

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

APPLICATION RECORD
(Returnable September 28, 2017)

September 22, 2017

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank

TO: SEE ATTACHED SERVICE LIST

INDEX

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

TABLE OF CONTENTS

TAB

DOCUMENT

- 1 Notice of Application returnable September 28, 2017
- 2 Affidavit of Mark Rosshirt together with exhibits sworn September 22, 2017

EXHIBITS

- A Corporate Profile Report of Xagenic Inc.
- B Certificate of Filing of a Notice of Intention to Make a Proposal
- C Edward Jonasson sworn August 4, 2017 (without exhibits)
- D Loan and Security Agreement
- E PPSA Search of Xagenic Inc.
- F Demand Letter and BIA Notice
- G DIP Approval Order

- 3 Form of Receivership Order
- 4 Blackline against Model Receivership Order
- 5 Consent of A. Farber & Partners Inc.
- 6 Service List

TAB 1

217-583044-0001
Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SILICON VALLEY BANK

Applicant

- and -



XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a judge presiding over the Commercial List at 330 University Avenue, Toronto, Ontario at 9:30 a.m. on September 28, 2017 or as soon after that time as the matter can be heard on the application of the Applicant.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does

not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: September 20, 2017

Issued by


Local registrar

Address of

court office: 330 University Avenue
Toronto, Ontario
M5G 1R7

TO THE ATTACHED SERVICE LIST

APPLICATION

THE APPLICANT, SILICON VALLEY BANK ("SVB"), MAKES APPLICATION FOR AN ORDER, amongst other things:

- a) abridging the time for service and filing of this notice of application and the application record or, in the alternative, dispensing with and/or validating service of same;
- b) lifting the stay of proceedings in the Proposal Proceedings (as defined below) and appointing A. Farber & Partners Inc. ("Farber") as receiver (in such capacity, the "Receiver"), without security, of all the assets, undertakings and properties of Xagenic Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, as specifically set out in the Order substantially in the form attached at Tab "3" of the Application Record; and
- c) such further and other relief as is just.

THE GROUNDS FOR THE APPLICATION ARE:

- a) the Debtor is privately-held company based in Toronto, Ontario and registered under the *Business Corporations Act* (Ontario);
- b) since its inception in 2010, the Debtor carries on business and maintains an office in Toronto. The Debtor develops molecular diagnostic systems, pursuant to which it processes and analyzes biological markers in genetic code that are used to diagnose and monitor disease, detect risk and assess appropriate treatment steps. The technology is still at the development stages;
- c) on August 1, 2017, the Debtor filed a notice of intention to make a proposal (the "Proposal Proceedings") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and Farber consented to act as trustee under the Proposal Proceedings;
- d) the Debtor is directly indebted to SVB in connection with a certain credit facility made available by SVB to the Debtor pursuant to and under the terms of loan and

security agreement made between SVB, as lender, and the Debtor, as borrower, dated March 13, 2015, as amended by (i) a first amendment to loan and security agreement dated December 20, 2016, (ii) a second amendment to loan and security agreement dated January 9, 2017 and (iii) a third amendment to loan and security agreement dated April 25, 2017 (as further amended from time to time, collectively, the “**Loan and Security Agreement**”);

- e) the obligations of the Debtor to SVB, including, without limitation, its obligations under the Loan and Security Agreement, are secured by, *inter alia*, the terms of the Loan and Security Agreement, a registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “PPSA”);
- f) as of September 20, 2017, the Debtor is indebted to SVB in principal and interest pursuant to the Loan and Security Agreement in the amount of USD\$315,311.01, plus costs, fees and expenses incurred by SVB in connection therewith;
- g) in accordance with its rights under the Loan and Security Agreement, SVB made formal written demand on the Debtor for payment of its indebtedness to SVB by letter dated July 26, 2017, and a Notice of Intention to Enforce Security pursuant to subsection 244(1) of the BIA accompanied the demand sent to the Debtor;
- h) as part of the Proposal Proceedings, and in order to facilitate the Debtor’s restructuring efforts, the Debtor obtained interim financing in the amount of up to \$500,000 from certain of the Debtor’s existing debenture holders, comprised of Shana Kelley, CTI Life Sciences Fund L.P. and BDC Capital Inc., pursuant to the terms of an interim financing term sheet dated July 31, 2017;
- i) the Debtor has failed to honour the demand or make alternative arrangements acceptable to SVB;
- j) the Debtor failed to obtain new capital investments up to the date of the Proposal Proceedings despite its efforts;
- k) the Debtor’s discussions with interested third party investors and prospective purchasers has not resulted in any financing or acquisition transaction and the

Debtor no longer has the financial wherewithal to continue operations and/or marketing efforts without additional cash flow and the likely erosion of SVB's collateral;

- l) the prescribed ten (10) day notice period afforded to debtors under the BIA has expired;
- m) the Debtor is unable to fulfill all its obligations to SVB and other stakeholders;
- n) the Debtor does not oppose to the immediate enforcement by SVB of its security under the Loan and Security Agreement and the appointment of Farber as receiver of the Debtor;
- o) a receiver is necessary for the protection of the estate of the Debtor, the interests of SVB and, perhaps, other stakeholders;
- p) in the circumstances, it is just and equitable to lift the stay of proceedings afforded to the Debtor in the Proposal Proceedings, terminate the Proposal Proceedings and appoint a receiver;
- q) Farber is a licensed trustee in bankruptcy and currently acts as the Proposal Trustee of the Debtor in the Proposal Proceeding and, as such, is familiar with the circumstances of the Debtor and its arrangements with Silicon Valley Bank;
- r) Farber has consented to being appointed as the Receiver;
- s) the grounds set out in the affidavit of Edward Jonasson sworn August 4, 2017 filed in the Proposal Proceedings (the "**Jonasson Affidavit**");
- t) the other grounds set out in the affidavit of Mark Rosshirt to be sworn and filed with the Court (the "**Rosshirt Affidavit**");
- u) subsections 50.4(11) and 243(1) of the BIA;
- v) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- w) rules 1.04, 1.05, 2.01, 2.03, 3.02, 14, 16.04 and 38 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- x) such further grounds as are required and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

- a) the Jonasson Affidavit;
- b) the Rosshirt Affidavit;
- c) the consent of Farber to act as the Receiver; and
- d) such other material as is required and this Court may permit.

September 20, 2017

AIRD & BERLIS LLP
Barristers & Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank

Court File No. _____

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

SERVICE LIST

GENERAL	
BORDEN LADNER GERVAIS Bay Adelaide Centre, East Tower 22 Adelaide Street West Suite 3400 Toronto, ON, Canada M5H 4E3 Counsel for the Respondent, Xagenic	Alex MacFarlane Tel: 416.367.6305 Email: amacfarlane@blg.com
AIRD & BERLIS LLP Brookfield Place 181 Bay Street Suite 1800, PO Box 754 Toronto ON M5J 2T9 Counsel for the Applicant, Silicon Valley Bank	Kyle Plunkett Tel: (416) 865-3406 E-mail: kplunkett@airdberlis.com Ian Aversa Tel: (416) 865-3082 E-mail: iaversa@airdberlis.com

A. FARBER & PARTNERS INC. 150 York Street, Suite 1600 Toronto, ON M5H 2T9 The Proposal Trustee	Hylton Levy and Robyn White Tel: 416.496.3070/416.796.6030 Email: hlevy@farberfinancial.com/rwhite@farberfinancial.com
McMILLAN LLP Brookfield Place, 181 Bay Street, Suite 440 Toronto, ON M5J 2T3	Tushara Weerasooriya Tel: 416.865.7890 Email: tushara.weerasooriya@mcmillan.ca
SECURED CREDITORS	
THE TORONTO-DOMINION BANK 55 King Street W. P.O. Box 1 Toronto, ON M5K 1A2	
XEROX CANADA LTD. 33 Bloor Street E. 3 rd Floor Toronto, ON M4W 3H1	
AGREEMENTS	
DOMAIN PARTNERS VII, L.P. One Palmer Square, Suite 515 Princeton, New Jersey 08542 Secured Debenture Holder	Lisa Kraeutler/Jesse Treu Tel: 609.683.5656 Email: kraeutler@domainvc.com/treu@domainvc.com
DP VIII ASSOCIATES, L.P. One Palmer Square, Suite 515 Princeton, New Jersey 08542 Secured Debenture Holder	Lisa Kraeutler/Jesse Treu Tel: 609.683.5656 Email: kraeutler@domainvc.com/treu@domainvc.com
ONTARIO CAPITAL GROWTH CORPORATION 250 Yonge Street, Suite 3501 P.O. Box 1 Toronto, ON M5B 2L7 Secured Debenture Holder	Brenda Hogan Tel: 416.212.3368 Email: Brenda.hogan@ontario.ca

COVENTON CAPITAL 375 University Avenue, Suite 700 Toronto, ON M5G 2J5 Observer for Ontario Capital Grown Corporation	Phil Reddon Tel: 416.365.5222 Email: phil@covingtoncap.com
CTI LIFE SCIENCES FUND, L.P. 1 Place Ville-Marie, Suite 1635 Montreal, QC H3B 2B6 Secured Debenture Holder	Shermaine Tilley/Ken Pastor Tel: 514.798.2333 Email: stilley@ctisciencences.com/kpastor@ctisciencences.com
SHANA KELLEY 21 Parkwood Avenue Toronto, ON M4V 2W9 Secured Debenture Holder	Tel: 647.500.8641 Email: shana.kelley@gmail.com
EDWARD JONASSON 91 Parklea Drive East York, ON M4G 2J9 Secured Debenture Holder	Tel: 416.473.6417 Email: edjonasson@gmail.com
BDC CAPITAL INC. Centre de Commerce Mondial 380 Rue Saint-Antoine Ouest Suite 2000 Montreal, QC H2Y 3X7 Secured Debenture Holder	Bharat Srinivasa/Dion Madsen Tel: 514.283.3133/415.806.1378 Email: bharat.srinivasa@bdccapital.ca/dion.madsen@bdccapital.ca
LAUREN WHYTE 1445 Sprucewood Terrace Oakville, ON L6M 2R1 Secured Debenture Holder	Tel: 905.330.0119 Email: laurenwhyte@gmail.com
GOVERNMENT AUTHORITIES	
DEPARTMENT OF JUSTICE Ontario Regional Office The Exchange Tower, Box 36 130 King Street West, Suite 3400 Toronto, ON M5X 1K6	Diane Winters Tel: (416) 973-3172 E-mail: diane.winters@justice.gc.ca

**ONTARIO MINISTRY OF
FINANCE**

Legal Services Branch
11-777 Bay Street
Toronto, ON M5G 2C8

Kevin J. O'Hara

Tel: 416-327-8463

Fax: 416-325-1460

Email: kevin.ohara@fin.gov.on.ca

E-MAIL DISTRIBUTION LIST

iaversa@airdberlis.com; kplunkett@airdberlis.com; amacfarlane@blg.com;
diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; hlevy@farberfinancial.com;
rwhite@farberfinancial.com; tushara.weerasooriya@mcmillan.ca; kraeutler@domainvc.com;
treu@domainvc.com; Brenda.hogan@ontario.ca; phil@covingtoncap.com;
stilley@ctisciences.com; kpastor@ctisciences.com; shana.kelley@gmail.com;
edjonasson@gmail.com; bharat.srinivasa@bdccapital.ca; dion.madsen@bdccapital.ca;
laurenwhyte@gmail.com;

SILICON VALLEY BANK

Applicant

- and - XAGENIC INC.

Respondent

Court File No.

2017-583074-mcc

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

NOTICE OF APPLICATION

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank

TAB 2

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

BETWEEN:

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

**AFFIDAVIT OF MARK ROSSHIRT
(sworn September 22, 2017)**

I, **MARK ROSSHIRT**, of the Town of Brookline, in Norfolk County, in the State of
Massachusetts, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Vice President of Silicon Valley Bank (“SVB”). SVB is a secured creditor of Xagenic Inc. (the “**Debtor**”), and I am responsible for management of the Debtor’s account and credit facilities with SVB. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not have personal knowledge of the matters set out herein, I have stated the source of my information and, in all such cases, believe it to be true.

PURPOSE

2. I am swearing this Affidavit in support of an application by SVB for an order, amongst other things, lifting the stay of proceedings in the Proposal Proceedings (as defined below) and appointing A. Farber & Partners Inc. ("**Farber**") as receiver (in such capacity, the "**Receiver**"), without security, of all the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, as specifically set out in the Order substantially in the form attached at **Tab "3"** of the Application Record;

DESCRIPTION OF THE RESPONDENT AND ITS BUSINESS

3. The Debtor is a privately-held Ontario corporation, incorporated on May 7, 2010. The Debtor's corporate profile report is attached as **Exhibit "A"** to this Affidavit.

4. On August 1, 2017, the Debtor filed a notice of intention to make a proposal (the "**Proposal Proceedings**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") under Court File No. 31-2278723, and Farber consented to act as trustee under the Proposal Proceedings. A copy of the Certificate of Filing of a Notice of Intention to Make a Proposal filed with Industry Canada (the "**NOI**") is attached hereto and marked as **Exhibit "B"** to this Affidavit.

5. I understand from our legal counsel, Aird & Berlis LLP ("**A&B**"), that upon the NOI being filed by the Debtor a stay of proceedings is granted in favour of the Debtor and its assets such that no enforcement steps can be initiated by a creditor without leave from the court. As part of the relief being sought by SVB in this Application, we will be asking the Court to lift the stay of proceedings and appoint Farber as receiver of the Debtor.

6. A more fulsome description of the Debtor's business and background is set out in the affidavit of Edward Jonasson sworn August 4, 2017 (the "**Jonasson Affidavit**") filed in the Proposal Proceedings, a copy of which, without the exhibits thereto, is attached hereto and marked as **Exhibit "C"** to this Affidavit.

7. Since its inception in 2010, the Debtor has carried on business from its leased office space located at 55 York Street, Suite 1600, Toronto, Ontario M5J 1R7. The Debtor develops molecular diagnostic systems, pursuant to which it processes and analyzes biological markers in genetic code that are used to diagnose and monitor disease, detect risk and assess appropriate treatment steps. I understand from a review of the Jonasson Affidavit that the technology is still at the development stages.

SVB'S LOANS TO THE DEBTOR AND RELATED SECURITY

8. The Debtor is directly indebted to SVB in connection with a certain credit facility made available by SVB to the Debtor pursuant to and under the terms of loan and security agreement made between SVB, as lender, and the Debtor, as borrower, dated March 13, 2015, as amended by (i) a first amendment to loan and security agreement dated December 20, 2016, (ii) a second amendment to loan and security agreement dated January 9, 2017 and (iii) a third amendment to loan and security agreement dated April 25, 2017 (as further amended from time to time, collectively, the "**Loan and Security Agreement**"), a copy of which is attached and marked as **Exhibit "D"** to this Affidavit.

9. The obligations of the Debtor to SVB, including, without limitation, its obligations under the Loan and Security Agreement, are secured by, *inter alia*, the terms of the Loan and Security

Agreement, a registration in respect of which was duly made pursuant to the *Personal Property Security Act* (Ontario) (the “PPSA”).

10. As of September 20, 2017, the Debtor is indebted to SVB in principal and interest pursuant to the Loan and Security Agreement in the amount of USD\$315,311.01, plus costs, fees and expenses incurred by SVB in connection therewith, which amounts continue to accrue.

THE OTHER SECURED CREDITORS

11. A copy of the PPSA search results for the Debtor, with currency to September 20, 2017 is attached and marked as **Exhibit “E”** to this Affidavit. These PPSA search results show that, in addition to SVB’s registration, each of Xerox Canada Ltd. (“**Xerox**”), Domain Partners VII, L.P. (“**Domain**”), CTI Life Sciences Fund, L.P. (“**CTI**”), Ontario Capital Growth Corp. (“**OCGC**”), BDC Capital Inc. (“**BDC**”), Shana Kelley (“**Kelley**”, and collectively with Domain, CTI, OCGC and BDC, the “**Secured Debenture Holders**”), The Toronto-Dominion Bank (“**TD**”) and the Ontario Ministry of Finance (the “**Ministry of Finance**”) has made one or more registrations under the PPSA against the Debtor. Apart from the PPSA registrations in favour of each of the Secured Debenture Holders, TD and the Ministry of Finance (which were registered after SVB’s registration), the PPSA registration in favour of Xerox appears to be limited to a specific equipment and the proceeds thereof. It is not proposed that the Receiver be appointed in respect of any assets, undertakings or undertakings of the Debtor over which any person or entity holds a validly-perfected purchase money security interest (“**PMSI**”) or lease. It is proposed that such persons and entities can make arrangements with the Debtor to recover their collateral after the Receiver, if appointed, has satisfied itself as to the validity of their PMSI and/or lease, as the case may be.

12. As set out in the Jonasson Affidavit, the registration in favour of the Ministry of Finance is in respect of a judgment it obtained against the Debtor relating to certain unremitted employment heath tax.

13. In addition, I understand from the Jonasson Affidavit that the registration in favour of TD relates to certain corporate credit cards. However, Mr. Jonasson advises in the Jonasson Affidavit that such amounts have been repaid in full and that these credit cards have since been cancelled.

14. As set out in paragraphs 22 to 26 of the Jonasson Affidavit, the Debtor also has significant unsecured debt, which includes amounts owing to, among others, each of Federal Economic Development Agency (approx. \$728,000), MaRS Investment Accelerator Fund Inc. (approx. \$359,000), Fujitsu Glovia, Inc. (approx. \$21,000), International Point of Care Inc. (approx. 70,000), Micralyne Inc. (approx. \$146,000) and Cooley LLP (approx. \$350,000).

DEFAULTS AND DEMAND LETTER

15. On or about July 25, 2017, I was advised by my lending colleague Tony Barkett, Director of SVB, that the Debtor's board of directors decided to wind down the business operations and initiate insolvency proceedings following a telephone discussion with the Debtor's Chief Financial Officer on July 24, 2017. This constituted an event of default under the Loan and Security Agreement, including a material adverse change having occurred and the Debtor being insolvent and unable to pay its debts as they become due.

16. As of July 20, 2017, USD\$315,311.01 is owing for principal and interest pursuant to the Loan and Security Agreement, which amount does not include fees and expenses, and any additional interest thereon, which continues to accrue.

17. As a result of the aforementioned defaults, SVB made formal written demand on the Debtor for payment of its indebtedness to SVB by letter dated July 26, 2017 (the “**Demand Letter**”). A Notice of Intention to Enforce Security (the “**BIA Notice**”) pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), accompanied the Demand Letter sent to the Debtor. A copy of the Demand Letter enclosing the applicable BIA Notice is attached hereto and marked as **Exhibit “F”** to this Affidavit.

REFINANCING EFFORTS AND PROPOSAL PROCEEDINGS

18. Following issuance of the Demand Letter, the Debtor initiated the Proposal Proceedings to facilitate the Debtor’s restructuring efforts including pursuing a sale transaction with an interested party.

19. As set out in the Jonasson Affidavit, the Debtor has been actively pursuing new capital investors and strategic partners to raise financing or consummate an acquisition of the Debtor’s business since September 2016.

20. As set out at paragraph 11 of the Jonasson Affidavit, up and until the commencement of the Proposal Proceedings, the Debtor relied upon its current investors to fund its operations and capital requirements. It appears that in July this year, these investors determined that they were no longer prepared to continue to fund the Debtor’s operations outside a formal process.

21. As part of the Proposal Proceedings, and with the support of SVB, the Debtor sought and obtained an Order from the Honourable Justice Lederman of this Court dated August 8, 2017 (the “**DIP Approval Order**”), approving an interim financing term sheet dated July 31, 2017 entered into between certain of the Secured Debenture Holders, as lenders (the “**DIP Lenders**”), and the Debtor, pursuant to which the DIP Lenders agreed to provide to the Debtor interim

financing up to \$750,000 to facilitate the Debtor's restructuring efforts within the Proposal Proceedings. A copy of the DIP Approval Order is attached hereto and marked as **Exhibit "G"** to this Affidavit.

22. The DIP Approval Order also provides for certain charges in favour of the DIP Lenders, the Debtor's counsel and the proposal trustee and its legal counsel (the "**NOI Charges**"). The priorities of these charges, including as they relate to the security in favour of SVB, were heavily negotiated between the applicable parties and are set out specifically in the DIP Approval Order.

23. As part of the relief sought in this Application, SVB will be seeking to have the priorities of the NOI Charges reaffirmed and for the Court to set out priority of the NOI Charges as they relate to the charges in the proposed receivership proceedings as set out in the form Order attached at Tab 3 to the Application Record.

24. Given the nature of the discussions the Debtor was having with a prospective purchaser, and the level of confidence the Debtor's management had with respect to consummating a sale transaction with this interested party, SVB agreed to support the Debtor's sale efforts in the Proposal Proceedings which could have resulted in the SVB indebtedness being repaid in full.

25. On or about September 18, 2017, Hylton Levy of Farber, in its capacity as proposal trustee of the Debtor, informed A&B that upon the prospective purchaser completing its review of the opportunity it decided that it was no longer prepared to pursue a sale transaction with the Debtor and informed the Debtor's management of same.

26. As a result, Farber informed A&B that the Debtor had applied the majority of the Interim Financing to pursue the transaction with the prospective purchaser and, as a result, was running up against an immediate cash flow problem, with no alternative plans and/or funding.

27. As a result, and upon discussions with Farber regarding the Debtor's cash flow, SVB has decided that it is no longer prepared to support the Proposal Proceedings while SVB's collateral continues to erode. We understand from Farber, and as noted in the Jonasson Affidavit, that the liquidation value of the Debtor will be insufficient to repay all the Debtor's secured creditors.

