of their respective Affiliates or agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is or becomes a Blocked Person 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. No Borrower will, or will permit any Subsidiary 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.

Section 5.16 **Change in Accounting**. No Borrower shall, and no Borrower shall suffer or permit any of its Subsidiaries to, (i) make any significant change in accounting treatment or reporting practices, except as required by GAAP or (ii) change the fiscal year or method for determining fiscal quarters of any Credit Party or of any consolidated Subsidiary of any Credit Party without the prior written consent of Agent, not to be unreasonably withheld, conditioned or delayed.

Article 6 - FINANCIAL COVENANTS

Section 6.1 Additional Defined Terms. The following additional definitions are hereby appended to Section 1.1 of this Agreement:

"**Defined Period**" means, for purposes of calculating the minimum Net Revenue, for any given calendar month, the twelve (12) month period immediately preceding any such calendar month.

"**Net Revenue**" means, for any period, (a) the consolidated gross revenues of Borrowers and their Subsidiaries generated solely through the commercial sale of Products by Borrowers and their Subsidiaries during such period, less (b)(i) trade, quantity and cash discounts allowed by Borrower, (ii) discounts, refunds, rebates, charge backs, retroactive price adjustments and any other allowances which effectively reduce net selling price, (iii) product returns and allowances, (iv) allowances for shipping or other distribution expenses, (iv) set-offs and counterclaims, and (v) any other similar and customary deductions used by Borrower in determining net revenues, all, in respect of (a) and (b), as determined in accordance with GAAP and in the Ordinary Course of Business.

Section 6.2 Minimum Net Revenue. Borrower shall not permit its consolidated Net Revenue for any Defined Period, as tested monthly, to be less than the minimum amount set forth on Schedule 6.2 for such Defined Period. A breach of a financial covenant contained in this Section 6.2 shall be deemed to have occurred as of any date of determination by Agent or as of the last day of any specified Defined Period, regardless of when the financial statements reflecting such breach are delivered to Agent.

Section 6.3 Evidence of Compliance. Borrowers shall furnish to Agent, together with the monthly financial reporting required of Borrowers in this Agreement, a Compliance Certificate as evidence of Borrowers' compliance with the covenants in this Article and evidence that no Event of Default specified in this Article has occurred. The Compliance Certificate shall include, without limitation, (a) a statement and report, on a form approved by Agent, detailing Borrowers' calculations, and (b) if requested by Agent and in connection with the delivery of the Compliance Certificate pursuant to Section 4.1, back-up documentation (including, without limitation, invoices, receipts and other evidence of costs incurred during such quarter as Agent shall reasonably require) evidencing the propriety of the calculations.

Article 7 - CONDITIONS

Section 7.1 Conditions to Closing. The obligation of each Lender to make the initial Loans on the Closing Date shall be subject to the receipt by Agent of each agreement, document and instrument set forth on the closing checklist attached hereto as Exhibit E, each in form and substance satisfactory to Agent, and such other closing deliverables reasonably requested by Agent and Lenders, and to the satisfaction of the following conditions precedent, each to the satisfaction of Agent and Lenders and their respective counsel in their sole discretion:

(a) the payment of all fees, expenses and other amounts due and payable under each Financing Document;

(b) since December 31, 2015, the absence of any Material Adverse Effect;

(c) the receipt of the initial Borrowing Base Certificate, prepared as of the Closing Date; and

(d) evidence confirming receipt by Three Peaks Capital S.a.r.l. of funds from Borrowers in an amount equal to $2,699,682.01 in respect of the payoff of Debt owed by Borrowers to Three Peaks Capital S.a.r.l. on the Closing Date.

Each Lender, by delivering its signature page to this Agreement, shall be deemed to have acknowledged receipt of, and consented to and approved, each Financing Document, each additional Operative Document and each other document, agreement and/or instrument required to be approved by Agent, Required Lenders or Lenders, as applicable, on the Closing Date.

Section 7.2 Conditions to Each Loan. The obligation of the Lenders to make a Loan or an advance in respect of any Loan, is subject to the satisfaction of the following additional conditions:

(a) receipt by Agent of a Notice of Borrowing (or telephonic notice if permitted by this Agreement) and updated Borrowing Base Certificate;

(b) immediately after a borrowing of a Revolving Loan and after application of the proceeds thereof or after such issuance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit;

(c) the fact that, immediately before and after such advance, no Default or Event of Default shall have occurred and be continuing;

(d) for Loans made on the Closing Date, the fact that the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete on and as of the Closing Date, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct as of such earlier date; and

(e) immediately before and after such advance, (i) no Default or Event of Default shall have occurred and be continuing; (ii) the representations and warranties of each Credit Party contained in the Financing Documents shall be true, correct and complete in all material respects on and as of the date of such borrowing or issuance, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; *provided*, *however*, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; (iii) no Material Adverse Effect shall have occurred and be continuing with respect to Borrowers or any Credit Party since the date of this Agreement; and (iv) Borrowers shall be in compliance with Article 8 hereof and, unless Agent shall elect otherwise from time to time, to waive such compliance.

Each giving of a Notice of Borrowing hereunder and each acceptance by any Borrower of the proceeds of any Loan made hereunder shall be deemed to be (y) a representation and warranty by each Borrower on the date of such notice or acceptance as to the facts specified in this Section, and (z) a restatement by each Borrower that each and every one of the representations made by it in any of the Financing Documents is true and correct as of such date (except to the extent that such representations and warranties expressly relate solely to an earlier date).

Section 7.3 **Searches**. Before the Closing Date, and thereafter (as and when determined by Agent in its discretion), Agent shall have the right to perform, all at Borrowers' expense, the searches

described in clauses (a), (b), and (c) below against Borrowers and any other Credit Party, the results of which are to be consistent with Borrowers' representations and warranties under this Agreement and the satisfactory results of which shall be a condition precedent to all advances of Loan proceeds: (a) UCC searches with the Secretary of State of the jurisdiction in which the applicable Person is organized; (b) judgment, pending litigation, federal tax lien, personal property tax lien, and corporate and partnership tax lien searches, in each jurisdiction searched under clause (a) above; and (c) searches of applicable corporate, limited liability company, partnership and related records to confirm the continued existence, organization and good standing of the applicable Person and the exact legal name under which such Person is organized.

Section 7.4 Post-Closing Requirements. Borrowers shall complete each of the post-closing obligations and/or provide to Agent each of the documents, instruments, agreements and information listed on Schedule 7.4 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.

ARTICLE 8 – REGULATORY MATTERS

Section 8.1 Reserved.

Section 8.2 Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make credit accommodations contemplated hereby, Borrowers hereby represent and warrant that all of the information regarding the Borrowers set forth in Schedule 8.2(a) is true, complete and correct as of the Closing Date, and that, except as disclosed in Schedule 8.2(b), the following statements are true, complete and correct as of the date hereof, and Borrowers hereby covenant and agree to notify Agent within five (5) Business Days (but in any event prior to Borrowers submitting any requests for advances of reserves or escrows or fundings of credit facility proceeds under this Agreement) following the occurrence of any facts, events or circumstances known to a Borrower, whether threatened, existing or pending, that would make any of the following representations and warranties untrue, incomplete or incorrect (together with such supporting data and information as shall be necessary to fully explain to Agent the scope and nature of the fact, event or circumstance), and shall provide to Agent within five (5) Business Days of Agent's request, such additional information as Agent shall request regarding such disclosure:

(a) Disclosure. All of Borrower's Products are listed on Schedule 8.2(a) (as updated from time to time pursuant to Section 4.15).

(b) Permits. Borrowers have (i) each Permit and other rights from, and have made all declarations and filings with, all applicable Governmental Authorities, all self-regulatory authorities and all courts and other tribunals necessary to engage in the ownership, management and operation of the business or the assets of any Borrower, and (ii) no knowledge that any Governmental Authority is considering limiting, suspending or revoking any such Permit. Borrower has delivered to Agent a copy of all Permits requested by Agent as of the date hereof or to the extent requested by Agent pursuant to Section 4.17. All such Permits are valid and in full force and effect and Borrowers are in material compliance with the terms and conditions of all such Permits, except where failure to be in such compliance or for a Permit to be valid and in full force and effect would not have a Material Adverse Effect.

(c) Regulatory Required Permits. With respect to any Product or service, (i) Borrower and its Subsidiaries have received, and such Product or service is the subject of, all Regulatory Required Permits needed in connection with the testing, manufacture, marketing or sale of such Product or conduct of such service as currently being conducted by or on behalf of Borrowers, and have provided Agent and each Lender with all notices and other information required by Section 4.17, and no Borrower has 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 Regulatory Required Permit or approval or that any such Regulatory 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 or conduct of such service cease or that such Product or service be withdrawn from the marketplace (ii) such Product is being tested, manufactured, marketed or sold, as the case may be, in material compliance with all applicable Laws and Regulatory Required Permits, and 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 (A) Borrower's manufacturing facilities and processes for such Product which have disclosed any material deficiencies or violations of Laws (including Healthcare Laws) and/or the Regulatory Required Permits related to the manufacture of such Product, or (B) any such Regulatory Required Permit or that any such Regulatory Required Permit has been revoked or withdrawn, nor has any such Governmental Authority issued any order or recommendation stating that the development, testing and/or manufacturing of such Product by Borrower should cease.

(d) Healthcare and Regulatory Events.

(i) None of the Borrowers are in violation of any Healthcare Laws, except where any such violation would not have a Material Adverse Effect.

(ii) As of the Closing Date, there have been no Regulatory Reporting Events.

(iii) No Borrower is participating in any Third Party Payor Program

(iv) None of the Borrower's officers, directors, employees, shareholders, their agents or affiliates has made an untrue statement of material fact or fraudulent statement to the FDA or failed to disclose a material fact required to be disclosed to the FDA, committed an act, made a statement, or failed to make a statement that would reasonably be expected to provide a basis for the FDA to invoke its policy respecting "Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities," set forth in 56 Fed. Regulation 46191 (September 10, 1991).

(v) Borrower has not received any written notice that any Governmental Authority, including without limitation the FDA, the DEA, the Office of the Inspector General of HHS or the United States Department of Justice has commenced or threatened to initiate any action against a Credit Party, any action to enjoin a Credit Party, their officers, directors, employees, shareholders or their agents and Affiliates, from conducting their businesses at any facility owned or used by them or for any material civil penalty, injunction, seizure or criminal action.

(vi) Borrower has not received from the FDA or the DEA, a Warning Letter, Form FDA-483, "Untitled Letter," other correspondence or notice setting forth allegedly objectionable observations or alleged violations of laws and regulations enforced by the FDA or the DEA, or any comparable correspondence from any state or local authority responsible for regulating drug products and establishments, or any comparable correspondence from any foreign counterpart of the FDA or DEA, or any comparable correspondence from any foreign counterpart of any state or local authority with regard to any Product or the manufacture, processing, packing, or holding thereof.

(vii) Borrower has not engaged in any Recalls, Market Withdrawals, or other forms of product retrieval from the marketplace of any Products.

(viii) Each Product (a) is not adulterated or misbranded within the meaning of the FDCA; (b) is not an article prohibited from introduction into interstate commerce under the

provisions of Sections 404, 505 or 512 of the FDCA; (c) each Product has been and/or shall be manufactured, imported, possessed, owned, warehoused, marketed, promoted, sold, labeled, furnished, distributed and marketed and each service has been conducted in accordance with all applicable Permits and Laws; and (d) each Product has been and/or shall be manufactured in accordance with Good Manufacturing Practices.

(e) Proceedings. No Borrower is subject to any proceeding, suit or, to Borrowers' knowledge, investigation by any federal, state or local government or quasi-governmental body, agency, board or authority or any other administrative or investigative body (including the Office of the Inspector General of the United States Department of Health and Human Services): (i) which may result in the imposition of a fine, alternative, interim or final sanction, a lower reimbursement rate for services rendered to eligible patients which has not been provided for on their respective financial statements, or which would have a Material Adverse Effect on any Borrower; or (ii) which would result in the revocation, transfer, surrender, suspension or other impairment of the Permits of Borrower.

(f) Ancillary Laws. Borrowers have received no notice, and are not aware, of any violation of applicable antitrust laws, employment or landlord-tenant laws of any federal, state or local government or quasi-governmental body, agency, board or other authority with respect to the Borrowers.

Section 8.3 Healthcare Operations.

(a) Borrower will:

(i) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all notifications, reports, submissions, Permit renewals and reports (other than cost reports as provided in Section 8.3(a)(ii) below) of every kind whatsoever required by Healthcare Laws (which reports will be materially accurate and complete in all respects and not misleading in any respect and shall not remain open or unsettled); and

(ii) timely file or caused to be timely filed (after giving effect to any extension duly obtained), all cost reports required by Healthcare Laws, which reports shall be materially accurate and complete in all respects and not misleading in any material respect and which shall not remain open or unsettled, except in accordance with applicable settlement appeals procedures that are timely and diligently pursued and except for any processing delays of any Governmental Authority.

(b) Borrower will maintain in full force and effect, and free from restrictions, probations, conditions or known conflicts which would materially impair the use or operation of Borrowers' business and assets, all Permits necessary under Healthcare Laws to carry on the business of Borrowers as it is conducted on the Closing Date.

(c) Borrower will not suffer or permit to occur any of the following:

(i) any transfer of a Permit or rights thereunder to any Person (other than Borrowers or Agent);

(ii) any pledge or hypothecation of any Permit as collateral security for any indebtedness other than Debt to Agent and each Lender under this Agreement and the other Financing Documents and the Affiliated Financing Documents; or

(iii) any rescission, withdrawal, revocation, amendment or modification of or other alteration to the nature, tenor or scope of any Permit.

(d) In connection with the development, testing, manufacture, marketing or sale of each and any Product by any Borrower, Borrower shall comply in all material respects with all Regulatory Required Permits at all times issued by any Governmental Authority, specifically including the FDA, with respect to such development, testing, manufacture, marketing or sales of such Product by Borrower as such activities are at any such time being conducted by Borrower.

ARTICLE 9 - SECURITY AGREEMENT

Section 9.1 Generally. As security for the payment and performance of the Obligations, and for the payment and performance of all obligations under the Affiliated Financing Documents (if any) and without limiting any other grant of a Lien and security interest in any Security Document, Borrowers hereby assign and grant to Agent, for the benefit of itself and Lenders, and, subject only to the Affiliated Intercreditor Agreement, a continuing first priority Lien on and security interest in, upon, and to the personal property set forth on Schedule 9.1 attached hereto and made a part hereof.

Section 9.2 Representations and Warranties and Covenants Relating to Collateral.

(a) The security interest granted pursuant to this Agreement constitutes a valid and, to the extent such security interest is required to be perfected by this Agreement and any other Financing Document, continuing perfected security interest in favor of Agent in all Collateral subject, for the following Collateral, subject to the occurrence of the following: (i) in the case of all Collateral in which a security interest may be perfected by filing a financing statement under the UCC, the completion of the filings and other actions specified on Schedule 9.2 (which, in the case of all filings and other documents referred to on such schedule, have been delivered to Agent in completed and duly authorized form), (ii) with respect to any Deposit Account, the execution of Deposit Account Control Agreements, (iii) in the case of letter-of-credit rights that are not supporting obligations of Collateral, the execution of a contractual obligation granting control to Agent over such letter-of-credit rights, (iv) in the case of electronic chattel paper, the completion of all steps necessary to grant control to Agent over such electronic chattel paper, (v) in the case of all certificated stock, debt instruments and investment property, the delivery thereof to Agent of such certificated stock, debt instruments and investment property consisting of instruments and certificates, in each case properly endorsed for transfer to Agent or in blank, (vi) in the case of all investment property not in certificated form, the execution of control agreements with respect to such investment property and (vii) in the case of all other instruments and tangible chattel paper that are not certificated stock, debt instructions or investment property, the delivery thereof to Agent of such instruments and tangible chattel paper. Such security interest shall be prior to all other Liens on the Collateral except for Permitted Liens. Except to the extent not required pursuant to the terms of this Agreement, all actions by each Credit Party necessary or desirable to protect and perfect the Lien granted hereunder on the Collateral have been duly taken.

(b) As of the Closing Date, Schedule 9.2 sets forth (i) each chief executive office and principal place of business of each Borrower and each of their respective Subsidiaries, and (ii) all of the addresses (including all warehouses) at which any of the Collateral is located and/or books and records of Borrowers regarding any Collateral or any of Borrower's assets, liabilities, business operations or financial condition are kept, which such Schedule 9.2 indicates in each case which Borrower(s) have Collateral and/or books located at such address, and, in the case of any such address not owned by one or more of the Borrowers(s), indicates the nature of such location (e.g., leased business location operated by Borrower(s), third party warehouse, consignment location, processor location, etc.) and the name and address of the third party owning and/or operating such location.

(c) Without limiting the generality of Section 3.2, except as indicated on Schedule 3.19 with respect to any rights of any Borrower as a licensee under any license of Intellectual Property owned by another Person, and except for the filing of financing statements under the UCC, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority or consent of any other Person is required for (i) the grant by each Borrower to Agent of the security interests and Liens in the Collateral provided for under this Agreement and the other Security Documents (if any), or (ii) the exercise by Agent of its rights and remedies with respect to the Collateral provided for under this Agreement and the other Security Documents or under any applicable Law, including the UCC and neither any such grant of Liens in favor of Agent or exercise of rights by Agent shall violate or cause a default under any agreement between any Borrower and any other Person relating to any such collateral, including any license to which a Borrower is a party, whether as licensor or licensee, with respect to any Intellectual Property, whether owned by such Borrower or any other Person.

(d) As of the Closing Date, no Borrower has any ownership interest in any Chattel Paper (as defined in Article 9 of the UCC), letter of credit rights, commercial tort claims, Instruments, documents or investment property (other than equity interests in any Subsidiaries of such Borrower disclosed on Schedule 3.4) and Borrowers shall give notice to Agent promptly (but in any event not later than the delivery by Borrowers of the next Compliance Certificate required pursuant to Section 4.1(b) above) upon the acquisition by any Borrower of any such Chattel Paper, letter of credit rights, commercial tort claims, Instruments, documents, investment property, in each case, in excess of $500,000. No Person other than Agent or (if applicable) any Lender has "control" (as defined in Article 9 of the UCC) over any Deposit Account, investment property (including Securities Accounts and commodities account), letter of credit rights or electronic chattel paper in which any Borrower has any interest (except for such control arising by operation of law in favor of any bank or securities intermediary or commodities intermediary with whom any Deposit Account, Securities Account or commodities account of Borrowers is maintained).

(e) Borrowers shall not, and shall not permit any Credit Party to, take any of the following actions or make any of the following changes unless Borrowers have given at least twenty (20) days prior written notice to Agent of Borrowers' intention to take any such action (which such written notice shall include an updated version of any Schedule impacted by such change) and have executed any and all documents, instruments and agreements and taken any other actions which Agent may request after receiving such written notice in order to protect and preserve the Liens, rights and remedies of Agent with respect to the Collateral: (i) change the legal name or organizational identification number of any Borrower as it appears in official filings in the jurisdiction of its organization, (ii) change the jurisdiction of incorporation or formation of any Borrower or Credit Party or allow any Borrower or Credit Party to designate any jurisdiction as an additional jurisdiction of incorporation for such Borrower or Credit Party, or change the type of entity that it is, or (iii) change its chief executive office, principal place of business, or the location of its books and records or move any Collateral in excess of $500,000 to or place any Collateral in excess of $500,000 on any location that is not then listed on the Schedules and/or establish any business location at any location that is not then listed on the Schedules.

(f) Borrowers shall not adjust, settle or compromise the amount or payment of any Account, or release wholly or partly any Account Debtor, or allow any credit or discount thereon (other than adjustments, settlements, compromises, credits and discounts in the Ordinary Course of Business, made while no Default exists and in amounts which are not material with respect to the Account and which, after giving effect thereto, do not cause the Borrowing Base to be less than the Revolving Loan Outstandings) without the prior written consent of Agent. Without limiting the generality of this Agreement or any other provisions of any of the Financing Documents relating to the rights of Agent after the occurrence and during the continuance of an Event of Default, Agent shall have the right at any time after the occurrence and during the continuance of an Event of Default to: (i) exercise the rights of Borrowers with respect to the obligation of any Account Debtor to make payment or otherwise render

performance to Borrowers and with respect to any property that secures the obligations of any Account Debtor or any other Person obligated on the Collateral, and (ii) adjust, settle or compromise the amount or payment of such Accounts.

