

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM S-8****REGISTRATION STATEMENT**

Under

**The Securities Act of 1933****AXSOME THERAPEUTICS, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other jurisdiction  
of incorporation or organization)

**45-4241907**  
(IRS Employer Identification No.)

**25 Broadway**  
**9th Floor**  
**New York, New York 10004**  
(Address of principal executive offices) (Zip Code)

**Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan**  
(Full title of the Plans)

**Herriot Tabuteau, M.D.**  
**Chief Executive Officer**  
**Axsome Therapeutics, Inc.**  
**25 Broadway**  
**9th Floor**  
**New York, New York 10004**  
(Name and address of agent for service)

**(212) 332-3241**  
(Telephone number, including area code, of agent for service)

**Copies to:**

**Emilio Ragosa**  
Morgan, Lewis & Bockius LLP  
502 Carnegie Center  
Princeton, New Jersey 08540  
Telephone: (609) 919-6600

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

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

**CALCULATION OF REGISTRATION FEE**

Title of Securities to be Registered (1)	Amount to be Registered(2)	Proposed Maximum Offering Price Per Share(3)	Proposed Maximum Aggregate Offering Price(3)	Amount of Registration Fee
Common stock, \$0.0001 par value, to be issued pursuant to the Registrant's 2015 Omnibus Incentive Compensation Plan	4,491,507 shares	\$ 8.26	\$ 37,099,848	\$ 3,736

- (1) This registration statement (the "Registration Statement") covers shares of the Registrant's common stock, \$0.0001 par value per share ("Common Stock"), which are issuable pursuant to the Registrant's 2015 Omnibus Incentive Compensation Plan (the "2015 Plan").
- (2) This Registration Statement shall also cover any additional shares of Common Stock which become issuable under the 2015 Plan by reason of any stock dividend, stock split, recapitalization or other similar transaction effected without the Registrant's receipt of consideration which results in an

increase in the number of the outstanding shares of Registrant's Common Stock.

- (3) Calculated solely for purposes of this offering under Rule 457(h) of the Securities Act of 1933, as amended (the "1933 Act"), on the basis of the average of the high and low prices per share of Registrant's Common Stock on December 15, 2015 as reported by The NASDAQ Stock Market.
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## PART II

### Information Required in the Registration Statement

#### Item 3. Incorporation of Documents by Reference

Axsome Therapeutics, Inc. (the “Registrant”) hereby incorporates by reference into this Registration Statement the following documents previously filed with the Securities and Exchange Commission (the “Commission”):

- (a) The Registrant’s Prospectus filed with the Commission pursuant to Rule 424(b) under the 1933 Act, relating to the Registration Statement on Form S-1, as amended (File No. 333-207393) and declared effective on November 19, 2015, which contains the Registrant’s audited financial statements for the latest fiscal year for which such statements have been filed with the Commission;
- (b) The Registrant’s Registration Statement (File No. 001-37635) on Form 8-A filed with the Commission on November 16, 2015 pursuant to Section 12(b) of the 1934 Act, in which there is described the terms, rights, and provisions applicable to the Registrant’s outstanding Common Stock; and
- (c) All other reports filed pursuant to Section 13(a) or 15(d) of the 1934 Act since the end of the fiscal year covered by the Registrant’s Prospectus referred to in (a) above.

All reports and definitive proxy or information statements filed pursuant to Section 13(a), 13(c), 14 or 15(d) of the 1934 Act after the date of this Registration Statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which registers all securities then remaining unsold shall be deemed to be incorporated by reference into this Registration Statement and to be a part hereof from the date of filing of such documents. Unless expressly incorporated into this Registration Statement, a report furnished but not filed on Form 8-K under the 1934 Act shall not be incorporated by reference into this Registration Statement. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this Registration Statement to the extent that a statement contained herein or in any subsequently filed document which also is deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this Registration Statement.

#### Item 4. Description of Securities

Not Applicable.

#### Item 5. Interests of Named Experts and Counsel

Not Applicable.