APPOINTMENT OF A RECEIVER

28. As of the time of swearing this Affidavit, the Debtor has failed to make payment in accordance with the Demand Letters, make alternative arrangements acceptable to SVB and the Proposal Proceedings have not resulted in any transaction being consummated which would result in SVB's indebtedness being repaid in full.

29. The Debtor has severe liquidity restraints and has no further means to carry on business or carry out further marketing efforts in its Proposal Proceedings.

30. The Debtor has indicated to the proposed Receiver and SVB that it does not oppose the relief being sought by SVB in this Application.

31. At this stage, SVB is no longer prepared to support the restructuring efforts of the Debtor's management and wishes to appoint a receiver over the assets, undertakings and properties of the Debtor.

32. SVB considers it reasonable and prudent to begin the enforcement of its Security in an effort to recover the indebtedness owed by the Debtor to SVB, particularly in light of the

Debtor's non-opposition to such relief being sought by SVB and the Debtor's immediate liquidity restraints, and it is within SVB's rights under the Loan and Security Agreement to do so, provided the Court is prepared to lift the stay of proceedings in the Proposal Proceedings to permit SVB to do so.

33. In the circumstances set out above, I believe that it is just and equitable that a receiver be appointed. A receiver is necessary for the protection of the estate of the Debtor, the interests of SVB and, perhaps, other stakeholders. SVB believes that the appointment of a receiver would enhance the prospect of recovery by SVB and protect all stakeholders.

34. SVB proposes that Farber be appointed as the receiver, given its knowledge of the business and efforts to date in its capacity as proposal trustee of the Debtor in the Proposal Proceedings.

35. Farber is a licensed trustee in bankruptcy and is familiar with the circumstances of the Debtor and its arrangements with SVB.

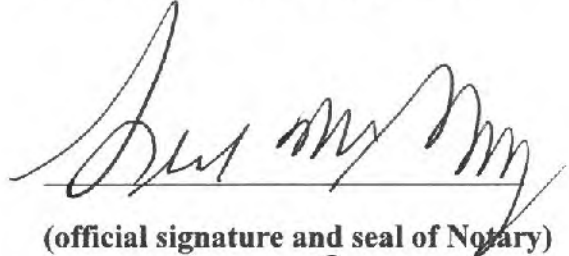
36. Farber has consented to act as receiver should the Court so appoint it. A copy of Farber's consent will be provided to the Court on the return of this Application.

37. This Affidavit is made in support of the within application, and for no other or improper purpose whatsoever.



MARK ROSSHIRT

On this 22nd day of September, 2017, before me, the undersigned Notary Public, personally appeared Mark Rosshirt, proved to me through satisfactory evidence of identification, which were MA Drivers Lic, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose Vice President for Silicon Valley Bank.



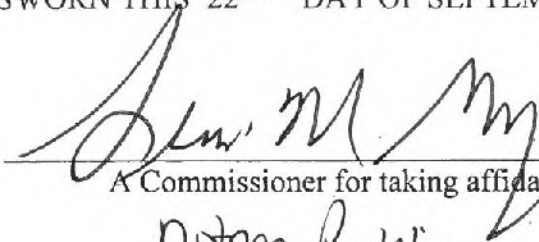
(official signature and seal of Notary)

Linda M Brancatore

my Comm Expires 10/5/18

Tab A

THIS IS **EXHIBIT "A"** TO THE
AFFIDAVIT OF **MARK ROSSHIRT**
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.



A Commissioner for taking affidavits

Notary Public
Linda M. Bancroft
my comm expires 10/5/18

Request ID: 020734798
Transaction ID: 65703901
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 1

CORPORATION PROFILE REPORT

Ontario Corp Number	Corporation Name	Incorporation Date	
1824183	XAGENIC INC.	2010/05/07	
		Jurisdiction	
		ONTARIO	
Corporation Type	Corporation Status	Former Jurisdiction	
ONTARIO BUSINESS CORP.	ACTIVE	NOT APPLICABLE	
Registered Office Address		Date Amalgamated	Amalgamation Ind.
55 YORK STREET		NOT APPLICABLE	NOT APPLICABLE
Suite # 1600		New Amal. Number	Notice Date
TORONTO		NOT APPLICABLE	NOT APPLICABLE
ONTARIO		Letter Date	
CANADA M5J 1R7		NOT APPLICABLE	
Mailing Address		Revival Date	Continuation Date
55 YORK STREET		NOT APPLICABLE	NOT APPLICABLE
Suite # 1000		Transferred Out Date	Cancel/Inactive Date
TORONTO		NOT APPLICABLE	NOT APPLICABLE
ONTARIO		EP Licence Eff.Date	EP Licence Term.Date
CANADA M5J 1R7		NOT APPLICABLE	NOT APPLICABLE
		Date Commenced in Ontario	Date Ceased in Ontario
		NOT APPLICABLE	NOT APPLICABLE
		Number of Directors	
		Minimum	Maximum
		00003	00007
Activity Classification		NOT APPLICABLE	NOT APPLICABLE
NOT AVAILABLE			

Request ID: 020734798
Transaction ID: 65703901
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 2

CORPORATION PROFILE REPORT

Ontario Corp Number

1824183

Corporation Name

XAGENIC INC.

Corporate Name History

XAGENIC INC.

Effective Date

2013/11/26

XAGENIC CANADA INC.

2010/05/07

Current Business Name(s) Exist:

NO

Expired Business Name(s) Exist:

NO

Administrator:

Name (Individual / Corporation)

ERIK

HOLMLIN

Address

PMB 155
P.O. BOX 5000

RANCHO SANTE FE
CALIFORNIA
UNITED STATES OF AMERICA 92067

Date Began

2013/11/26

First Director

NOT APPLICABLE

Designation

DIRECTOR

Officer Type

Resident Canadian

N

Request ID: 020734798
Transaction ID: 65703901
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 3

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1824183

XAGENIC INC.

Administrator:

Name (Individual / Corporation)

Address

SHANA
KELLEY

55 YORK STREET

Suite # 1000
TORONTO
ONTARIO
CANADA M5J 1R7

Date Began

First Director

2010/05/07

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Administrator:

Name (Individual / Corporation)

Address

SHANA
KELLEY

55 YORK STREET

Suite # 1000
TORONTO
ONTARIO
CANADA M5J 1R7

Date Began

First Director

2010/05/07

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

OTHER

Request ID: 020734798
Transaction ID: 65703901
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 4

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1824183

XAGENIC INC.

Administrator:
Name (Individual / Corporation)

Address

DION
MADSEN

15 DONNA MARIA WAY

ORINDA
CALIFORNIA
UNITED STATES OF AMERICA 94563

Date Began

First Director

2014/07/31

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

N

Administrator:
Name (Individual / Corporation)

Address

SHERMAINE
TILLEY

1 PLACE VILLE MARIE
CTI LIFE SCIENCES FUND
Suite # 1635
MONTREAL
QUEBEC
CANADA H3B 2B6

Date Began

First Director

2012/01/27

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

Y

Request ID: 020734798
Transaction ID: 65703901
Category ID: UNE

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 5

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1824183

XAGENIC INC.

Administrator:
Name (Individual / Corporation)

Address

JESSE

ONE PALMER SQUARE

TREU

Suite # 515
PRINCETON
NEW JERSEY
UNITED STATES OF AMERICA 08542

Date Began

First Director

2013/11/26

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

DIRECTOR

N

Administrator:
Name (Individual / Corporation)

Address

JESSE

ONE PALMER SQUARE

TREU

Suite # 515
PRINCETON
NEW JERSEY
UNITED STATES OF AMERICA 08542

Date Began

First Director

2014/12/04

NOT APPLICABLE

Designation

Officer Type

Resident Canadian

OFFICER

CHAIRMAN

N

Request ID: 020734798
Transaction ID: 65703901
Category ID: UN/E

Province of Ontario
Ministry of Government Services

Date Report Produced: 2017/09/21
Time Report Produced: 10:22:36
Page: 6

CORPORATION PROFILE REPORT

Ontario Corp Number

Corporation Name

1824183

XAGENIC INC.

Last Document Recorded

Act/Code	Description	Form	Date
CIA	ANNUAL RETURN 2016	1C	2017/03/05 (ELECTRONIC FILING)

THIS REPORT SETS OUT THE MOST RECENT INFORMATION FILED BY THE CORPORATION ON OR AFTER JUNE 27, 1992, AND RECORDED IN THE ONTARIO BUSINESS INFORMATION SYSTEM AS AT THE DATE AND TIME OF PRINTING. ALL PERSONS WHO ARE RECORDED AS CURRENT DIRECTORS OR OFFICERS ARE INCLUDED IN THE LIST OF ADMINISTRATORS.

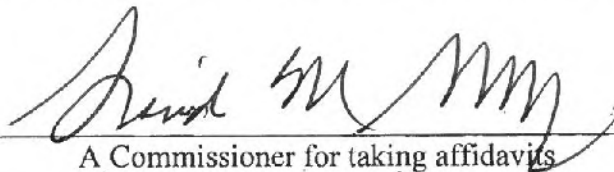
PLEASE NOTE THAT WHEN THE SAME INDIVIDUAL HOLDS MULTIPLE 'OTHER UNTITLED' OFFICER POSITIONS, AS INDICATED ON A FORM 1 UNDER THE *CORPORATIONS INFORMATION ACT*, ONLY ONE OF THESE 'OTHER UNTITLED' POSITIONS HELD BY THAT INDIVIDUAL WILL BE REFLECTED ON THIS REPORT.

ADDITIONAL HISTORICAL INFORMATION MAY EXIST ON MICROFICHE.

The issuance of this report in electronic form is authorized by the Ministry of Government Services.

Tab B

THIS IS EXHIBIT "B" TO THE
AFFIDAVIT OF MARK ROSSHIRT
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.



A Commissioner for taking affidavits

Lincoln in Pennsylvania

Notary Public

my Comm Expires 10/5/18



Industry Canada
Office of the Superintendent
of Bankruptcy Canada

Industrie Canada
Bureau du surintendant
des faillites Canada

District of Ontario
Division No. 09 - Toronto
Court No. 31-2278723
Estate No. 31-2278723

In the Matter of the Notice of Intention to make a
proposal of:

Xagenic Inc.
Insolvent Person

A. FARBER & PARTNERS INC.
Licensed Insolvency Trustee

Date of the Notice of Intention: August 01, 2017

CERTIFICATE OF FILING OF A NOTICE OF INTENTION TO MAKE A PROPOSAL
Subsection 50.4 (1)

I, the undersigned, Official Receiver in and for this bankruptcy district, do hereby certify that the aforementioned insolvent person filed a Notice of Intention to Make a Proposal under subsection 50.4 (1) of the *Bankruptcy and Insolvency Act*.

Pursuant to subsection 69(1) of the Act, all proceedings against the aforementioned insolvent person are stayed as of the date of filing of the Notice of Intention.

Date: August 02, 2017, 07:42

E-File/Dépôt Electronique

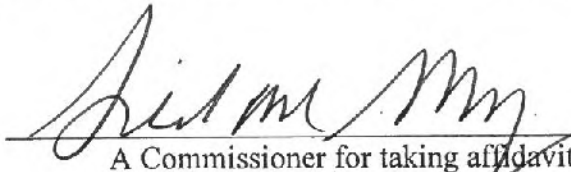
Official Receiver

151 Yonge Street, 4th Floor, Toronto, Ontario, Canada, M5C2W7, (877)376-9902

Canada

Tab C

THIS IS **EXHIBIT "C"** TO THE
AFFIDAVIT OF **MARK ROSSHIRT**
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.


A Commissioner for taking affidavits

Linda M. Roslata
Notary Public

my comm expires 10/5/18

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE PROPOSAL OF XAGENIC INC., OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**AFFIDAVIT OF EDWARD JONASSON
(Sworn August 4, 2017)**

I, **EDWARD JONASSON**, of the City of Toronto in the Province of Ontario, **MAKE OATH AND SAY as follows:**

1. I am the Chief Financial Officer of Xagenic Inc. ("**Xagenic**"), the debtor company in these proceedings and as such have personal knowledge of the matters deposed to in this Affidavit, or where I do not possess such personal knowledge, I have stated the source of my information, and in all such cases I believe both the information and the resulting statement to be true.
2. On August 1, 2017, Xagenic filed a notice of intention to make a proposal (the "**NOI**") pursuant to the *Bankruptcy and Insolvency Act* (Canada). A. Farber & Partners Inc. (the "**Proposal Trustee**") consented to act as trustee under the proposal. Attached and marked as **Exhibit "A"** is a true copy of the NOI.
3. This Affidavit is made in support of a motion seeking approval of interim financing, creating an administration charge in favour of the Proposal Trustee and the solicitors for the Proposal Trustee and Xagenic for fees and disbursements related to these proceedings and extending the stay of proceedings.

Xagenic's Business and History

4. Xagenic is a privately-held company based in Toronto, Ontario and registered under the Ontario *Business Corporations Act*.
5. Xagenic carries on business and maintains an office in Toronto. Xagenic has no other locations, and all management and finance functions are directed and controlled from the Toronto office. All of Xagenic's employees work out of the Toronto office.

6. Xagenic was founded and incorporated in 2010 and since that time has been in the business of developing molecular diagnostic systems. Molecular diagnostics are processes to analyse biological markers in genetic code that are used to diagnose and monitor disease, detect risk and assess appropriate treatment steps.
7. In particular, Xagenic is developing the Xagenic X1™ platform ("X1"). X1 is a lab-free platform with a time-to-result of 20 minutes that will allow tests to be conducted in real time at the point of care (i.e. the doctor's office). The intellectual property related to X1 is one of Xagenic's most significant assets. X1 will be the first platform of its kind, and Xagenic believes that there is a large market opportunity for this technology.

Capital Structure and Liquidity Crisis

8. Since 2010, Xagenic has raised approximately \$52.7 million from equity financing, approximately \$1.4 million in debt financing and \$2.053 million from convertible debenture financing. The total of all financing of approximately \$56.153 million was used to fund its business and the development of X1. These equity financings were raised through initial seed financing tranches (June 2010 and January 2011), Series A tranches of preferred shares (January and December 2012), and Series B and B-1 tranches of preferred shares (between November 2013 and April 2016). Debt financings were raised beginning in September 2010 through to June 2017. The secured convertible debenture funding closed two tranches in January 2017 and April 2017.
9. Since Xagenic's technology is in the development stages, it is currently dependent on raising funds through debt and equity in order to fund its operations.
10. Since September 2016, Xagenic has actively pursued new capital investors and strategic partners to raise Series C debenture financing or an acquisition of the company.
11. Since January 2017, Xagenic's current investors have funded its operations and capital requirements.
12. Between February 2017 and late July 2017, Xagenic and its management were in active discussions for financing or acquisitions. I participated in those discussions and based on those discussions, I believe that Xagenic is likely to be able to conclude a financing or sale, although it will require time to do so. Based on those discussions, and my

experience as a chartered accountant and chief financial officer, I do not believe that a transaction can be concluded before August 30, 2017, but I am optimistic that a transaction can be concluded.

13. In late July 2017, the investors determined that they were unable or unwilling to continue to fund Xagenic's operations outside a formal process, despite the interest received in Xagenic's discussions towards a potential financing or acquisition. Certain of the existing investors have already agreed to provide further financing in the course of these proceedings (as will be described further below).
14. The Xagenic board of directors determined that it was appropriate and necessary to file the NOI to allow Xagenic to continue to explore the financing or sale opportunities available to it.

Major Creditors

15. As of August 1, 2017, Xagenic's outstanding debt is approximately \$5.3 million.
16. Xagenic's secured creditors are:
 - (a) Silicon Valley Bank ("SVB"), owed approximately \$396,000;
 - (b) Xerox Canada Ltd., owed approximately \$1,300; and
 - (c) secured convertible debentures of approximately \$2.05 million held by various parties, including:
 - (i) Domain Partners VII, L.P., owed approximately \$712,000;
 - (ii) CTI Life Sciences Fund, L.P., owed approximately \$422,000;
 - (iii) Ontario Capital Growth Corp., owed approximately \$422,000;
 - (iv) BDC Capital Inc., owed approximately \$311,000; and
 - (v) Shana Kelley, owed approximately \$167,000.
17. I also hold a convertible debenture and Xagenic owes approximately \$10,000 on that debenture. All of the other debenture holders are owed less than \$6,000.

18. Attached and marked as **Exhibit "B"** is a true copy of the search results from the Ontario Personal Property Registry showing the *Personal Property Security Act* (Ontario) registrations against Xagenic.
19. The Ontario Ministry of Finance security registration is in respect of a judgment (of approximately \$8,900) it obtained against Xagenic. The judgment is in respect of Ontario employment health tax.
20. The Toronto Dominion Bank ("TD") also has a registered security interest. This security interest relates to Xagenic's corporate credit cards, and all amounts owed to TD in respect of these cards were repaid prior to the NOI filing. The corporate credit cards were cancelled on July 26, 2017. TD also holds a GIC as security for amounts owing on the cards. Based on my discussions with Xagenic's account manager at TD, I believe that TD will return the GIC 30 days following cancellation of the cards (late August 2017).
21. The other security registrations are in favour of the secured debentureholders, SVB and Xerox Canada Ltd.
22. Xagenic's significant unsecured creditors include:
 - (a) Federal Economic Development Agency (Federal Business Development Bank), owed approximately \$728,000;
 - (b) MaRS Investment Accelerator Fund Inc., owed approximately \$359,000; and
 - (c) Cooley LLP ("**Cooley**"), owed approximately \$350,000.
23. Cooley is Xagenic's legal counsel with respect to intellectual property issues. Cooley is responsible for maintaining all of Xagenic's intellectual property assets, including patents. Xagenic's intellectual property is its most significant asset.
24. Xagenic also owes Fujitsu Glovia, Inc. ("**FG**") approximately \$21,000 on an unsecured basis. Although the amount owed to FG is not substantial, relative to Xagenic's other debts, FG is one of Xagenic's key suppliers. FG provides Xagenic's accounting services and is critical to its ongoing operations.

25. International Point of Care Inc. (“**IPOC**”) assembles Xagenic’s cartridges. Xagenic owes IPOC approximately \$70,000. IPOC has one of Xagenic’s significant assets, a laser welder that IPOC uses to weld Xagenic’s cartridges.
26. Other significant suppliers and unsecured creditors that are important to Xagenic’s operations are Vexos, which builds Xagenic’s instruments and is owed approximately \$145,000 and Micralyne Inc., which supplies Xagenic with microchips and is owed approximately \$146,000.

DIP Financing

27. To facilitate Xagenic’s restructuring and these proceedings, certain debenture holders have agreed to provide Xagenic with interim financing (the “**DIP Financing**”).
28. Attached and marked as **Exhibit “C”** is a true copy of the term sheet for the DIP Financing (the “**DIP Term Sheet**”) dated July 31, 2017 between Xagenic as borrower and Shana Kelley, CTI Life Sciences Fund L.P. and BDC Capital Inc. (collectively, the “**Lenders**”) as lenders. Schedule A of the DIP Term Sheet has been partially redacted to protect confidential information that is commercially sensitive.
29. The key terms of the DIP Term Sheet include:
 - (a) the Lenders will provide a revolving demand facility up to \$500,000;
 - (b) additional lenders may participate with the consent of the Lenders;
 - (c) Xagenic will use the proceeds of advances to fund its operating expenses during these proceedings;
 - (d) the Lenders will be granted a priority charge securing all amounts owed to the Lenders, with priority over SVB in the amount of \$150,000, and the balance being subordinate to SVB but in priority to existing charges; and
 - (e) the Lenders’ agreement to make advances under the DIP Financing is conditional on the DIP Term Sheet being approved by the Court.
30. The Lenders are all current secured creditors of Xagenic, with each holding convertible debentures. Additional debenture holders may agree to provide Xagenic with interim financing on the same terms as the DIP Term Sheet.

31. In particular the Ontario Capital Growth Corporation ("**OCGC**") has historically matched investments made by CTI Life Sciences Fund L.P.; and Domain Partners VIII, L.P. (together with OCGC, the "**Additional Lenders**") has advised that they may be willing to contribute further funds. Together, the Additional Lenders may provide Xagenic with a further \$250,000 in interim financing.
32. The Additional Lenders would participate in the priority charge sought on this motion.
33. Xagenic seeks approval of a bifurcated priority charge in the amount of \$750,000 in favour of the Lenders and any Additional Lenders that advance funds pursuant to the Term Sheet (collectively, the "**DIP Lenders**"). Of this amount, \$150,000 will have priority over all existing security interests, and \$600,000 will have priority over all existing security interests, except the security interest in favour of SVB (subject to a review of SVB's security by the Proposal Trustee). This charge will be subordinate to the administration charge, as described below, in favour of the Proposal Trustee and Xagenic's solicitors. The DIP Lenders' charge will secure only amounts advanced after the Term Sheet is approved.
34. The Lenders have committed \$500,000 pursuant to the DIP Term Sheet. However, as set out above, Xagenic may obtain approximately \$250,000 in additional funds on the same terms and conditions.
35. Xagenic seeks a higher charge that is higher than the committed amounts set out in the DIP Term Sheet so that Xagenic can obtain additional financing on the same terms and conditions without incurring the expense of a further motion with respect to this financing. Xagenic is of the view that this will minimize expenses and allow key personnel to focus on Xagenic's ability to make a proposal to its creditors. The charge will also ensure that all fees and interest owing on the DIP Financing is secured.
36. Any additional financing would be obtained on the same terms and conditions as the DIP Term Sheet and would be provided by existing debentureholders, whose security will be subordinated in favour of the DIP Lenders charge. No other significant secured creditors will be subordinated as a result of the increased lending and the priority charge.