(g) Without limiting the generality of Sections 9.2(c) and 9.2(e):

(i) Borrowers shall deliver to Agent all tangible Chattel Paper in excess of $500,000 and all Instruments in excess of $500,000 and documents in excess of $500,000 owned by any Borrower and constituting part of the Collateral duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall provide Agent with "control" (as defined in Article 9 of the UCC) of all electronic Chattel Paper owned by any Borrower and constituting part of the Collateral by having Agent identified as the assignee on the records pertaining to the single authoritative copy thereof and otherwise complying with the applicable elements of control set forth in the UCC. Borrowers also shall deliver to Agent all security agreements securing any such Chattel Paper and securing any such Instruments. Upon the request of Agent, Borrowers will mark conspicuously all such Chattel Paper and all such Instruments and documents with a legend, in form and substance satisfactory to Agent, indicating that such Chattel Paper and such instruments and documents are subject to the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents. Borrowers shall comply with all the provisions of Section 5.14 with respect to the Deposit Accounts and Securities Accounts of Borrowers.

(ii) Borrowers shall deliver to Agent all letters of credit in excess of $500,000 on which any Borrower is the beneficiary and which give rise to letter of credit rights owned by such Borrower which constitute part of the Collateral in each case duly endorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Agent. Borrowers shall take any and all actions as may be necessary or desirable, or that Agent may reasonably request, from time to time, to cause Agent to obtain exclusive "control" (as defined in Article 9 of the UCC) of any such letter of credit rights in a manner acceptable to Agent.

(iii) Borrowers shall promptly advise Agent upon any Borrower becoming aware that it has any interests in any commercial tort claim in excess of $500,000 that constitutes part of the Collateral, which such notice shall include descriptions of the events and circumstances giving rise to such commercial tort claim and the dates such events and circumstances occurred, the potential defendants with respect to such commercial tort claim and any court proceedings that have been instituted with respect to such commercial tort claims, and Borrowers shall, with respect to any such commercial tort claim, execute and deliver to Agent such documents as Agent shall request to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to any such commercial tort claim.

(iv) No Accounts or Inventory or other Collateral and no books and records and/or software and equipment of the Borrowers regarding any of the Collateral or any of the Borrower's assets, liabilities, business operations or financial condition shall at any time be located at any leased location or in the possession or control of any warehouse, consignee, bailee or any of Borrowers' agents or processors, without prior written notice to Agent and the receipt by Agent, of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers (as applicable) satisfactory to Agent prior to the commencement of such lease or of such possession or control (as applicable); *provided,* that, except as otherwise provided pursuant to Section 4.11, prior written notice to Agent and/or the delivery of warehouse receipts, consignment agreements, landlord waivers, or bailee waivers shall not be required for Collateral in transit and with respect to locations at which less than $500,000 of Collateral is maintained. Borrowers shall, upon the request of Agent,

notify any such landlord, warehouse, consignee, bailee, agent or processor of the security interests and Liens in favor of Agent created pursuant to this Agreement and the Security Documents, instruct such Person to hold all such Collateral for Agent's account subject to Agent's instructions and shall obtain an acknowledgement from such Person that such Person holds the Collateral for Agent's benefit.

(v) Borrowers shall cause all equipment and other tangible Personal Property other than Inventory to be maintained and preserved in the same condition, repair and in working order as when new, ordinary wear and tear excepted, and shall promptly make or cause to be made all repairs, replacements and other improvements in connection therewith that are necessary or desirable to such end. Upon the reasonable request of Agent, Borrowers shall promptly deliver to Agent any and all certificates of title, applications for title or similar evidence of ownership of all such tangible Personal Property and shall cause Agent to be named as lienholder on any such certificate of title or other evidence of ownership. Borrowers shall not permit any such tangible Personal Property to become fixtures to real estate unless such real estate is subject to a Lien in favor of Agent.

(vi) Each Borrower hereby authorizes Agent to file without the signature of such Borrower one or more UCC financing statements relating to liens on personal property relating to all or any part of the Collateral, which financing statements may list Agent as the "secured party" and such Borrower as the "debtor" and which describe and indicate the collateral covered thereby as all or any part of the Collateral under the Financing Documents (including an indication of the collateral covered by any such financing statement as "all assets" of such Borrower now owned or hereafter acquired), in such jurisdictions as Agent from time to time determines are appropriate, and to file without the signature of such Borrower any continuations of or corrective amendments to any such financing statements, in any such case in order for Agent to perfect, preserve or protect the Liens, rights and remedies of Agent with respect to the Collateral. Each Borrower also ratifies its authorization for Agent to have filed in any jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(vii) As of the Closing Date, no Borrower holds, and after the Closing Date Borrowers shall promptly notify Agent in writing upon creation or acquisition by any Borrower of, any Collateral which constitutes a claim against any Governmental Authority, including, without limitation, the federal government of the United States or any instrumentality or agency thereof, the assignment of which claim is restricted by any applicable Law, including, without limitation, the federal Assignment of Claims Act and any other comparable Law. Upon the request of Agent, Borrowers shall take such steps as may be necessary or desirable, or that Agent may request, to comply with any such applicable Law.

(viii) Borrowers shall furnish to Agent from time to time any statements and schedules further identifying or describing the Collateral and any other information, reports or evidence concerning the Collateral as Agent may reasonably request from time to time.

ARTICLE 10 - EVENTS OF DEFAULT

Section 10.1 Events of Default. For purposes of the Financing Documents, the occurrence of any of the following conditions and/or events, whether voluntary or involuntary, by operation of law or otherwise, shall constitute an "**Event of Default**":

(a) (i) any Credit Party shall fail to pay any principal, interest or other scheduled payment when due or pay any other premium, fee or other amount payable under any Financing Document

within three (3) Business Days of when due, (ii) there shall occur any default in the performance of or compliance with Section 2.11, Section 4.1, Section 4.2(b), Section 4.4(c), Section 4.6, Article 5 or Article 6 of this Agreement, or (iii) there shall occur any default in the performance of or compliance with Section 4.16, Section 4.17 or Article 8 of this Agreement and, solely in the case of this clause (iii), such default is not remedied by the Credit Party or waived by Agent within five (5) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(b) any Credit Party defaults in the performance of or compliance with any term contained in this Agreement or in any other Financing Document (other than occurrences described in other provisions of this Section 10.1 for which a different grace or cure period is specified or for which no grace or cure period is specified and thereby constitute immediate Events of Default) and such default is not remedied by the Credit Party or waived by Agent within thirty (30) days after the earlier of (i) receipt by Borrower Representative of notice from Agent or Required Lenders of such default, or (ii) actual knowledge of any Borrower or any other Credit Party of such default;

(c) any representation, warranty, certification or statement made by any Credit Party or any other Person in any Financing Document or in any certificate, financial statement or other document delivered pursuant to any Financing Document is incorrect in any respect (or in any material respect if such representation, warranty, certification or statement is not by its terms already qualified as to materiality) when made (or deemed made);

(d) (i) failure of any Credit Party to pay when due or within any applicable grace period any principal, interest or other amount on Debt (other than the Loans), or the occurrence of any breach, default, condition or event with respect to any Debt (other than the Loans), if the effect of such failure or occurrence is to cause or to permit the holder or holders of any such Debt, or to cause, Debt or other liabilities having an individual principal amount in excess of $500,000 or having an aggregate principal amount in excess of $500,000 to become or be declared due prior to its stated maturity, or (ii) the occurrence of any material breach or default under any terms or provisions of any Subordinated Debt Document or under any agreement subordinating the Subordinated Debt to all or any portion of the Obligations or the occurrence of any event requiring the prepayment of any Subordinated Debt;

(e) any Credit Party or any Subsidiary of a Borrower shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing;

(f) an involuntary case or other proceeding shall be commenced against any Credit Party or any Subsidiary of a Borrower seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) days; or an order for relief shall be entered against any Credit Party or any Subsidiary of a Borrower under applicable federal bankruptcy, insolvency or other similar law in respect of (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations, (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations, or (iii) possession, foreclosure, seizure or retention, sale

or other disposition of, or other proceedings to enforce security over, all or any substantial part of the assets of such Credit Party or Subsidiary;

(g) (i) institution of any steps by any Person to terminate a Pension Plan if as a result of such termination any Credit Party or any member of the Controlled Group would be required to make a contribution to such Pension Plan, or would incur a liability or obligation to such Pension Plan, in excess of $500,000, (ii) a contribution failure occurs with respect to any Pension Plan sufficient to give rise to a Lien under Section 303(k) of ERISA or Section 430(k) of the Code or an event occurs that would reasonably be expected to give rise to a Lien under Section 4068 of ERISA, or (iii) there shall occur any withdrawal or partial withdrawal from a Multiemployer Plan and the withdrawal liability (without unaccrued interest) to Multiemployer Plans as a result of such withdrawal (including any outstanding withdrawal liability that any Credit Party or any member of the Controlled Group have incurred on the date of such withdrawal) exceeds $500,000;

(h) one or more judgments or orders for the payment of money (not paid or fully covered by insurance maintained in accordance with the requirements of this Agreement and as to which the relevant insurance company has acknowledged coverage) aggregating in excess of $500,000 shall be rendered against any or all Credit Parties and either (i) enforcement proceedings shall have been commenced by any creditor upon any such judgments or orders, or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of any such judgments or orders, by reason of a pending appeal, bond or otherwise, shall not be in effect;

(i) any Lien created by any of the Security Documents shall at any time fail to constitute a valid and perfected Lien on all of the Collateral purported to be encumbered thereby, subject to no prior or equal Lien except Permitted Liens, or any Credit Party shall so assert;

(j) the institution by any Governmental Authority of criminal proceedings against any Credit Party;

(k) a default or event of default occurs under any Guarantee of any portion of the Obligations;

(l) any Borrower makes any payment on account of any Debt that has been subordinated to any of the Obligations, other than payments specifically permitted by the terms of such subordination;

(m) any Borrower's equity fails to remain registered with the SEC in good standing, and/or such equity fails to remain publicly traded on and registered with a public securities exchange;

(n) the occurrence of any fact, event or circumstance that would reasonably be expected to result in a Material Adverse Effect;

(o) (i) the voluntary withdrawal or institution of any action or proceeding by the FDA or similar Governmental Authority to order the withdrawal of any Product or Product category from the market or to enjoin Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries from manufacturing, marketing, selling or distributing any Product or Product category Product which, in each case, would reasonably be expected to result in Material Adverse Effect, (ii) the institution of any action or proceeding by any DEA, FDA, or any other Governmental Authority to revoke, suspend, reject, withdraw, limit, or restrict any Regulatory Required Permit held by Borrower, its Subsidiaries or any representative of Borrower or its Subsidiaries, which, in each case, would reasonably be expected to result in Material Adverse Effect, (iii) the commencement of any enforcement action against Borrower, its

Subsidiaries or any representative of Borrower or its Subsidiaries (with respect to the business of Borrower or its Subsidiaries) by DEA, FDA, or any other Governmental Authority which would reasonably be expected to result in a Material Adverse Effect, or (iv) the occurrence of adverse test results in connection with a Product which would result in Material Adverse Effect;

(p) any Credit Party defaults under or breaches any Material Contract (after any applicable grace period contained therein), or a Material Contract shall be terminated by a third party or parties party thereto prior to the expiration thereof, or there is a loss of a material right of a Credit Party under any Material Contract to which it is a party, in each case which could reasonably be expected to result in a Material Adverse Effect; or

(q) there shall occur any default or event of default under the Affiliated Financing Documents.

All cure periods provided for in this Section 10.1 shall run concurrently with any cure period provided for in any applicable Financing Documents under which the default occurred.

Section 10.2 Acceleration and Suspension or Termination of Revolving Loan Commitment. Upon the occurrence and during the continuance of an Event of Default, Agent may, and shall if requested by Required Lenders, (a) by notice to Borrower Representative suspend or terminate the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto, in whole or in part (and, if in part, each Lender's Revolving Loan Commitment shall be reduced in accordance with its Pro Rata Share), and/or (b) by notice to Borrower Representative declare all or any portion of the Obligations to be, and the Obligations shall thereupon become, immediately due and payable, with accrued interest thereon, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same; *provided*, *however*, that in the case of any of the Events of Default specified in Section 10.1(e) or 10.1(f) above, without any notice to any Borrower or any other act by Agent or the Lenders, the Revolving Loan Commitment and the obligations of Agent and the Lenders with respect thereto shall thereupon immediately and automatically terminate and all of the Obligations shall become immediately and automatically due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower and Borrowers will pay the same.

Section 10.3 UCC Remedies.

(a) Upon the occurrence of and during the continuance of an Event of Default under this Agreement or the other Financing Documents, Agent, in addition to all other rights, options, and remedies granted to Agent under this Agreement or at law or in equity, may exercise, either directly or through one or more assignees or designees, all rights and remedies granted to it under all Financing Documents and under the UCC in effect in the applicable jurisdiction(s) and under any other applicable law; including, without limitation:

(i) the right to take possession of, send notices regarding, and collect directly the Collateral, with or without judicial process;

(ii) the right to (by its own means or with judicial assistance) enter any of Borrowers' premises and take possession of the Collateral, or render it unusable, or to render it usable or saleable, or dispose of the Collateral on such premises in compliance with subsection (iii) below and to take possession of Borrowers' original books and records, to obtain access to Borrowers' data processing equipment, computer hardware and software relating to the Collateral and to use all of the foregoing and the information contained therein in any manner Agent deems appropriate, without any liability for rent, storage, utilities, or other sums, and Borrowers shall not

resist or interfere with such action (if Borrowers' books and records are prepared or maintained by an accounting service, contractor or other third party agent, Borrowers hereby irrevocably authorize such service, contractor or other agent, upon notice by Agent to such Person that an Event of Default has occurred and is continuing, to deliver to Agent or its designees such books and records, and to follow Agent's instructions with respect to further services to be rendered);

(iii) the right to require Borrowers at Borrowers' expense to assemble all or any part of the Collateral and make it available to Agent at any place designated by Agent;

(iv) the right to notify postal authorities to change the address for delivery of Borrowers' mail to an address designated by Agent and to receive, open and dispose of all mail addressed to any Borrower; and/or

(v) the right to enforce Borrowers' rights against Account Debtors and other obligors, including, without limitation, (i) the right to collect Accounts directly in Agent's own name (as agent for Lenders) and to charge the collection costs and expenses, including attorneys' fees, to Borrowers, and (ii) the right, in the name of Agent or any designee of Agent or Borrowers, to verify the validity, amount or any other matter relating to any Accounts by mail, telephone, telegraph or otherwise, including, without limitation, verification of Borrowers' compliance with applicable Laws. Borrowers shall cooperate fully with Agent in an effort to facilitate and promptly conclude such verification process. Such verification may include contacts between Agent and applicable federal, state and local regulatory authorities having jurisdiction over the Borrowers' affairs, all of which contacts Borrowers hereby irrevocably authorize.

(b) Each Borrower agrees that a notice received by it at least ten (10) days before the time of any intended public sale, or the time after which any private sale or other disposition of the Collateral is to be made, shall be deemed to be reasonable notice of such sale or other disposition. If permitted by applicable law, any perishable Collateral which threatens to speedily decline in value or which is sold on a recognized market may be sold immediately by Agent without prior notice to Borrowers. At any sale or disposition of Collateral, Agent may (to the extent permitted by applicable law) purchase all or any part of the Collateral, free from any right of redemption by Borrowers, which right is hereby waived and released. Each Borrower covenants and agrees not to interfere with or impose any obstacle to Agent's exercise of its rights and remedies with respect to the Collateral. Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. Agent may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. Agent may sell the Collateral without giving any warranties as to the Collateral. Agent may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral. If Agent sells any of the Collateral upon credit, Borrowers will be credited only with payments actually made by the purchaser, received by Agent and applied to the indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Agent may resell the Collateral and Borrowers shall be credited with the proceeds of the sale. Borrowers shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Obligations.

(c) Without restricting the generality of the foregoing and for the purposes aforesaid, each Borrower hereby appoints and constitutes Agent its lawful attorney-in-fact with full power of substitution in the Collateral, upon the occurrence and during the continuance of an Event of Default, to (i) use unadvanced funds remaining under this Agreement or which may be reserved, escrowed or set aside for any purposes hereunder at any time, or to advance funds in excess of the face amount of the Notes, (ii) pay, settle or compromise all existing bills and claims, which may be Liens or security interests, or to

avoid such bills and claims becoming Liens against the Collateral, (iii) execute all applications and certificates in the name of such Borrower and to prosecute and defend all actions or proceedings in connection with the Collateral, and (iv) do any and every act which such Borrower might do in its own behalf; it being understood and agreed that this power of attorney in this subsection (c) shall be a power coupled with an interest and cannot be revoked.

(d) Agent and each Lender is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrowers' labels, mask works, rights of use of any name, any other Intellectual Property and advertising matter, and 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 Article, Borrowers' rights under all licenses (whether as licensor or licensee) and all franchise agreements inure to Agent's and each Lender's benefit.

Section 10.4 Reserved.

Section 10.5 Default Rate of Interest. At the election of Agent or Required Lenders, after the occurrence of an Event of Default and for so long as it continues, the Loans and other Obligations shall bear interest at rates that are three percent (3.0%) per annum in excess of the rates otherwise payable under this Agreement; *provided, however*, that in the case of any Event of Default specified in Section 10.1(e) or 10.1(f) above, such default rates shall apply immediately and automatically without the need for any election or action of any kind on the part of Agent or any Lender.

Section 10.6 Setoff Rights. During the continuance of any Event of Default, each Lender is hereby authorized by each Borrower at any time or from time to time, with reasonably prompt subsequent notice to such Borrower (any prior or contemporaneous notice being hereby expressly waived) to set off and to appropriate and to apply any and all (a) balances held by such Lender or any of such Lender's Affiliates at any of its offices for the account of such Borrower or any of its Subsidiaries (regardless of whether such balances are then due to such Borrower or its Subsidiaries), and (b) other property at any time held or owing by such Lender to or for the credit or for the account of such Borrower or any of its Subsidiaries, against and on account of any of the Obligations; except that no Lender shall exercise any such right without the prior written consent of Agent. Any Lender exercising a right to set off shall purchase for cash (and the other Lenders shall sell) interests in each of such other Lender's Pro Rata Share of the Obligations as would be necessary to cause all Lenders to share the amount so set off with each other Lender in accordance with their respective Pro Rata Share of the Obligations. Each Borrower agrees, to the fullest extent permitted by law, that any Lender and any of such Lender's Affiliates may exercise its right to set off with respect to the Obligations as provided in this Section 10.6.

Section 10.7 Application of Proceeds.

(a) Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, each 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 such Borrower or any Guarantor of all or any part of the Obligations, and, as between Borrowers 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.

(b) Following the occurrence and continuance of an Event of Default, but absent the occurrence and continuance of an Acceleration Event, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in such order as Agent may from time to time elect.

(c) Notwithstanding anything to the contrary contained in this Agreement, if an Acceleration Event shall have occurred, and so long as it continues, Agent shall apply any and all payments received by Agent in respect of the Obligations, and any and all proceeds of Collateral received by Agent, in the following order: *first*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to Agent with respect to this Agreement, the other Financing Documents or the Collateral; *second*, to all fees, costs, indemnities, liabilities, obligations and expenses incurred by or owing to any Lender with respect to this Agreement, the other Financing Documents or the Collateral; *third*, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); *fourth*, to the principal amount of the Obligations outstanding; and *fifth* to any other indebtedness or obligations of Borrowers owing to Agent or any Lender under the Financing Documents. Any balance remaining shall be delivered to Borrowers or to whomever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (y) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (z) 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.