#### Item 6. Indemnification of Directors and Officers

As permitted by the Delaware General Corporation Law, the Registrant has adopted provisions in its amended and restated certificate of incorporation and amended and restated by-laws that limit or eliminate the personal liability of its directors. Consequently, a director will not be personally liable to the Registrant or the Registrant’s stockholders for monetary damages for breach of fiduciary duty as a director, except for liability for: (i) any breach of the director’s duty of loyalty to the Registrant or the Registrant’s stockholders; (ii) any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law; (iii) any unlawful payments related to dividends or unlawful stock repurchases, redemptions or other distributions; or (iv) any transaction from which the director derived an improper personal benefit.

These limitations of liability do not alter director liability under the federal securities laws and do not affect the availability of equitable remedies such as an injunction or rescission.

In addition, the Registrant's amended and restated by-laws provide that: (i) the Registrant will indemnify its directors, officers and, in the discretion of its board of directors, certain employees to the fullest extent permitted by the Delaware General Corporation Law; and (ii) advance expenses, including attorneys' fees, to the Registrant's directors and, in the discretion of the Registrant's board of directors, to its officers and certain employees, in connection with legal proceedings, subject to limited exceptions.

The Registrant's amended and restated certificate of incorporation that became effective immediately prior to the completion of its initial public offering provides that the Registrant will indemnify each of its directors to the fullest extent permitted by the Delaware General Corporation Law and advance expenses to each indemnitee in connection with any proceeding in which indemnification is available.

The Registrant also maintains general liability insurance to provide insurance coverage to its directors and officers for losses arising out of claims based on acts or omissions in their capacities as directors or officers, including liabilities under the 1933 Act. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers, or persons controlling the Registrant pursuant to the foregoing provisions, the Registrant has been informed that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

These provisions may discourage stockholders from bringing a lawsuit against the Registrant's directors in the future for any breach of their fiduciary duty. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit the Registrant and its stockholders. Furthermore, a stockholder's investment may be adversely affected to the extent the Registrant pays the costs of settlement and damage awards against directors, officers and certain employees pursuant to these indemnification provisions. The Registrant believes that these provisions, the indemnification agreements and the insurance are necessary to attract and retain talented and experienced directors and officers.

Item 7. Exemption from Registration Claimed

Not Applicable.

Item 8. Exhibits

<u>Exhibit Number</u>	<u>Exhibit</u>
4.1	Instruments Defining the Rights of Stockholders. Reference is made to Registrant's Registration Statement No. 001-37635 on Form 8-A, together with the exhibits thereto, which are incorporated herein by reference pursuant to Item 3(b) to this Registration Statement.
5.1	Opinion and Consent of Morgan, Lewis & Bockius LLP.
23.1	Consent of Morgan, Lewis & Bockius LLP is contained in Exhibit 5.1.
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24	Power of Attorney. Reference is made to page II-4 of this Registration Statement.
99.1(1)	Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan.
99.2	Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan, Form of Stock Option Agreement.

(1) Exhibit 99.1 is incorporated by reference to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-207393), as declared effective on November 19, 2015.

Item 9. Undertakings

A. The undersigned Registrant hereby undertakes: (1) to file, during any period in which offers or sales are being made, a post-effective amendment to this Registration Statement: (i) to include any prospectus required by Section 10(a)(3) of the 1933 Act, (ii) to reflect in the prospectus any facts or events arising after the effective date of this Registration Statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this Registration Statement and (iii) to include any material information with respect to the plan of distribution not previously disclosed in this Registration Statement or any material change to such information in this Registration Statement; provided, however, that clauses (1)(i) and (1)(ii) shall not apply if the information required to be included in a post-effective amendment by those clauses is contained in periodic reports filed with or furnished to the Commission by the Registrant pursuant to Section 13 or Section 15(d) of the 1934 Act that are incorporated by reference into this Registration Statement; (2) that for the purpose of determining any liability under the 1933 Act each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; and (3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the 2015 Plan.

B. The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the 1933 Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the 1934 Act that is incorporated by reference into this Registration Statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

C. Insofar as indemnification for liabilities arising under the 1933 Act may be permitted to directors, officers or controlling persons of the Registrant pursuant to the indemnification provisions summarized in Item 6 or otherwise, the Registrant has been advised that, in the opinion of the Commission, such indemnification is against public policy as expressed in the 1933 Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer, or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the 1933 Act and will be governed by the final adjudication of such issue.