37. Xagenic, with the assistance of the Proposal Trustee, has prepared a cash flow forecast through October 27, 2017. The cash flow forecast will be attached to the report of the Proposal Trustee.
38. As set out in the cash flow forecast, Xagenic's primary uses of cash over this period will be the costs of ongoing operations (rent and payroll, including source deductions) and the professional fees and disbursements in connection with these proceedings.
39. The DIP Financing is a critical component of the cash flow statement. Without the DIP Financing, an immediate liquidation would be required. As set out below, that would result in a shortfall to Xagenic's secured creditors. Further, given the nature of Xagenic's business there are health and safety issues that require an orderly shutdown of Xagenic's business. The costs associated with that orderly shutdown are contemplated in the cash flow statement.

Restructuring Plans

40. Xagenic has cut staff in order to reduce costs and improve its ability to manage operations during these proceedings until a transaction can be concluded. At one time, Xagenic employed 60 people. All employees were terminated effective July 31, 2017. Xagenic now has six contract employees. These employees are necessary in order to maintain the lab (including for health and safety purposes) and to effectively and efficiently pursue a transaction. Xagenic also expects to bring certain employees back as needed on a contract basis to ensure that all medical waste and biohazardous material is handled safely and responsibly.
41. Xagenic is continuing to meet with various parties in an effort to determine the level of interest in a financing or acquisition, with a view to finalizing a term sheet and closing a financing or acquisition.
42. As noted above, based on the discussions to-date, I do not believe that a transaction can be concluded by August 30, 2017. Xagenic will require additional time to complete its discussions with interested parties and conclude the ultimate transaction. Accordingly, Xagenic seeks a 45 day extension of the stay of proceedings.

43. Through the transaction, Xagenic will seek to maximize recovery for its secured and unsecured creditors.
44. On a liquidation value, Xagenic's assets will be insufficient to repay Xagenic's secured creditors. Based on the likely liquidation value and my experience as a chartered accountant and my experience as a chief financial officer of multiple companies, I believe that a financing or acquisition transaction will maximize the potential recovery for Xagenic's secured and unsecured creditors and that this can be achieved by continuing operations through to conclusion of a transaction. In particular, it is important that all biohazardous material is handled in a safe and responsible manner and that all of Xagenic's intellectual property is maintained and protected.
45. Xagenic is optimistic that a financing or acquisition of the business will have the effect of improving its long term financial prospects while preserving value for all stakeholders. Xagenic's senior management are committed to guiding Xagenic through this proposal proceeding, and significant secured creditors are prepared to provide funding to allow Xagenic to pursue a transaction for the benefit of all stakeholders. Xagenic believes that the best way to preserve value for the company and its stakeholders is for the DIP Financing to be approved and the stay extended so that it may focus on its efforts towards a financing or sale.


Administration Charge

46. The Proposal Trustee has agreed to act as proposal trustee in these proceedings and to assist Xagenic with preparation of cash flow projections and all aspects in respect of its proposal.
47. The Proposal Trustee and Xagenic's solicitors are essential to Xagenic's efforts to conclude a financing or sale transaction. They have each advised that they are prepared to provide or continue to provide services to Xagenic only if they are protected with a charge over Xagenic's assets. Accordingly, Xagenic seeks to establish a priority charge over its assets in favour of its solicitors, the Proposal Trustee and the Proposal Trustee's solicitors.

48. The proposed charge in favour of the Proposal Trustee (and its solicitors) and Xagenic's solicitors is a bifurcated priority charge of \$190,000, with \$40,000 having priority over all existing security interests and \$150,000 having priority over all existing security interests, except the security interest in favour of SVB. This charge will have priority over the charge in favour of the DIP Lenders, as described above.
49. This charge amount has been determined not on the basis of the total fees payable to these professionals during these proceedings but on an assessment of what could be an amount outstanding to these professionals at any given time in the proceedings.

SWORN BEFORE ME at the City of
Toronto, in the Province of Ontario, this)
4th day of August 2017)

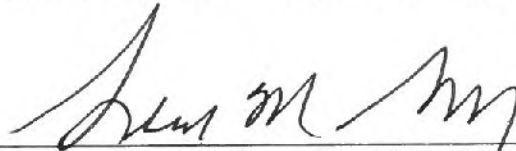
[Signature]
A Commissioner of Oaths in and for the
Province of Ontario


EDWARD JONASSON

Julie Laura Peacock, a Commissioner, etc.,
Province of Ontario, for Borden Ladner Gervais LLP,
Barristers and Solicitors.
Expires March 19, 2018.

Tab D

THIS IS EXHIBIT "D" TO THE
AFFIDAVIT OF MARK ROSSHIRT
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.



A Commissioner for taking affidavits

Linda M. Roschick

Notary Public

My Comm Expires 10/5/18

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (this "Agreement") dated as of March 13, 2015 (the "Effective Date") by and between SILICON VALLEY BANK, a California corporation with a loan production office located at 275 Grove Street, Suite 2-200, Newton, Massachusetts 02466 ("Bank"), and XAGENIC INC., a corporation organized under the laws of the Province of Ontario ("Borrower") provides the terms on which Bank shall lend to Borrower and Borrower shall repay Bank. The parties agree as follows:

1 ACCOUNTING AND OTHER TERMS

Accounting terms not defined in this Agreement shall be construed following GAAP. Calculations and determinations must be made following GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "Dollars" or "\$" are United States Dollars, unless otherwise noted.

2 LOAN AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay Bank the outstanding principal amount of all Credit Extensions and accrued and unpaid interest thereon as and when due in accordance with this Agreement.

2.1.1 Revolving Advances.

(a) Availability. Subject to the terms and conditions of this Agreement, Bank shall make Advances not exceeding the Availability Amount. Amounts borrowed under the Revolving Line may be repaid and, prior to the Revolving Line Maturity Date, reborrowed, subject to the applicable terms and conditions precedent herein.

(b) Termination; Repayment. The Revolving Line terminates on the Revolving Line Maturity Date, when the principal amount of all Advances, the unpaid interest thereon, and all other Obligations relating to the Revolving Line shall be immediately due and payable.

2.2 Overadvances. If, at any time, the outstanding principal amount of any Advances exceeds the lesser of either the Revolving Line or the Borrowing Base, Borrower shall immediately pay to Bank in cash the amount of such excess (such excess, the "Overadvance"). Without limiting Borrower's obligation to repay Bank any Overadvance, Borrower agrees to pay Bank interest on the outstanding amount of any Overadvance, on demand, at the Default Rate.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Revolving Line shall accrue interest at a floating per annum rate equal to one and three-quarters of one percent (1.75%) above the Prime Rate, which interest shall be payable monthly in accordance with Section 2.3(d) below.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall bear interest at a rate per annum which is five percent (5.0%) above the rate that is otherwise applicable thereto (the "Default Rate"). Fees and expenses which are required to be paid by Borrower pursuant to the Loan Documents (including, without limitation, Bank Expenses) but are not paid when due shall bear interest until paid at a rate equal to the highest rate applicable to the Obligations. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Bank.

(c) Adjustment to Interest Rate. Changes to the interest rate of any Credit Extension based on changes to the Prime Rate shall be effective on the effective date of any change to the Prime Rate and to the extent of any such change.

(d) Payment; Interest Computation. Interest is payable monthly on the first calendar day of each month and shall be computed on the basis of a 360-day year for the actual number of days elapsed. In computing interest, (i) all payments received after 12:00 p.m. Eastern time on any day shall be deemed received at the opening of business on the next Business Day, and (ii) the date of the making of any Credit Extension shall be included and the date of payment shall be excluded; provided, however, that if any Credit Extension is repaid on the same day on which it is made, such day shall be included in computing interest on such Credit Extension.

2.4 Fees. Borrower shall pay to Bank:

(a) Commitment Fee. A fully earned, non-refundable commitment fee of Nine Thousand Three Hundred Seventy-Five Thousand Dollars (\$9,375.00), on the Effective Date;

(b) Bank Expenses. All Bank Expenses (including reasonable attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due (or, if no stated due date, upon demand by Bank); and

(c) Fees Fully Earned. Unless otherwise provided in this Agreement or in a separate writing by Bank, Borrower shall not be entitled to any credit, rebate, or repayment of any fees earned by Bank pursuant to this Agreement notwithstanding any termination of this Agreement or the suspension or termination of Bank's obligation to make loans and advances hereunder. Bank may deduct amounts owing by Borrower under the clauses of this Section 2.4 pursuant to the terms of Section 2.5(c). Bank shall provide Borrower written notice of deductions made from the Designated Deposit Account pursuant to the terms of the clauses of this Section 2.4.

2.5 Payments; Application of Payments; Debit of Accounts.

(a) All payments to be made by Borrower under any Loan Document shall be made in immediately available funds in Dollars, without setoff or counterclaim, before 12:00 p.m. Eastern time on the date when due. Payments of principal and/or interest received after 12:00 p.m. Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment shall be due the next Business Day, and additional fees or interest, as applicable, shall continue to accrue until paid.

(b) Bank has the exclusive right to determine the order and manner in which all payments with respect to the Obligations may be applied. Borrower shall have no right to specify the order or the accounts to which Bank shall allocate or apply any payments required to be made by Borrower to Bank or otherwise received by Bank under this Agreement when any such allocation or application is not specified elsewhere in this Agreement.

(c) Bank may debit any of Borrower's deposit accounts, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes Bank when due. These debits shall not constitute a set-off.

2.6. Withholding. Payments received by Bank from Borrower under this Agreement will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any Governmental Authority (including any interest, additions to tax or penalties applicable thereto). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to Bank, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, Bank receives a net sum equal to the sum which it would have received had no withholding or deduction been required, and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority. Borrower will, upon request, furnish

Bank with proof reasonably satisfactory to Bank indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement.

3 CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Bank's obligation to make the initial Credit Extension is subject to the condition precedent that Bank shall have received, in form and substance satisfactory to Bank, such documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate, including, without limitation:

- (a) duly executed original signatures to the Loan Documents;
- (b) the Operating Documents and certificate of status of Borrower certified by the Ontario Ministry of Government Services as of a date no earlier than thirty (30) days prior to the Effective Date;
- (c) duly executed original signatures to the completed Borrowing Resolutions for Borrower;
- (d) an officer's certificate of the Borrower with respect to its articles of incorporation, by-laws, shareholder agreement, incumbency and resolutions authorizing the execution and delivery of this Agreement and the other Loan Documents;
- (e) certified copies, dated as of a recent date, of financing statement searches, as Bank may request, accompanied by written evidence (including any PPSA termination statements or PPSA confirmations, as applicable) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;
- (f) the Perfection Certificate of Borrower, together with the duly executed original signature thereto;
- (g) a Notice of Assignment of Tax Credits (federal and provincial) by the Borrower, together with the duly executed original signatures of the Borrower thereto;
- (h) a landlord's consent in favor of Bank in respect of the Borrower's leased location by the landlord thereof, together with the duly executed original signatures thereto;
- (i) approval and waiver agreement from the Health Technology Exchange;
- (j) evidence satisfactory to Bank that the insurance policies and endorsements required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing lender loss payable and/or additional insured clauses or endorsements in favor of Bank; and
- (k) payment of the fees and Bank Expenses then due as specified in Section 2.4 hereof.

3.2 Conditions Precedent to all Credit Extensions. Bank's obligations to make each Credit Extension, including the initial Credit Extension, is subject to the following conditions precedent:

- (a) except as otherwise provided in Section 3.4, timely receipt of an executed Payment/Advance Form;
- (b) the representations and warranties in this Agreement shall be true, accurate, and complete in all material respects on the date of the Payment/Advance Form and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that

already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in this Agreement remain true, accurate, and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) Bank determines to its satisfaction that there has not been any material impairment in the general affairs, management, results of operation, financial condition or the prospect of repayment of the Obligations, or any material adverse deviation by Borrower from the most recent business plan of Borrower presented to and accepted by Bank; and

(d) Receipt of a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the prior month).

3.3 Covenant to Deliver. Borrower agrees to deliver to Bank each item required to be delivered to Bank under this Agreement as a condition precedent to any Credit Extension. Borrower expressly agrees that a Credit Extension made prior to the receipt by Bank of any such item shall not constitute a waiver by Bank of Borrower's obligation to deliver such item, and the making of any Credit Extension in the absence of a required item shall be in Bank's sole discretion.

3.4 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Credit Extension set forth in this Agreement, to obtain a Credit Extension, Borrower shall notify Bank (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 12:00 p.m. Eastern time on the Funding Date of the Credit Extension. Together with any such electronic or facsimile notification, Borrower shall deliver to Bank by electronic mail or facsimile a completed Payment/Advance Form executed by a Responsible Officer or his or her designee. Bank may rely on any telephone notice given by a person whom Bank believes is a Responsible Officer or designee. Bank shall credit the Credit Extensions to the Designated Deposit Account. Bank may make Credit Extensions under this Agreement based on instructions from a Responsible Officer or his or her designee or without instructions if the Credit Extensions are necessary to meet Obligations which have become due.

4 CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

Borrower and Bank acknowledge that (a) Borrower represents that it has rights in the Collateral, (b) Bank has given value to Borrower, (c) the parties have not agreed to postpone the time for attachment of the security interest, and (d) the security interest is intended to attach (i) as to Collateral in which Borrower now has rights, when Borrower executes this Agreement and (ii) as to Collateral in which Borrower subsequently acquires rights, when Borrower first obtains those rights.

Borrower acknowledges that it previously has entered, and/or may in the future enter, into Bank Services Agreements with Bank. Regardless of the terms of any Bank Services Agreement, Borrower agrees that any amounts Borrower owes Bank thereunder shall be deemed to be Obligations hereunder and that it is the intent of Borrower and Bank to have all such Obligations secured by the first priority perfected security interest in the Collateral granted herein (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien in this Agreement).

If this Agreement is terminated, Bank's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as Bank's obligation to make Credit Extensions has terminated, Bank shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower. In the event (x) all Obligations (other than inchoate indemnity obligations), except for Bank Services, are satisfied in full, and (y) this Agreement is terminated, Bank shall terminate the security interest granted herein upon Borrower providing cash collateral acceptable to Bank in its good faith business judgment for Bank Services, if any. In the event such Bank Services consist of outstanding Letters of Credit, Borrower shall provide to Bank cash collateral in an amount equal to (x) if such Letters of Credit are denominated in Dollars, then at least one hundred five percent (105.0%); and (y) if such Letters of Credit are denominated in a Foreign Currency, then at least one hundred ten percent (110.0%), of the Dollar Equivalent of the face amount of all such Letters of Credit plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its business judgment), to secure all of the Obligations relating to such Letters of Credit.

4.2 Priority of Security Interest. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral (subject only to Permitted Liens that are permitted pursuant to the terms of this Agreement to have superior priority to Bank's Lien under this Agreement). If Borrower shall acquire a commercial tort claim, Borrower shall promptly notify Bank in a writing signed by Borrower of the general details thereof and grant to Bank in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Bank.

4.3 Authorization to File Financing Statements. Borrower hereby authorizes Bank to file financing statements, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Bank's interest or rights hereunder, including a notice that any disposition of the Collateral, by either Borrower or any other Person, shall be deemed to violate the rights of Bank under the Code. Such financing statements may indicate the Collateral as "all assets of the Debtor" or words of similar effect, or as being of an equal or lesser scope, or with greater detail, all in Bank's discretion.

5 REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants as follows:

5.1 Due Organization, Authorization; Power and Authority. Borrower is duly existing and in good standing in its jurisdiction of formation and is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its business or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a material adverse effect on Borrower's business. In connection with this Agreement, Borrower has delivered to Bank a completed certificate signed by Borrower, entitled "Perfection Certificate". Borrower represents and warrants to Bank that (a) Borrower's exact legal name is that indicated on the Perfection Certificate and on the signature page hereof; (b) Borrower is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate; (c) the Perfection Certificate accurately sets forth Borrower's organizational identification number or accurately states that Borrower has none; (d) the Perfection Certificate accurately sets forth Borrower's place of business, or, if more than one, its chief executive office as well as Borrower's mailing address (if different than its chief executive office); (e) Borrower (and each of its predecessors) has not, in the past five (5) years, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificate pertaining to Borrower and each of its Subsidiaries is accurate and complete (it being understood and agreed that Borrower may from time to time update certain information in the Perfection Certificate after the Effective Date to the extent permitted by one or more specific provisions in this Agreement). If Borrower is not now a Registered Organization but later becomes one, Borrower shall promptly notify Bank of such occurrence and provide Bank with Borrower's organizational identification number.

The execution, delivery and performance by Borrower of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's organizational documents, (ii) contravene, conflict with, constitute a default under or violate any material Requirement of Law, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental

Authority by which Borrower or any of its Subsidiaries or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect), or (v) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any material agreement by which Borrower is bound. Borrower is not in default under any agreement to which it is a party or by which it is bound in which the default could reasonably be expected to have a material adverse effect on Borrower's business.

5.2 Collateral. Borrower has good title to, rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien hereunder, free and clear of any and all Liens except Permitted Liens. Borrower has no Collateral Accounts at or with any bank or financial institution other than Bank or Bank's Affiliates except for the Collateral Accounts described in the Perfection Certificate delivered to Bank in connection herewith and which Borrower has taken such actions as are necessary to give Bank a perfected security interest therein, pursuant to the term of Section 6.6(b). The Accounts are bona fide, existing obligations of the Account Debtors.

The Collateral is not in the possession of any third party bailee (such as a warehouse) except as otherwise provided in the Perfection Certificate. None of the components of the Collateral shall be maintained at locations other than as provided in the Perfection Certificate or as permitted pursuant to Section 7.2.

All Inventory is in all material respects of good and marketable quality, free from material defects.

Borrower is the sole owner of the Intellectual Property which it owns or purports to own except for (a) non-exclusive licenses granted to its customers in the ordinary course of business, (b) over-the-counter software that is commercially available to the public, and (c) material Intellectual Property licensed to Borrower and noted on the Perfection Certificate. Each Patent which it owns or purports to own and which is material to Borrower's business is valid and enforceable, and no part of the Intellectual Property which Borrower owns or purports to own and which is material to Borrower's business has been judged invalid or unenforceable, in whole or in part. To the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property violates the rights of any third party except to the extent such claim would not reasonably be expected to have a material adverse effect on Borrower's business.

Except as noted on the Perfection Certificate, Borrower is not a party to, nor is it bound by, any Restricted License.

5.3 Litigation. There are no actions or proceedings pending or, to the knowledge of any Responsible Officer, threatened in writing by or against Borrower or any of its Subsidiaries involving more than, individually or in the aggregate, Fifty Thousand Dollars (\$50,000.00).

5.4 Financial Statements; Financial Condition. All consolidated financial statements for Borrower and any of its Subsidiaries delivered to Bank fairly present in all material respects Borrower's consolidated financial condition and Borrower's consolidated results of operations. There has not been any material deterioration in Borrower's consolidated financial condition since the date of the most recent financial statements submitted to Bank.

5.5 Solvency. The fair salable value of Borrower's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of Borrower's liabilities; Borrower is not left with unreasonably small capital after the transactions in this Agreement; and Borrower is able to pay its debts (including trade debts) as they mature.

5.6 Regulatory Compliance. Borrower is not an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Borrower is not engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower (a) has complied in all material respects with all Requirements of Law, and (b) has not violated any Requirements of Law the violation of which could reasonably be expected to have a

material adverse effect on its business. None of Borrower's or any of its Subsidiaries' properties or assets has been used by Borrower or any Subsidiary or, to the best of Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than legally. Borrower and each of its Subsidiaries have obtained all consents, approvals and authorizations of, made all declarations or filings with, and given all notices to, all Government Authorities that are necessary to continue their respective businesses as currently conducted.

5.7 Subsidiaries; Investments. Borrower does not own any stock, partnership, or other ownership interest or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except (a) to the extent such taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserve or other appropriate provision, if any, as shall be required in conformity with GAAP shall have been made therefor, or (b) if such taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed Five Thousand Dollars (\$5,000.00).

To the extent Borrower defers payment of any contested taxes, Borrower shall (i) notify Bank in writing of the commencement of, and any material development in, the proceedings, and (ii) post bonds or take any other steps required to prevent the governmental authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. Borrower has paid all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms, and Borrower has not withdrawn from participation in, and has not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions as working capital and to fund its general business requirements and not for personal, family, household or agricultural purposes.

5.10 Full Disclosure. No written representation, warranty or other statement of Borrower in any certificate or written statement given to Bank, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Bank, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not misleading (it being recognized by Bank that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.11 Definition of "Knowledge." For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of any Responsible Officer.

5.12 Eligible Tax Credits. Bank has been granted, prior to any Eligible Accrued Tax Credits and/or Eligible Filed Tax Credits being included in any Borrowing Base Certificate, a first priority security interest under the laws of the Province of Ontario, on all claims, receivables and Eligible Accrued Tax Credits and/or Eligible Filed Tax Credits, present and future, of Borrower, which security interest shall have been registered under the Code.

6 AFFIRMATIVE COVENANTS

Borrower shall do all of the following:

6.1 Government Compliance. Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of formation and maintain qualification in each jurisdiction in which the failure to so qualify would reasonably be expected to have a material adverse effect on Borrower's business or operations. Borrower shall comply, and have each Subsidiary comply, in all material respects, with all laws, ordinances and regulations to which it is subject.