Section 10.8 Waivers.

(a) Except as otherwise provided for in this Agreement and to the fullest extent permitted by applicable law, each Borrower waives: (i) presentment, demand and protest, and notice of presentment, dishonor, intent to accelerate, acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all Financing Documents, the Notes or any other notes, commercial paper, accounts, contracts, documents, Instruments, Chattel Paper and Guarantees at any time held by Lenders on which any Borrower may in any way be liable, and hereby ratifies and confirms whatever Lenders may do in this regard; (ii) all rights to notice and a hearing prior to Agent's or any Lender's taking possession or control of, or to Agent's or any Lender's replevy, attachment or levy upon, any Collateral or any bond or security which might be required by any court prior to allowing Agent or any Lender to exercise any of its remedies; and (iii) the benefit of all valuation, appraisal and exemption Laws. Each Borrower acknowledges that it has been advised by counsel of its choices and decisions with respect to this Agreement, the other Financing Documents and the transactions evidenced hereby and thereby.

(b) Each Borrower for itself and all its successors and assigns, (i) agrees that its liability shall not be in any manner affected by any indulgence, extension of time, renewal, waiver, or modification granted or consented to by Lender; (ii) consents to any indulgences and all extensions of time, renewals, waivers, or modifications that may be granted by Agent or any Lender with respect to the payment or other provisions of the Financing Documents, and to any substitution, exchange or release of the Collateral, or any part thereof, with or without substitution, and agrees to the addition or release of any Borrower, endorsers, guarantors, or sureties, or whether primarily or secondarily liable, without notice to any other Borrower and without affecting its liability hereunder; (iii) agrees that its liability shall be unconditional and without regard to the liability of any other Borrower, Agent or any Lender for any tax on the indebtedness; and (iv) to the fullest extent permitted by law, expressly waives the benefit of any statute or rule of law or equity now provided, or which may hereafter be provided, which would produce a result contrary to or in conflict with the foregoing.

(c) To the extent that Agent or any Lender may have acquiesced in any noncompliance with any requirements or conditions precedent to the closing of the Loans or to any subsequent disbursement of Loan proceeds, such acquiescence shall not be deemed to constitute a waiver by Agent or any Lender of such requirements with respect to any future disbursements of Loan proceeds and Agent may at any time after such acquiescence require Borrowers to comply with all such

requirements. Any forbearance by Agent or Lender in exercising any right or remedy under any of the Financing Documents, or otherwise afforded by applicable law, including any failure to accelerate the maturity date of the Loans, shall not be a waiver of or preclude the exercise of any right or remedy nor shall it serve as a novation of the Notes or as a reinstatement of the Loans or a waiver of such right of acceleration or the right to insist upon strict compliance of the terms of the Financing Documents. Agent's or any Lender's acceptance of payment of any sum secured by any of the Financing Documents after the due date of such payment shall not be a waiver of Agent's and such Lender's right to either require prompt payment when due of all other sums so secured or to declare a default for failure to make prompt payment. The procurement of insurance or the payment of taxes or other Liens or charges by Agent as the result of an Event of Default shall not be a waiver of Agent's right to accelerate the maturity of the Loans, nor shall Agent's receipt of any condemnation awards, insurance proceeds, or damages under this Agreement operate to cure or waive any Credit Party's default in payment of sums secured by any of the Financing Documents.

(d) Without limiting the generality of anything contained in this Agreement or the other Financing Documents, each Borrower agrees that if an Event of Default is continuing (i) Agent and Lenders shall not be subject to any "one action" or "election of remedies" law or rule, and (ii) all Liens and other rights, remedies or privileges provided to Agent or Lenders shall remain in full force and effect until Agent or Lenders have exhausted all remedies against the Collateral and any other properties owned by Borrowers and the Financing Documents and other security instruments or agreements securing the Loans have been foreclosed, sold and/or otherwise realized upon in satisfaction of Borrowers' obligations under the Financing Documents.

(e) Nothing contained herein or in any other Financing Document shall be construed as requiring Agent or any Lender to resort to any part of the Collateral for the satisfaction of any of Borrowers' obligations under the Financing Documents in preference or priority to any other Collateral, and Agent may seek satisfaction out of all of the Collateral or any part thereof, in its absolute discretion in respect of Borrowers' obligations under the Financing Documents. In addition, Agent shall have the right from time to time to partially foreclose upon any Collateral in any manner and for any amounts secured by the Financing Documents then due and payable as determined by Agent in its sole discretion, including, without limitation, the following circumstances: (i) in the event any Borrower defaults beyond any applicable grace period in the payment of one or more scheduled payments of principal and/or interest, Agent may foreclose upon all or any part of the Collateral to recover such delinquent payments, or (ii) in the event Agent elects to accelerate less than the entire outstanding principal balance of the Loans, Agent may foreclose all or any part of the Collateral to recover so much of the principal balance of the Loans as Lender may accelerate and such other sums secured by one or more of the Financing Documents as Agent may elect. Notwithstanding one or more partial foreclosures, any unforeclosed Collateral shall remain subject to the Financing Documents to secure payment of sums secured by the Financing Documents and not previously recovered.

(f) To the fullest extent permitted by law, each Borrower, for itself and its successors and assigns, waives in the event of foreclosure of any or all of the Collateral any equitable right otherwise available to any Credit Party which would require the separate sale of any of the Collateral or require Agent or Lenders to exhaust their remedies against any part of the Collateral before proceeding against any other part of the Collateral; and further in the event of such foreclosure each Borrower does hereby expressly consent to and authorize, at the option of Agent, the foreclosure and sale either separately or together of each part of the Collateral.

Section 10.9 Injunctive Relief. The parties acknowledge and agree that, in the event of a breach or threatened breach of any Credit Party's obligations under any Financing Documents, Agent and Lenders may have no adequate remedy in money damages and, accordingly, shall be entitled to an injunction

(including, without limitation, a temporary restraining order, preliminary injunction, writ of attachment, or order compelling an audit) against such breach or threatened breach, including, without limitation, maintaining any cash management and collection procedure described herein. However, no specification in this Agreement of a specific legal or equitable remedy shall be construed as a waiver or prohibition against any other legal or equitable remedies in the event of a breach or threatened breach of any provision of this Agreement. Each Credit Party waives, to the fullest extent permitted by law, the requirement of the posting of any bond in connection with such injunctive relief. By joining in the Financing Documents as a Credit Party, each Credit Party specifically joins in this Section as if this Section were a part of each Financing Document executed by such Credit Party.

Section 10.10 Marshalling; Payments Set Aside. Neither Agent nor any Lender shall be under any obligation to marshal any assets in payment of any or all of the Obligations. To the extent that Borrower makes any payment or Agent enforces its Liens or Agent or any Lender exercises its right of set-off, and such payment or the proceeds of such enforcement or set-off is subsequently invalidated, declared to be fraudulent or preferential, set aside, or required to be repaid by anyone, then to the extent of such recovery, the Obligations or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor, shall be revived and continued in full force and effect as if such payment had not been made or such enforcement or set-off had not occurred.

ARTICLE 11 - AGENT

Section 11.1 Appointment and Authorization. Each Lender hereby irrevocably appoints and authorizes Agent to enter into each of the Financing Documents to which it is a party (other than this Agreement) on its behalf and to take such actions as Agent on its behalf and to exercise such powers under the Financing Documents as are delegated to Agent by the terms thereof, together with all such powers as are reasonably incidental thereto. Subject to the terms of Section 11.16 and to the terms of the other Financing Documents, Agent is authorized and empowered to amend, modify, or waive any provisions of this Agreement or the other Financing Documents on behalf of Lenders. The provisions of this Article 11 are solely for the benefit of Agent and Lenders and neither any Borrower nor any other Credit Party shall have any rights as a third party beneficiary of any of the provisions hereof. In performing its functions and duties under this Agreement, Agent shall act solely as agent of Lenders and does not assume and shall not be deemed to have assumed any obligation toward or relationship of agency or trust with or for any Borrower or any other Credit Party. Agent may perform any of its duties hereunder, or under the Financing Documents, by or through its agents, servicers, trustees, investment managers or employees.

Section 11.2 Agent and Affiliates. Agent shall have the same rights and powers under the Financing Documents as any other Lender and may exercise or refrain from exercising the same as though it were not Agent, and Agent and its Affiliates may lend money to, invest in and generally engage in any kind of business with each Credit Party or Affiliate of any Credit Party as if it were not Agent hereunder.

Section 11.3 Action by Agent. The duties of Agent shall be mechanical and administrative in nature. Agent shall not have by reason of this Agreement a fiduciary relationship in respect of any Lender. Nothing in this Agreement or any of the Financing Documents is intended to or shall be construed to impose upon Agent any obligations in respect of this Agreement or any of the Financing Documents except as expressly set forth herein or therein.

Section 11.4 Consultation with Experts. Agent may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts.

Section 11.5 Liability of Agent. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be liable to any Lender for any action taken or not taken by it in connection with the Financing Documents, except that Agent shall be liable with respect to its specific duties set forth hereunder but only to the extent of its own gross negligence or willful misconduct in the discharge thereof as determined by a final non-appealable judgment of a court of competent jurisdiction. Neither Agent nor any of its directors, officers, agents, trustees, investment managers, servicers or employees shall be responsible for or have any duty to ascertain, inquire into or verify (a) any statement, warranty or representation made in connection with any Financing Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements specified in any Financing Document; (c) the satisfaction of any condition specified in any Financing Document; (d) the validity, effectiveness, sufficiency or genuineness of any Financing Document, any Lien purported to be created or perfected thereby or any other instrument or writing furnished in connection therewith; (e) the existence or non-existence of any Default or Event of Default; or (f) the financial condition of any Credit Party. Agent shall not incur any liability by acting in reliance upon any notice, consent, certificate, statement, or other writing (which may be a bank wire, facsimile or electronic transmission or similar writing) believed by it to be genuine or to be signed by the proper party or parties. Agent shall not be liable for any apportionment or distribution of payments made by it in good faith and if any such apportionment or distribution is subsequently determined to have been made in error the sole recourse of any Lender to whom payment was due but not made, shall be to recover from other Lenders any payment in excess of the amount to which they are determined to be entitled (and such other Lenders hereby agree to return to such Lender any such erroneous payments received by them).

Section 11.6 Indemnification. Each Lender shall, in accordance with its Pro Rata Share, indemnify Agent (to the extent not reimbursed by Borrowers) upon demand against any cost, expense (including counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from Agent's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction) that Agent may suffer or incur in connection with the Financing Documents or any action taken or omitted by Agent hereunder or thereunder. If any indemnity furnished to Agent for any purpose shall, in the opinion of Agent, be insufficient or become impaired, Agent may call for additional indemnity and cease, or not commence, to do the acts indemnified against even if so directed by Required Lenders until such additional indemnity is furnished.

Section 11.7 Right to Request and Act on Instructions. Agent may at any time request instructions from Lenders with respect to any actions or approvals which by the terms of this Agreement or of any of the Financing Documents Agent is permitted or desires to take or to grant, and if such instructions are promptly requested, Agent shall be absolutely entitled to refrain from taking any action or to withhold any approval and shall not be under any liability whatsoever to any Person for refraining from any action or withholding any approval under any of the Financing Documents until it shall have received such instructions from Required Lenders or all or such other portion of the Lenders as shall be prescribed by this Agreement. Without limiting the foregoing, no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting under this Agreement or any of the other Financing Documents in accordance with the instructions of Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) and, notwithstanding the instructions of Required Lenders (or such other applicable portion of the Lenders), Agent shall have no obligation to take any action if it believes, in good faith, that such action would violate applicable Law or exposes Agent to any liability for which it has not received satisfactory indemnification in accordance with the provisions of Section 11.6.

Section 11.8 Credit Decision. Each Lender acknowledges that it has, independently and without reliance upon Agent or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon Agent or any other Lender, and based

on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking any action under the Financing Documents.

Section 11.9 Collateral Matters. Lenders irrevocably authorize Agent, at its option and in its discretion, to (a) release any Lien granted to or held by Agent under any Security Document (i) upon termination of the Revolving Loan Commitment and payment in full of all Obligations; or (ii) constituting property sold or disposed of as part of or in connection with any disposition permitted under any Financing Document (it being understood and agreed that Agent may conclusively rely without further inquiry on a certificate of a Responsible Officer as to the sale or other disposition of property being made in full compliance with the provisions of the Financing Documents); and (b) subordinate any Lien granted to or held by Agent under any Security Document to a Permitted Lien that is allowed to have priority over the Liens granted to or held by Agent pursuant to the definition of "Permitted Liens". Upon request by Agent at any time, Lenders will confirm Agent's authority to release and/or subordinate particular types or items of Collateral pursuant to this Section 11.9.

Section 11.10 Agency for Perfection. Agent and each Lender hereby appoint each other Lender as agent for the purpose of perfecting Agent's security interest in assets which, in accordance with the UCC in any applicable jurisdiction, can be perfected by possession or control. Should any Lender (other than Agent) obtain possession or control of any such assets, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor, shall deliver such assets to Agent or in accordance with Agent's instructions or transfer control to Agent in accordance with Agent's instructions. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Loan unless instructed to do so by Agent (or consented to by Agent), it being understood and agreed that such rights and remedies may be exercised only by Agent.

Section 11.11 Notice of Default. Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default except with respect to defaults in the payment of principal, interest and fees required to be paid to Agent for the account of Lenders, unless Agent shall have received written notice from a Lender or a Borrower referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". Agent will notify each Lender of its receipt of any such notice. Agent shall take such action with respect to such Default or Event of Default as may be requested by Required Lenders (or all or such other portion of the Lenders as shall be prescribed by this Agreement) in accordance with the terms hereof. Unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable or in the best interests of Lenders.

Section 11.12 Assignment by Agent; Resignation of Agent; Successor Agent

(a) Agent may at any time assign its rights, powers, privileges and duties hereunder to (i) another Lender or an Affiliate of Agent or any Lender or any Approved Fund, 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 endeavor to give notice to the Lenders and Borrowers. Failure to give such notice shall not affect such assignment in any way or cause the assignment to be ineffective. 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 Financing 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 paragraph.

(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 Financing Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by Borrowers to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between Borrowers and such successor. After the retiring Agent's resignation hereunder and under the other Financing Documents, the provisions of this Article and Section 11.12 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.

Section 11.13 Payment and Sharing of Payment.

(a) Revolving Loan Advances, Payments and Settlements; Interest and Fee Payments.

(i) Agent shall have the right, on behalf of Revolving Lenders to disburse funds to Borrowers for all Revolving Loans requested or deemed requested by Borrowers pursuant to the terms of this Agreement. Agent shall be conclusively entitled to assume, for purposes of the preceding sentence, that each Revolving Lender, other than any Non-Funding Lenders, will fund its Pro Rata Share of all Revolving Loans requested by Borrowers. Each Revolving Lender shall reimburse Agent on demand, in accordance with the provisions of the immediately following paragraph, for all funds disbursed on its behalf by Agent pursuant to the first sentence of this clause (i), or if Agent so requests, each Revolving Lender will remit to Agent its Pro Rata Share of any Revolving Loan before Agent disburses the same to a Borrower. If Agent elects to require that each Revolving Lender make funds available to Agent, prior to a disbursement by Agent to a Borrower, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's Pro Rata Share of the Revolving Loan requested by such Borrower no later than 12:00 Noon (Eastern time) on the date of funding of such Revolving Loan, and each such Revolving Lender shall pay Agent on such date such Revolving Lender's Pro Rata Share of such requested Revolving Loan, in same day funds, by wire transfer to the Payment Account, or such other account as may be identified by Agent to Revolving Lenders from time to time. If any Lender fails to pay the amount of its Pro Rata Share of any funds advanced by Agent pursuant to the first sentence of this clause (i) within one (1) Business Day after Agent's demand, Agent shall promptly notify Borrower Representative, and Borrowers shall immediately repay such amount to Agent. Any repayment required by Borrowers pursuant to this Section 11.13 shall be accompanied by accrued interest thereon from and including the date such amount is made available to a Borrower to but excluding the date of payment at the rate of interest then applicable to Revolving Loans. Nothing in this Section 11.13 or elsewhere in this Agreement or the other Financing Documents shall be deemed to require Agent to advance funds on behalf of any Lender

or to relieve any Lender from its obligation to fulfill its commitments hereunder or to prejudice any rights that Agent or any Borrower may have against any Lender as a result of any default by such Lender hereunder.

(ii) On a Business Day of each week as selected from time to time by Agent, or more frequently (including daily), if Agent so elects (each such day being a "**Settlement Date**"), Agent will advise each Revolving Lender by telephone, facsimile or e-mail of the amount of each such Revolving Lender's percentage interest of the Revolving Loan balance as of the close of business of the Business Day immediately preceding the Settlement Date. In the event that payments are necessary to adjust the amount of such Revolving Lender's actual percentage interest of the Revolving Loans to such Lender's required percentage interest of the Revolving Loan balance as of any Settlement Date, the Revolving Lender from which such payment is due shall pay Agent, without setoff or discount, to the Payment Account before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date the full amount necessary to make such adjustment. Any obligation arising pursuant to the immediately preceding sentence shall be absolute and unconditional and shall not be affected by any circumstance whatsoever. In the event settlement shall not have occurred by the date and time specified in the second preceding sentence, interest shall accrue on the unsettled amount at the rate of interest then applicable to Revolving Loans.

(iii) On each Settlement Date, Agent shall advise each Revolving Lender by telephone, facsimile or e-mail of the amount of such Revolving Lender's percentage interest of principal, interest and fees paid for the benefit of Revolving Lenders with respect to each applicable Revolving Loan, to the extent of such Revolving Lender's Revolving Loan Exposure with respect thereto, and shall make payment to such Revolving Lender before 1:00 p.m. (Eastern time) on the Business Day following the Settlement Date of such amounts in accordance with wire instructions delivered by such Revolving Lender to Agent, as the same may be modified from time to time by written notice to Agent; *provided, however,* that, in the case such Revolving Lender is a Defaulted Lender, Agent shall be entitled to set off the funding short-fall against that Defaulted Lender's respective share of all payments received from any Borrower.

(iv) On the Closing Date, Agent, on behalf of Lenders, may elect to advance to Borrowers the full amount of the initial Loans to be made on the Closing Date prior to receiving funds from Lenders, in reliance upon each Lender's commitment to make its Pro Rata Share of such Loans to Borrowers in a timely manner on such date. If Agent elects to advance the initial Loans to Borrower in such manner, Agent shall be entitled to receive all interest that accrues on the Closing Date on each Lender's Pro Rata Share of such Loans unless Agent receives such Lender's Pro Rata Share of such Loans before 3:00 p.m. (Eastern time) on the Closing Date.

(v) It is understood that for purposes of advances to Borrowers made pursuant to this Section 11.13, Agent will be using the funds of Agent, and pending settlement, (A) all funds transferred from the Payment Account to the outstanding Revolving Loans shall be applied first to advances made by Agent to Borrowers pursuant to this Section 11.13, and (B) all interest accruing on such advances shall be payable to Agent.

(vi) The provisions of this Section 11.13(a) shall be deemed to be binding upon Agent and Lenders notwithstanding the occurrence of any Default or Event of Default, or any insolvency or bankruptcy proceeding pertaining to any Borrower or any other Credit Party.

(b) Reserved.

(c) Return of Payments.

(i) If Agent pays an amount to a Lender under this Agreement in the belief or expectation that a related payment has been or will be received by Agent from a Borrower and such related payment is not received by Agent, then Agent will be entitled to recover such amount from such Lender on demand without setoff, counterclaim or deduction of any kind, together with interest accruing on a daily basis at the Federal Funds Rate.

(ii) If Agent determines at any time that any amount received by Agent under this Agreement must be returned to any Borrower or paid to any other Person pursuant to any insolvency law or otherwise, then, notwithstanding any other term or condition of this Agreement or any other Financing Document, Agent will not be required to distribute any portion thereof to any Lender. In addition, each Lender will repay to Agent on demand any portion of such amount that Agent has distributed to such Lender, together with interest at such rate, if any, as Agent is required to pay to any Borrower or such other Person, without setoff, counterclaim or deduction of any kind.