6.2 Financial Statements, Reports, Certificates. Provide Bank with the following:

(a) Borrowing Base Certificate. Within thirty (30) days after the last day of each month, a duly completed Borrowing Base Certificate signed by a Responsible Officer;

(b) Monthly Financial Statements. (i) Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the prior month), and (ii) as soon as available, but no later than thirty (30) days after the last day of each month in which any Advances are outstanding, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "Monthly Financial Statements");

(c) Monthly Compliance Certificate. Within thirty (30) days after the last day of each month and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank may reasonably request;

(d) Board-Approved Projections. As soon as available, but no later than thirty (30) days after the last day of Borrower's fiscal year, and contemporaneously with any updates thereto, Board-approved projections as to the then current fiscal year in a form acceptable to Bank;

(e) Annual Audited Financial Statements. As soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion on the financial statements from an independent certified public accounting firm reasonably acceptable to Bank;

(f) Other Statements. Within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or to any holders of Subordinated Debt;

(g) SEC Filings. In the event that Borrower becomes subject to the reporting requirements under the Exchange Act within five (5) days of filing, copies of all periodic and other reports, proxy statements and other materials filed by Borrower with the SEC, any Governmental Authority succeeding to any or all of the functions of the SEC or with any national securities exchange, or distributed to its shareholders, as the case may be. Documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the Internet at Borrower's website address; provided, however, Borrower shall promptly notify Bank in writing (which may be by electronic mail) of the posting of any such documents;

(h) Legal Action Notice. A prompt report of any legal actions pending or threatened in writing against Borrower or any of its Subsidiaries that could result in damages or costs to Borrower or any of its Subsidiaries of, individually or in the aggregate, Fifty Thousand Dollars (\$50,000.00) or more; and

(i) Other Financial Information. Other financial information reasonably requested by Bank.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower and its Account Debtors shall follow Borrower's customary

practices as they exist at the Effective Date. Borrower must promptly notify Bank of all returns, recoveries, disputes and claims that involve more than One Hundred Thousand Dollars (\$100,000.00).

6.4 Taxes; Pensions. Timely file, and require each of its Subsidiaries to timely file, all required tax returns and reports and timely pay, and require each of its Subsidiaries to timely pay, all foreign, federal, state, provincial, and local taxes, assessments, deposits and contributions owed by Borrower and each of its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Bank, on demand, appropriate certificates attesting to such payments, and pay all amounts necessary to fund all present pension, profit sharing and deferred compensation plans in accordance with their terms.

6.5 Insurance.

(a) Keep its business and the Collateral insured for risks and in amounts standard for companies in Borrower's industry and location and as Bank may reasonably request. Insurance policies shall be in a form, with financially sound and reputable insurance companies that are not Affiliates of Borrower, and in amounts that are satisfactory to Bank. All property policies shall have a lender's loss payable endorsement showing Bank as lender loss payee. All liability policies shall show, or have endorsements showing, Bank as an additional insured. Bank shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral.

(b) Ensure that proceeds payable under any property policy are, at Bank's option, payable to Bank on account of the Obligations.

(c) At Bank's request, Borrower shall deliver certified copies of insurance policies and evidence of all premium payments. Each provider of any such insurance required under this Section 6.5 shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to Bank, that it will give Bank thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. If Borrower fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons and Bank, Bank may make all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Bank deems prudent.

6.6 Operating Accounts.

(a) Maintain all of its and all of its Subsidiaries' U.S. operating, depository, and securities accounts with Bank and Bank's Affiliates.

(b) Provide Bank five (5) days prior written notice before establishing any Collateral Account at or with any bank or financial institution other than Bank or Bank's Affiliates. For each Collateral Account that Borrower at any time maintains, Borrower shall cause the applicable bank or financial institution (other than Bank) at or with which any Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Bank's Lien in such Collateral Account in accordance with the terms hereunder which Control Agreement may not be terminated without the prior written consent of Bank. The provisions of the previous sentence shall not apply to deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's employees and identified to Bank by Borrower as such.

6.7 Protection of Intellectual Property Rights.

(a) (i) Protect, defend and maintain the validity and enforceability of its material Intellectual Property; (ii) promptly advise Bank in writing of material infringements or any other event that could reasonably be expected to materially and adversely affect the value of its Intellectual Property; and (iii) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Bank's written consent.

(b) Provide written notice to Bank within ten (10) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Borrower shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for (i) any Restricted License to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) Bank to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with Bank's rights and remedies under this Agreement and the other Loan Documents.

6.8 Litigation Cooperation. From the date hereof and continuing through the termination of this Agreement, make available to Bank, without expense to Bank, Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Bank may deem them reasonably necessary to prosecute or defend any third-party suit or proceeding instituted by or against Bank with respect to any Collateral or relating to Borrower.

6.9 Access to Collateral; Books and Records. Allow Bank, or its agents, at reasonable times, on one (1) Business Day's notice (provided no notice is required if an Event of Default has occurred and is continuing), to inspect the Collateral and audit and copy Borrower's Books. Such inspections or audits shall be conducted no more often than once every six (6) months unless an Event of Default has occurred and is continuing in which case such inspections and audits shall occur as often as Bank shall determine is necessary. The foregoing inspections and audits shall be at Borrower's expense, and the charge therefor shall be Eight Hundred Fifty Dollars (\$850.00) per person per day (or such higher amount as shall represent Bank's then-current standard charge for the same), plus reasonable out-of-pocket expenses.

6.10 Eligible Tax Credits. Borrower hereby undertakes to forward to Bank, within ten (10) days, any check or amount received from any taxing authority with respect to the Eligible Accrued Tax Credits and/or Eligible Filed Tax Credits listed in the then applicable Borrowing Base Certificate in reduction of the outstanding balance owing with respect to such Eligible Accrued Tax Credits and/or Eligible Filed Tax Credits. The failure by Borrower to do so within ten (10) days following receipt of any such check or amount shall constitute an immediate Event of Default for which there shall be no grace or cure period.

6.11 Further Assurances. Execute any further instruments and take further action as Bank reasonably requests to perfect or continue Bank's Lien in the Collateral or to effect the purposes of this Agreement.

7 NEGATIVE COVENANTS

Borrower shall not do any of the following without Bank's prior written consent:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "Transfer"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business; (b) of worn-out or obsolete Equipment that is, in the reasonable judgment of Borrower, no longer economically practicable to maintain or useful in the ordinary course of business of Borrower; (c) consisting of Permitted Liens and Permitted Investments; (d) consisting of the sale or issuance of any stock of Borrower permitted under Section 7.2 of this Agreement; (e) consisting of Borrower's use or transfer of money or Cash Equivalents in the ordinary course of its business for the payment of ordinary course business expenses in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; and (f) of non-exclusive licenses for the use of the property of Borrower or its Subsidiaries in the ordinary course of business.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses currently engaged in by Borrower and such Subsidiary, as applicable, or reasonably related thereto; (b) liquidate or dissolve; or (c) (i) fail to provide notice to Bank of any Key Person departing from or ceasing to be employed by Borrower within five (5) days after his or her departure from Borrower; or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty percent (40%) of the voting stock of Borrower immediately after giving effect to such transaction or related

series of such transactions (other than by the sale of Borrower's equity securities in a public offering or to venture capital or private equity investors so long as Borrower identifies to Bank the venture capital or private equity investors at least seven (7) Business Days prior to the closing of the transaction and provides to Bank a description of the material terms of the transaction).

Borrower shall not, without at least fifteen (15) days prior written notice to Bank: (1) add any new offices or business locations, including warehouses (unless such new offices or business locations contain less than Ten Thousand Dollars (\$10,000.00) in Borrower's assets or property) or deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Twenty-Five Thousand Dollars (\$25,000.00) to a bailee at a location other than to a bailee and at a location already disclosed in the Perfection Certificate, (2) change its jurisdiction of organization or change the jurisdiction of its chief executive office, (3) change its organizational structure or type, (4) change its legal name, or (5) change any organizational number (if any) assigned by its jurisdiction of organization. If Borrower intends to deliver any portion of the Collateral valued, individually or in the aggregate, in excess of Twenty-Five Thousand Dollars (\$25,000.00) to a bailee, and Bank and such bailee are not already parties to a bailee agreement governing both the Collateral and the location to which Borrower intends to deliver the Collateral, then Borrower will first receive the written consent of Bank, and such bailee shall execute and deliver a bailee agreement in form and substance satisfactory to Bank.

7.3 Mergers or Acquisitions. Merge, amalgamate or consolidate, or permit any of its Subsidiaries to merge, amalgamate or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock or property of another Person (including, without limitation, by the formation of any Subsidiary). A Subsidiary may merge, amalgamate or consolidate into another Subsidiary or into Borrower.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts, or permit any of its Subsidiaries to do so, except for Permitted Liens, permit any Collateral not to be subject to the first priority security interest granted herein, or enter into any agreement, document, instrument or other arrangement (except with or in favor of Bank) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower or any Subsidiary from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or any Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "Permitted Liens" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6(b) hereof.

7.7 Distributions; Investments. (a) Pay any dividends or make any distribution or payment or redeem, retire or purchase any capital stock; or (b) directly or indirectly make any Investment (including, without limitation, by the formation of any Subsidiary) other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit to exist any material transaction with any Affiliate of Borrower, except for transactions that are in the ordinary course of Borrower's business, upon fair and reasonable terms that are no less favorable to Borrower than would be obtained in an arm's length transaction with a non-affiliated Person.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof, provide for earlier or greater principal, interest, or other payments thereon, or adversely affect the subordination thereof to Obligations owed to Bank.

8 EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "Event of Default") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension when due, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day cure period shall not apply to payments due on the Revolving Line Maturity Date). During the cure period, the failure to make or pay any payment specified under clause (b) hereunder is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower fails or neglects to perform any obligation in Sections 6.2, 6.4, 6.5, 6.6, 6.7(b), 6.10, or violates any covenant in Section 7 (provided, however, for Section 6.2 Borrower shall fail to cure such default within three (3) Business Days); or

(b) Borrower fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period);

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or of any entity under the control of Borrower (including a Subsidiary), or (ii) a notice of lien or levy is filed against any of Borrower's assets by any Governmental Authority, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; or

(b) (i) any material portion of Borrower's assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower from conducting all or any material part of its business;

8.5 Insolvency. (a) Borrower is unable to pay its debts (including trade debts) as they become due or otherwise becomes insolvent; (b) Borrower begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower and is not dismissed or stayed within thirty (30) days (but no Credit Extensions shall be made while any of the conditions described in clause (a) exist and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is, under any agreement to which Borrower is a party with a third party or parties, (a) any default resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount individually or in the aggregate in excess of Fifty Thousand Dollars (\$50,000.00); or (b) any breach or default by Borrower, the result of which could have a material adverse effect on Borrower's business;

8.7 Judgments; Penalties. One or more fines, penalties or final judgments, orders or decrees for the payment of money in an amount, individually or in the aggregate, of at least Fifty Thousand Dollars (\$50,000.00)

(not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower by any Governmental Authority, and the same are not, within ten (10) days after the entry, assessment or issuance thereof, discharged, satisfied, or paid, or after execution thereof, stayed or bonded pending appeal, or such judgments are not discharged prior to the expiration of any such stay (provided that no Credit Extensions will be made prior to the satisfaction, payment, discharge, stay, or bonding of such fine, penalty, judgment, order or decree);

8.8 Misrepresentations. Borrower or any Person acting for Borrower makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Bank or to induce Bank to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made; or

8.9 Subordinated Debt. Any document, instrument, or agreement evidencing any Subordinated Debt shall for any reason be revoked or invalidated or otherwise cease to be in full force and effect, any Person shall be in breach thereof or contest in any manner the validity or enforceability thereof or deny that it has any further liability or obligation thereunder, or the Obligations shall for any reason be subordinated or shall not have the priority contemplated by this Agreement.

9 BANK'S RIGHTS AND REMEDIES

9.1 Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default, Bank may, without notice or demand, do any or all of the following:

(a) declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations are immediately due and payable without any action by Bank);

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Bank;

(c) for any Letters of Credit, demand that Borrower (i) deposit cash with Bank in an amount equal to (A) one hundred five percent (105.0%) of the face amount of all such Letters of Credit denominated in Dollars, and (B) one hundred ten percent (110.0%) of the face amount of all such Letters of Credit denominated in a Foreign Currency of the Dollar Equivalent of the aggregate face amount of all Letters of Credit remaining undrawn (plus all interest, fees, and costs due or to become due in connection therewith (as estimated by Bank in its good faith business judgment)), to secure all of the Obligations relating to such Letters of Credit, as collateral security for the repayment of any future drawings under such Letters of Credit, and Borrower shall forthwith deposit and pay such amounts, and (ii) pay in advance all letter of credit fees scheduled to be paid or payable over the remaining term of any Letters of Credit;

(d) terminate any FX Contracts;

(e) verify the amount of, demand payment of and performance under, and collect any Accounts and General Intangibles, settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Bank considers advisable, and notify any Person owing Borrower money of Bank's security interest in such funds;

(f) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Bank requests and make it available as Bank designates. Bank may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase, contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Bank a license to enter and occupy any of its premises, without charge, to exercise any of Bank's rights or remedies;

(g) apply to the Obligations any (i) balances and deposits of Borrower it holds, or (ii) amount held by Bank owing to or for the credit or the account of Borrower;

(h) seize, ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. Bank is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's labels, Patents, Copyrights, mask works, rights of use of any name, trade secrets, trade names, Trademarks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Bank's exercise of its rights under this Section, Borrower's rights under all licenses and all franchise agreements inure to Bank's benefit;

(i) place a "hold" on any account maintained with Bank and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(j) demand and receive possession of Borrower's Books;

(k) obtain from any court of competent jurisdiction an order for the sale or foreclosure of any or all of the Collateral;

(l) appoint in writing a receiver or receiver and manager (a "Receiver") for all or any part of the Collateral who shall be vested with all of the Bank's rights and remedies under this Agreement, at law or in equity. Any such Receiver, with respect to responsibility for its acts, shall, to the extent permitted by applicable law, be deemed to the agent of the Borrower and not the Bank;

(m) obtain from any court of competent jurisdiction an order for the appointment of a Receiver of the Borrower or of any or all of the Collateral;

(n) to the extent permitted by applicable law, realize on any or all of the Collateral and sell, lease, assign, give options to purchase, or otherwise dispose of and deliver any or all of the Collateral (or contract to do any of the above), in one or more parcels at any public or private sale, on such terms and conditions as the Bank may deem advisable and at such prices as it may deem best; and

(o) exercise all rights and remedies available to Bank under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

9.2 Power of Attorney. Borrower hereby irrevocably appoints Bank as its lawful attorney-in-fact, exercisable only upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Bank determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Bank or a third party as the Code permits. Borrower hereby appoints Bank as its lawful attorney-in-fact to sign Borrower's name on any documents necessary to perfect or continue the perfection of Bank's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations have been satisfied in full and Bank is under no further obligation to make Credit Extensions hereunder. Bank's foregoing appointment as Borrower's attorney in fact, and all of Bank's rights and powers, coupled with an interest, are irrevocable until all Obligations have been fully repaid and performed and Bank's obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower fails to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower is obligated to pay under this Agreement or any other Loan Document or which may be required to preserve the Collateral, Bank may obtain such insurance or make such payment, and all amounts so paid by Bank are Bank Expenses and immediately due and payable, bearing interest at the then highest rate applicable to the Obligations, and secured by the Collateral. Bank will make reasonable efforts to provide Borrower with notice of Bank obtaining such insurance at the time it is

obtained or within a reasonable time thereafter. No payments by Bank are deemed an agreement to make similar payments in the future or Bank's waiver of any Event of Default.

9.4 Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, Bank shall have the right to apply in any order any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Accounts or other disposition of the Collateral, or otherwise, to the Obligations. Bank shall pay any surplus to Borrower by credit to the Designated Deposit Account or to other Persons legally entitled thereto; Borrower shall remain liable to Bank for any deficiency. If Bank, directly or indirectly, enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, Bank shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by Bank of cash therefor.

9.5 Bank's Liability for Collateral. So long as Bank complies with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Bank, Bank shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Bank's failure, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Bank thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Bank's rights and remedies under this Agreement and the other Loan Documents are cumulative. Bank has all rights and remedies provided under the Code, by law, or in equity. Bank's exercise of one right or remedy is not an election and shall not preclude Bank from exercising any other remedy under this Agreement or other remedy available at law or in equity, and Bank's waiver of any Event of Default is not a continuing waiver. Bank's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by Bank on which Borrower is liable.

10 NOTICES

All notices, consents, requests, approvals, demands, or other communication by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. or Canadian mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by electronic mail or facsimile transmission; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Bank or Borrower may change its mailing or electronic mail address or facsimile number by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower: Xagenic Inc.
55 York Street, Suite 1000
Toronto, Ontario, Canada M5J1R7
Attn: _____
Fax: _____
Email: _____

If to Bank: Silicon Valley Bank
275 Grove Street, Suite 2-200
Newton, Massachusetts 02466
Attn: Mr. Tony Barkett
Fax: _____
Email: tbarkett@svb.com

with a copy to: Riemer & Braunstein LLP
Three Center Plaza
Boston, Massachusetts 02108
Attn: David A. Ephraim, Esquire
Fax: (617) 692-3455
Email: DEphraim@riemerlaw.com

11 CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

Massachusetts law governs the Loan Documents without regard to principles of conflicts of law. Borrower and Bank each submit to the exclusive jurisdiction of the State and Federal courts in Boston, Massachusetts; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Bank from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Bank. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND BANK EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

This Section 11 shall survive the termination of this Agreement.

12 GENERAL PROVISIONS

12.1 Termination Prior to Revolving Line Maturity Date; Survival. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to its terms and all Obligations have been satisfied. So long as Borrower has satisfied the Obligations (other than inchoate indemnity obligations, and any other obligations which, by their terms, are to survive the termination of this Agreement, and any Obligations under Bank Services Agreements that are cash collateralized in accordance with Section 4.1 of this Agreement), this Agreement may be terminated prior to the Revolving Line Maturity Date by Borrower, effective three (3) Business Days after written notice of termination is given to Bank. Those obligations

that are expressly specified in this Agreement as surviving this Agreement's termination shall continue to survive notwithstanding this Agreement's termination.

12.2 Successors and Assigns. This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not assign this Agreement or any rights or obligations under it without Bank's prior written consent (which may be granted or withheld in Bank's discretion). Bank has the right, without the consent of or notice to Borrower, to sell, transfer, assign, negotiate, or grant participation in all or any part of, or any interest in, Bank's obligations, rights, and benefits under this Agreement and the other Loan Documents.

12.3 Indemnification. Borrower agrees to indemnify, defend and hold Bank and its directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Bank (each, an "**Indemnified Person**") harmless against: (i) all obligations, demands, claims, and liabilities (collectively, "**Claims**") claimed or asserted by any other party in connection with the transactions contemplated by the Loan Documents; and (ii) all losses or expenses (including Bank Expenses) in any way suffered, incurred, or paid by such Indemnified Person as a result of, following from, consequential to, or arising from transactions between Bank and Borrower (including reasonable attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct.

This Section 12.3 shall survive until all statutes of limitation with respect to the Claims, losses, and expenses for which indemnity is given shall have run.

12.4 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.5 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.6 Correction of Loan Documents. Bank may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties.

12.7 Amendments in Writing; Waiver; Integration. No purported amendment or modification of any Loan Document, or waiver, discharge or termination of any obligation under any Loan Document, shall be enforceable or admissible unless, and only to the extent, expressly set forth in a writing signed by the party against which enforcement or admission is sought. Without limiting the generality of the foregoing, no oral promise or statement, nor any action, inaction, delay, failure to require performance or course of conduct shall operate as, or evidence, an amendment, supplement or waiver or have any other effect on any Loan Document. Any waiver granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver. The Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of the Loan Documents merge into the Loan Documents.

12.8 Counterparts. This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Agreement.

12.9 Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (a) to Bank's Subsidiaries or Affiliates (such Subsidiaries and Affiliates, together with Bank, collectively, "**Bank Entities**"); (b) to prospective transferees or purchasers of any interest in the Credit Extensions (provided, however, Bank shall use its best efforts to obtain any prospective transferee's or purchaser's agreement to the terms of this provision); (c) as required by law, regulation, subpoena, or other order; (d) to Bank's regulators or as otherwise required in connection with Bank's examination or audit; (e) as Bank considers appropriate in exercising remedies under the Loan Documents; and (f) to third-party service providers of Bank so long as such service providers have executed a

confidentiality agreement with Bank with terms no less restrictive than those contained herein. Confidential information does not include information that is either: (i) in the public domain or in Bank's possession when disclosed to Bank, or becomes part of the public domain (other than as a result of its disclosure by Bank in violation of this Agreement) after disclosure to Bank; or (ii) disclosed to Bank by a third party, if Bank does not know that the third party is prohibited from disclosing the information.

Bank Entities may use anonymous forms of confidential information for aggregate datasets, for analyses or reporting, and for any other uses not expressly prohibited in writing by Borrower. The provisions of the immediately preceding sentence shall survive termination of this Agreement.

12.10 Right of Set Off. Borrower hereby grants to Bank, a lien, security interest and right of set off as security for all Obligations to Bank, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Bank or any entity under the control of Bank (including a Bank subsidiary) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Bank may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE BANK TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Electronic Execution of Documents. The words "execution," "signed," "signature" and words of like import in any Loan Document shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity and enforceability as a manually executed signature or the use of a paper-based recordkeeping systems, as the case may be, to the extent and as provided for in any applicable law, including, without limitation, any state law based on the Uniform Electronic Transactions Act.

12.12 Captions. The headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

12.13 Construction of Agreement. The parties mutually acknowledge that they and their attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty this Agreement shall be construed without regard to which of the parties caused the uncertainty to exist.

12.14 Relationship. The relationship of the parties to this Agreement is determined solely by the provisions of this Agreement. The parties do not intend to create any agency, partnership, joint venture, trust, fiduciary or other relationship with duties or incidents different from those of parties to an arm's-length contract.

12.15 Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) confer any benefits, rights or remedies under or by reason of this Agreement on any persons other than the express parties to it and their respective permitted successors and assigns; (b) relieve or discharge the obligation or liability of any person not an express party to this Agreement; or (c) give any person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

13 DEFINITIONS

13.1 Definitions. As used in the Loan Documents, the word "shall" is mandatory, the word "may" is permissive, the word "or" is not exclusive, the words "includes" and "including" are not limiting, the singular includes the plural, and numbers denoting amounts that are set off in brackets are negative. As used in this Agreement, the following capitalized terms have the following meanings:

"Account" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"Account Debtor" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"Advance" or **"Advances"** means a revolving credit loan (or revolving credit loans) under the Revolving Line.

"Affiliate" is, with respect to any Person, each other Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"Agreement" is defined in the preamble hereof.

"Authorized Signer" is any individual listed in Borrower's Borrowing Resolution who is authorized to execute the Loan Documents, including any Credit Extension request, on behalf of Borrower.

"Availability Amount" is the lesser of (i) (A) the Revolving Line or (B) the amount available under the Borrowing Base minus (ii) the outstanding principal balance of any Advances.

"Bank" is defined in the preamble hereof.

"Bank Entities" is defined in Section 12.9.

"Bank Expenses" are all audit fees and expenses, costs, and expenses (including reasonable attorneys' fees and expenses) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred with respect to Borrower.

"Bank Services" are any products, credit services, and/or financial accommodations previously, now, or hereafter provided to Borrower or any of its Subsidiaries by Bank or any Bank Affiliate, including, without limitation, any letters of credit, cash management services (including, without limitation, merchant services, direct deposit of payroll, business credit cards, and check cashing services), interest rate swap arrangements, and foreign exchange services as any such products or services may be identified in Bank's various agreements related thereto (each, a **"Bank Services Agreement"**).

"Bank Services Agreement" is defined in the definition of Bank Services.

"Board" is Borrower's board of directors.

"Borrower" is defined in the preamble hereof.

"Borrower's Books" are all Borrower's books and records including ledgers, federal and state tax returns, records regarding Borrower's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"Borrowing Base" is (a) eighty-five percent (85%) of Eligible Filed Tax Credits, plus (b) fifty percent (50%) of Eligible Accrued Tax Credits, in each case as determined by Bank from Borrower's most recent Borrowing Base Certificate; provided, however, that Bank has the right to decrease the foregoing percentages in its good faith business judgment to mitigate the impact of events, conditions, contingencies, or risks which may adversely affect the Collateral or its value.

"Borrowing Base Certificate" is that certain certificate in the form attached hereto as Exhibit B.

"Borrowing Resolutions" are, with respect to any Person, those resolutions adopted by such Person's board of directors (and, if required under the terms of such Person's Operating Documents, stockholders) and

delivered by such Person to Bank approving the Loan Documents to which such Person is a party and the transactions contemplated thereby.

"Business Day" is any day that is not a Saturday, Sunday or a day on which Bank is closed, and if any determination of a "Business Day" shall relate to an FX Contract, the term "Business Day" shall mean a day on which dealings are carried on in the country of settlement of the Foreign Currency.

"Canadian Dollar" and **"CAD"** each mean the lawful currency of Canada.

"Cash Equivalents" means (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; and (c) Bank's certificates of deposit issued maturing no more than one (1) year after issue.

"Claims" is defined in Section 12.3.

"Code" is (a) with respect to any assets located in the United States, the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the Commonwealth of Massachusetts; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the Commonwealth of Massachusetts, the term **"Code"** shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions, and (b) with respect to any assets located in Canada, the PPSA, as amended and as may be further amended and in effect from time to time; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Bank's Lien on any Collateral is governed by the PPSA or equivalent legislation in effect in a provincial jurisdiction other than Ontario, the term **"Code"** shall mean the PPSA or equivalent legislation as enacted and in effect in such other province solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"Collateral" is any and all properties, rights and assets of Borrower described on Exhibit A.

"Collateral Account" is any Deposit Account, Securities Account, or Commodity Account.

"Commodity Account" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"Compliance Certificate" is that certain certificate in the form attached hereto as Exhibit C.

"Contingent Obligation" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation, in each case, directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but **"Contingent Obligation"** does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"Control Agreement" is any control agreement entered into among the depository institution at which Borrower maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower maintains a Securities Account or a Commodity Account, Borrower, and Bank pursuant to which Bank obtains control (within the meaning of the Code) over such Deposit Account, Securities Account, or Commodity Account.

"Copyrights" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret.

"Credit Extension" is any Advance, Overadvance, or any other extension of credit by Bank for Borrower's benefit.

"Default Rate" is defined in Section 2.3(b).

"Deposit Account" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"Designated Deposit Account" is the multicurrency account denominated in Dollars, account number _____, maintained by Borrower with Bank.

"Dollars," "dollars" or use of the sign "\$" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "\$" sign to denote its currency or may be readily converted into lawful money of the United States.

"Dollar Equivalent" is, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in a Foreign Currency, the equivalent amount therefor in Dollars as determined by Bank at such time on the basis of the then-prevailing rate of exchange in San Francisco, California, for sales of the Foreign Currency for transfer to the country issuing such Foreign Currency.

"Effective Date" is defined in the preamble hereof.

"Eligible Accrued Tax Credits" means the unpaid accrued (in respect of the current fiscal year only) but not filed investment tax credits earned or arising under the Scientific Research and Experimental Development Tax Incentive Program, in effect from time to time, as administered by the Canada Revenue Agency and any applicable provincial taxing authority, which (a) comply in all respects with Section 5.12, and (b) are earned by and owing to Borrower by (i) the Province of Ontario properly claimed or to be claimed by Borrower in its annual provincial corporate tax return (such return to be filed within one hundred eighty (180) days of Borrower's fiscal year end) and certified as such by an auditor or consultant reasonably acceptable to Bank and are acceptable to Bank in all respects (the **"Provincial Credits"**) and (ii) Her Majesty the Queen in right of Canada properly claimed or to be claimed by Borrower in its annual federal corporate tax return (such return to be filed within one hundred eighty (180) days of Borrower's fiscal year end) and certified as such by an auditor or consultant reasonably acceptable to Bank and are acceptable to Bank in all respects (the **"Federal Credits"**), each of which have been assigned to the Bank in accordance with Section 5.12 and in respect of which Borrower has completed the appropriate Notice of Assignment and Direction, which will, among other things, direct the applicable Minister to pay to Bank all amounts to be paid to Borrower pursuant to such Provincial Credits and Federal Credits. In no event shall Eligible Accrued Tax Credits include any Eligible Filed Tax Credits.

"Eligible Filed Tax Credits" means the unpaid filed Provincial Credits and/or Federal Credits, certified as such by an auditor or consultant acceptable to Bank and are reasonably acceptable to Bank in all respects, each of which have been assigned to the Bank in accordance with Section 5.12 and in respect of which Borrower has completed the appropriate Notice of Assignment and Direction, which will, among other things, direct the applicable Minister to pay to Bank all amounts to be paid to Borrower pursuant to such Provincial Credits and Federal Credits. In no event shall Eligible Filed Tax Credits include any Eligible Accrued Tax Credits.

"Equipment" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"Event of Default" is defined in Section 8.

"Exchange Act" is the Securities Exchange Act of 1934, as amended.

"Federal Credits" is defined as set forth in the definition of Eligible Accrued Tax Credits defined herein.

"Foreign Currency" means lawful money of a country other than the United States.

"Funding Date" is any date on which a Credit Extension is made to or for the account of Borrower which shall be a Business Day.

"FX Contract" is any foreign exchange contract by and between Borrower and Bank under which Borrower commits to purchase from or sell to Bank a specific amount of Foreign Currency on a specified date.

"GAAP" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession, which are applicable to the circumstances as of the date of determination.

"General Intangibles" is all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all Intellectual Property, claims, income and other tax refunds, security and other deposits, payment intangibles, contract rights, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"Governmental Approval" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"Governmental Authority" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"Indebtedness" is (a) indebtedness for borrowed money or the deferred price of property or services, such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"Indemnified Person" is defined in Section 12.3.

"Insolvency Proceeding" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"Intellectual Property" means, with respect to any Person, all of such Person's right, title, and interest in and to the following:

- (a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to such Person;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"Inventory" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of Borrower's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"Investment" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"Key Person" is Borrower's Chief Technology Officer, who is Shana Kelley as of the Effective Date.

"Letter of Credit" is a standby or commercial letter of credit issued by Bank upon request of Borrower based upon an application, guarantee, indemnity, or similar agreement.

"Lien" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property.

"Loan Documents" are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, any Bank Services Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

"Material Adverse Change" is (a) a material impairment in the perfection or priority of Bank's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations, or condition (financial or otherwise) of Borrower; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"Monthly Financial Statements" is defined in Section 6.2(b).

"Obligations" are Borrower's obligations to pay when due any debts, principal, interest, fees, Bank Expenses, and other amounts Borrower owes Bank now or later, whether under this Agreement, the other Loan Documents, or otherwise, including, without limitation, any interest accruing after Insolvency Proceedings begin and debts, liabilities, or obligations of Borrower assigned to Bank, and to perform Borrower's duties under the Loan Documents.

"Operating Documents" are, for any Person, such Person's formation documents, as certified by the Ontario Ministry of Government Services (or equivalent agency) of such Person's jurisdiction of organization on a date that is no earlier than thirty (30) days prior to the Effective Date, and, (a) if such Person is a corporation, its bylaws in current form, (b) if such Person is a limited liability company, its limited liability company agreement (or

similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"Overadvance" is defined in Section 2.2.

"Patents" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"Payment/Advance Form" is that certain form attached hereto as Exhibit D.

"Payment Date" is the first (1st) calendar day of each month.

"Perfection Certificate" is defined in Section 5.1.

"Permitted Indebtedness" is:

- (a) Borrower's Indebtedness to Bank under this Agreement and the other Loan Documents;
- (b) Indebtedness existing on the Effective Date and shown on the Perfection Certificate;
- (c) Subordinated Debt;
- (d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;
- (e) unsecured Indebtedness owing to the Federal Economic Development Agency of Southern Ontario, up to a maximum original principal amount incurred not to exceed Nine Hundred Ninety Thousand Canadian Dollars (CAD 990,000.00), provided, however, that such permitted amount shall reduce on a dollar-for-dollar basis as such Indebtedness is repaid or otherwise satisfied;
- (f) unsecured Indebtedness owing to the Health Technology Exchange, up to a maximum original principal amount incurred not to exceed Two Hundred Ninety-Nine Thousand Nine Hundred Eighty-Five Canadian Dollars (CAD 299,985.00), provided, however, that such permitted amount shall reduce on a dollar-for-dollar basis as such Indebtedness is repaid or otherwise satisfied;
- (g) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of business;
- (h) Indebtedness secured by Liens permitted under clauses (a) and (c) of the definition of "Permitted Liens" hereunder; and
- (i) extensions, refinancings, modifications, amendments and restatements of any items of Permitted Indebtedness (a) through (h) above, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose more burdensome terms upon Borrower or its Subsidiary, as the case may be.

"Permitted Investments" are:

- (a) Investments (including, without limitation, Subsidiaries) existing on the Effective Date and shown on the Perfection Certificate; and
- (b) Investments consisting of Cash Equivalents.

"Permitted Liens" are:

(a) Liens existing on the Effective Date and shown on the Perfection Certificate or arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) purchase money Liens or capital leases (i) on Equipment acquired or held by Borrower incurred for financing the acquisition of the Equipment securing no more than Fifty Thousand Dollars (\$50,000.00) in the aggregate amount outstanding, or (ii) existing on Equipment when acquired, if the Lien is confined to the property and improvements and the proceeds of the Equipment; and

(d) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase.

"Person" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

"PPSA" means the Personal Property Security Act (Ontario).

"Prime Rate" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

"Provincial Credits" is defined as set forth in the definition of Eligible Accrued Tax Credits defined herein.

"Receiver" is defined in Section 9.1(l).

"Registered Organization" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"Requirement of Law" is as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Responsible Officer" is any of the Chief Executive Officer, President, Chief Financial Officer, Controller and Chief Technology Officer of Borrower.

"Restricted License" is any material license or other agreement with respect to which Borrower is the licensee (a) that prohibits or otherwise restricts Borrower from granting a security interest in Borrower's interest in such license or agreement or any other property, or (b) for which a default under or termination of could interfere with the Bank's right to sell any Collateral.

"Revolving Line" is an aggregate principal amount equal to One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00).

"Revolving Line Maturity Date" is September 13, 2016.

"SEC" shall mean the Securities and Exchange Commission, any successor thereto, and any analogous Governmental Authority.

"Securities Account" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"Subordinated Debt" is indebtedness incurred by Borrower subordinated to all of Borrower's now or hereafter indebtedness to Bank (pursuant to a subordination, intercreditor, or other similar agreement in form and substance satisfactory to Bank entered into between Bank and the other creditor), on terms acceptable to Bank.

"Subsidiary" is, as to any Person, a corporation, partnership, limited liability company or other entity of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of Borrower.

"Trademarks" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"Transfer" is defined in Section 7.1.

[Signature page follows.]

IN WITNESS WHEREOF, this Agreement and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, this Agreement is being executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the Effective Date.

BORROWER:

XAGENIC, INC.

By 

Name: Edward Jonsson

Title: CFO

BANK:

SILICON VALLEY BANK

By _____

Name: _____

Title: _____

IN WITNESS WHEREOF, this Agreement and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, this Agreement is being executed as a sealed instrument under the laws of the Commonwealth of Massachusetts as of the Effective Date.

BORROWER:

XAGENIC INC.

By _____
Name: _____
Title: _____

BANK:

SILICON VALLEY BANK

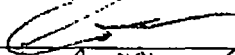
By  _____
Name: Anthony Barker
Title: Director

EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (except as provided below), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (a) leased Equipment or Equipment financed by purchase money indebtedness (in each case, and any accessions, attachments, replacements or improvements thereon) that is subject to a Lien that is permitted pursuant to subsection (a) or (c) of the definition of "Permitted Lien", provided that upon the release of any such Lien, such Equipment (and any accessions, attachments, replacements or improvements thereon) shall be deemed to be Collateral hereunder and shall be subject to the security interest granted herein without any action by Borrower or Bank, or (b) any Intellectual Property; provided, however, the Collateral shall include all Accounts and all proceeds of Intellectual Property. If a judicial authority (including a U.S. Bankruptcy Court) would hold that a security interest in the underlying Intellectual Property is necessary to have a security interest in such Accounts and such property that are proceeds of Intellectual Property, then the Collateral shall automatically, and effective as of the Effective Date, include the Intellectual Property to the extent necessary to permit perfection of Bank's security interest in such Accounts and such other property of Borrower that are proceeds of the Intellectual Property.

Pursuant to the terms of a certain negative pledge arrangement with Bank, Borrower has agreed not to encumber any of its Intellectual Property without Bank's prior written consent.

EXHIBIT B - BORROWING BASE CERTIFICATE

Borrower: Xagenic Inc.
Lender: Silicon Valley Bank
Commitment Amount: \$1,250,000.00

ELIGIBLE FILED TAX CREDITS

- | | | |
|----|---|----------|
| 1. | Eligible Filed Tax Credits | \$ _____ |
| 2. | ELIGIBLE AMOUNT OF ELIGIBLE FILED TAX CREDITS (85% of #1) | \$ _____ |

ELIGIBLE ACCRUED TAX CREDITS

- | | | |
|----|---|----------|
| 3. | Eligible Accrued Tax Credits | \$ _____ |
| 4. | ELIGIBLE AMOUNT OF ELIGIBLE ACCRUED TAX CREDITS (50% of #3) | \$ _____ |

BALANCES

- | | | |
|----|--|----------------|
| 5. | Maximum Loan Amount | \$1,250,000.00 |
| 6. | Total Funds Available (Lesser of #5 or (#2 plus #4)) | \$ _____ |

The undersigned represents and warrants that this is true, complete and correct, and that the information in this Borrowing Base Certificate complies with the representations and warranties in the Loan and Security Agreement between the undersigned and Silicon Valley Bank.

COMMENTS:

XAGENIC INC.

By: _____

Authorized Signer

Date: _____

BANK USE ONLY

Received by: _____

AUTHORIZED SIGNER

Date: _____

Verified: _____

AUTHORIZED SIGNER

Date: _____

Compliance Status: Yes No

EXHIBIT C

COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
FROM: XAGENIC INC.

Date: _____

The undersigned authorized officer of XAGENIC INC. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"):

(1) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below; (2) there are no Events of Default; (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement; and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Monthly financial statements with Compliance Certificate	Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30 th day of the month, in which case the reporting shall be for the prior month) and monthly within 30 days when any Advances are outstanding	Yes No
Annual financial statement (CPA Audited)	FYE within 180 days	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Borrowing Base Certificate	Monthly within 30 days	Yes No
Board projections	FYE within 30 days	Yes No

Other Matters

Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate.

Yes No

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

XAGENIC INC.

By: _____
Name: _____
Title: _____

BANK USE ONLY

Received by: _____
AUTHORIZED SIGNER
Date: _____

Verified: _____
AUTHORIZED SIGNER
Date: _____

Compliance Status: Yes No

EXHIBIT D - LOAN PAYMENT/ADVANCE REQUEST FORM

DEADLINE FOR SAME DAY PROCESSING IS NOON EASTERN TIME

Fax To: _____

Date: _____

LOAN PAYMENT:		Xagenic Inc.	
From Account # _____	(Deposit Account #)	To Account # _____	(Loan Account #)
Principal \$ _____		and/or Interest \$ _____	
Authorized Signature: _____		Phone Number: _____	
Print Name/Title: _____			

LOAN ADVANCE:	
Complete <i>Outgoing Wire Request</i> section below if all or a portion of the funds from this loan advance are for an outgoing wire.	
From Account # _____	To Account # _____
(Loan Account #)	(Deposit Account #)
Amount of Advance \$ _____	
All Borrower's representations and warranties in the Loan and Security Agreement are true, correct and complete in all material respects on the date of the request for an advance; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date:	
Authorized Signature: _____	
Print Name/Title: _____	
Phone Number: _____	

OUTGOING WIRE REQUEST:	
Complete only if all or a portion of funds from the loan advance above is to be wired.	
Deadline for same day processing is noon, Eastern Time	
Beneficiary Name: _____	Amount of Wire: \$ _____
Beneficiary Bank: _____	Account Number: _____
City and State: _____	
Beneficiary Bank Transit (ABA) #: _____	Beneficiary Bank Code (Swift, Sort, Chip, etc.): _____
	(For International Wire Only)
Intermediary Bank: _____	Transit (ABA) #: _____
For Further Credit to: _____	
Special Instruction: _____	
By signing below, I (we) acknowledge and agree that my (our) funds transfer request shall be processed in accordance with and subject to the terms and conditions set forth in the agreements(s) covering funds transfer service(s), which agreements(s) were previously received and executed by me (us).	
Authorized Signature: _____	2 nd Signature (if required): _____
Print Name/Title: _____	Print Name/Title: _____
Telephone #: _____	Telephone #: _____

**FIRST AMENDMENT
TO
LOAN AND SECURITY AGREEMENT**

This First Amendment to Loan and Security Agreement (this "**Amendment**") is entered into this 20th day of December, 2016, and is effective as of September 13, 2016, by and between **SILICON VALLEY BANK** ("**Bank**") and **XAGENIC INC.**, a corporation organized under the laws of the Province of Ontario ("**Borrower**") whose address is 55 York Street, Suite 1000, Toronto, Ontario, Canada M5J1R7.

RECITALS

A. Bank and Borrower have entered into that certain Loan and Security Agreement dated as of March 13, 2015 (as the same may from time to time be further amended, modified, supplemented or restated, the "**Loan Agreement**").

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to (i) extend the maturity date, and (ii) make certain other revisions to the Loan Agreement as more fully set forth herein.

D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Agreement.

2.1 Section 3.2 (Conditions Precedent to all Credit Extensions). Section 3.2 is amended by (i) deleting "and" at the end of subsection (c), (ii) replacing subsection (d) with the following subsection (d) below, and (iii) inserting the following new provisions to appear as subsections (e), (f), (g), and (h) thereof:

(d) Receipt of a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such

Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made);

(e) receipt of a duly completed Borrowing Base Certificate signed by a Responsible Officer (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made);

(f) receipt of a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank may reasonably request (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made);

(g) Board-approved projections as to the then current fiscal year in a form acceptable to Bank; and

(h) 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 Bank.