(d) Defaulted Lenders. The failure of any Defaulted Lender to make any payment required by it hereunder shall not relieve any other Lender of its obligations to make payment, but neither any other Lender nor Agent shall be responsible for the failure of any Defaulted Lender to make any payment required hereunder. Notwithstanding anything set forth herein to the contrary, a Defaulted Lender shall not have any voting or consent rights under or with respect to any Financing Document or constitute a "Lender" (or be included in the calculation of "Required Lenders" hereunder) for any voting or consent rights under or with respect to any Financing Document.

(e) Sharing of Payments. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of setoff or otherwise) on account of any Loan (other than pursuant to the terms of Section 2.8(d)) in excess of its Pro Rata Share of payments entitled pursuant to the other provisions of this Section 11.13, such Lender shall purchase from the other Lenders such participations in extensions of credit made by such other Lenders (without recourse, representation or warranty) as shall be necessary to cause such purchasing Lender to share the excess payment or other recovery ratably with each of them; *provided, however,* that if all or any portion of the excess payment or other recovery is thereafter required to be returned or otherwise recovered from such purchasing Lender, such portion of such purchase shall be rescinded and each Lender which has sold a participation to the purchasing Lender shall repay to the purchasing Lender the purchase price to the ratable extent of such return or recovery, without interest. Each Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this clause (e) may, to the fullest extent permitted by law, exercise all its rights of payment (including pursuant to Section 10.6) with respect to such participation as fully as if such Lender were the direct creditor of Borrowers in the amount of such participation). If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a setoff to which this clause (e) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders entitled under this clause (e) to share in the benefits of any recovery on such secured claim.

Section 11.14 Right to Perform, Preserve and Protect. If any Credit Party fails to perform any obligation hereunder or under any other Financing Document, Agent itself may, but shall not be obligated to, cause such obligation to be performed at Borrowers' expense. Agent is further authorized by Borrowers and the Lenders to make expenditures from time to time which Agent, in its reasonable business judgment, deems necessary or desirable to (a) preserve or protect the business conducted by Borrowers, the Collateral, or any portion thereof, and/or (b) enhance the likelihood of, or maximize the amount of, repayment of the Loan and other Obligations. Each Borrower hereby agrees to reimburse Agent on demand for any and all

costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14. Each Lender hereby agrees to indemnify Agent upon demand for any and all costs, liabilities and obligations incurred by Agent pursuant to this Section 11.14, in accordance with the provisions of Section 11.6.

Section 11.15 Additional Titled Agents. Except for rights and powers, if any, expressly reserved under this Agreement to any bookrunner, arranger or to any titled agent named on the cover page of this Agreement, other than Agent (collectively, the "**Additional Titled Agents**"), and except for obligations, liabilities, duties and responsibilities, if any, expressly assumed under this Agreement by any Additional Titled Agent, no Additional Titled Agent, in such capacity, has any rights, powers, liabilities, duties or responsibilities hereunder or under any of the other Financing Documents. Without limiting the foregoing, no Additional Titled Agent shall have nor be deemed to have a fiduciary relationship with any Lender. At any time that any Lender serving as an Additional Titled Agent shall have transferred to any other Person (other than any Affiliates) all of its interests in the Loan, such Lender shall be deemed to have concurrently resigned as such Additional Titled Agent.

Section 11.16 Amendments and Waivers.

(a) No provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by Borrowers, the Required Lenders and any other Lender to the extent required under Section 11.16(b); *provided, however*, any Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In addition to the required signatures under Section 11.16(a), no provision of this Agreement or any other Financing Document may be amended, waived or otherwise modified unless such amendment, waiver or other modification is in writing and is signed or otherwise approved by the following Persons:

(i) if any amendment, waiver or other modification would increase a Lender's funding obligations in respect of any Loan, by such Lender; and/or

(ii) if the rights or duties of Agent are affected thereby, by Agent;

provided, however, that, in each of (i) and (ii) above, no such amendment, waiver or other modification shall, unless signed or otherwise approved in writing by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Loan; (B) postpone the date fixed for, or waive, any payment (other than any mandatory prepayment pursuant to Section 2.1(b)(ii)) of principal of any Loan, or of interest on any Loan (other than default interest) or any fees provided for hereunder (other than late charges) or postpone the date of termination of any commitment of any Lender hereunder; (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 of the Collateral, authorize any Borrower to sell or otherwise dispose of all or substantially all of the Collateral, release any Guarantor of all or any portion of the Obligations or its Guarantee obligations with respect thereto, or consent to a transfer of any of the Intellectual Property, except, in each case with respect to this clause (D), as otherwise may be provided in this Agreement or the other Financing Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 11.16(b) or the definitions of the terms used in this Section 11.16(b) insofar as the definitions affect the substance of this Section 11.16(b); (F) consent to the assignment, delegation or other transfer by any Credit Party of any of its rights and obligations under any Financing Document or release any Borrower of its payment obligations under any Financing Document, except, in each case with respect to this clause (F), pursuant to

a merger or consolidation permitted pursuant to this Agreement; or (G) amend any of the provisions of Section 10.7 or amend any of the definitions Pro Rata Share, Revolving Loan Commitment, Revolving Loan Commitment Amount, Revolving Loan Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder. 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) and (G) of the preceding sentence.

Section 11.17 Assignments and Participations.

(a) Assignments.

(i) 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. Except as Agent may otherwise agree, the amount of any such assignment (determined as of the date of the applicable Assignment Agreement or, if a "Trade Date" is specified in such Assignment Agreement, as of such Trade Date) shall be in a minimum aggregate amount equal to $1,000,000 or, if less, the assignor's entire interests in the outstanding Loan; *provided, however,* that, in connection with simultaneous assignments to two or more related Approved Funds, such Approved Funds shall be treated as one assignee for purposes of determining compliance with the minimum assignment size referred to above. Borrowers and Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned to an Eligible Assignee until Agent shall have received and accepted an effective Assignment Agreement executed, delivered and fully completed by the applicable parties thereto and a processing fee of $3,500 to be paid by the assigning Lender; *provided, however,* that only one processing fee shall be payable in connection with simultaneous assignments to two or more related Approved Funds.

(ii) From and after the date on which the conditions described above have been met, (A) such Eligible Assignee shall be deemed automatically to have become a party hereto and, to the extent of the interests assigned to such Eligible Assignee pursuant to such Assignment Agreement, shall have the rights and obligations of a Lender hereunder, and (B) the assigning Lender, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment Agreement, shall be released from its rights and obligations hereunder (other than those that survive termination pursuant to Section 12.1). Upon the request of the Eligible Assignee (and, as applicable, the assigning Lender) pursuant to an effective Assignment Agreement, each Borrower shall execute and deliver to Agent for delivery to the Eligible Assignee (and, as applicable, the assigning Lender) Notes in the aggregate principal amount of the Eligible Assignee's Loan (and, as applicable, Notes in the principal amount of that portion of the principal amount of the Loan retained by the assigning Lender). Upon receipt by the assigning Lender of such Note, the assigning Lender shall return to Borrower Representative any prior Note held by it.

(iii) Agent, acting solely for this purpose as an agent of Borrower, shall maintain at the office of its servicer located in Bethesda, Maryland a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of each Lender, and the commitments of, and principal amount of the Loan owing to, such Lender pursuant to the terms hereof (the "**Register**"). The entries in such Register shall be conclusive, absent manifest effort, and Borrower, Agent and Lenders may treat each Person whose name is recorded therein pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. Such Register shall be available for inspection by Borrower and any Lender, at any reasonable time upon reasonable prior notice to Agent. Each Lender that sells a participation shall, acting solely for this purpose as an agent of Borrower maintain a register

on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Obligations (each, a "Participant Register"). The entries in the Participant Registers shall be conclusive, absent manifest error. Each Participant Register shall be available for inspection by Borrower and Agent at any reasonable time upon reasonable prior notice to the applicable Lender; *provided*, that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Financing Document) to any Person (including Borrower) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. For the avoidance of doubt, Agent (in its capacity as Agent) shall have no responsibility for maintaining a participant register.

(iv) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, 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.

(v) Notwithstanding the foregoing provisions of this Section 11.17(a) or any other provision of this Agreement, Agent has the right, but not the obligation, to effectuate assignments of Loan via an electronic settlement system acceptable to Agent as designated in writing from time to time to the Lenders by Agent (the "**Settlement Service**"). At any time when Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be consistent with the other provisions of this Section 11.17(a). Each assigning Lender and proposed Eligible Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loan pursuant to the Settlement Service. With the prior written approval of Agent, Agent's approval of such Eligible Assignee shall be deemed to have been automatically granted with respect to any transfer effected through the Settlement Service. Assignments and assumptions of the Loan shall be effected by the provisions otherwise set forth herein until Agent notifies Lenders of the Settlement Service as set forth herein.

(b) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or Agent, sell to one or more Persons (other than any Borrower or any Borrower's Affiliates) participating interests in its Loan, commitments or other interests hereunder (any such Person, a "**Participant**"). In the event of a sale by a Lender of a participating interest to a Participant, (i) such Lender's obligations hereunder shall remain unchanged for all purposes, (ii) Borrowers and Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations hereunder, and (iii) all amounts payable by each Borrower shall be determined as if such Lender had not sold such participation and shall be paid directly to such Lender. Each Borrower agrees that if amounts outstanding under this Agreement are due and payable (as a result of acceleration or otherwise), each Participant shall be deemed to have the right of set-off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement; *provided, however*, that such right of set-off shall be subject to the obligation of each Participant to share with Lenders, and Lenders agree to share with each Participant, as provided in Section 11.5.

(c) Replacement of Lenders. Within thirty (30) days after: (i) receipt by Agent of notice and demand from any Lender for payment of additional costs as provided in Section 2.8(d), which demand shall not have been revoked, (ii) any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.8(a), (iii) any Lender is a Defaulted Lender, and the circumstances causing such status shall not have been cured or waived; or (iv) any failure by any Lender to consent to a requested amendment, waiver or modification to any Financing Document in which Required Lenders have already consented to such amendment, waiver or modification but the consent of each Lender, or each Lender affected thereby, is required with respect thereto (each relevant Lender in the foregoing clauses (i) through (iv) being an "**Affected Lender**") each of Borrower Representative and Agent may, at its option, notify such Affected Lender and, in the case of Borrowers' election, Agent, of such Person's intention to obtain, at Borrowers' expense, a replacement Lender ("**Replacement Lender**") for such Lender, which Replacement Lender shall be an Eligible Assignee and, in the event the Replacement Lender is to replace an Affected Lender described in the preceding clause (iv), such Replacement Lender consents to the requested amendment, waiver or modification making the replaced Lender an Affected Lender. In the event Borrowers or Agent, as applicable, obtains a Replacement Lender within ninety (90) days following notice of its intention to do so, the Affected Lender shall sell, at par, and assign all of its Loan and funding commitments hereunder to such Replacement Lender in accordance with the procedures set forth in Section 11.17(a); *provided, however,* that (A) Borrowers shall have reimbursed such Lender for its increased costs and additional payments for which it is entitled to reimbursement under Section 2.8(a) or Section 2.8(d), as applicable, of this Agreement through the date of such sale and assignment, and (B) Borrowers shall pay to Agent the $3,500 processing fee in respect of such assignment. In the event that a replaced Lender does not execute an Assignment Agreement pursuant to Section 11.17(a) within five (5) Business Days after receipt by such replaced Lender of notice of replacement pursuant to this Section 11.17(c) and presentation to such replaced Lender of an Assignment Agreement evidencing an assignment pursuant to this Section 11.17(c), such replaced Lender shall be deemed to have consented to the terms of such Assignment Agreement, and any such Assignment Agreement executed by Agent, the Replacement Lender and, to the extent required pursuant to Section 11.17(a), Borrowers, shall be effective for purposes of this Section 11.17(c) and Section 11.17(a). Upon any such assignment and payment, such replaced Lender shall no longer constitute a "**Lender**" for purposes hereof, other than with respect to such rights and obligations that survive termination as set forth in Section 12.1.

(d) Credit Party Assignments. No Credit Party may assign, delegate or otherwise transfer any of its rights or other obligations hereunder or under any other Financing Document without the prior written consent of Agent and each Lender.

Section 11.18 Funding and Settlement Provisions Applicable When Non-Funding Lenders Exist. So long as Agent has not waived the conditions to the funding of Loans set forth in Article VII or Section 2.1, any Lender may deliver a notice to Agent stating that such Lender shall cease making Revolving Loans due to the non-satisfaction of one or more conditions to funding Loans set forth in Article VII or Section 2.1, and specifying any such non-satisfied conditions. Any Lender delivering any such notice shall become a non-funding Lender (a "**Non-Funding Lender**") for purposes of this Agreement commencing on the Business Day following receipt by Agent of such notice, and shall cease to be a Non-Funding Lender on the date on which such Lender has either revoked the effectiveness of such notice or acknowledged in writing to each of Agent the satisfaction of the condition(s) specified in such notice, or Required Lenders waive the conditions to the funding of such Loans giving rise to such notice by Non-Funding Lender. Each Non-Funding Lender shall remain a Lender for purposes of this Agreement to the extent that such Non-Funding Lender has Revolving Loan Outstanding in excess of $0; *provided, however,*

that during any period of time that any Non-Funding Lender exists, and notwithstanding any provision to the contrary set forth herein, the following provisions shall apply:

(a) For purposes of determining the Pro Rata Share of each Revolving Lender under clause (c) of the definition of such term, each Non-Funding Lender shall be deemed to have a Revolving Loan Commitment Amount as in effect immediately before such Lender became a Non-Funding Lender.

(b) Except as provided in clause (a) above, the Revolving Loan Commitment Amount of each Non-Funding Lender shall be deemed to be $0.

(c) The Revolving Loan Commitment at any date of determination during such period shall be deemed to be equal to the sum of (i) the aggregate Revolving Loan Commitment Amounts of all Lenders, other than the Non-Funding Lenders as of such date *plus* (ii) the aggregate Revolving Loan Outstandings of all Non-Funding Lenders as of such date.

(d) [Reserved].

(e) Agent shall have no right to make or disburse Revolving Loans for the account of any Non-Funding Lender pursuant to Section 2.1(b)(i) to pay interest, fees, expenses and other charges of any Credit Party.

(f) To the extent that Agent applies proceeds of Collateral or other payments received by Agent to repayment of Revolving Loans pursuant to Section 10.7, such payments and proceeds shall be applied first in respect of Revolving Loans made at the time any Non-Funding Lenders exist, and second in respect of all other outstanding Revolving Loans.

Section 11.19 Reserved.

Section 11.20 Definitions. As used in this Article 11, the following terms have the following meanings:

"**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.

"**Assignment Agreement**" means an assignment agreement in form and substance acceptable to Agent.

"**Defaulted Lender**" means, so long as such failure shall remain in existence and uncured, any Lender which shall have failed to make any Loan or other credit accommodation, disbursement, settlement or reimbursement required pursuant to the terms of any Financing Document.

"**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, (x) "**Eligible Assignee**" shall not include any Borrower or any of a Borrower's Affiliates, and (y) no proposed assignee intending to assume all or any portion of the Revolving

Loan Commitment shall be an Eligible Assignee unless such proposed assignee either already holds a portion of such Revolving Loan Commitment, or has been approved as an Eligible Assignee by Agent.

"**Federal Funds Rate**" means, for any day, the rate of interest per annum (rounded upwards, if necessary, to the nearest whole multiple of 1/100 of 1%) equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, *provided, however*, that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day, and (b) if no such rate is so published on such next preceding Business Day, the Federal Funds Rate for such day shall be the average rate quoted to Agent on such day on such transactions as determined by Agent.

ARTICLE 12 - MISCELLANEOUS

Section 12.1 Survival. All agreements, representations and warranties made herein and in every other Financing Document shall survive the execution and delivery of this Agreement and the other Financing Documents and the other Operative Documents. The provisions of Section 2.10 and Articles 11 and 12 and any provision in any other Financing Document expressly stated to survive shall survive the payment of the Obligations (both with respect to any Lender and all Lenders collectively) and any termination of this Agreement and any judgment with respect to any Obligations, including any final foreclosure judgment with respect to any Security Document, and no unpaid or unperformed, current or future, Obligations will merge into any such judgment.

Section 12.2 No Waivers. No failure or delay by Agent or any Lender in exercising any right, power or privilege under any Financing Document shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein and therein provided shall be cumulative and not exclusive of any rights or remedies provided by law. Any reference in any Financing Document to the "continuing" nature of any Event of Default shall not be construed as establishing or otherwise indicating that any Borrower or any other Credit Party has the independent right to cure any such Event of Default, but is rather presented merely for convenience should such Event of Default be waived in accordance with the terms of the applicable Financing Documents.

Section 12.3 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including prepaid overnight courier, facsimile transmission or similar writing) and shall be given to such party at its address, facsimile number or e-mail address set forth on the signature pages hereof (or, in the case of any such Lender who becomes a Lender after the date hereof, in an assignment agreement or in a notice delivered to Borrower Representative and Agent by the assignee Lender forthwith upon such assignment) or at such other address, facsimile number or e-mail address as such party may hereafter specify for the purpose by notice to Agent and Borrower Representative; *provided*, *however*, that notices, requests or other communications shall be permitted by electronic means only in accordance with the provisions of Section 12.3(b) and (c). Each such notice, request or other communication shall be effective (i) if given by facsimile, when such notice is transmitted to the facsimile number specified by this Section and the sender receives a confirmation of transmission from the sending facsimile machine, or (ii) if given by mail, prepaid overnight courier or any other means, when received or when receipt is refused at the applicable address specified by this Section 12.3(a).

(b) Notices and other communications to the parties hereto may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to

procedures approved from time to time by Agent,*provided*, *however*, that the foregoing shall not apply to notices sent directly to any Lender if such Lender has notified Agent that it is incapable of receiving notices by electronic communication. Agent or Borrower Representative may, in their discretion, agree to accept notices and other communications to them hereunder by electronic communications pursuant to procedures approved by it, *provided*, *however*, that approval of such procedures may be limited to particular notices or communications.

(c) Unless Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor, *provided*, *however*, that if any such notice or other communication is not sent or posted during normal business hours, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day.

Section 12.4 Severability. In case any provision of or obligation under this Agreement or any other Financing Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 12.5 Headings. Headings and captions used in the Financing Documents (including the Exhibits, Schedules and Annexes hereto and thereto) are included for convenience of reference only and shall not be given any substantive effect.

Section 12.6 Confidentiality.

(a) Each Credit Party agrees (i) not to transmit or disclose provisions of any Financing Document to any Person (other than to Borrowers' advisors and officers on a need-to-know basis or as otherwise may be required by Law) without Agent's prior written consent, (ii) to inform all Persons of the confidential nature of the Financing Documents and to direct them not to disclose the same to any other Person and to require each of them to be bound by these provisions.

(b) Agent and each Lender shall hold all non-public information regarding the Credit Parties and their respective businesses identified as such by Borrowers and obtained by Agent or any Lender pursuant to the requirements hereof in accordance with such Person's customary procedures for handling information of such nature, except that disclosure of such information may be made (i) to their respective agents, employees, Subsidiaries, Affiliates, attorneys, auditors, professional consultants, rating agencies, insurance industry associations and portfolio management services, (ii) to prospective transferees or purchasers of any interest in the Loans, Agent or a Lender, *provided*, *however*, that any such Persons are bound by obligations of confidentiality, (iii) as required by Law, subpoena, judicial order or similar order and in connection with any litigation, (iv) as may be required in connection with the examination, audit or similar investigation of such Person, and (v) to a Person that is a trustee, investment advisor or investment manager, collateral manager, servicer, noteholder or secured party in a Securitization (as hereinafter defined) in connection with the administration, servicing and reporting on the assets serving as collateral for such Securitization. For the purposes of this Section, "**Securitization**" mean (A) the pledge of the Loans as collateral security for loans to a Lender, or (B) a public or private offering by a Lender or any of its Affiliates or their respective successors and assigns, of securities which represent an interest in, or which are collateralized, in whole or in part, by the Loans. Confidential information shall include only such information identified as such at the time provided to Agent and shall not include information that

either: (y) is in the public domain, or becomes part of the public domain after disclosure to such Person through no fault of such Person, or (z) is disclosed to such Person by a Person other than a Credit Party, *provided*, *however*, Agent does not have actual knowledge that such Person is prohibited from disclosing such information. The obligations of Agent and Lenders under this Section 12.6 shall supersede and replace the obligations of Agent and Lenders under any confidentiality agreement in respect of this financing executed and delivered by Agent or any Lender prior to the date hereof.