2.2 Section 6.2(a)-(e) (Financial Statements; Reports, Certificates). Sections 6.2(a) through (e) are amended in their entirety and replaced with the following:

(a) Borrowing Base Certificate. (i) Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made) and (ii) within thirty (30) days after the last day of each month in which any Advances are outstanding, a duly completed Borrowing Base Certificate signed by a Responsible Officer;

(b) Monthly Financial Statements. (i) Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made), and (ii) as soon as

available, but no later than thirty (30) days after the last day of each month in which any Advances are outstanding, a company prepared consolidated balance sheet and income statement covering Borrower's consolidated operations for such month certified by a Responsible Officer and in a form acceptable to Bank (the "**Monthly Financial Statements**");

(c) Monthly Compliance Certificate. (i) Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made) and (ii) within thirty (30) days after the last day of each month in which any Advances are outstanding and together with the Monthly Financial Statements, a duly completed Compliance Certificate signed by a Responsible Officer, certifying that as of the end of such month, Borrower was in full compliance with all of the terms and conditions of this Agreement, and such other information as Bank may reasonably request;

(d) Board-Approved Projections. (i) Immediately prior to each request for an Advance and (ii) as soon as available, but no later than thirty (30) days after the last day of Borrower's fiscal year in which any Advances are outstanding, and contemporaneously with any updates thereto, Board-approved projections as to the then current fiscal year in a form acceptable to Bank;

(e) Annual Audited Financial Statements. (i) Immediately prior to each request for an Advance and (ii) as soon as available, but no later than one hundred eighty (180) days after the last day of Borrower's fiscal year in which any Advances are outstanding, 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 Bank;

2.3 Section 6.9 (Access to Collateral; Books and Records). Section 6.9 is amended in its entirety and replaced with the following:

6.9 Intentionally Omitted.

2.4 Section 13.1 (Definitions). The following terms and their respective definitions set forth in Section 13.1 are amended in their entirety and replaced with the following:

"Revolving Line Maturity Date" is September 12, 2017.

"Prime Rate" is the rate of interest per annum from time to time published in the money rates section of The Wall Street Journal or any successor publication thereto as the "prime rate" then in effect; provided

that, in the event such rate of interest is less than zero, such rate shall be deemed to be zero for purposes of this Agreement; and provided further that if such rate of interest, as set forth from time to time in the money rates section of The Wall Street Journal, becomes unavailable for any reason as determined by Bank, the "Prime Rate" shall mean the rate of interest per annum announced by Bank as its prime rate in effect at its principal office in the State of California (such Bank announced Prime Rate not being intended to be the lowest rate of interest charged by Bank in connection with extensions of credit to debtors).

2.5 Exhibit C (Compliance Certificate). The Compliance Certificate is amended in its entirety and replaced with the Compliance Certificate in the form of Schedule 1 attached hereto.

3. Limitation of Amendments.

3.1 The amendments set forth in Section 2 above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on the date hereof remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Ratification of Perfection Certificate. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated as of March 13, 2015, delivered by Borrower to Bank, and acknowledges, confirms and agrees the disclosures and information Borrower provided to Bank in said Perfection Certificate have not changed, as of the date hereof.

6. Integration. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

7. Counterparts. This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

8. Effectiveness. This Amendment shall be deemed effective as of September 13, 2016, upon (a) the due execution and delivery to Bank of this Amendment by each party hereto and (b) Borrower's payment of (i) a fully-earned, non-refundable modification fee in an amount equal to Five Thousand Dollars (\$5,000.00) and (ii) Bank's legal fees and expenses incurred in connection with this Amendment.

[Signature page follows.]


IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

BORROWER

SILICON VALLEY BANK

XAGENIC INC.

By: 
Name: Kyle DiIella
Title: Vice President

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

BORROWER

SILICON VALLEY BANK

XAGENIC INC.

By: _____

By:  _____

Name: _____

Name: EDWARD JONASSON

Title: _____

Title: CFO

SCHEDULE 1
EXHIBIT C
COMPLIANCE CERTIFICATE

TO: SILICON VALLEY BANK
 FROM: XAGENIC INC.

Date: _____

The undersigned authorized officer of XAGENIC INC. ("Borrower") certifies that under the terms and conditions of the Loan and Security Agreement between Borrower and Bank (the "Agreement"):

(1) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below; (2) there are no Events of Default; (3) all representations and warranties in the Agreement are true and correct in all material respects on this date except as noted below; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date; (4) Borrower, and each of its Subsidiaries, has timely filed all required tax returns and reports, and Borrower has timely paid all foreign, federal, state and local taxes, assessments, deposits and contributions owed by Borrower except as otherwise permitted pursuant to the terms of Section 5.8 of the Agreement; and (5) no Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Bank.

Attached are the required documents supporting the certification. The undersigned certifies that these are prepared in accordance with GAAP consistently applied from one period to the next except as explained in an accompanying letter or footnotes. The undersigned acknowledges that no borrowings may be requested at any time or date of determination that Borrower is not in compliance with any of the terms of the Agreement, and that compliance is determined not just at the date this certificate is delivered. Capitalized terms used but not otherwise defined herein shall have the meanings given them in the Agreement.

Please indicate compliance status by circling Yes/No under "Complies" column.

<u>Reporting Covenants</u>	<u>Required</u>	<u>Complies</u>
Monthly financial statements with Compliance Certificate	Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made) and monthly within 30 days when any Advances are outstanding	Yes No
Annual financial statement (CPA Audited)	Immediately prior to each request for an Advance and FYE within 180 days when any Advances are outstanding	Yes No
10-Q, 10-K and 8-K	Within 5 days after filing with SEC	Yes No
Borrowing Base Certificate	Immediately prior to each request for an Advance (for the month ending immediately prior to the month in which a request for an Advance has been made, unless such request for Advance or the funding date for such Advance is prior to the 30th day of the month, in which case the reporting shall be for the month ending two (2) months prior to the month in which a request for an Advance has been made) and monthly within 30 days when any Advances are outstanding	Yes No

Board projections	Immediately prior to each request for an Advance and FYE within 30 days when any Advances are outstanding	Yes No
-------------------	--	--------

Other Matters

Have there been any amendments of or other changes to the capitalization table of Borrower and to the Operating Documents of Borrower or any of its Subsidiaries? If yes, Yes No
provide copies of any such amendments or changes with this Compliance Certificate.

The following are the exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions to note.")

XAGENIC INC.

BANK USE ONLY

By: _____
Name: _____
Title: _____

Received by: _____
AUTHORIZED SIGNER
Date: _____

Verified: _____
AUTHORIZED SIGNER
Date: _____

Compliance Status: Yes No

**SECOND AMENDMENT
TO
LOAN AND SECURITY AGREEMENT**

This Second Amendment to Loan and Security Agreement (this "**Amendment**") is entered into this 9th day of January, 2017, by and between **SILICON VALLEY BANK** ("**Bank**") and **XAGENIC INC.**, a corporation organized under the laws of the Province of Ontario ("**Borrower**") whose address is 55 York Street, Suite 1000, Toronto, Ontario, Canada M5J1R7.

RECITALS

A. Bank and Borrower have entered into that certain Loan and Security Agreement dated as of March 13, 2015, as amended by that certain First Amendment to Loan and Security Agreement dated as of December 20, 2016 (as the same may from time to time be amended, modified, supplemented or restated, the "**Loan Agreement**").

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more fully set forth herein.

D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, **THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. **Definitions.** Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. **Amendments to Loan Agreement.**

2.1 **Section 6.7 (Protection and Registration of Intellectual Property Rights).** The Loan Agreement shall be amended by inserting the following new subsection (c) to appear at the end of Section 6.7 thereof:

"(c) To the extent not already disclosed in writing to Bank, if Borrower (i) obtains any Patent, registered Trademark, registered Copyright, registered mask work, or any pending application for any of the foregoing, whether as owner, licensee or otherwise, or (ii) applies for any Patent or the registration of any Trademark, then Borrower shall promptly provide written notice thereof to Bank and, after the occurrence of an Event of Default, shall execute such

intellectual property security agreements and other documents and take such other actions as Bank may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Bank in such property. If Borrower decides to register any Copyrights or mask works in the United States Copyright Office or the Canadian Intellectual Property Office, Borrower shall, after the occurrence of an Event of Default: (x) provide Bank with at least fifteen (15) days prior written notice of Borrower's intent to register such Copyrights or mask works together with a copy of the application it intends to file with the United States Copyright Office or the Canadian Intellectual Property Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Bank may request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Bank in the Copyrights or mask works intended to be registered with the United States Copyright Office or the Canadian Intellectual Property Office; and (z) record such intellectual property security agreement with the United States Copyright Office or the Canadian Intellectual Property Office contemporaneously with filing the Copyright or mask work application(s) with the United States Copyright Office or the Canadian Intellectual Property Office. After the occurrence of an Event of Default, Borrower shall promptly provide to Bank copies of all applications that it files for Patents or for the registration of Trademarks, Copyrights or mask works, together with evidence of the recording of the intellectual property security agreement required for Bank to perfect and maintain a first priority perfected security interest in such property."

2.2 Section 13 (Definitions). The Loan Agreement shall be amended by (i) deleting "and" at the end of subsection (h), (ii) changing "." to "; and" at the end of subsection (i), and (iii) inserting the following new provision to appear as subsection (j), in each case as set forth in the definition entitled "Permitted Indebtedness" appearing in Section 13.1 (Definitions):

"(h) Borrower's Indebtedness to Investors, up to a maximum principal amount incurred to not exceed Three Million Canadian Dollars (CAD 3,000,000.00) plus interest thereon, provided, however, that such permitted amount shall reduce on a dollar-for-dollar basis as the principal portion of such Indebtedness is repaid or otherwise satisfied."

2.3 Section 13 (Definitions). The Loan Agreement shall be amended by (i) deleting "and" at the end of subsection (c), (ii) changing "." to "; and" at the end of subsection (d), and (iii) inserting the following new provision to appear as subsection (e), in each case as set forth in the definition entitled "Permitted Liens" appearing in Section 13.1 (Definitions):

"(e) Liens in favor of Investors securing the Indebtedness described in subsection (h) of the definition of Permitted Indebtedness, provided, however, that such Liens are only permitted to the extent that they constitute Subordinated Debt and are only on property on which Bank has a first priority perfected security interest."

2.4 Section 13 (Definitions). The Loan Agreement shall be amended by inserting the following new definitions to appear alphabetically in Section 13.1 thereof:

"2017 Effective Date" means January 9, 2017.

"Investors" mean BDC Capital Inc. and each holder of a secured promissory note.

"Subordination Agreement" means that certain Subordination Agreement by and between the Investors and Bank dated as of the 2017 Effective Date, as may be amended, modified, supplemented or restated from time to time.

2.5 Section 13 (Definitions). The following term and its respective definition set forth in Section 13.1 are amended in its entirety and replaced with the following:

"Loan Documents" are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, any Bank Services Agreement, the Subordination Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

2.6 Exhibit A (Collateral Description). The Loan Agreement shall be amended by substituting the Collateral description appearing on Exhibit A thereto for the Collateral description on Schedule 1 hereto. Borrower hereby grants Bank, to secure the payment and performance in full of all of the Obligations and the performance of each of Borrower's duties under the Loan Documents, a continuing security interest in, and pledges to Bank, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof.

3. Limitation of Amendments.

3.1 The amendments set forth in Section 2 above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations

and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on December 20, 2016, remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. Ratification of Perfection Certificate. Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated as of March 13, 2015, delivered by Borrower to Bank, and acknowledges, confirms and agrees the disclosures and information Borrower provided to Bank in said Perfection Certificate have not changed, as of the date hereof.

6. Integration. This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

7. **Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.


8. **Effectiveness.** This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, and (b) Borrower's payment of Bank's legal fees and expenses incurred in connection with this Amendment.

[Signature page follows.]

IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

SILICON VALLEY BANK

By:  _____

Name: Anthony SARKIS

Title: DIRECTOR

BORROWER

XAGENIC INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

SILICON VALLEY BANK

By: _____

Name: _____

Title: _____

BORROWER

XAGENIC INC.

By:  _____

Name: Edward Jonasson

Title: CFO

Schedule 1

EXHIBIT A – COLLATERAL DESCRIPTION

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health-care 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, certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

all Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include leased Equipment or Equipment financed by purchase money indebtedness (in each case, and any accessions, attachments, replacements or improvements thereon) that is subject to a Lien that is permitted pursuant to subsection (a) or (c) of the definition of "Permitted Lien", provided that upon the release of any such Lien, such Equipment (and any accessions, attachments, replacements or improvements thereon) shall be deemed to be Collateral hereunder and shall be subject to the security interest granted herein without any action by Borrower or Bank.

**THIRD AMENDMENT
TO
LOAN AND SECURITY AGREEMENT**

This Third Amendment to Loan and Security Agreement (this "**Amendment**") is entered into this 25th day of April, 2017, by and between **SILICON VALLEY BANK** ("**Bank**") and **XAGENIC INC.**, a corporation organized under the laws of the Province of Ontario ("**Borrower**") whose address is 55 York Street, Suite 1000, Toronto, Ontario, Canada M5J1R7.

RECITALS

A. Bank and Borrower have entered into that certain Loan and Security Agreement dated as of March 13, 2015, as amended by that certain First Amendment to Loan and Security Agreement dated as of December 20, 2016 and as further amended by that certain Second Amendment to Loan and Security Agreement dated Jan 9, 2017 (as the same may from time to time be amended, modified, supplemented or restated, the "**Loan Agreement**").

B. Bank has extended credit to Borrower for the purposes permitted in the Loan Agreement.

C. Borrower has requested that Bank amend the Loan Agreement to make certain revisions to the Loan Agreement as more fully set forth herein.

D. Bank has agreed to so amend certain provisions of the Loan Agreement, but only to the extent, in accordance with the terms, subject to the conditions and in reliance upon the representations and warranties set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined in this Amendment shall have the meanings given to them in the Loan Agreement.

2. Amendments to Loan Agreement.

2.1 Section 13 (Definitions). The Loan Agreement shall be amended by deleting subsection (j) in the definition of "Permitted Indebtedness" appearing in Section 13.1 (Definitions) in its entirety and replacing it with the following:

“(j) Borrower’s Indebtedness to Investors, up to a maximum principal amount incurred to not exceed Four Million Five Hundred Thousand Canadian Dollars (CAD 4,500,000.00) plus interest thereon, provided, however, that such permitted amount shall reduce on a dollar-for-dollar basis as the principal portion of such Indebtedness is repaid or otherwise satisfied.”

2.2 Section 13 (Definitions). The Loan Agreement shall be amended by deleting subsection (e) in the definition of "Permitted Liens" appearing in Section 13.1 (Definitions) in its entirety and replacing it with the following:

"(e) Liens in favor of Investors securing the Indebtedness described in subsection (j) of the definition of Permitted Indebtedness, provided, however, that such Liens are only permitted to the extent that they constitute Subordinated Debt and are only on property on which Bank has a first priority perfected security interest."

2.3 Section 13 (Definitions). The Loan Agreement shall be amended by inserting the following new definitions to appear alphabetically in Section 13.1 thereof:

"**April 2017 Effective Date**" means April 25, 2017.

"**Investors**" means any investor who has signed the A&R Subordination Agreement or an acknowledgement and counterpart thereto.

"**A&R Subordination Agreement**" means that certain amended and restated subordination agreement by and between the Investors and Bank dated as of the April 2017 Effective Date, as may be amended, modified, supplemented or restated from time to time.

2.4 Section 13 (Definitions). The following term and its definition set forth in Section 13.1 is amended in its entirety and replaced with the following:

"**Loan Documents**" are, collectively, this Agreement and any schedules, exhibits, certificates, notices, and any other documents related to this Agreement, the Perfection Certificate, any Bank Services Agreement, the A&R Subordination Agreement, any subordination agreement, any note, or notes or guaranties executed by Borrower, and any other present or future agreement by Borrower with or for the benefit of Bank in connection with this Agreement or Bank Services, all as amended, restated, or otherwise modified.

2.5 Section 13 (Definitions). The following term and its definition set forth in Section 13.1 is deleted in its entirety:

"**Subordination Agreement**" means that certain Subordination Agreement by and between the Investors and Bank dated as of the 2017 Effective Date, as may be amended, modified, supplemented or restated from time to time.

3. Limitation of Amendments.

3.1 The amendments set forth in Section 2 above are effective for the purposes set forth herein and shall be limited precisely as written and shall not be deemed to (a) be a consent to any amendment, waiver or modification of any other term or condition of any Loan Document, or (b) otherwise prejudice any right or remedy which Bank may now have or may

have in the future under or in connection with any Loan Document.

3.2 This Amendment shall be construed in connection with and as part of the Loan Documents and all terms, conditions, representations, warranties, covenants and agreements set forth in the Loan Documents, except as herein amended, are hereby ratified and confirmed and shall remain in full force and effect.

4. Representations and Warranties. To induce Bank to enter into this Amendment, Borrower hereby represents and warrants to Bank as follows:

4.1 Immediately after giving effect to this Amendment (a) the representations and warranties contained in the Loan Documents are true, accurate and complete in all material respects as of the date hereof (except to the extent such representations and warranties relate to an earlier date, in which case they are true and correct as of such date), and (b) no Event of Default has occurred and is continuing;

4.2 Borrower has the power and authority to execute and deliver this Amendment and to perform its obligations under the Loan Agreement, as amended by this Amendment;

4.3 The organizational documents of Borrower delivered to Bank on December 20, 2016, remain true, accurate and complete and have not been amended, supplemented or restated and are and continue to be in full force and effect;

4.4 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, have been duly authorized;

4.5 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not and will not contravene (a) any law or regulation binding on or affecting Borrower, (b) any contractual restriction with a Person binding on Borrower, (c) any order, judgment or decree of any court or other governmental or public body or authority, or subdivision thereof, binding on Borrower, or (d) the organizational documents of Borrower;

4.6 The execution and delivery by Borrower of this Amendment and the performance by Borrower of its obligations under the Loan Agreement, as amended by this Amendment, do not require any order, consent, approval, license, authorization or validation of, or filing, recording or registration with, or exemption by any governmental or public body or authority, or subdivision thereof, binding on Borrower, except as already has been obtained or made; and

4.7 This Amendment has been duly executed and delivered by Borrower and is the binding obligation of Borrower, enforceable against Borrower in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, liquidation, moratorium or other similar laws of general application and equitable principles relating to or affecting creditors' rights.

5. **Ratification of Perfection Certificate.** Borrower hereby ratifies, confirms and reaffirms, all and singular, the terms and disclosures contained in a certain Perfection Certificate dated as of March 13, 2015, delivered by Borrower to Bank, and acknowledges, confirms and agrees the disclosures and information Borrower provided to Bank in said Perfection Certificate have not changed, as of the date hereof.

6. **Integration.** This Amendment and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Amendment and the Loan Documents merge into this Amendment and the Loan Documents.

7. **Counterparts.** This Amendment may be executed in any number of counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

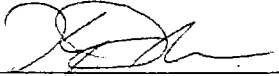
8. **Effectiveness.** This Amendment shall be deemed effective upon (a) the due execution and delivery to Bank of this Amendment by each party hereto, and (b) Borrower's payment of Bank's legal fees and expenses incurred in connection with this Amendment.

[Signature page follows.]

IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

SILICON VALLEY BANK

By: 

Name: Kyle D. Lella

Title: Vice President

BORROWER

XAGENIC INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, this Amendment and all documents executed in connection therewith, or relating thereto, have been negotiated, prepared and deemed to be executed by Borrower in the United States of America. In addition, the parties hereto have caused this Amendment to be duly executed as a sealed instrument under the laws of the Commonwealth of Massachusetts and delivered as of the date first written above.

BANK

SILICON VALLEY BANK

By: _____

Name: _____

Title: _____

BORROWER

XAGENIC INC.

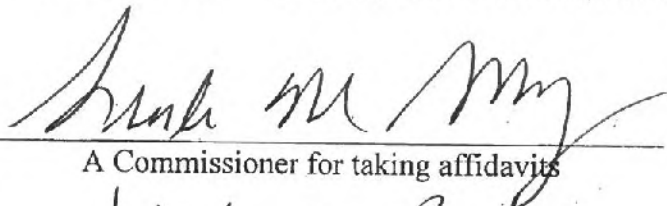
By: 

Name: Edward Janssen

Title: Cfo.

Tab E

THIS IS EXHIBIT "E" TO THE
AFFIDAVIT OF MARK ROSSHIRT
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.



A Commissioner for taking affidavits

Linda M. Rosenthal
Notary Public

My Comm Expires 10/5/18



SECURITY IS EVERYTHING

Phone: (416) 225-5511

Ontario Search Results
ID 1429683
Search Type [BD] Business Debtor

Your Ref No. 118-117752-KP
Liens : 13 Pages : 16

Searched : 21SEP2017 01:17 PM
Printed : 21SEP2017 01:16 PM

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:16:53
ACCOUNT : 009233-0001 FAMILY : 1 OF 13 ENQUIRY PAGE : 1 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 694987506 EXPIRY DATE : 04APR 2020 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20140404 1401 1462 3999 REG TYP: P PPSA REG PERIOD: 6
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK ST, SUITE 1600
CITY : TORONTO PROV: ON POSTAL CODE: M5J1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

XEROX CANADA LTD
09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR
CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: PPSA CANADA INC. - (3992)
17 ADDRESS : 110 SHEPPARD AVE EAST, SUITE 303
CITY : TORONTO PROV: ON POSTAL CODE: M2N6Y8

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:16:56
ACCOUNT : 009233-0001 FAMILY : 2 OF 13 ENQUIRY PAGE : 2 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 695800926 EXPIRY DATE : 02MAY 2020 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20140502 1703 1462 3607 REG TYP: P PPSA REG PERIOD: 6
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : SUITE 1000, 55 YORK ST
CITY : TORONTO PROV: ON POSTAL CODE: M5J1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
XEROX CANADA LTD

09 ADDRESS : 33 BLOOR ST. E. 3RD FLOOR
CITY : TORONTO PROV: ON POSTAL CODE: M4W3H1
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: PPSA CANADA INC. - (3992)
17 ADDRESS : 110 SHEPPARD AVE EAST, SUITE 303
CITY : TORONTO PROV: ON POSTAL CODE: M2N6Y8

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:16:58
ACCOUNT : 009233-0001 FAMILY : 3 OF 13 ENQUIRY PAGE : 3 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 702991422 EXPIRY DATE : 15JAN 2020 STATUS :
01 CAUTION FILING : PAGE : 001 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20150115 1238 1793 1767 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
SILICON VALLEY BANK

09 ADDRESS : 3003 TASMAN DRIVE
CITY : SANTA CLARA PROV: CA POSTAL CODE: 95054
CONS. MV DATE OF OR NO FIXED

GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X
YEAR MAKE MODEL V.I.N.