Section 12.7 Waiver of Consequential and Other Damages. To the fullest extent permitted by applicable law, no Borrower shall assert, and each Borrower hereby waives, any claim against any Indemnitee (as defined below), on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of this Agreement, any other Financing Document or any agreement or instrument contemplated hereby or thereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Financing Documents or the transactions contemplated hereby or thereby.

Section 12.8 GOVERNING LAW; SUBMISSION TO JURISDICTION.

(a) THIS AGREEMENT, EACH NOTE AND EACH OTHER FINANCING DOCUMENT, AND ALL DISPUTES AND OTHER 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 NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

(b) EACH BORROWER HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED IN THE STATE OF NEW YORK IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, 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. EACH BORROWER EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH BORROWER HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON SUCH BORROWER BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH BORROWER AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME HAS BEEN POSTED.

(c) Each Borrower, Agent and each Lender agree that each Loan (including those made on the Closing Date) shall be deemed to be made in, and the transactions contemplated hereunder and in any other Financing Document shall be deemed to have been performed in, the State of Maryland. Nothing in this Section 12.8(c) shall amend or modify Sections 12.8(a) or (b) in any respect.

Section 12.9 WAIVER OF JURY TRIAL. EACH BORROWER, AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE FINANCING DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY AND

AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. EACH BORROWER, AGENT AND EACH LENDER ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE OTHER FINANCING DOCUMENTS, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH BORROWER, AGENT AND EACH LENDER WARRANTS AND REPRESENTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

Section 12.10 Publication; Advertisement.

(a) Publication. No Credit Party will 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 MCF or any of its Affiliates or any reference to this Agreement or the financing evidenced hereby, in any case except (i) as required by Law, subpoena or judicial or similar order, in which case the applicable Credit Party shall give Agent prior written notice of such publication or other disclosure, or (ii) with MCF's prior written consent.

(b) Advertisement. Each Lender and each Credit Party hereby authorizes MCF to publish the name of such Lender and Credit Party, 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 MCF elects to submit for publication. In addition, each Lender and each Credit Party agrees that MCF 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, MCF shall provide Borrowers with an opportunity to review and confer with MCF regarding the contents of any such tombstone, advertisement or information, as applicable, prior to its submission for publication and, following such review period, MCF may, from time to time, publish such information in any media form desired by MCF, until such time that Borrowers shall have requested MCF cease any such further publication.

Section 12.11 Counterparts; Integration. This Agreement and the other Financing Documents may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version of any executed signature page shall bind the parties hereto. This Agreement and the other Financing Documents constitute the entire agreement and understanding among the parties hereto and supersede any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

Section 12.12 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.

Section 12.13 Lender Approvals. Unless expressly provided herein to the contrary, any approval, consent, waiver or satisfaction of Agent or Lenders with respect to any matter that is the subject of this

Agreement, the other Financing Documents may be granted or withheld by Agent and Lenders in their sole and absolute discretion and credit judgment.

Section 12.14 Expenses; Indemnity.

(a) Borrowers hereby agree to promptly pay (i) all costs and expenses of Agent (including, without limitation, the fees, costs and expenses of counsel to, and independent appraisers and consultants retained by Agent) in connection with the examination, review, due diligence investigation, documentation, negotiation, closing and syndication of the transactions contemplated by the Financing Documents, in connection with the performance by Agent of its rights and remedies under the Financing Documents and in connection with the continued administration of the Financing Documents including (A) any amendments, modifications, consents and waivers to and/or under any and all Financing Documents, and (B) any periodic public record searches conducted by or at the request of Agent (including, without limitation, title investigations, UCC searches, fixture filing searches, judgment, pending litigation and tax lien searches and searches of applicable corporate, limited liability, partnership and related records concerning the continued existence, organization and good standing of certain Persons); (ii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with the creation, perfection and maintenance of Liens pursuant to the Financing Documents; (iii) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with (A) protecting, storing, insuring, handling, maintaining or selling any Collateral, (B) any litigation, dispute, suit or proceeding relating to any Financing Document, and (C) any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all of the Financing Documents; (iv) without limitation of the preceding clause (i), all costs and expenses of Agent in connection with Agent's reservation of funds in anticipation of the funding of the initial Loans to be made hereunder; and (v) all costs and expenses incurred by Lenders in connection with any litigation, dispute, suit or proceeding relating to any Financing Document and in connection with any workout, collection, bankruptcy, insolvency and other enforcement proceedings under any and all Financing Documents, whether or not Agent or Lenders are a party thereto.

(b) Each Borrower hereby agrees to indemnify, pay and hold harmless Agent and Lenders and the officers, directors, employees, trustees, agents, investment advisors and investment managers, collateral managers, servicers, and counsel of Agent and Lenders (collectively called the "**Indemnitees**") 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 Indemnitee shall be designated a party thereto and including any such proceeding initiated by or on behalf of a Credit Party, 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 Indemnitee as a result of or in connection with the transactions contemplated hereby or by the other Operative Documents (including (i)(A) as a direct or indirect result of the presence on or under, or escape, seepage, leakage, spillage, discharge, emission or release from, any property now or previously owned, leased or operated by Borrower, any Subsidiary or any other Person of any Hazardous Materials, (B) arising out of or relating to the offsite disposal of any materials generated or present on any such property, or (C) arising out of or resulting from the environmental condition of any such property or the applicability of any governmental requirements relating to Hazardous Materials, whether or not occasioned wholly or in part by any condition, accident or event caused by any act or omission of Borrower or any Subsidiary, and (ii) proposed and actual extensions of credit under this Agreement) and the use or intended use of the proceeds of the Loans, except that Borrower shall have no obligation hereunder to an Indemnitee with respect to any liability resulting from the gross negligence, fraud, bad faith or willful misconduct of such Indemnitee, as determined by a final

non-appealable judgment of a court of competent jurisdiction. To the extent that the undertaking set forth in the immediately preceding sentence 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.

(c) Notwithstanding any contrary provision in this Agreement, the obligations of Borrowers under this Section 12.14 shall survive the payment in full of the Obligations and the termination of this Agreement. NO INDEMNITEE SHALL BE RESPONSIBLE OR LIABLE TO THE BORROWERS OR TO ANY OTHER PARTY TO ANY FINANCING DOCUMENT, ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH PARTY, FOR INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHICH MAY BE ALLEGED AS A RESULT OF CREDIT HAVING BEEN EXTENDED, SUSPENDED OR TERMINATED UNDER THIS AGREEMENT OR ANY OTHER FINANCING DOCUMENT OR AS A RESULT OF ANY OTHER TRANSACTION CONTEMPLATED HEREUNDER OR THEREUNDER.

Section 12.15 Reserved.

Section 12.16 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Credit Party for liquidation or reorganization, should any Credit Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Credit Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Obligations, whether as a fraudulent preference reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

Section 12.17 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers and Agent and each Lender and their respective successors and permitted assigns.

Section 12.18 USA PATRIOT Act Notification . Agent (for itself and not on behalf of any Lender) and each Lender hereby notifies Borrowers that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record certain information and documentation that identifies Borrowers, which information includes the name and address of Borrower and such other information that will allow Agent or such Lender, as applicable, to identify Borrowers in accordance with the USA PATRIOT Act.

Section 12.19 Cross Default and Cross Collateralization.

(a) Cross-Default. As stated under Section 10.1 hereof, an Event of Default under any of the Affiliated Financing Documents shall be an Event of Default under this Agreement. In addition, a Default or Event of Default under any of the Financing Documents shall be a Default under the Affiliated Financing Documents.

(b) Cross Collateralization. Borrowers acknowledge and agree that the Collateral securing this Loan, also secures the Affiliated Obligations.

(c) Consent. Each Borrower authorizes Agent, without giving notice to any Borrower or obtaining the consent of any Borrower and without affecting the liability of any Borrower for the Affiliated Obligations directly incurred by the Borrowers, from time to time to:

(i) compromise, settle, renew, extend the time for payment, change the manner or terms of payment, discharge the performance of, decline to enforce, or release all or any of the Affiliated Obligations; grant other indulgences to any Borrowers in respect thereof; or modify in any manner any documents relating to the Affiliated Obligations;

(ii) declare all Affiliated Obligations due and payable upon the occurrence and during the continuance of an Event of Default;

(iii) take and hold security for the performance of the Affiliated Obligations of any Borrowers and exchange, enforce, waive and release any such security;

(iv) apply and reapply such security and direct the order or manner of sale thereof as Agent, in its sole discretion, may determine;

(v) release, surrender or exchange any deposits or other property securing the Affiliated Obligations or on which Agent at any time may have a Lien; release, substitute or add any one or more endorsers or guarantors of the Affiliated Obligations of any Borrowers; or compromise, settle, renew, extend the time for payment, discharge the performance of, decline to enforce, or release all or any obligations of any such endorser or guarantor or other Person who is now or may hereafter be liable on any Affiliated Obligations or release, surrender or exchange any deposits or other property of any such Person;

(vi) apply payments received by Lender from Borrower to any Obligations or Affiliated Obligations, as permitted in accordance with the terms of this Agreement and in such order as Lender shall determine, in its sole discretion; and

(vii) assign the Affiliated Financing Documents in whole or in part

[SIGNATURES APPEAR ON FOLLOWING PAGES]

IN WITNESS WHEREOF, intending to be legally bound, each of the parties have caused this Agreement to be executed the day and year first above mentioned.

BORROWERS:

AXOGEN, INC.

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: President and CEO

AXOGEN CORPORATION

By: /s/ Karen Zaderej
Name: Karen Zaderej
Title: President and CEO

Address:

AxoGen, Inc.
13631 Progress Boulevard, Suite 400
Alachua, FL 32615
Attention: Peter J. Mariani and Greg Freitag
Facsimile: (386) 462-6801
E-Mail: pmariani@axogeninc.com; gregfreitag@gmail.com

AGENT:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AxoGen transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

Payment Account Designation:

Wells Fargo Bank, N.A. (McLean, VA)
ABA #: 121-000-248
Account Name: MidCap Funding IV Trust – Collections
Account #: 2000036282803
Attention: AxoGen Facility

LENDER:

MIDCAP FINANCIAL TRUST

By: Apollo Capital Management, L.P.,
its investment manager

By: Apollo Capital Management GP, LLC,
its general partner

By: /s/ Maurice Amsellem
Name: Maurice Amsellem
Title: Authorized Signatory

Address:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: Account Manager for AxoGen transaction
Facsimile: 301-941-1450
E-mail: notices@midcapfinancial.com

with a copy to:

c/o MidCap Financial Services, LLC, as servicer
7255 Woodmont Avenue, Suite 200
Bethesda, Maryland 20814
Attn: General Counsel
Facsimile: 301-941-1450
E-mail: legalnotices@midcapfinancial.com

ANNEXES, EXHIBITS AND SCHEDULES

ANNEXES

Annex A	Commitment Annex

EXHIBITS

Exhibit A	Reserved
Exhibit B	Form of Compliance Certificate
Exhibit C	Borrowing Base Certificate
Exhibit D	Form of Notice of Borrowing
Exhibit E	Form of Closing Checklist

SCHEDULES

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Schedule 3.1	Existence, Organizational ID Numbers, Foreign Qualification, Prior Names
Schedule 3.4	Capitalization
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Schedule 9.1	Collateral
Schedule 9.2	Location of Collateral

Annex A to Credit Agreement (Commitment Annex)

Lender	Revolving Loan Commitment Amount	Revolving Loan Commitment Percentage
MidCap Financial Trust	$10,000,000	100%
TOTALS	$10,000,000	100%

Exhibit A to Credit Agreement (Reserved)

Exhibit B to Credit Agreement (Form of Compliance Certificate)

COMPLIANCE CERTIFICATE

This Compliance Certificate is given by _____, a Responsible Officer of **AxoGen, Inc.** (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of October 25, 2016 among the Borrower Representative, **AxoGen Corporation**, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby certifies to Agent and Lenders that:

(a) the financial statements delivered with this certificate in accordance with Section 4.1 of the Credit Agreement fairly present in all material respects the results of operations and financial condition of Borrowers and their Consolidated Subsidiaries as of the dates and the accounting period covered by such financial statements;

(b) the representations and warranties of each Credit Party contained in the Financing Documents are true, correct and complete in all material respects on and as of the date hereof, except to the extent that any such representation or warranty relates to a specific date in which case such representation or warranty shall be true and correct in all material respects as of such earlier date; provided, however, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof;

(c) I have reviewed the terms of the Credit Agreement and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and conditions of Borrowers and their Consolidated Subsidiaries during the accounting period covered by such financial statements, and such review has not disclosed the existence during or at the end of such accounting period, and I have no knowledge of the existence as of the date hereof, of any condition or event that constitutes a Default or an Event of Default, except as set forth in **Schedule 1** hereto, which includes a description of the nature and period of existence of such Default or an Event of Default and what action Borrowers have taken, are undertaking and propose to take with respect thereto;

(d) Net Revenue of Borrowers and Guarantor for the relevant Defined Period is equal to $_____. Borrowers and Guarantor are in compliance with the covenant contained in Article 6 of the Credit Agreement and in each Guarantee constituting a part of the Financing Documents, each as demonstrated by the calculation of such covenant attached hereto, which calculation is true, correct and complete.

(e) **[**Schedule 5.14 to the Credit Agreement contains a complete and accurate statement of all deposit accounts or investment accounts maintained by Borrowers and Guarantors;][1]

(f) [except as noted on **Schedule 2** attached hereto, Schedule 9.2 to the Credit Agreement contains a complete and accurate list of all business locations of Borrowers and Guarantors and all names

[1] To be delivered quarterly.

under which Borrowers and Guarantors currently conduct business; Schedule 2 specifically notes any changes in the names under which any Borrower or Guarantors conduct business;][2]

(g) [except as noted on **Schedule 3** attached hereto, the undersigned has no knowledge of (i) any federal or state tax liens having been filed against any Borrower, Guarantor or any Collateral, or (ii) any failure of any Borrower or any Guarantors to make required payments of withholding or other tax obligations of any Borrower or any Guarantors during the accounting period to which the attached statements pertain or any subsequent period;][3]

(h) [except as noted on Schedule 4 attached hereto and Schedule 3.6 to the Credit Agreement, the undersigned has no knowledge of any current, pending or threatened: (i) litigation against the Borrowers or any Guarantors, (ii) inquiries, investigations or proceedings concerning the business affairs, practices, licensing or reimbursement entitlements of Borrowers or any Guarantors, or (iii) default by Borrowers or any Guarantors under any Material Contract to which it is a party, which in each case, which would reasonably be expected to have a Material Adverse Effect with respect to Borrowers or any other Credit Party or which in any manner calls into question the validity or enforceability of any Financing Document;][4]

(i) [except as noted on **Schedule 5** attached hereto, no Borrower or Guarantor has acquired, by purchase, by the approval or granting of any application for registration (whether or not such application was previously disclosed to Agent by Borrowers) or otherwise, any Intellectual Property that is registered with any United States or foreign Governmental Authority, or has filed with any such United States or foreign Governmental Authority, any new application for the registration of any Intellectual Property, or acquired rights under a license as a licensee with respect to any such registered Intellectual Property (or any such application for the registration of Intellectual Property) owned by another Person, that has not previously been reported to Agent on Schedule 3.17 to the Credit Agreement or any **Schedule 5** to any previous Compliance Certificate delivered by Borrower to Agent;][5]

(j) [except as noted on **Schedule 6** attached hereto, no Borrower or Guarantor has acquired, by purchase or otherwise, any Chattel Paper, Letter of Credit Rights, Instruments, Documents or Investment Property that has not previously been reported to Agent on any **Schedule 6** to any previous Compliance Certificate delivered by Borrower Representative to Agent;][6] and

(k) [except as noted on **Schedule 7** attached hereto, no Borrower or Guarantor is aware of any commercial tort claim that has not previously been reported to Agent on any Schedule 7 to any previous Compliance Certificate delivered by Borrower Representative to Agent.][7]

The foregoing certifications and computations are made as of _____, 20__ (end of month/quarter/year) and as of _____, 20__.

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[2] To be delivered quarterly.
[3] To be delivered quarterly.
[4] To be delivered quarterly.
[5] To be delivered quarterly.
[6] To be delivered quarterly.
[7] To be delivered quarterly.

Sincerely,

AXOGEN, INC.

By: _____
Name: _____
Title: _____

Exhibit C to Credit Agreement (Borrowing Base Certificate)

Exhibit D to Credit Agreement (Form of Notice of Borrowing)

NOTICE OF BORROWING

This Notice of Borrowing is given by _____, a Responsible Officer of **AxoGen, Inc.** (the "**Borrower Representative**"), pursuant to that certain Credit and Security Agreement dated as of October 25, 2016 among the Borrower Representative, **AxoGen Corporation**, and any additional Borrower that may hereafter be added thereto (collectively, "**Borrowers**"), MidCap Financial Trust, individually as a Lender and as Agent, and the financial institutions or other entities from time to time parties hereto, each as a Lender (as such agreement may have been amended, restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"). Capitalized terms used herein without definition shall have the meanings set forth in the Credit Agreement.

The undersigned Responsible Officer hereby gives notice to Agent of Borrower Representative's request to borrow $_____ of Revolving Loans on _____, 201__. Attached is a Borrowing Base Certificate complying in all respects with the Credit Agreement and confirming that, after giving effect to the requested advance, the Revolving Loan Outstandings will not exceed the Revolving Loan Limit.

The undersigned officer hereby certifies that, both before and after giving effect to the request above (a) each of the conditions precedent set forth in Section 7.2 have been satisfied, (b) all of the representations and warranties contained in the Credit Agreement and the other Financing Documents are true, correct and complete as of the date hereof, except to the extent such representation or warranty relates to a specific date, in which case such representation or warranty is true, correct and complete as of such earlier date, and (c) no Default or Event of Default has occurred and is continuing on the date hereof.

IN WITNESS WHEREOF, the undersigned officer has executed and delivered this Notice of Borrowing this ____ day of _____, 201__.

Sincerely,

AXOGEN INC.

By: _____
Name: _____
Title: _____

Exhibit E to Credit Agreement (Form of Closing Checklist)

[See Attached]

Schedule 2.1 – Reserved

Schedule 3.1 – Existence, Organizational ID Numbers, Foreign Qualification, Prior Names

Credit Party/ Borrower	Prior Names	Type of Entity / State of Formation	States Qualified	State Org. ID Number	Federal Tax ID Number	Location of Borrower (address)
AxoGen, Inc.	n/a	Minnesota	None.	2Z-782	41-1301878	13631 Progress Boulevard Suite 400 Alachua, FL 32615
AxoGen Corporation	n/a	Delaware	Alabama Florida Kansas Kentucky Maine New York	295902 F06000004632 4294591 0867874 20090961 F 3908099	55-0805988	13631 Progress Boulevard Suite 400 Alachua, FL 32615

Schedule 3.4 – Capitalization

Credit Party	Shares of Common Stock Authorized	Options and Warrants	Shares of Common Stock Issued and Outstanding	Additional Information
AxoGen, Inc.	50,000,000	3,509,264 (Options) 44,843 (Warrant)	32,898,115	Essex Woodlands Registration Rights Agreement whereby it has a participation right in offerings.
AxoGen Corporation	1,000	-	1,000	AxoGen, Inc. is the sole shareholder of AxoGen Corporation.

Schedule 3.6 – Litigation

None.

Schedule 3.15 – Brokers

A broker's fee in an amount equal to $310,000, paid on the Closing Date pursuant to the Exclusive Placement Agreement by and between AxoGen, Inc. and Trump Securities LLC and Credo 180, LLC, the broker-dealer is Trump Securities LLC and Credo 180, LLC.

Schedule 3.17 – Material Contracts

Credit Party	Other Party to Contract	Title/Date of Contract
AxoGen Corporation	Community Blood Center (d/b/a Community Tissue Services)	License and Services Agreement dated August 6, 2015.
AxoGen Corporation	University of Florida Research Foundation, Inc.	Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms dated February 21, 2006, as amended to date.
AxoGen Corporation	The Board of Regents of the University of Texas System	Patent License Agreement dated August 2, 2005, as amended to date.
AxoGen, Inc.	Cook Biotech Incorporated	Distribution Agreement dated August 27, 2008 as amended to date.

Schedule 3.18 – Environmental Compliance

None.

Schedule 3.19 – Intellectual Property

INTANGIBLE ASSETS SCHEDULE

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AxoGen Nerve Regeneration - Nerve Recovery Training Video.	Copyright	PAu003375221	2009	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video & 4 other titles.	Copyright	V3622D050	2012	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video & 4 other titles (copyright) / Reg. V3608D804.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) & 7 other titles.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration -nerve recovery training video (copyright) / Reg. PAu3375221.	Copyright	V9918D288	2014	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video. PAu 3-375-221.	Copyright	V3608D804	2011	
AxoGen Corporation	AxoGen Nerve Regeneration-- Nerve Recovery Training Video. PAu 3-375-221.	Copyright	V3586D387	2010	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video. PAu3375221.	Copyright	V3622D050	2012	
AxoGen Corporation	AxoGen nerve regeneration - nerve recovery training video / Reg. PA3375221.	Copyright	V9918D288	2014	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent	US 14/036,405	9/25/2013	NA
AxoGen, Inc.	Connector and Wrap for End-to-Side Nerve Coaptation	Patent Application	US 62/251901	11/6/2015	NA
AxoGen, Inc.	Implant Devices With a Pre-Set Pulley System	Patent Application	US 62/247,938	10/29/2015	NA
AxoGen, Inc.	Quantitative Structural Assay of a Nerve Graft	Patent Application	US 14/724,359	5/28/2015	NA
AxoGen, Inc.	Two-Point Disciminator Sensory Measurement Device	Design Patent Application	US 29/531,797	6/30/2015	NA
AxoGen, Inc.	Organotypic DRG-Peripheral Nerve Cuture System	Patent Application	US 14/724,365	5/28/2015	NA
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	US 8,545,485 PCT/US2009/041266 WO 2009/132012	4/21/2009	5/8/32
AxoGen, Inc. and AxoGen Corporation	Antiviral Patch	Patent Application	US2007/0026056 PCT/US2004/000392 WO2004062600 US 11/535,214 US 09/688,445	9/26/2006	NA
LecTec Corporation	Hand Sanitizing Patch	Patent Application	US2011/0105976 PCT/US2009/01407 WO2009111040 US 12/921,253	12/20/2010	NA

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
LecTec Corporation	Hand Sanitizing Patch Having an Integrally Bonded Antimicrobial	Patent Application	US 2011/0293681 PCT/US2011/026319 WO2011106700 US 13/035,535	2/25/2011	NA
LecTec Corporation	Acne Patch	Patent	US 6,495,158	1/19/2001	NA
LecTec Corporation	Antipruritic Patch	Patent	US 6,469,227 PCT/US2000/012970 WO2001041745	5/12/2000	NA
LecTec Corporation	Anti-itch Patch	Patent Application	PCT/US2000/033498 WO2001041746	12/11/200	NA
LecTec Corporation	Therapeutic Method for Treating Acne or Isolated Pimples and Adhesive Patch Therefor	Patent	US 6,455,065 PCT/US2000/013539 WO2000069405	5/18/1999	NA
LecTec Corporation	Aqueous Gel Would Dressing and Package	Patent Application	PCT/US1992/008403 WO1993006802	NA	NA
LecTec Corporation	Aqueous Gel and Package For a Wound Dressing and Method	Patent	US 6,406,712 US 07/774,064 US 08/328,619	10/25/1994	NA
LecTec Corporation	Biologically Active Aqueous Gel Wound Dressing	Patent	US 5,804,213 US 07/914751	7/15/1992	NA
LecTec Corporation	Mixing and Dispensing Package for a Wound Dressing	Patent	US 6,620,436 US 08/345,215 US 07/913,151 US 07/774,064	11/28/1994	NA

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
LecTec Corporation	Inhalation Therapy Decongestant With Foraminous Carrier	Patent	US 6,090,403 US 09/135,104	8/17/1998	NA
LecTec Corporation	Treating Traumatic Burns or Blisters of the Skin	Patent	US 6,348,212 US 09/314,271 US 2001/0055608	5/18/1999	NA
LecTec Corporation	Psoriasis Patch	Patent	US 6,830,758 US 2003/0077316 US 09/824,533	4/2/2001	8/8/21
LecTec Corporation	Treating Viral Infection at Smallpox Vaccination Site	Patent	US 7,288,265 US 09/688,445 US 10/228,809	1/8/2003	5/6/22
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	CA 2721945 PCT/US2009/041266 WO2009/132012	4/21/2009	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	EP2900292	9/25/2013	NA
AxoGen, Inc.	Nerve Elevator and Method of Use	Patent	EP2276410	4/21/2009	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	2013/80049387.3	9/25/2013	NA
AxoGen, Inc.	Materials and Methods for Protecting Against Neuromas	Patent Application	16100027.9	9/25/2013	NA
AxoGen Corporation	AVIVE	US Trademark	86758930	9/16/2015	
AxoGen Corporation	AVIVE SOFT TISSUE BARRIER	US Trademark	86831990	11/25/2015	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation		US Trademark	86832049	11/25/2015	
AxoGen Corporation	ACROVAL	US Trademark	86800802	10/27/2015	
AxoGen Corporation		US Trademark	86832476	11/25/2015	
AxoGen Corporation	AXOGUARD	Canada Trademark	1436230	4/28/2009	
AxoGen Corporation		Canada Trademark	1436230	4/28/2009	
AxoGen Corporation		Canada Trademark	1778914	4/22/2016	
AxoGen Corporation	AxoGen	Canada Trademark	1339181 TMA763833	3/13/2007 4/9/2010	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	AVANCE	Canada Trademark	1778915	4/22/2016	
AxoGen Corporation		Canada Trademark	1778917	4/22/2016	
AxoGen Corporation	AVANCE NERVE GRAFT	Canada Trademark	1339356 TMA763791	3/14/2007 4/9/2010	
AxoGen Corporation	AxoGen	Europe Trademark	005791521	3/13/2007	
AxoGen Corporation	AVANCE NERVE GRAFT	Europe Trademark	005783352	3/14/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Japan Trademark	2007-37127 5165944	4/13/2007 9/12/2018	
AxoGen Corporation	AVANCE NERVE GRAFT	Japan Trademark	2007-37128 5131894	4/13/2007 4/25/2008	
AxoGen Corporation	AVANCE NERVE GRAFT	Mexico Trademark	0843615 1016747	3/21/2007 12/7/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	0843618 1013259	3/21/2007 11/26/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	08543617	3/21/2007	
AxoGen Corporation	AXOGEN NERVE REGENERATION	Mexico Trademark	08543619	3/21/2007	
AxoGen, Inc.	AXOGUARD	US Trademark	77604199	10/20/2008	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen, Inc.	AXOGUARD	US Trademark	77604196	10/30/2008	
AxoGen, Inc.	AXOGEN	US Trademark	78980974	9/14/2006	
AxoGen, Inc.	AXOGEN	US Trademark	78974174	9/14/2006	
AxoGen, Inc.	AxoGen	US Trademark	77976702	11/20/2006	
AxoGen, Inc.	AxoGen	US Trademark	77047475	11/20/2006	
AxoGen, Inc.	AVANCE	US Trademark	78974529	9/14/2006	
AxoGen, Inc.	Avance	US Trademark	77100843	11/27/2007	
AxoGen, Inc.	Ranger	US Trademark	85589906	9/18/2012	
AxoGen, Inc.	RANGER	US Trademark	85598373	9/18/2012	
AxoGen Corporation	ACROPINCH	US Trademark	86875586	1/14/2016	
AxoGen Corporation	ACROGRIP	US Trademark	86874592	1/13/2016	

INTELLECTUAL PROPERTY (REGISTRATIONS AND APPLICATIONS) OWNED BY BORROWERS					
Borrower that is Owner of IP	**Name / Identifier of IP**	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/Publication or Application Number**	**Registration/ Application Date**	**Anticipated Expiration Date**
AxoGen Corporation	PSSD	US Trademark	86875647	1/14/2016	
AxoGen Corporation	PRESSURE SPECIFIED SENSORY DEVICE	US Trademark	86843224	12/8/2015	
AxoGen, Inc.		US Trademark	86381110	8/29/2014	
AxoGen, Inc.	AXOTOUCH	US Trademark	86338751	7/17/2014	
AxoGen, Inc.	"Nerve Connector"	US Trademark			
AxoGen, Inc.	"Nerve Protector"	US Trademark			
AxoGen Corporation	"Nerve Matters"	US Trademark	87124496	8/2/2016	

INTANGIBLE ASSETS SCHEDULE (*CONTINUED*)

LICENSE AND SIMILAR AGREEMENTS

INBOUND LICENSE # 1		
Name and Date of License Agreement:	Patent License Agreement with an effective date of July 19, 2005, as amended .	
Borrower that is Licensee:	AxoGen Corporation	
Name and address of Licensor:	The Board of Regents of the University of Texas System, an agency of the State of Texas 201 West 7th Street Austin, Texas 78701	
Expiration Date of License	Upon expiration of the last to expire of the Licensed Patents.	
Exclusive License [Y/N]?	Yes	
Restrictions on:	**Right to Grant a Lien [Y/N]?**	No
	Right to Assign [Y/N]?	No
	Right to Sublicense [Y/N]?	No, subject to conditions.
Does Default or Termination Affect Agent's Ability to sell [Y/N]?	No.	

Describe Licensed Intellectual Property For This License			
Name / Identifier of IP	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/ Publication or Application Number**	**Filing Date**
Cell-Free Tissue Replacement For Tissue Engineering	Patent	US 7,402,319 US 2005/0043819 US 10/672,689	9/26/2003

Cell-Free Tissue Replacement for Tissue Engineering	Patent Application	US 2014/0248325 US 14/274,156	5/9/2014
Cell-Free Tissue Replacement for Tissue Engineering	Patent	US 8,758,794 US 2009/0030269 US 12/135,772	6/9/2008
Biodegradable, Electrically Conducting Polymer For Tissue Engineering Applications	Patent	US 6,696,575 US 2003/0066987 PCT/US2002/009514 WO2002076288 US 10/107,705	3/27/2002

INBOUND LICENSE # 2		
Name and Date of License Agreement:	First Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms dated February 21, 2006, as amended on July 5, 2016.	
Borrower that is Licensee:	AxoGen Corporation	
Name and address of Licensor:	University of Florida Research Foundation, Inc. (UNRF) 223 Grinter Hall Gainesville, Florida 32611	
Expiration Date of License	Until the earlier of the date that no Licensed Patent remains enforceable or the payment of earned royalties ceases for more than four (4) calendar quarters on all Licensed Products and Processes.	
Exclusive License [Y/N]?	Exclusive for 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; AND A Non-exclusive license, limited to the Licensed Field and Licensed Territory under Licensed Know-How to make, have made, use and sell, offer to sell, have sold and import Licensed Products and/or Licensed Processes. UNRF reserves the right, solely for research (including research funded by 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 party by any claims of any Improvements.	
Restrictions on:	**Right to Grant a Lien [Y/N]?**	No
	Right to Assign [Y/N]?	Yes, 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.
	Right to Sublicense [Y/N]?	No

Does Default or Termination Affect Agent's Ability to sell [Y/N]?	No

Describe Licensed Intellectual Property For This License			
Name / Identifier of IP	**Type of IP (e.g., patent, TM, ©, mask work)**	**Registration/ Publication or Application Number**	**Filing Date**
Method for Decellularization of Nerve Allografts	Patent Application	US 2016/0030636 PCT/US14/30688 US 14/776,765	9/15/2015
Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and In Vitro Nerve Tissue Culture	Patent	US 6,972,168 US 2003/0040112 US 10/218,864	8/13/2002
Materials and Methods for Nerve Grafting, Selection of Nerve Grafts, and In Vitro Nerve Tissue Culture	Patent	US 7,732,200 US 2004/0180434 US 10/812,776	3/29/2004
Materials and Methods For Nerve Grafting	Patent Application	US 2013/0337549 US 13/776,606	2/25/2013
Materials and Methods For Nerve Grafting	Patent Application	US 2008/0299536 US 12/190,359	8/12/2008
Materials and Methods For Nerve Repair	Patent	US 8,986,733 US 2011/0082482 US 12/966,540	12/13/2010
Methods for Nerve Repair	Patent	US 7,851,447 US 2003/0072749 US 10/218,316	8/13/2002
Materials and Methods To Promote Repair of Nerve Tissue	Patent Application	PCT/US2002/025922 WO2003015612	8/13/2002
Materials and Methods To Promote Repair of Nerve Tissue	Patent	EP1425390 EP20020763451	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	EP14763757.3	3/17/2014

Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296 009 PCT/US2002/025922 PA/a/2004/001334	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296020 PCT/US2002/025922 MX/a/2007/012379	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296021 PCT/US2002/025922 MX/a/2007/012379	8/13/2002
Materials and Methods For Nerve Grafting Comprising Degrading Chondoitin Sulfate Proteoglycan	Patent	CA 2455827	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	MX 296019 PCT/US2002/025922 MX/a/2007/012382	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	JP2016-503443	3/17/2014
Materials and Methods for Promoting Nerve Tissue Repair	Patent	JP 4749667 JP2003520377	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	P1425390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	DE 60242143.8	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	ES1425390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	FR142390	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	GB1425390	8/13/2002

Materials and Methods for Promoting Nerve Tissue Repair	Patent	IT 502012902027579	8/13/2002
Materials and Methods for Promoting Nerve Tissue Repair	Patent	SE 1425390	8/13/2002
Method for Decellularization of Nerve Allografts	Patent Application	2754-2015	3/17/2014
Method for Decellularization of Nerve Allografts	Patent Application	2014/80026804.7	3/17/2014
Method for Decellularization of Nerve Allografts	Patent Application	2015-7028784	3/17/2014

Schedule 4.9 – Litigation, Governmental Proceedings and Other Notice Events

None.

Schedule 5.1 – Permitted Debt; Permitted Contingent Obligations

None.

Schedule 5.2 – Permitted Liens

Credit Party Debtor	Name of Holder/Secured Party of Lien/Encumbrance	Description of Property Encumbered
AxoGen Corporation	Ja-Cole, LP – Lessor of Burleson facility	All nonexempt, per the definition of lease, personal property at Burleson
AxoGen Corporation	WIGSHAW, LLC (and SNH Medical Office Properties Trust as successor in interest) – Lessor of Progress Corporate Park facility	Tenant's property (but expressly excluding any of Tenant's interests in intellectual property, product inventory, raw materials, and human tissue in any form), now or hereafter located upon the Leased Premises
AxoGen Corporation	Cisco Systems Capital Corp.	Certain equipment leased and financed by AxoGen Corporation under Contact No. 25406089 as evidenced by the UCC-1 Financing Statement No. 2016-087-6512X filed with the Florida Secured Transaction Registry on September 6, 2016

Schedule 5.7 – Permitted Investments

None.

Schedule 5.8 – Affiliate Transactions

None.

Schedule 5.11 –Business Description

Manufacturer, developer, seller and distributor of medical products.

Schedule 5.14 – Deposit Accounts and Securities Accounts

“*”**

Schedule 6.2 – Minimum Net Revenue Schedule

"*"

Schedule 7.4 – Post Closing Requirements

Borrowers shall satisfy and complete each of the following obligations, or provide Agent each of the items listed below, as applicable, on or before the date indicated below, all to the satisfaction of Agent in its sole and absolute discretion:

1. Within sixty (60) days of the Closing Date (or such later date as Agent may agree in its sole discretion), Borrowers shall establish a Lockbox with the Lockbox Bank, subject to the provisions of this Agreement, and shall execute with the Lockbox Bank a Deposit Account Control Agreement and such other agreements related to such Lockbox as Agent may require, each of which shall be in form and substance reasonably satisfactory to Agent.

2. By December 15, 2016 (or such later date as Agent my agree in its sole discretion), Borrower shall establish a Lockbox Account, into which only payments and proceeds received from Account Debtors are deposited and maintained, and shall executed with the applicable depository bank a Deposit Account Control Agreement, in form and substance reasonably satisfactory to Agent, providing for full cash dominion in favor of the Agent.

3. Within two (2) Business Days after the Closing Date (or such later date as Agent may agree in its sole discretion), Borrowers shall ensure that each Deposit Account of Borrowers maintained at Silicon Valley Bank on the Closing Date shall be subject to a Deposit Account Control Agreement.

4. With respect to the Amended and Restated Standard Exclusive License Agreement with Sublicensing Terms, by and among the University of Florida Research Foundation, Inc. and AxoGen Corp, dated as of February 21, 2006 (as the same has been amended, supplemented or otherwise modified from time to time, the "**University of Florida License**") Borrower shall use commercially reasonable efforts to, within ninety (90) days of the Closing Date (or such later date as Agent may agree in its sole discretion), cause to be delivered to Agent the consent of, or waiver by, any person whose consent or waiver is necessary for (x) the University of Florida License to be deemed "Collateral" and for Agent to have a security interest in it that might otherwise 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 Financing Documents.

5. Borrowers shall, by the date that is sixty (60) days following the Closing Date (or such later date as Agent may agree in writing), provide Agent with an executed landlord's agreement, which shall be reasonably satisfactory in form and substance to Agent (it being understood and agreed that a landlord's agreement substantially in the form of the "Landlord's Subordination and Waiver of Lien" executed in favor of Three Peaks Capital S.a.r.l. in connection with Debt owed by Borrowers to Three Peaks Capital S.a.r.l. and paid off on the Closing Date, shall be satisfactory to Agent), for the location at 13631 Progress Boulevard, Suites 400 & 600, Alachua, FL 32615.

Borrower's failure to complete and satisfy any of the above obligations on or before the date indicated above, or Borrower's failure to deliver any of the above listed items on or before the date indicated above, shall constitute an immediate an automatic Event of Default.

Schedule 8.2(a) –Products

1. Avance® Nerve Graft
2. AxoGuard® Nerve Connector
3. AxoGuard® Nerve Protector
4. AxoTouch™ Two-Point Discriminator
5. AcroVal™ Neurosensory and Motor Testing System.

Schedule 8.2(b) – Exceptions to Healthcare Representations and Warranties

None.

Schedule 9.1 – Collateral

The Collateral consists of all of each Borrower's assets, including without limitation, all of each Borrower's right, title and interest in and to the following, whether now owned or hereafter created, acquired or arising:

(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, securities accounts, fixtures, letter 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;

(b) all of Borrowers' books and records relating to any of the foregoing; and

(c) 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.

Notwithstanding anything to the contrary of the foregoing, Collateral shall not include Excluded Property.

Schedule 9.2 – Collateral Information

Chief Executive Office and Principal Place of Business:

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	13631 Progress Boulevard, Suite 400, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust.