11
12

GENERAL COLLATERAL DESCRIPTION

13 ALL PRESENT AND AFTER-ACQUIRED PERSONAL PROPERTY OF THE DEBTOR.
14 NOTWITHSTANDING THE FOREGOING, THE COLLATERAL DOES NOT INCLUDE ANY
15 INTELLECTUAL PROPERTY OF THE DEBTOR PROVIDED, HOWEVER, THE
16 AGENT: AIRD & BERLIS LLP (117752 - TONY GIOIA)
17 ADDRESS : 181 BAY STREET, SUITE 1800
CITY : TORONTO PROV: ON POSTAL CODE: M5J2T9

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:01
ACCOUNT : 009233-0001 FAMILY : 3 OF 13 ENQUIRY PAGE : 4 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 702991422 EXPIRY DATE : 15JAN 2020 STATUS :
01 CAUTION FILING : PAGE : 002 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20150115 1238 1793 1767 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:

OCN :
04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13 COLLATERAL SHALL INCLUDE ALL ACCOUNTS AND ALL PROCEEDS OF
14 INTELLECTUAL PROPERTY. PURSUANT TO THE TERMS OF A CERTAIN NEGATIVE
15 PLEDGE ARRANGEMENT WITH SECURED PARTY, DEBTOR HAS AGREED NOT TO
16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

```

00 FILE NUMBER : 702991422      EXPIRY DATE : 15JAN 2020 STATUS :
01 CAUTION FILING :                PAGE : 003 OF 3                MV SCHEDULE ATTACHED :
   REG NUM : 20150115 1238 1793 1767 REG TYP:                REG PERIOD:
02 IND DOB :                IND NAME:
03 BUS NAME:

                                                                OCN :
04 ADDRESS :
   CITY      :                PROV:                POSTAL CODE:
05 IND DOB :                IND NAME:
06 BUS NAME:

                                                                OCN :
07 ADDRESS :
   CITY      :                PROV:                POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS :
   CITY      :                PROV:                POSTAL CODE:
   CONS.                MV                DATE OF OR NO FIXED
   GOODS INVTRY. EQUIP  ACCTS  OTHER  INCL  AMOUNT  MATURITY  MAT DATE
10
   YEAR MAKE                MODEL                V.I.N.
11
12
GENERAL COLLATERAL DESCRIPTION
13 ENCUMBER ANY OF ITS INTELLECTUAL PROPERTY WITHOUT THE PRIOR WRITTEN
14 CONSENT OF THE SECURED PARTY.
15
16 AGENT:
17 ADDRESS :
   CITY      :                PROV:                POSTAL CODE:

```

PSSME04	PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM	09/21/2017
CCCL204	DISPLAY 2C REGISTRATION - SCREEN 1	13:17:06
ACCOUNT : 009233-0001	FAMILY : 3 OF 13	ENQUIRY PAGE : 6 OF 16
FILE CURRENCY : 20SEP 2017		
SEARCH : BD : XAGENIC INC.		

				FILE NUMBER 702991422	
		PAGE	TOT	REGISTRATION NUM	REG TYPE
01	CAUTION :	001	OF 1	MV SCHED: 20161222 1030 1793 0241	
21	REFERENCE FILE NUMBER :	702991422			
22	AMEND PAGE:	NO PAGE:	CHANGE: A	AMNDMNT REN YEARS:	CORR PER:
23	REFERENCE DEBTOR/	IND NAME:			
24	TRANSFEROR:	BUS NAME: XAGENIC INC.			

25 OTHER CHANGE:
26 REASON: AMENDED TO REMOVE THE GENERAL COLLATERAL DESCRIPTION IN
27 /DESCR: REGISTRATION NO. 20150115 1238 1793 1767.
28 :
02/05 IND/TRANSFEE:
03/06 BUS NAME/TRFEE:

04/07 ADDRESS: OCN:
CITY: PROV: POSTAL CODE:
29 ASSIGNOR:

08 SECURED PARTY/LIEN CLAIMANT/ASSIGNEE :

```

09 ADDRESS :
   CITY      :                PROV :          POSTAL CODE :
CONS.        MV              DATE OF          NO FIXED
GOODS INVTRY EQUIP ACCTS OTHER INCL          AMOUNT      MATURITY OR  MAT DATE
10
11
12
13
14
15
16 NAME : AIRD & BERLIS LLP
17 ADDRESS : 181 BAY STREET, SUITE 1800, BOX# 754
   CITY      : TORONTO          PROV : ON          POSTAL CODE : M5J2T9

```

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:08
ACCOUNT : 009233-0001 FAMILY : 4 OF 13 ENQUIRY PAGE : 7 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 703521819 EXPIRY DATE : 09FEB 2020 STATUS :
01 CAUTION FILING : PAGE : 01 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20150209 1440 1530 3996 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK ST SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :
THE TORONTO-DOMINION BANK - 10202
09 ADDRESS : 55 KING ST W P.O. BOX 1
CITY : TORONTO PROV: ON POSTAL CODE: M5K 1A2
CONS. MV DATE OF OR NO FIXED
GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: D+H LIMITED PARTNERSHIP
17 ADDRESS : SUITE 200, 4126 NORLAND AVENUE
CITY : BURNABY PROV: BC POSTAL CODE: V5G 3S8

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:11
ACCOUNT : 009233-0001 FAMILY : 5 OF 13 ENQUIRY PAGE : 8 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 723562137 EXPIRY DATE : 21DEC 2021 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20161221 1447 1862 4079 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :
BDC CAPITAL INC.

09 ADDRESS : 380 SAINT-ANTOINE STREET WEST
CITY : MONTREAL PROV: PQ POSTAL CODE: H2Y 3X7
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:13
ACCOUNT : 009233-0001 FAMILY : 6 OF 13 ENQUIRY PAGE : 9 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 723562155 EXPIRY DATE : 21DEC 2021 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20161221 1447 1862 4080 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
DOMAIN PARTNERS VIII, L.P.

09 ADDRESS : ONE PALMER SQUARE, SUITE 515
CITY : PRINCETON PROV: NJ POSTAL CODE: 08542
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:16
ACCOUNT : 009233-0001 FAMILY : 7 OF 13 ENQUIRY PAGE : 10 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 723562164 EXPIRY DATE : 21DEC 2021 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20161221 1448 1862 4081 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
DP VIII ASSOCIATES, L.P.

09 ADDRESS : ONE PALMER SQUARE, SUITE 515
CITY : PRINCETON PROV: NJ POSTAL CODE: 08542
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:19
ACCOUNT : 009233-0001 FAMILY : 8 OF 13 ENQUIRY PAGE : 11 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 723562182 EXPIRY DATE : 21DEC 2021 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20161221 1448 1862 4082 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
CTI LIFE SCIENCES FUND, L.P.

09 ADDRESS : 1 PLACE VILLE-MARIE, SUITE 1050
CITY : MONTREAL PROV: PQ POSTAL CODE: H3B 4S6
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12

GENERAL COLLATERAL DESCRIPTION

13
14
15

16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)

17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:21
ACCOUNT : 009233-0001 FAMILY : 9 OF 13 ENQUIRY PAGE : 12 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 723562191 EXPIRY DATE : 21DEC 2021 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20161221 1449 1862 4083 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :
ONTARIO CAPITAL GROWTH CORPORATION
09 ADDRESS : 250 YONGE STREET, 35TH FLOOR
CITY : TORONTO PROV: ON POSTAL CODE: M5B 2L7
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:24
ACCOUNT : 009233-0001 FAMILY : 10 OF 13 ENQUIRY PAGE : 13 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 726888861 EXPIRY DATE : 24APR 2022 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20170424 1705 1862 2802 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

EDWARD JONASSON
09 ADDRESS : 91 PARKLEA DRIVE
CITY : EAST YORK PROV: ON POSTAL CODE: M4G 2J9
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:26
ACCOUNT : 009233-0001 FAMILY : 11 OF 13 ENQUIRY PAGE : 14 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 726888879 EXPIRY DATE : 24APR 2022 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20170424 1705 1862 2803 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

04 ADDRESS : 55 YORK STREET, SUITE 1000 OCN :
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

07 ADDRESS : OCN :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

SHANA KELLEY
09 ADDRESS : 21 PARKWOOD AVENUE
CITY : TORONTO PROV: ON POSTAL CODE: M4V 2W9
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION
13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:29
ACCOUNT : 009233-0001 FAMILY : 12 OF 13 ENQUIRY PAGE : 15 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 727749549 EXPIRY DATE : 17MAY 2022 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20170517 1427 1862 4816 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK STREET, SUITE 1000
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:
08 SECURED PARTY/LIEN CLAIMANT :

LAUREN WHYTE
09 ADDRESS : 1445 SPRUCEWOOD TERRACE
CITY : OAKVILLE PROV: ON POSTAL CODE: L6M 2R1
CONS. MV DATE OF OR NO FIXED
GOODS INVTY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X X X X X
YEAR MAKE MODEL V.I.N.

11
12
GENERAL COLLATERAL DESCRIPTION

13
14
15
16 AGENT: BORDEN LADNER GERVAIS LLP (H. DUTCH)
17 ADDRESS : 22 ADELAIDE STREET WEST
CITY : TORONTO PROV: ON POSTAL CODE: M5H 4E3

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 09/21/2017
CCCL204 DISPLAY 1C REGISTRATION - SCREEN 1 13:17:31
ACCOUNT : 009233-0001 FAMILY : 13 OF 13 ENQUIRY PAGE : 16 OF 16
FILE CURRENCY : 20SEP 2017
SEARCH : BD : XAGENIC INC.

00 FILE NUMBER : 729757053 EXPIRY DATE : 13JUL 2022 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20170713 0927 1031 3737 REG TYP: P PPSA REG PERIOD: 05
02 IND DOB : IND NAME:
03 BUS NAME: XAGENIC INC.

OCN :
04 ADDRESS : 55 YORK ST UNIT 1600
CITY : TORONTO PROV: ON POSTAL CODE: M5J 1R7
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE

09 ADDRESS : 400-130 DUFFERIN AVENUE,
CITY : LONDON PROV: ON POSTAL CODE: N6A 6G8
CONS. MV DATE OF OR NO FIXED

	GOODS	INVTRY.	EQUIP	ACCTS	OTHER	INCL	AMOUNT	MATURITY	MAT DATE
10	X	X	X	X			8921		
	YEAR MAKE				MODEL		V.I.N.		

11

12

GENERAL COLLATERAL DESCRIPTION

13

14

15

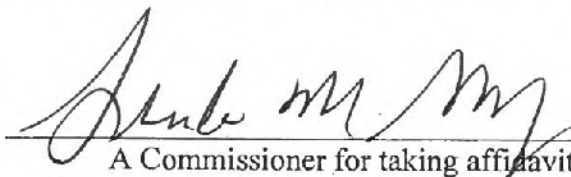
16 AGENT: MINISTRY OF FINANCE,AM & COLLECTIONS BRANCH, EHT, BN#812569655

17 ADDRESS : 400-130 DUFFERIN AVENUE, (071/746)
CITY : LONDON PROV: ON POSTAL CODE: N6A 6G8

END OF REPORT

Tab F

THIS IS EXHIBIT "F" TO THE
AFFIDAVIT OF MARK ROSSHIRT
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.


A Commissioner for taking affidavits

Linda M. Patterson
Notary Public
My Comm Expires 10/5/18

AIRD BERLIS

Kyle B. Plunkett
Direct: 416.863.3406
E-mail: kplunkett@airdberlis.com

July 26, 2017

VIA COURIER
REGISTERED & ORDINARY MAIL

Xagenic Inc.
55 York Street, Suite 1000
Toronto, Ontario M5J1R7

Attention: Edward Jonasson, Chief Financial Officer

Dear Sirs:

Re: Silicon Valley Bank loans to Xagenic Inc.

Take notice that Xagenic Inc. is indebted to our client, Silicon Valley Bank, for the sum of USD\$315,496.09, for principal, overdraft and interest as at July 26, 2017.

On behalf of our client, Silicon Valley Bank, we hereby make formal demand for payment. We hereby require you to pay to our client, Silicon Valley Bank the said sum of USD\$315,496.09 plus interest, costs and any subsequent fluctuations of the loan account.

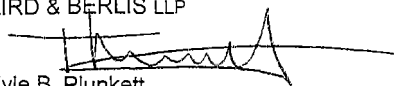
Should payment not be received forthwith, our client may take whatever action is deemed necessary to recover our client's funds, plus accrued interest.

We enclose herewith a Notice of Intention to Enforce Security pursuant to the *Bankruptcy and Insolvency Act*, subsection 244(1).

Please govern yourself accordingly.

Yours very truly,

AIRD & BERLIS LLP


Kyle B. Plunkett
KBP/ph
Encl.

30012459.1

NOTICE OF INTENTION TO ENFORCE SECURITY
(Bankruptcy and Insolvency Act, Subsection 244(1))
By Registered and Ordinary Post

TO: Xagenic Inc.
55 York Street, Suite 1000
Toronto, Ontario M5J1R7

an insolvent company / person TAKE NOTICE that:

1. Silicon Valley Bank a secured creditor, intends to enforce its security on the property of the insolvent company/person described below:
 - (a) all of the undertaking, property and assets of Xagenic Inc., including, without limiting the generality of the foregoing, all of the intangibles, proceeds, books and records, equipment and inventory.
2. The security that is to be enforced is in the form of:
 - (a) a Loan and Security Agreement dated March 13, 2015, as amended, and registered pursuant to *The Personal Property Security Act (Ontario)* on July 21, 2015 under File Number 702991422 pursuant to Financing Statement No.: 20150115 1238 1793 1767, as amended by Financing Change Statement No. 20161222 1030 1793 0241.
3. The total amount of indebtedness secured by the security is set out below:

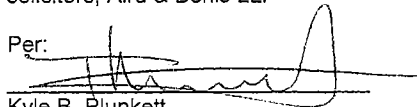
FACILITIES	PRINCIPAL	INTEREST	TOTAL P + I	INTEREST RATE/PER DIEM
Revolving Loan	USD\$311,111.00	USD\$1,296.30	USD\$312,407.30	USD\$51.86
Overdraft	USD\$3,088.79		USD\$3,088.79	USD\$51.86
Total (USD)			\$315,496.09	

4. The secured party will not have the right to enforce the security until after the expiry of the ten (10) day period following the sending of this notice, unless the insolvent company/person consents to an earlier enforcement.

DATED at Toronto this 26th day of July, 2017.

SILICON VALLEY BANK, by its
solicitors, Aird & Berlis LLP

Per:

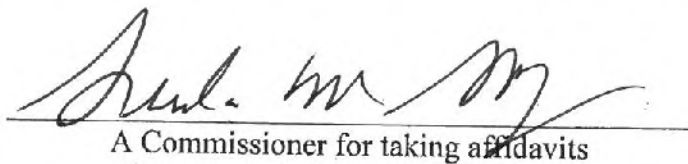

Kyle B. Plunkett

Brookfield Place, Suite 1800
181 Bay Street, Box 754
Toronto, Ontario, M5J 2T9
Tel: (416) 863-1500
Fax: (416) 863-1515

Note: This Notice is given for precautionary purposes only and there is no acknowledgement that any person to whom this Notice is delivered is insolvent, or that the provisions of the *Bankruptcy and Insolvency Act* apply to the enforcement of this security.

Tab G

THIS IS **EXHIBIT "G"** TO THE
AFFIDAVIT OF **MARK ROSSHIRT**
SWORN THIS 22ND DAY OF SEPTEMBER, 2017.

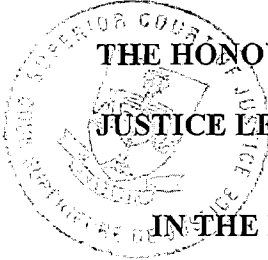


A Commissioner for taking affidavits

Linda M. Rosenthal
Notary Public

my Comm. Expires 10/5/18

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)



THE HONOURABLE
JUSTICE LEDERMAN

) TUESDAY THE 8th
)
) DAY OF AUGUST, 2017

IN THE MATTER OF THE PROPOSAL OF XAGENIC INC., OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO

ORDER

THIS MOTION made by Xagenic Inc. (the "**Company**") for an Order pursuant to sections 50.4(9) and 50.6 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Edward Jonasson sworn August 4, 2017 (the "**Jonasson Affidavit**") and the first report of A. Farber & Partners Inc. (the "**Proposal Trustee**") in its capacity as proposal trustee, dated August 4, 2017 and on hearing the submissions of counsel for the Company and such other parties as may be in attendance and no one appearing for another party on the service list, although duly served as appears from reading the affidavit of service of Julie Laura Peacock sworn August 4, 2017, filed;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

DIP FINANCING

2. **THIS COURT ORDERS** that the Company is hereby authorized and empowered to borrow under a credit facility (the "**DIP Facility**") from Shana Kelley, CTI Life Sciences Fund, BDC Capital Inc. and such other debentureholders as may agree to provide financing (collectively, the "**DIP Lenders**") in order to finance the continuation of the Company's

business and preservation of the Company's current and future assets, undertakings and properties of every nature and kind whatsoever and wherever situate, including all proceeds thereof (the "**Property**") provided that the borrowings under the DIP Facility shall not exceed \$750,000 unless permitted by further Order of this Court.

3. **THIS COURT ORDERS** that the DIP Facility shall be made on the terms and subject to the conditions set out in the term sheet dated July 31, 2017, save and except that the maximum amount that may be borrowed under the facility is hereby increased from \$500,000 to \$750,000 (the "**DIP Term Sheet**") between the Company as borrower and Shana Kelley, CTI Life Sciences Fund and BDC Capital Inc. as lenders, a copy of which is attached as Exhibit C to the Jonasson Affidavit.

4. **THIS COURT ORDERS** that the Company is authorized and empowered to execute and deliver such credit agreements, mortgages, charges, deeds of trust, assignments of rents, deposit account control agreements, pledge agreements, security agreements, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**DIP Documents**") as are contemplated by the DIP Term Sheet or as the DIP Lenders may reasonably require pursuant to the terms of the DIP Term Sheet.

5. **THIS COURT ORDERS** that the Company is authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the DIP Lenders under and pursuant to the DIP Term Sheet and the DIP Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

6. **THIS COURT ORDERS** that the DIP Lenders are entitled to the benefit of and are granted a charge on the Property in an amount equal to \$750,000, which charge shall have the priority set out below, and in particular shall be bifurcated into a priority amount of \$150,000 (the "**Priority DIP Charge**") and a subordinate amount of \$600,000 (the "**Subordinate DIP Charge**" and, together with the Priority DIP Charge, the "**DIP Charge**").

7. **THIS COURT ORDERS AND DECLARES** that, unless otherwise agreed by the DIP Lenders (in their sole discretion), the DIP Lenders shall be treated as unaffected in any proposal filed by the Company under the BIA with respect to any advances under the DIP Documents.

8. **THIS COURT ORDERS** that the DIP Charge shall secure amounts owing to the DIP Lenders pursuant to the DIP Facility, and shall not secure any amounts owing to the DIP Lenders by the Company prior to the date of this Order.

ADMINISTRATION CHARGE

9. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Company as part of the cost of these proceedings. The Company is hereby authorized and directed to pay the accounts of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company on a periodic basis.

10. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company are entitled to the benefit of and are granted a charge on the Property, which charge shall not exceed an aggregate amount of \$190,000, which charge shall have the priority set out below, and in particular shall be bifurcated into a priority amount of \$40,000 (the "**Priority Administration Charge**") and a subordinate amount of \$150,000 (the "**Subordinate Administration Charge**") and together with the Priority Administration Charge, the "**Administration Charge**").

11. **THIS COURT ORDERS** that the Administration Charge shall be security for the fees and disbursements of the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Company, each incurred at their respective standard rates and charges, both before and after the making of this Order, which are related to these proceedings.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

12. **THIS COURT ORDERS** that the priorities of the Administration Charge, the DIP Charge, and the security granted by the Company in favour of Silicon Valley Bank (the "**SVB Charge**") as among them, shall be as follows:

First – Priority Administration Charge;

(a) Second – Priority DIP Charge;

Third – SVB Charge (subject to the review and report of the Proposal Trustee on the security in favour of Silicon Valley Bank supporting the SVB Charge);

Fourth – Subordinate Administration Charge; and

Fifth – Subordinate DIP Charge.

13. **THIS COURT ORDERS THAT** any security documentation evidencing, or the filing, registration or perfection of the Administration Charge and the DIP Charge (collectively, the “**Charges**”) shall not be required and the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

14. **THIS COURT ORDERS** that each of the Priority Administration Charge and the Priority DIP Charge (together, the “**Priority Charges**”) (all as constituted and defined in this Order) constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Priority Charges rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any person, party or entity.

15. **THIS COURT ORDERS** that each of the Subordinate Administration Charge and the Subordinate DIP Charge (together, the “**Subordinate Charges**”) (all as constituted and defined in this Order) constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Priority Charges rank in priority to all Encumbrances in favour of any person, party or entity, other than the SVB Charge (subject to the Proposal Trustee’s review and report on the security in favour of Silicon Valley Bank).

16. **THIS COURT ORDERS** that except as otherwise expressly provided herein, or as may be approved by this Court, the Company shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to or *pari passu* with the Charges unless the Company obtains the prior written consent of the beneficiaries of the applicable Charges and the SVB Charge.

17. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the charges entitled to the benefit of the Charges (collectively, the “**Chargees**”) by (a) the pendency of these proceedings and any declarations of insolvency made herein; (b) any applications for bankruptcy orders issued pursuant to the BIA; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; or (d) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances contained in any existing loan document, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, the “**Agreements**”) which binds the Company and notwithstanding any provision to the contrary in any Agreements the creation of the Charges shall not create or be deemed to constitute a breach by the Company of any Agreements to which it is a party and payments pursuant to this Order or the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct or other challengeable or voidable transactions under any applicable law.

18. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Company’s interest in such real property leases.

STAY OF PROCEEDINGS

19. **THIS COURT ORDERS** that the stay of proceedings as a result of the Company having filed a notice of intention to make a proposal pursuant to the BIA on August 1, 2017 is hereby continued and extended to 11:59pm on Monday, October 16, 2017.

SERVICE AND NOTICE

20. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further

orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.farberfinancial.com/insolvency-engagements/xagenicinc>

21. **THIS COURT ORDERS** that the E-Service List Keeper (as defined in the Protocol) for the purpose of this proceeding shall be the Proposal Trustee.

22. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Company and the Proposal Trustee are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Company's creditors or other interested parties at their respective addresses as last shown on the records of the Company and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

23. **THIS COURT ORDERS** that nothing in this Order shall prevent the Proposal Trustee from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy or a monitor of the Company or the Property.

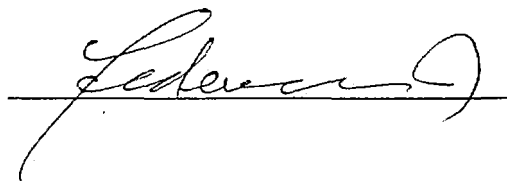
AID AND RECOGNITION

24. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Company, the Proposal Trustee and their agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

AUG 08 2017

PER / PAR:




IN THE MATTER OF THE PROPOSAL OF XAGENIC INC., OF THE CITY OF TORONTO, IN THE PROVINCE OF
ONTARIO

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDINGS COMMENCED AT TORONTO	
ORDER	
BORDEN LADNER GERVAIS LLP Bay Adelaide Centre, East Tower 22 Adelaide St. W. Toronto, Ontario M5H 4E3 ALEX MACFARLANE / LSUC # 28133Q Tel: 416-367-6305 Email: amacfarlane@blg.com ROGER JAIPARGAS / LSUC # 43275C Tel: 416-367-6266 Email: rjaipargas@blg.com Lawyers for Xagenic Inc.	

Applicant

Respondent

Court File No. CV-17-583074-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**AFFIDAVIT OF MARK ROSSHIRT
(sworn September 22, 2017)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank

TAB 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE _____) THURSDAY, THE 28TH DAY
)
JUSTICE _____) OF SEPTEMBER, 2017

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**ORDER
(appointing Receiver)**

THIS APPLICATION made by Silicon Valley Bank (“SVB”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “CJA”) appointing A. Farber & Partners Inc. (“Farber”) as receiver (in such capacity, the “Receiver”) without security, of all of the assets, undertakings and properties of Xagenic Inc. (the “Debtor”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Mark Rosshirt sworn September 22, 2017 and the exhibits thereto, Order of the Honourable Justice Lederman dated August 8, 2017 (the “NOI Order”) granted in the Debtor’s Proposal Proceedings (as defined below), and on hearing the submissions of counsel for SVB and such other counsel as were present, no one appearing for any other person on the service list although duly served as appears from the affidavit of service of Paula Hoosain sworn September 22, 2017 and on reading the consent of Farber to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the notice of application and the application record is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF PROPOSAL PROCEEDINGS

2. **THIS COURT ORDERS AND DECLARES** that: (i) the stay of proceedings in the proposal proceedings (the “**Proposal Proceedings**”) of the Debtor (Court File No. / Estate No. 31-2278723) commenced under Part III of the BIA are hereby lifted; (ii) the Proposal Proceedings are hereby terminated; (iii) the provisions of Part III of the BIA shall have no further application to the Debtor; (iv) the Debtor shall be deemed to have made an assignment in bankruptcy pursuant to the BIA as of the date of this Order (the “**Bankruptcy Proceedings**”); and (v) Farber is appointed as The Trustee of the Estate of the Debtor, a bankrupt, in the Bankruptcy Proceedings.

APPOINTMENT

3. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, Farber is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

4. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order including, without limitation, the filing of any Scientific Research and Experimental Development tax incentive claims with Canada Revenue Agency for which the Debtor may be entitled to;

- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate including, without limitation, entering into a liquidation agreement with Infinity Asset Solutions Inc.;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$500,000, provided that the aggregate consideration for all such transactions does not exceed \$750,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause,and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the

Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person’s possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. **THIS COURT ORDERS** that the Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a “Sale”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario*

Water Resources Act, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER’S LIABILITY

18. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER’S ACCOUNTS

19. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the “**Receiver’s Charge**”) on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver’s Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

20. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements and Farber's outstanding fees and disbursements (if any) in its capacity as the Debtor's proposal trustee in the Proposal Proceedings, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to (i) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and (ii) the Receiver's Charge.

23. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

25. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates

evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

PRIORITY OF CHARGES

26. **THIS COURT ORDERS** that, in paragraph 27, capitalized terms used that are not otherwise defined in this Order have the meaning ascribed to such term in the NOI Order.

27. **THIS COURT ORDERS** that the priorities of the Receiver's Charge, the Receiver's Borrowing Charge, the Priority Administration Charge, the Priority DIP Charge, the SVB Charge, the Subordinate Administration Charge and the Subordinate DIP Charge, as among them, shall be as follows:

First –Receiver's Charge;

Second –Receiver's Borrowing Charge;

Third –Priority Administration Charge (to the maximum amount of \$40,000);

Fourth – Priority DIP Charge (to the maximum amount of \$150,000);

Fifth – SVB Charge (subject to review and report of the Receiver on the security in favour of SVB supporting the SVB Charge);

Sixth – Subordinate Administration Charge (to a maximum amount of \$150,000);
and

Seventh – Subordinate DIP Charge (to a maximum amount of \$600,000).

SERVICE AND NOTICE

28. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**"), this Order shall constitute an order for substituted service pursuant to

Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <http://www.farberfmancial.com/insolvency-engagements/xagenicinc>

29. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

30. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and

that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. **THIS COURT ORDERS** that SVB shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of SVB's security or, if not so provided by SVB's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that A. Farber & Partners Inc., the receiver (in such capacity, the "**Receiver**") of the assets, undertakings and properties Xagenic Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 28th day of September, 2017 (the "**Order**") made in an application having Court file number CV-17-583074-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

A. FARBER & PARTNERS INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

SILICON VALLEY BANK
Applicant

And

XAGENIC INC.
Respondent

Court File No. CV-17-583074-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER
(Appointing Receiver)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank

TAB 4

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE _____) ~~DAY~~ THURSDAY, THE 28TH
DAY

JUSTICE _____) ~~OF~~ _____, 2017
SEPTEMBER, 2017

PLAINTIFF¹

Plaintiff

SILICON VALLEY BANK

Applicant

- and -

DEFENDANT

Defendant

XAGENIC INC.

Respondent

ORDER
(appointing Receiver)

THIS MOTION~~APPLICATION~~ made by the Plaintiff² Silicon Valley Bank ("SVB") for
an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3,
as amended (the "BIA") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as

¹ The Model Order Subcommittee notes that a receivership proceeding may be commenced by action or by application.
This model order is drafted on the basis that the receivership proceeding is commenced by way of an action.

² Section 243(1) of the BIA provides that the Court may appoint a receiver "on application by a secured creditor".

amended (the "CJA") appointing [RECEIVER'S NAME] A. Farber & Partners Inc. ("Farber") as receiver ~~[and manager]~~ (in such ~~capacities~~ capacity, the "Receiver") without security, of all of the assets, undertakings and properties of [DEBTOR'S NAME] Xagenic Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of [NAME] Mark Rosshirt sworn [DATE] and the ~~Exhibits thereto~~ September 22, 2017 and the exhibits thereto, Order of the Honourable Justice Lederman dated August 8, 2017 (the "NOI Order") granted in the Debtor's Proposal Proceedings (as defined below), and on hearing the submissions of counsel for [NAMES] SVB and such other counsel as were present, no one appearing for [NAME] any other person on the service list although duly served as appears from the affidavit of service of [NAME] Paula Hoosain sworn [DATE] September 22, 2017 and on reading the consent of [RECEIVER'S NAME] Farber to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the ~~Notice~~ notice of ~~Motion~~ application and the ~~Motion~~ application record is hereby abridged and validated³ so that this ~~motion~~ application is properly returnable today and hereby dispenses with further service thereof.

TERMINATION OF PROPOSAL PROCEEDINGS

2. **THIS COURT ORDERS AND DECLARES** that: (i) the stay of proceedings in the proposal proceedings (the "**Proposal Proceedings**") of the Debtor (Court File No. / Estate No. 31-2278723) commenced under Part III of the BIA are hereby lifted; (ii) the Proposal Proceedings are hereby terminated; (iii) the provisions of Part III of the BIA shall have no further application to the Debtor; (iv) the Debtor shall be deemed to have made an assignment in bankruptcy pursuant to the BIA as of the date of this Order (the "**Bankruptcy Proceedings**");

³ If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in appropriate circumstances.

and (v) Farber is appointed as The Trustee of the Estate of the Debtor, a bankrupt, in the Bankruptcy Proceedings.

APPOINTMENT

3. ~~2.~~ **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, [~~RECEIVER'S NAME~~] Farber is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

4. ~~3.~~ **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise

of the Receiver's powers and duties, including, without limitation, those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order including, without limitation, the filing of any Scientific Research and Experimental Development tax incentive claims with Canada Revenue Agency for which the Debtor may be entitled to;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings.⁴ The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may

⁴ This model order does not include specific authority permitting the Receiver to either file an assignment in bankruptcy on behalf of the Debtor, or to consent to the making of a bankruptcy order against the Debtor. A bankruptcy may have the effect of altering the priorities among creditors, and therefore the specific authority of the Court should be sought if the Receiver wishes to take one of these steps.

deem appropriate including, without limitation, entering into a liquidation agreement with Infinity Asset Solutions Inc.;

- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$ 500,000 , provided that the aggregate consideration for all such transactions does not exceed \$ 750,000 ; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;⁵

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, ~~[or section 31 of the Ontario *Mortgages Act*, as the case may be.]~~⁵ shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

⁵ If the Receiver will be dealing with assets in other provinces, consider adding references to applicable statutes in other provinces. If this is done, those statutes must be reviewed to ensure that the Receiver is exempt from or can be exempted from such notice periods, and further that the Ontario Court has the jurisdiction to grant such an exemption.

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. ~~4.~~ **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**") and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

6. ~~5.~~ **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or

affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph ~~5~~6 or in paragraph ~~6~~7 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

7. ~~6.~~ **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

8. ~~7.~~ **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this

Court upon application by the Receiver on at least two (2) days' notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

9. ~~8.~~ **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

10. ~~9.~~ **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

11. ~~10.~~ **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. ~~11.~~ **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. ~~12.~~ **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

14. ~~13.~~ **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including, without limitation, the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the **"Post Receivership Accounts"**) and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

15. ~~14.~~ **THIS COURT ORDERS** that all ~~employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The~~ Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in

respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

16. ~~15.~~ **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "~~“Sale”~~"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

17. ~~16.~~ **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "~~“Possession”~~") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "~~“Environmental Legislation”~~"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the

Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

18. ~~17.~~ **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

19. ~~18.~~ **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.⁶

20. ~~19.~~ **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

21. ~~20.~~ **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements and Farber's

⁶ Note that subsection 243(6) of the BIA provides that the Court may not make such an order "unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations".

outstanding fees and disbursements (if any) in its capacity as the Debtor's proposal trustee in the Proposal Proceedings, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

22. ~~21.~~ **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$50,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to ~~the Receiver's Charge and~~ (i) the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA; and (ii) the Receiver's Charge.

23. ~~22.~~ **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

24. ~~23.~~ **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as **Schedule "A"** hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

25. ~~24.~~ **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

PRIORITY OF CHARGES

26. THIS COURT ORDERS that, in paragraph 27, capitalized terms used that are not otherwise defined in this Order have the meaning ascribed to such term in the NOI Order.

27. THIS COURT ORDERS that the priorities of the Receiver's Charge, the Receiver's Borrowing Charge, the Priority Administration Charge, the Priority DIP Charge, the SVB Charge, the Subordinate Administration Charge and the Subordinate DIP Charge, as among them, shall be as follows:

First – Receiver's Charge;

Second – Receiver's Borrowing Charge;

Third – Priority Administration Charge (to the maximum amount of \$40,000);

Fourth – Priority DIP Charge (to the maximum amount of \$150,000);

Fifth – SVB Charge (subject to review and report of the Receiver on the security in favour of SVB supporting the SVB Charge);


Sixth – Subordinate Administration Charge (to a maximum amount of \$150,000);
and

Seventh – Subordinate DIP Charge (to a maximum amount of \$600,000).

SERVICE AND NOTICE

28. 25–THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website

at
<http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/> shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the “**Rules**”), this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil*

~~Procedure~~. Subject to Rule 3.01(d) of the ~~Rules of Civil Procedure~~ and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL :
<http://www.farberfinancial.com/insolvency-engagements/xagenicinc>

29. ~~26.~~ **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

30. ~~27.~~ **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

31. ~~28.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

32. ~~29.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

33. ~~30.~~ **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

34. ~~31.~~ **THIS COURT ORDERS** that ~~the Plaintiff~~ SVB shall have its costs of this ~~motion~~ application, up to and including entry and service of this Order, provided for by the terms of ~~the Plaintiff~~ SVB's security or, if not so provided by ~~the Plaintiff~~ SVB's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

35. ~~32.~~ **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that ~~[RECEIVER'S NAME]~~ A. Farber & Partners Inc., the receiver (in such capacity, the **"Receiver"**) of the assets, undertakings and properties ~~[DEBTOR'S NAME]~~ Xagenic Inc. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the **"Property"**) appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the **"Court"**) dated the 28th day of 20 September, 2017 (the **"Order"**) made in an action application having Court file number CL CV-17-583074-00CL, has received as such Receiver from the holder of this certificate (the **"Lender"**) the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver

to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

~~{RECEIVER'S NAME}~~ **A. FARBER &
PARTNERS INC.**, solely in its capacity as
Receiver of the Property, and not in its personal
capacity

Per: _____

Name:

Title:

SILICON VALLEY BANK

Applicant

And

XAGENIC INC.

Respondent

Court File No. CV-17-583074-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

PROCEEDING COMMENCED AT TORONTO

ORDER
(Appointing Receiver)

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, Ontario M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC # 61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank
30438555.5

TAB 5

Court File No. CV-17-583074-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

CONSENT

A. Farber & Partners Inc. hereby consents to act as the receiver of the Respondent herein.

DATED at Toronto this 21st day of September, 2017

A. FARBER & PARTNERS INC.

Per: R. White
Name: Robyn White
Title: Senior Insolvency Manager, Licensed
Insolvency Trustee

SILICON VALLEY BANK

Applicant
and

XAGENIC INC.

Respondent

Court File No.: CV-17-583074-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceedings commenced at TORONTO

CONSENT TO ACT AS RECEIVER

Thornton Grout Finnigan LLP
Barristers and Solicitors
Toronto-Dominion Centre
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7
(416) 304-1313

Asim Iqbal (LSUC# 61884B)
Email: aiqbal@tgf.ca
Tel: (416) 304-0595

Lawyers for the Proposed Receiver

TAB 6

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, c. C.43, AS AMENDED**

SERVICE LIST

GENERAL	
BORDEN LADNER GERVAIS Bay Adelaide Centre, East Tower 22 Adelaide Street West Suite 3400 Toronto, ON, Canada M5H 4E3 Lawyers for the Respondent, Xagenic Inc.	Alex MacFarlane Tel: 416.367.6305 Email: amacfarlane@blg.com
AIRD & BERLIS LLP Brookfield Place 181 Bay Street Suite 1800, PO Box 754 Toronto ON M5J 2T9 Lawyers for the Applicant, Silicon Valley Bank	Kyle Plunkett Tel: (416) 865-3406 E-mail: kplunkett@airdberlis.com Ian Aversa Tel: (416) 865-3082 E-mail: iaversa@airdberlis.com

A. FARBER & PARTNERS INC. 150 York Street, Suite 1600 Toronto, ON M5H 2T9 The Proposal Trustee	Hylton Levy and Robyn White Tel: 416.496.3070/416.796.6030 Email: hlevy@farberfinancial.com rwhite@farberfinancial.com
THORNTON GROUT FINNIGAN LLP Suite 3200, TD West Tower 100 Wellington Street West P.O. Box 329 Toronto-Dominion Centre Toronto, ON M5K 1K7 Lawyers for the Proposed Receiver	Asim Iqbal Tel: 416.304.0595 Email: aiqbal@tgf.ca
MCMILLAN LLP Brookfield Place, 181 Bay Street, Suite 440 Toronto, ON M5J 2T3 Lawyers for Shana Kelley in her capacity as DIP Lender	Tushara Weerasooriya Tel: 416.865.7890 Email: tushara.weerasooriya@mcmillan.ca
SECURED CREDITORS	
XEROX CANADA LTD. 33 Bloor Street E. 3 rd Floor Toronto, ON M4W 3H1	
AGREEMENTS	
DOMAIN PARTNERS VII, L.P. One Palmer Square, Suite 515 Princeton, New Jersey 08542 Secured Debenture Holder	Lisa Kraeutler/Jesse Treu Tel: 609.683.5656 Email: kraeutler@domainvc.com treu@domainvc.com
DP VIII ASSOCIATES, L.P. One Palmer Square, Suite 515 Princeton, New Jersey 08542 Secured Debenture Holder	Lisa Kraeutler/Jesse Treu Tel: 609.683.5656 Email: kraeutler@domainvc.com treu@domainvc.com

ONTARIO CAPITAL GROWTH CORPORATION 250 Yonge Street, Suite 3501 P.O. Box 1 Toronto, ON M5B 2L7 Secured Debenture Holder	Brenda Hogan Tel: 416.212.3368 Email: Brenda.hogan@ontario.ca
COVINGTON CAPITAL 375 University Avenue, Suite 700 Toronto, ON M5G 2J5 Observer for Ontario Capital Grown Corporation	Phil Reddon Tel: 416.365.5222 Email: phil@covingtoncap.com
CTI LIFE SCIENCES FUND, L.P. 1 Place Ville-Marie, Suite 1635 Montreal, QC H3B 2B6 Secured Debenture Holder	Shermaine Tilley/Ken Pastor Tel: 514.798.2333 Email: stilley@ctisciencences.com kpastor@ctisciencences.com
SHANA KELLEY 21 Parkwood Avenue Toronto, ON M4V 2W9 Secured Debenture Holder	Tel: 647.500.8641 Email: shana.kelley@gmail.com
EDWARD JONASSON 91 Parklea Drive East York, ON M4G 2J9 Secured Debenture Holder	Tel: 416.473.6417 Email: edjonasson@gmail.com
BDC CAPITAL INC. Centre de Commerce Mondial 380 Rue Saint-Antoine Ouest Suite 2000 Montreal, QC H2Y 3X7 Secured Debenture Holder	Bharat Srinivasa/Dion Madsen Tel: 514.283.3133/415.806.1378 Email: bharat.srinivasa@bdccapital.ca dion.madsen@bdccapital.ca
LAUREN WHYTE 1445 Sprucewood Terrace Oakville, ON L6M 2R1 Secured Debenture Holder	Tel: 905.330.0119 Email: laurenwhyte@gmail.com

GOVERNMENT AUTHORITIES**DEPARTMENT OF JUSTICE**

Ontario Regional Office
The Exchange Tower, Box 36
130 King Street West, Suite 3400
Toronto, ON M5X 1K6

Diane Winters

Tel: (416) 973-3172

E-mail: diane.winters@justice.gc.ca

ONTARIO MINISTRY OF FINANCE

Legal Services Branch
11-777 Bay Street
Toronto, ON M5G 2C8

Kevin J. O'Hara

Tel: 416-327-8463

Fax: 416-325-1460

Email: kevin.ohara@fin.gov.on.ca

E-MAIL DISTRIBUTION LIST

iaversa@airdberlis.com; kplunkett@airdberlis.com; amacfarlane@blg.com;
diane.winters@justice.gc.ca; kevin.ohara@ontario.ca; hlevy@farberfinancial.com;
rwhite@farberfinancial.com; aiqbal@tgf.ca; tushara.weerasooriya@mcmillan.ca;
kraeutler@domainvc.com; treu@domainvc.com; Brenda.hogan@ontario.ca;
phil@covingtoncap.com; stille@ctisciences.com; kpastor@ctisciences.com;
shana.kelley@gmail.com; edjonasson@gmail.com; bharat.srinivasa@bdccapital.ca;
dion.madsen@bdccapital.ca; laurenwhyte@gmail.com;

SILICON VALLEY BANK

Applicant

- and -

XAGENIC INC.

Respondent

Court File No. CV-17-583074-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced at Toronto

**APPLICATION RECORD
(Returnable September 28, 2017)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Ian Aversa (LSUC # 55449N)
Tel: (416) 865-3082
Fax: (416) 863-1515
Email: iaversa@airdberlis.com

Kyle B. Plunkett (LSUC #61044N)
Tel: (416) 865-3406
Fax: (416) 863-1515
Email: kplunkett@airdberlis.com

Lawyers for Silicon Valley Bank