Location of books and records (if different from the above):

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	N/A	

Locations of owned, leased, or occupied real property:

Credit Party/ Borrower	Address	Nature of Location
AxoGen, Inc. AND AxoGen Corporation	13631 Progress Boulevard, Suite 400 and 600, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust
AxoGen Corporation	Boone Business Park, 300 Boone Rd., Suites A-2, 3 and 4, Burleson Texas Johnson County	Leased business location operated by Borrower(s). Lessor: Ja-Cole, LP
AxoGen Corporation	349 South Main Street, Dayton, Ohio 45402	
AxoGen, Inc.	1407 South Kings Highway, Texarkana, Texas 75501 – Record Storage (AxoGen, Inc. leases space and maintains records at this facility, which is the prior corporate headquarters)	
AxoGen Corporation	12085 Research Drive, Lab 170, Alachua, FL 32615	Licensed space at the Sid Martin Biotechnology Development Institute. Licensor: University of Florida Research Foundation, Inc.

Locations of inventory, equipment, or other property:

Credit Party/ Borrower	Address	Nature of Location
AxoGen Corporation	13631 Progress Boulevard, Suite 400 and 600, Alachua, FL 32615	Leased business location operated by Borrower(s). Lessor: SNH Medical Office Properties Trust
AxoGen Corporation	Boone Business Park, 300 Boone Rd., Suites A-2, 3 and 4, Burleson Texas Johnson County	Leased business location operated by Borrower(s). Lessor: Ja-Cole, LP
AxoGen Corporation	349 South Main Street, Dayton, Ohio 45402	
AxoGen Corporation	12085 Research Drive, Lab 170, Alachua, FL 32615	Licensed space at the Sid Martin Biotechnology Development Institute. Licensor: University of Florida Research Foundation, Inc.

Exhibit 10.22

AXOGEN, INC.
NON–INCENTIVE STOCK OPTION AGREEMENT

This **Non–Incentive Stock Option Agreement**, effective as of this [.] day of [.], 20[.] (the "*Effective Date*"), by and between AxoGen, Inc., a Minnesota corporation (the "*Company*"), and [.] ("*Optionee*").

WHEREAS, the Company wishes to grant this stock option to Optionee pursuant to the AxoGen, Inc. 2010 Stock Incentive Plan, as amended and restated (the "*Plan*").

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

1. **Grant of Option**. The Company hereby grants to Optionee the right and option (the "*Option*") to purchase all or any part of an aggregate of [.] shares (the "*Shares*") of the common stock, par value $0.01 per share (the "*Common Stock*"), of the Company at the exercise price of $[.] per Share on the terms and conditions set forth herein. It is understood and agreed that such price is not less than 100% of the Fair Market Value (as defined in the Plan) of each such Share on the Effective Date. The Option is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Internal Revenue Code of 1986, as amended (the "*Code*").

2. **Duration and Exercisability**. The Option may not be exercised by Optionee except as set forth herein, and the Option shall in all events terminate ten (10) years from the date hereof (the "*Termination Date*").

(a) During the lifetime of Optionee, the Option shall be exercisable only by Optionee. The Option shall not be assignable or transferable by Optionee, other than by will or the laws of descent and distribution.

(b) The Option shall become exercisable on the following dates, if the Grantee is a Service Provider (as defined in the Plan) on the applicable vesting date:

[.]

The exercisability of the Option is cumulative, but shall not exceed 100% of the Shares subject to the Option. If the foregoing schedule would produce fractional Shares, the number of Shares for which the Option becomes exercisable shall be rounded down to the nearest whole Share.

3. **Exercise of Option After Death or Departure from Board of Directors**.

(a) In the event Optionee ceases to serve as a member of the Board of Directors of the Company or its subsidiaries, if any, for any reason, including death or disability, other than Optionee's gross and willful misconduct, Optionee shall continue to have the right to exercise this Option at any time within the term of this Option to the extent of the full number of Shares Optionee was entitled to purchase under this Option on the date of such termination.

(b) In the event Optionee ceases to serve as a member of the Board of Directors of the Company or its subsidiaries, if any, by reason of Optionee's gross and willful misconduct during the course of services, which shall include, but not be limited to, the wrongful appropriation of funds of the Company or the commission of a gross misdemeanor or felony, this Option (whether or not vested and exercisable) shall be terminated as of the date of the misconduct.

(c) Notwithstanding the above, in no case may this Option be exercised to any extent by anyone after the Termination Date.

4. **Change in Control**.

(a) In the event that a "Change in Control" (as hereinafter defined) occurs, all outstanding Options, whether or not vested, shall be subject to the agreement pursuant to which such Change in Control is consummated. Such agreement shall provide for one or more of the following:

(i) the continuation of such outstanding Options by the Company (if the Company is the surviving corporation);

(ii) the assumption of such outstanding Options by the surviving corporation or its parent in a manner that complies with Section 424(a) of the Code; or

(iii) the substitution by the surviving corporation or its parent of new options for such outstanding Options in a manner that complies with Section 424(a) of the Code.

(b) A " *Change in Control*" of the Company shall be deemed to have occurred if:

(i) any "*person*" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "*Exchange Act*")) shall, together with his, her or its "*Affiliates*" and "*Associates*" (as such terms are defined in Rule 12b–2 promulgated under the Exchange Act), become the "*Beneficial Owner*" (as such term is defined in Rule 13d–3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities (any such person being hereinafter referred to as an "*Acquiring Person*");

(ii) the "Continuing Directors" (as hereinafter defined) shall cease to constitute a majority of the Company's Board of Directors during a 12-month period;

(iii) there should occur (A) any consolidation or merger involving the Company and the Company shall not be the continuing or surviving corporation or the shares of the Company's capital stock shall be converted into cash, securities or other property; *provided, however*, that this subclause (A) shall not apply to a merger or consolidation in which (i) the Company is the surviving corporation and (ii) the stockholders of the Company immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company.

(c) " *Continuing Director*" shall mean any person who is a member of the Board of Directors of the Company, while such person is a member of the Board of Directors, who is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a representative of an Acquiring Person or of any such Affiliate or Associate and who (i) was a member of the Company's Board of Directors on the date of grant of the Option or (ii) subsequently became a member of the Board of Directors, upon the nomination or recommendation, or with the approval of, a majority of the Continuing Directors.

5. **Manner of Exercise**.

(a) The Option may only be exercised by Optionee or other proper party within the option term by delivering written notice of exercise to the Company at its principal executive office. The notice shall state the number of Shares as to which the Option is being exercised and shall be accompanied by payment in full of the exercise price for all of the Shares designated in the notice.

(b) Payment of the exercise price shall be made by:

- certified or bank cashier's check payable to the Company (cash);
- tender of shares of the Company's Common Stock, which, unless the Committee provides its consent, must have been, previously owned by Optionee, having a Fair Market Value on the

date of exercise equal to the exercise price of the Option, or a combination of cash and shares equal to such exercise price;

- attestation of the Company's Common Stock valued at Fair Market Value as of the date of exercise of the Option equal to the exercise price of the Option, or a combination of cash and shares equal to such exercise price; or
- net settlement of the Option, using a portion of the Shares to be obtained on exercise in payment of the exercise price of the Option (and, if applicable, any required minimum tax withholding or such greater amount permitted under FASB Accounting Standards Codification Topic 718, Compensation—Stock Compensation, and amendments thereto, for equity-classified awards).

6. **Adjustments**. In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, reorganization, merger, consolidation, split–up, spin–off, combination, repurchase or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company or other similar corporate transaction or event affects the Common Stock such that an adjustment is necessary pursuant to Section 4(c) of the Plan in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, and all or any portion of the Option shall then be unexercised and not yet expired, then appropriate adjustments in the outstanding Option shall be made as determined by the Committee in accordance with the provisions of Section 4(c) of the Plan in order to prevent dilution or enlargement of Option rights.

7. **Miscellaneous**.

(a) *Plan Provisions Control.* In the event that any provision of this Agreement conflicts with or is inconsistent in any respect with the terms of the Plan, the terms of the Plan shall control.

(b) *No Rights of Shareholders*. Neither Optionee, Optionee's legal representative nor a permissible assignee of this Option shall have any of the rights and privileges of a shareholder of the Company with respect to the Shares, unless and until such Shares have been issued in the name of Optionee, Optionee's legal representative or permissible assignee, as applicable.

(c) *No Right to Continuance of Services.* This Agreement shall not confer on Optionee any right with respect to the continuance of any relationship with the Company or any subsidiary of the Company, nor will it interfere in any way with the right of the Company to terminate such relationship at any time.

(d) *Governing Law*. The validity, construction and effect of the Plan and this Agreement, and any rules and regulations relating to the Plan and this Agreement, shall be determined in accordance with the laws of the State of Minnesota.

(e) *Severability*. If any provision of this Agreement is or becomes or is deemed to be invalid, illegal or unenforceable in any jurisdiction or would disqualify this Agreement under any law deemed applicable by the Committee (as defined in the Plan), such provision shall be construed or deemed amended to conform to applicable laws, or if it cannot be so construed or deemed amended without, in the determination of the Committee, materially altering the purpose or intent of the Plan or this Agreement, such provision shall be stricken as to such jurisdiction or this Agreement, and the remainder of this Agreement shall remain in full force and effect.

(f) *No Trust or Fund Created*. Neither the Plan nor this Agreement shall create or be construed to create a trust or separate fund of any kind or a fiduciary relationship between the Company or any affiliate and Optionee or any other person.

(g) *Headings*. Headings are given to the sections and subsections of this Agreement solely as a convenience to facilitate reference. Such headings shall not be deemed in any way material or relevant to the construction or interpretation of this Agreement or any provision thereof.

(h) *Conditions Precedent to Issuance of Shares*. Shares shall not be issued pursuant to the exercise of the Option unless such exercise and the issuance and delivery of the applicable Shares pursuant thereto shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, the rules and regulations promulgated thereunder, the requirements of the NASDAQ Global Market or any other applicable stock exchange and the Minnesota Business Corporation Act. As a condition to the exercise of the Option, the Company may require that the person exercising or paying the exercise price represent and warrant that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation and warranty is required by law.

(i) *Withholding.* In order to provide the Company with the opportunity to claim the benefit of any income tax deduction which may be available to it upon the exercise of the Option and in order to comply with all applicable federal or state income tax laws or regulations, the Company may take such action as it deems appropriate to assure that, if necessary, all applicable federal or state payroll, withholding, income or other taxes are withheld or collected from Optionee.

(j) *Consultation With Professional Tax and Investment Advisors*. Optionee acknowledges that the grant, exercise, vesting or any payment with respect to this Option, and the sale or other taxable disposition of the Shares acquired pursuant to the exercise thereof, may have tax consequences pursuant to the Code or under local, state or international tax laws. Optionee further acknowledges that such Optionee is relying solely and exclusively on Optionee's own professional tax and investment advisors with respect to any and all such matters (and is not relying, in any manner, on the Company or any of its employees or representatives). Finally, Optionee understands and agrees that any and all tax consequences resulting from this Option and its grant, exercise, vesting or any payment with respect thereto, and the sale or other taxable disposition of the Shares acquired pursuant to the Plan, is solely and exclusively the responsibility of Optionee without any expectation or understanding that the Company or any of its employees or representatives will pay or reimburse such holder for such taxes or other items.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, effective as of the Effective Date.

AXOGEN, INC.

By: _____
Name: [.]
Its: [.]

Date: [.]

OPTIONEE

_____
[.]

Date: [.]

Exhibit 10.23

Pursuant to 17 CFR 240.24b-2, confidential information has been omitted in places marked "*" and has been filed separately with the Securities and Exchange Commission pursuant to a Confidential Treatment Application filed with the Commission.**

AXOGEN, INC.
PERFORMANCE STOCK UNIT AWARD AGREEMENT

Participant:
Maximum Performance-Based Restricted Stock Units:
Target Performance-Based Restricted Stock Units:
Award Type: Performance-Based Restricted Stock Unit
Award Agreement Plan Name: AxoGen, Inc. 2010 Incentive Stock Plan
Award Date: December 29, 2016

This Agreement, dated as of the 29th day of December, 2016 (the "Grant Date"), is between AxoGen, Inc., a Minnesota corporation (the "Company"), and the Participant. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Company's 2010 Incentive Stock Plan, as Amended and Restated as of May 26, 2016 (the "Plan").

1. Grant and Acceptance of Award. The Company hereby indicates its award to the Participant that number of performance-based Restricted Stock Units (the "Units") set forth herein (the "Award"). Each Unit is equivalent in value to one share of Company Common Stock, par value $.01 per share ("Share") and represents the Company's commitment to issue one Share at a future date, subject to certain eligibility, performance, vesting and other conditions set forth herein. The Award is intended to be granted pursuant to, and is subject to the terms and conditions of, this Agreement and the provisions of the Plan.

2. Eligibility Conditions upon Award of Units. The Participant hereby acknowledges the intent of the Company to award Units subject to certain eligibility, performance, vesting and other conditions set forth herein.

3. Vesting. All of the Units are nonvested and forfeitable as of the Grant Date. So long as the Participant's employment is continuous from the Grant Date through the applicable date upon which vesting is scheduled to occur, the Units will become vested and nonforfeitable in accordance with the vesting schedule set forth in this Section 3 subject to the accelerated vesting provisions in Section 7 of this Agreement.

(a) Satisfaction of Performance-Based Conditions. Subject to the timing conditions described in Section 6 of this Agreement, except as otherwise provided in Section 9 of this Agreement and Appendix B, and the satisfaction of the performance conditions set forth on Appendix A to this Agreement during the time period from January 1, 2017 through December 31, 2018 (the "Performance Period"), the Company will issue Shares hereunder to the Participant subject to the further vesting provisions provided in subsection (b) of this Section 3.

(b) Satisfaction of Time-Based Vesting Conditions . The Company's Compensation Committee of the Board of Directors (the "Committee") will determine by February 15, 2019 the number of shares of Shares, if any, (the "Eligible Shares") that may be issued based on the satisfaction of the performance conditions in Appendix A. Subject to the timing conditions described in Section 6 of this Agreement, except as otherwise provided in Section 9 of this Agreement and Appendix B, Units will be the settled by the Company via the issuance of Shares, on the following dates provided that the Participant's employment is continuous through each applicable vesting date (each a "Vesting Date"):

i. 33.33% of the Eligible Shares shall vest on February 15, 2019;
ii. 33.33% of the Eligible Shares shall vest on February 15, 2020; and
iii. 33.34% of the Eligible Shares shall vest on February 15, 2021

4. Timing of Settlement. The Units will be settled by the Company, via the issuance of Shares as described herein, on the date that the Units become vested and nonforfeitable. However, if a scheduled issuance date falls on a Saturday, Sunday or federal holiday, such issuance date shall instead fall on the next following day that the principal executive offices of the Company are open for business. Notwithstanding the foregoing, in the event that: (i) the Participant is subject to the Company's policy permitting officers and directors to sell shares only during certain "window" periods, in effect from time to time or the Participant is otherwise prohibited from selling the Shares in the public market and any Shares covered by the Units are scheduled to be issued on a day (the "Original Distribution Date") that does not occur during an open "window period" applicable to the Participant, as determined by the Company in accordance with such policy, or does not occur on a date when the Participant is otherwise permitted to sell Shares in the open market; and (ii) the Company elects not to satisfy its tax withholding obligations by withholding Shares from the Participant's distribution, then such Shares shall not be issued and delivered on such Original Distribution Date and shall instead be issued and delivered on the first business day of the next occurring open "window period" applicable to the Participant pursuant to such policy (regardless of whether the Participant is still providing continuous services at such time) or the next business day when the Participant is not prohibited from selling Shares in the open market, but in no event later than the fifteenth day of the third calendar month of the calendar year following the calendar year in which the Original Distribution Date occurs. In all cases, the issuance and delivery of the Shares under this Agreement is intended to comply with Treasury Regulation 1.409A-1(b)(4) and shall be construed and administered in such a manner.

5. Participant's Rights in the Shares . The Shares, if and when issued hereunder, shall be registered in the name of the Participant and evidenced in the manner as the Company may determine. During the period prior to the issuance of Shares, the Participant will have no rights of a shareholder of the Company with respect to the Shares, including no right to receive dividends or vote the number of Shares underlying each Award.

6. Termination of Employment -- Eligibility Conditions . If the employment of the Participant with the Company is terminated or the Participant separates from the Company for any reason (including death or disability), none of the Units will become vested and the right to any Eligible Shares remaining subject to the vesting provisions of Section 3(b) shall be void. Except as set forth in Section 9, eligibility to be issued Shares is conditioned on the Participant's continuous employment with the Company through and on the last day of the Performance Period and the Vesting Dates as set forth in Section 3 above.

7. Change in Control of the Company .

(a) In the event of a Change in Control of the Company prior to the end of the Performance Period, Shares shall be issued based on the greater of: (i) the Target Performance Units (100% of the Revenue target achieved as provided in Appendix A); or (ii) the expected performance as determined by the Committee in its sole discretion immediately prior to the consummation of the Change in Control. All such Units will become fully-vested.

(b) In the event of a Change in Control of the Company prior to the date that all Eligible Shares meet the vesting requirements of Section 3 of this Agreement, all unvested Eligible Shares will vest immediately prior to the consummation of the Change in Control and be issued to the Participant

(c) For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to have occurred if:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) shall, together with his, her or its "Affiliates" and "Associates" (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), become the "Beneficial Owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities (any such person being hereinafter referred to as an "Acquiring Person");

(ii) the "Continuing Directors" (as hereinafter defined) shall cease to constitute a majority of the Company's Board of Directors during a 12 month period; or

(iii) there should occur: (A) any consolidation or merger involving the Company and the Company shall not be the continuing or surviving corporation or the shares of the Company's capital stock shall be converted into cash, securities or other property; provided, however, that this subclause (A) shall not apply to a merger or consolidation in which: i. the Company is the surviving corporation and ii. the shareholders of the Company immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company.

(d) For purposes of this Agreement, a "Continuing Director" shall mean any person who is a member of the Board of Directors of the Company, while such person is a member of the Board of Directors, who is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a representative of an Acquiring Person or of any such Affiliate or Associate and who: (i) was a member of the Company's Board of Directors on the Grant Date, or (ii) subsequently became a member of the Board of Directors, upon the nomination or recommendation, or with the approval of, a majority of the Continuing Directors.

8. Issuance of Shares. The Company shall not be obligated to issue any Shares until: (i) all federal and state laws and regulations as the Company may deem applicable have been complied with; (ii) the Shares have been listed or authorized for listing upon official notice to NASDAQ or have otherwise been accorded trading privileges; and (iii) all other legal matters in connection with the issuance and delivery of the shares have been approved by the Company's legal department.

9. Tax Withholding. The Participant shall be responsible for the payment of any taxes of any kind required by any national, state or local law to be paid with respect to the Units or the Shares to be awarded hereunder, including, without limitation, the payment of any applicable withholding, income, social and similar taxes or obligations. Except as otherwise provided in this Section 11, upon the issuance of Shares or the satisfaction of any eligibility condition with respect to the Shares to be issued hereunder, or upon any other event giving rise to any tax liability, the Company shall hold back from the total number of Shares to be delivered to the Participant, and shall cause to be transferred to the Company, whole Shares having a Fair Market Value on the date the Shares are subject to issuance or taxation an amount as nearly as possible equal to (rounded to the next whole share) the Company's withholding, income, social and similar tax obligations with respect to the Shares at such time. To the extent of the Fair Market Value of the withheld shares, the Participant shall be deemed to have satisfied the Participant's responsibility under this Section 11 to pay these obligations. The Participant shall satisfy the Participant's responsibility to pay any other withholding, income, social or similar tax obligations with respect to the Shares, and (subject to such rules as the Committee may prescribe) may satisfy the Participant's responsibility to pay the tax obligations described in the immediately preceding sentence, by so indicating to the Company or its designee in writing at least one (1) business day prior to the date the Shares are subject to issuance and by paying the amount of these tax obligations in cash to the Company or its designee within fifteen (15) business days following the date the Units vest or by making other arrangements satisfactory to the Committee for payment of these obligations. In no event shall whole Shares be withheld by, or delivered to, the Company in satisfaction of tax withholding requirements in excess of the maximum statutory tax withholding required by law. The Participant agrees to indemnify the Company against any and all liabilities, damages, costs and expenses that the Company may hereafter incur, suffer or be required to pay with respect to the payment or withholding of any taxes. The obligations of the Company under this Agreement and the Plan shall be conditional upon such payment or arrangements, and the Company shall, to the extent permitted by law, have the right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

10. Investment Intent. The Participant acknowledges that the acquisition of the Shares to be issued hereunder is for investment purposes without a view to distribution thereof.

11. Limits on Transferability; Restrictions on Shares; Legend on Certificate . Until the eligibility conditions of this Award have been satisfied and Shares have been issued in accordance with the terms of this Agreement or by action of the Committee, the Units awarded hereunder are not transferable and shall not be sold, transferred, assigned, pledged, gifted, hypothecated or otherwise disposed of or encumbered by the Participant. Transfers of the Shares by the Participant are subject to the Company's Insider Trading Policy and applicable securities laws. Shares issued to the Participant in certificate form or to the Participant's book entry account upon satisfaction of the vesting and other conditions of this Award may be restricted from transfer or sale by the Company and evidenced by stop-transfer instructions upon the Participant's book entry account or restricted legend(s) affixed to

certificates in the form as the Company or its counsel may require with respect to any applicable restrictions on sale or transfer.

12. Award Subject to the Plan. The Award to be made pursuant to this Agreement is made subject to the Plan. The terms and provisions of the Plan, as may be amended from time to time are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable terms and conditions of the Plan will govern and prevail.

13. Amendment. This Agreement may be amended from time to time by the Committee in its discretion; provided, however, that this Agreement may not be modified in a manner that would have a materially adverse effect on the Units or Shares as determined in the discretion of the Committee, except as provided in the Plan or in a written document signed by the Participant and the Company.

14. No Rights to Continued Employment. The Company's intent to issue the Shares hereunder shall not confer upon the Participant any right to continued employment or other association with the Company or any of its affiliates or subsidiaries; and this Agreement shall not be construed in any way to limit the right of the Company or any of its subsidiaries or affiliates to terminate the employment or other association of the Participant with the Company or to change the terms of such employment or association at any time.

15. Legal Notices. Any legal notice necessary under this Agreement shall be addressed to the Company in care of its General Counsel at the principle executive offices of the Company and to the Participant at the address appearing in the personnel records of the Company for such Participant or to either party at such other address as either party may designate in writing to the other. Any such notice shall be deemed effective upon receipt thereof by the addressee.

16. Governing Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Florida (without regard to the conflict of laws principles thereof) and applicable federal laws. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Agreement, the parties hereby submit and consent to the exclusive jurisdiction of the state of Florida and agree that such litigation shall be conducted only in the state of Florida, or the federal courts for the United States for the District of Florida, and no other courts, where this Award is made and/or to be performed.

17. Headings. The headings contained in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to the one and the same instrument.

(signatures on following page)

AXOGEN, INC.

By: _____

Name: Karen Zaderej

Title: CEO

Participant

By: _____

Name:

Date: 12/29/2016

APPENDIX A

PLAN: AXOGEN, INC 2010 STOCK INCENTIVE PLAN

Based upon the final determination of the Committee after the end of the Performance Period, the Units will vest in a range of 0% to 150% of the number of Units as follows:

A. 0% of the Units will vest if 2018 Gross Revenue is below **"***"**;

B. 50% of the Units will vest if 2018 Gross Revenue equals **"***"**; and

C. the following number of Units indicated on the chart below will vest based upon achieving 2018 Gross Revenue (Revenue Achievement) in excess of **"***"** with 100% of the Target Units vesting if 2018 Gross Revenue equals **"***"** and up to the Maximum Units vesting if 2018 Gross Revenue equals or exceeds **"***"**:

(revenue in ,000,000)

For purposes of this Appendix A, Gross Revenue means the annual "Revenue" as reflected on the Company's Consolidated Statement of Operations for the fiscal year 2018.

APPENDIX B

Nature of Grant. In accepting the grant, Participant acknowledges that:

(1) the Plan is established voluntarily by the Company, is discretionary in nature and may be modified, amended, suspended or terminated by the Company at any time;

(2) this Award does not create any contractual or other right to receive future awards, or other benefits in lieu of an award, even if awards have been given repeatedly in the past, and all decisions with respect to future awards, if any, will be at the sole discretion of the Company;

(3) this Award is not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, termination, bonuses, retirement benefits or similar payments;

(4) the future value of the Shares is unknown and cannot be predicted with certainty; and

(5) in consideration of the Award, no claim or entitlement to compensation or damages shall arise from termination of the Award resulting from termination of his or her employment by the Company (for any reason whatsoever and whether or not in breach of local labor laws) and the Participant irrevocably releases the Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by accepting this Award, the Participant shall be deemed to have irrevocably waived his or her entitlement to pursue such claim.

Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal data as described herein by and among, as applicable, the Company and its subsidiary for the exclusive purpose of implementing, administering and managing the Participant's participation in the Plan.

The Participant understands that the Company holds certain personal information about him or her, including, but not limited to, the Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all options or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor, for the purpose of implementing, administering and managing the Plan ("Data"). The Participant understands that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan. The Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Participant's participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Participant may elect to deposit any Shares acquired upon settlement of the Units. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. The Participant understands that the Participant may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the

consents herein. The Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan.

Exhibit 10.24

AXOGEN, INC.
RETENTION SHARE UNIT AWARD AGREEMENT

Participant: Karen Zaderej
Number of Retention-Based Restricted Stock Units: 40,000
Award Type: Retention-Based Restricted Stock Unit
Award Agreement Plan Name: AxoGen, Inc. 2010 Incentive Stock
Plan Award Date: December 29, 2016

This Agreement, dated as of the 29th day of December, 2016 (the "Grant Date"), is between AxoGen, Inc., a Minnesota corporation (the "Company"), and the Participant. All capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Company's 2010 Incentive Stock Plan, as Amended and Restated as of May 26, 2016 (the "Plan").

1. Grant and Acceptance of Award. The Company hereby indicates its award to the Participant that number of retention-based Restricted Stock Units (the "Units") set forth herein (the "Award"). Each Unit is equivalent in value to one share of Company Common Stock, par value $.01 per share ("Share") and represents the Company's commitment to issue one Share at a future date, subject to certain eligibility, vesting and other conditions set forth herein. The Award is intended to be granted pursuant to, and is subject to the terms and conditions of, this Agreement and the provisions of the Plan.

2. Eligibility Conditions upon Award of Units. The Participant hereby acknowledges the intent of the Company to award Units subject to certain eligibility, vesting and other conditions set forth herein.

3. Vesting. All of the Units are nonvested and forfeitable as of the Grant Date. So long as the Participant's employment is continuous from the Grant Date through January 1, 2020 (the "Vesting Date"), the Units will become vested and nonforfeitable as of the Vesting Date, subject to the accelerated vesting provisions in Section 7 of this Agreement. Subject to Sections 6 and7 of this Agreement and Appendix A, Units will be the settled by the Company via the issuance of Shares on the Vesting Date.

4. Timing of Settlement. The Units will be settled by the Company, via the issuance of Shares as described herein, on the date that the Units become vested and nonforfeitable. However, if the scheduled issuance date falls on a Saturday, Sunday or federal holiday, such issuance date shall instead fall on the next following day that the principal executive offices of the Company are open for business. Notwithstanding the foregoing, in the event that: (i) the Participant is subject to the Company's policy permitting officers and directors to sell shares only during certain "window" periods, in effect from time to time or the Participant is otherwise prohibited from selling the Shares in the public market and any Shares covered by the Units are scheduled to be issued on a day (the "Original Distribution Date") that does not occur during an open "window period" applicable to the Participant, as determined by the Company in accordance with such policy, or does not occur on a date when the Participant is otherwise permitted to sell Shares in the open market; and (ii) the Company elects not to satisfy its tax withholding obligations by withholding Shares from the Participant's distribution, then such Shares shall not be issued and delivered on such Original Distribution Date and shall instead be issued and delivered on

the first business day of the next occurring open "window period" applicable to the Participant pursuant to such policy (regardless of whether the Participant is still providing continuous services at such time) or the next business day when the Participant is not prohibited from selling Shares in the open market, but in no event later than the fifteenth day of the third calendar month of the calendar year following the calendar year in which the Original Distribution Date occurs. In all cases, the issuance and delivery of the Shares under this Agreement is intended to comply with Treasury Regulation 1.409A-1(b)(4) and shall be construed and administered in such a manner.

5 . Participant's Rights in the Shares . The Shares, if and when issued hereunder, shall be registered in the name of the Participant and evidenced in the manner as the Company may determine. During the period prior to the issuance of Shares, the Participant will have no rights of a shareholder of the Company with respect to the Shares, including no right to receive dividends or vote the number of Shares underlying each Award.

6 . Termination of Employment -- Eligibility Conditions . If the employment of the Participant with the Company is terminated or the Participant separates from the Company for any reason (including death or disability) prior to the Vesting Date, none of the Units will become vested. Except as set forth in Section 7, eligibility to be issued Shares is conditioned on the Participant's continuous employment with the Company through and on the Vesting Dates.

7. Change in Control of the Company .

(a) In the event of a Change in Control of the Company prior to the Vesting Date all Units will become fully-vested and nonforfeitable as of immediately before and contingent upon the occurrence of a Change in Control, conditioned on the Participant's continuous employment with the Company through the date of the Change in Control.

(b) For purposes of this Agreement, a "Change in Control" of the Company shall be deemed to have occurred if:

(i) any "person" (as such term is used in Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")) shall, together with his, her or its "Affiliates" and "Associates" (as such terms are defined in Rule 12b-2 promulgated under the Exchange Act), become the "Beneficial Owner" (as such term is defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities (any such person being hereinafter referred to as an "Acquiring Person");

(ii) the "Continuing Directors" (as hereinafter defined) shall cease to constitute a majority of the Company's Board of Directors during a 12 month period; or

(iii) there should occur: (A) any consolidation or merger involving the Company and the Company shall not be the continuing or surviving corporation or the shares of the Company's capital stock shall be converted into cash, securities or other property; provided, however, that this subclause (A) shall not apply to a merger or consolidation in which: i. the Company is the surviving corporation and ii. the shareholders of

the Company immediately prior to the transaction have the same proportionate ownership of the capital stock of the surviving corporation immediately after the transaction; or (B) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the assets of the Company.

(c) For purposes of this Agreement, a "Continuing Director" shall mean any person who is a member of the Board of Directors of the Company, while such person is a member of the Board of Directors, who is not an Acquiring Person, an Affiliate or Associate of an Acquiring Person or a representative of an Acquiring Person or of any such Affiliate or Associate and who: (i) was a member of the Company's Board of Directors on the Grant Date, or (ii) subsequently became a member of the Board of Directors, upon the nomination or recommendation, or with the approval of, a majority of the Continuing Directors.

8. Issuance of Shares. The Company shall not be obligated to issue any Shares until: (i) all federal and state laws and regulations as the Company may deem applicable have been complied with; (ii) the Shares have been listed or authorized for listing upon official notice to NASDAQ or have otherwise been accorded trading privileges; and (iii) all other legal matters in connection with the issuance and delivery of the shares have been approved by the Company's legal department.

9. Tax Withholding. The Participant shall be responsible for the payment of any taxes of any kind required by any national, state or local law to be paid with respect to the Units or the Shares to be awarded hereunder, including, without limitation, the payment of any applicable withholding, income, social and similar taxes or obligations. Except as otherwise provided in this Section 9, upon the issuance of Shares or the satisfaction of any eligibility condition with respect to the Shares to be issued hereunder, or upon any other event giving rise to any tax liability, the Company shall hold back from the total number of Shares to be delivered to the Participant, and shall cause to be transferred to the Company, whole Shares having a Fair Market Value on the date the Shares are subject to issuance or taxation an amount as nearly as possible equal to (rounded to the next whole share) the Company's withholding, income, social and similar tax obligations with respect to the Shares at such time. To the extent of the Fair Market Value of the withheld shares, the Participant shall be deemed to have satisfied the Participant's responsibility under this Section 9 to pay these obligations. The Participant shall satisfy the Participant's responsibility to pay any other withholding, income, social or similar tax obligations with respect to the Shares, and (subject to such rules as the Committee may prescribe) may satisfy the Participant's responsibility to pay the tax obligations described in the immediately preceding sentence, by so indicating to the Company or its designee in writing at least one (1) business day prior to the date the Shares are subject to issuance and by paying the amount of these tax obligations in cash to the Company or its designee within fifteen (15) business days following the date the Units vest or by making other arrangements satisfactory to the Committee for payment of these obligations. In no event shall whole Shares be withheld by, or delivered to, the Company in satisfaction of tax withholding requirements in excess of the maximum statutory tax withholding required by law. The Participant agrees to indemnify the Company against any and all liabilities, damages, costs and expenses that the Company may hereafter incur, suffer or be required to pay with respect to the payment or withholding of any taxes. The obligations of the Company under this Agreement and the Plan shall be conditional upon such payment or arrangements, and the Company shall, to the extent permitted by law, have the

right to deduct any such taxes from any payment of any kind otherwise due to the Participant.

10. Investment Intent. The Participant acknowledges that the acquisition of the Shares to be issued hereunder is for investment purposes without a view to distribution thereof.

11. Limits on Transferability; Restrictions on Shares; Legend on Certificate. Until the eligibility conditions of this Award have been satisfied and Shares have been issued in accordance with the terms of this Agreement or by action of the Committee, the Units awarded hereunder are not transferable and shall not be sold, transferred, assigned, pledged, gifted, hypothecated or otherwise disposed of or encumbered by the Participant. Transfers of the Shares by the Participant are subject to the Company's Insider Trading Policy and applicable securities laws. Shares issued to the Participant in certificate form or to the Participant's book entry account upon satisfaction of the vesting and other conditions of this Award may be restricted from transfer or sale by the Company and evidenced by stop-transfer instructions upon the Participant's book entry account or restricted legend(s) affixed to certificates in the form as the Company or its counsel may require with respect to any applicable restrictions on sale or transfer.

12. Award Subject to the Plan. The Award to be made pursuant to this Agreement is made subject to the Plan. The terms and provisions of the Plan, as may be amended from time to time are hereby incorporated herein by reference. In the event of a conflict between any term or provision contained in this Agreement and a term or provision of the Plan, the applicable terms and conditions of the Plan will govern and prevail.

13. Amendment. This Agreement may be amended from time to time by the Committee in its discretion; provided, however, that this Agreement may not be modified in a manner that would have a materially adverse effect on the Units or Shares as determined in the discretion of the Committee, except as provided in the Plan or in a written document signed by the Participant and the Company.

14. No Rights to Continued Employment. The Company's intent to issue the Shares hereunder shall not confer upon the Participant any right to continued employment or other association with the Company or any of its affiliates or subsidiaries; and this Agreement shall not be construed in any way to limit the right of the Company or any of its subsidiaries or affiliates to terminate the employment or other association of the Participant with the Company or to change the terms of such employment or association at any time.

15. Legal Notices. Any legal notice necessary under this Agreement shall be addressed to the Company in care of its General Counsel at the principle executive offices of the Company and to the Participant at the address appearing in the personnel records of the Company for such Participant or to either party at such other address as either party may designate in writing to the other. Any such notice shall be deemed effective upon receipt thereof by the addressee.

16. Governing Law. The interpretation, performance and enforcement of this Agreement shall be governed by the laws of the State of Florida (without regard to the conflict of laws principles thereof) and applicable federal laws. For purposes of litigating any dispute that arises directly or indirectly from the relationship of the parties evidenced by this Agreement, the parties hereby submit and consent to the exclusive jurisdiction of the state of Florida and agree that such litigation shall be conducted only

in the state of Florida, or the federal courts for the United States for the District of Florida, and no other courts, where this Award is made and/or to be performed.

17. Headings. The headings contained in this Agreement are for convenience only and shall not affect the meaning or interpretation of this Agreement.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to the one and the same instrument.

AXOGEN, INC.

By: /s/ Greg Freitag
Name: Greg Freitag
Title: General Counsel

Participant

By: /s/ Karen Zaderej
Name: Karen Zaderej

Date: 12/29/2016

APPENDIX A

Nature of Grant. In accepting the grant, Participant acknowledges that:

(1) the Plan is established voluntarily by the Company, is discretionary in nature and may be modified, amended, suspended or terminated by the Company at any time;

(2) this Award does not create any contractual or other right to receive future awards, or other benefits in lieu of an award, even if awards have been given repeatedly in the past, and all decisions with respect to future awards, if any, will be at the sole discretion of the Company;

(3) this Award is not part of normal or expected compensation or salary for any purposes, including, but not limited to, calculating any severance, termination, bonuses, retirement benefits or similar payments;

(4) the future value of the Shares is unknown and cannot be predicted with certainty; and

(5) in consideration of the Award, no claim or entitlement to compensation or damages shall arise from termination of the Award resulting from termination of his or her employment by the Company (for any reason whatsoever and whether or not in breach of local labor laws) and the Participant irrevocably releases the Company from any such claim that may arise; if, notwithstanding the foregoing, any such claim is found by a court of competent jurisdiction to have arisen, then, by accepting this Award, the Participant shall be deemed to have irrevocably waived his or her entitlement to pursue such claim.

Data Privacy. Participant hereby explicitly and unambiguously consents to the collection, use and transfer, in electronic or other form, of his or her personal data as described herein by and among, as applicable, the Company and its subsidiary for the exclusive purpose of implementing, administering and managing the Participant's participation in the Plan.

The Participant understands that the Company holds certain personal information about him or her, including, but not limited to, the Participant's name, home address and telephone number, date of birth, social insurance number or other identification number, salary, nationality, job title, any Shares or directorships held in the Company, details of all options or any other entitlement to Shares awarded, canceled, exercised, vested, unvested or outstanding in the Participant's favor, for the purpose of implementing, administering and managing the Plan ("Data"). The Participant understands that Data may be transferred to any third parties assisting in the implementation, administration and management of the Plan. The Participant authorizes the recipients to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Participant's participation in the Plan, including any requisite transfer of such Data as may be required to a broker or other third party with whom the Participant may elect to deposit any Shares acquired upon settlement of the Units. The Participant understands that Data will be held only as long as is necessary to implement, administer and manage his or her participation in the Plan. The Participant understands that the Participant may, at any time, view Data, request additional information about the

storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein. The Participant understands, however, that refusing or withdrawing his or her consent may affect his or her ability to participate in the Plan.

EXHIBIT 21.1

SUBSIDIARY OF AXOGEN, INC.

As of December 31, 2016, AxoGen Inc. had two sole subsidiaries:

1. AxoGen Corporation, a Delaware corporation; and
2. AxoGen Europe GmbH, an Austrian corporation.

EXHIBIT 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statements of AxoGen, Inc. on Form S-3 (File Nos. 333-207829 and 333-195588) and Form S-8 (File Nos. 333-211660, 333-201238 and 333-177980) of our report dated March 1, 2017, appearing in this annual report on form 10-K of AxoGen, Inc. and Subsidiaries as of and for the years ended December 31, 2016 and 2015.

/s/ LURIE, LLP

Minneapolis, Minnesota
March 1, 2017

EXHIBIT 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Karen Zaderej, certify that:

1. I have reviewed this annual report on Form 10-K of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have;

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2017

/s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Peter Mariani, certify that:

1. I have reviewed this annual report on Form 10-K of AxoGen, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officers and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have;

a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officers and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 1, 2017

/s/ Peter Mariani
Peter Mariani
Chief Financial Officer

EXHIBIT 32.1

CERTIFICATION PURSUANT TO SECTION 906 OF THE SARBANES —OXLEY ACT OF 2002

In connection with the Annual Report of AxoGen, Inc. (the "Company") on Form 10-K for the year ended December 31, 2016 as filed with the Securities and Exchange Commission (the "Report"), I, Karen Zaderej, Chief Executive Officer and Peter Mariani, Chief Financial Officer, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, to the best of my knowledge that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ Karen Zaderej
Karen Zaderej
Chief Executive Officer
March 1, 2017

/s/ Peter Mariani
Peter Mariani
Chief Financial Officer
March 1, 2017