**SIGNATURES**

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8, and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of New York, State of New York on this 16th day of December, 2015.

**AXSOME THERAPEUTICS, INC.**

By: /s/ Herriot Tabuteau, M.D.  
Herriot Tabuteau, M.D.  
Chief Executive Officer and  
Chairman of the Board

**POWER OF ATTORNEY**

**KNOW ALL PERSONS BY THESE PRESENTS:**

That each person whose signature appears below constitutes and appoints Herriot Tabuteau, M.D., Chief Executive Officer, and Constance Ames, Vice President, Finance, and each of them, as such person's true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for such person and in such person's name, place and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this Registration Statement, and to file same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as such person might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them, or their or his or her substitutes, may lawfully do or cause to be done by virtue thereof.

Pursuant to the requirements of the Securities Act of 1933, as amended, this Registration Statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Herriot Tabuteau, M.D.</u> Herriot Tabuteau, M.D.	Chief Executive Officer and Chairman of the Board (Principal Executive Officer)	December 16, 2015
<u>/s/ Constance Ames</u> Constance Ames	Vice President, Finance (Principal Financial and Accounting Officer)	December 16, 2015
<u>/s/ Roger Jeffs, Ph.D.</u> Roger Jeffs, Ph.D.	Director	December 16, 2015
<u>/s/ Mark Coleman, M.D.</u> Mark Coleman, M.D.	Director	December 16, 2015
<u>/s/ Mark Saad</u> Mark Saad	Director	December 16, 2015

## EXHIBIT INDEX

Exhibit Number	Exhibit
4.1	Instruments Defining the Rights of Stockholders. Reference is made to Registrant's Registration Statement No. 001-37635 on Form 8-A, together with the exhibits thereto, which are incorporated herein by reference pursuant to Item 3(b) to this Registration Statement.
5.1	Opinion and Consent of Morgan, Lewis & Bockius LLP.
23.1	Consent of Morgan, Lewis & Bockius LLP is contained in Exhibit 5.1.
23.2	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24	Power of Attorney. Reference is made to page II-4 of this Registration Statement.
99.1(1)	Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan.
99.2	Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan, Form of Stock Option Agreement.

(1) Exhibit 99.1 is incorporated by reference to the Registrant's Registration Statement on Form S-1, as amended (File No. 333-207393), as declared effective on November 19, 2015.

OPINION AND CONSENT OF MORGAN, LEWIS & BOCKIUS LLP

December 16, 2015

Axsome Therapeutics, Inc.  
25 Broadway  
9th Floor  
New York, New York 10004

Re: Axsome Therapeutics, Inc. - Registration Statement on Form S-8 for 4,491,507 Shares of Common Stock

Ladies and Gentlemen:

We have acted as counsel to Axsome Therapeutics, Inc., a Delaware Corporation (the "Company"), in connection with the registration on Form S-8 (the "Registration Statement") under the Securities Act of 1933, as amended, of 4,491,507 shares of Common Stock (the "Shares") under the Company's 2015 Omnibus Incentive Compensation Plan (the "2015 Plan").

This opinion is being furnished in accordance with the requirements of Item 8 of Form S-8 and Item 601(b)(5)(i) of Regulation S-K.

We have reviewed the Company's charter documents and the corporate proceedings taken by the Company in connection with the establishment and implementation of the 2015 Plan. Based on such review, we are of the opinion that, if, as and when the Shares have been issued and sold (and the consideration therefor received) pursuant to the (a) provisions of option agreements duly authorized under the 2015 Plan and in accordance with the Registration Statement, or (b) duly authorized restricted stock units or other stock-based awards under the 2015 Plan and in accordance with the Registration Statement, such Shares will be duly authorized, legally issued, fully paid and nonassessable.

We consent to the filing of this opinion letter as Exhibit 5.1 to the Registration Statement. In giving the opinion set forth in this letter, we do not hereby admit that we are acting within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, as amended, or the rules or regulations of the Securities and Exchange Commission thereunder.

This opinion letter is rendered as of the date first written above and we disclaim any obligation to advise you of facts, circumstances, events or developments which hereafter may be brought to our attention and which may alter, affect or modify the opinion expressed herein. Our opinion is expressly limited to the matters set forth above and we render no opinion, whether by implication or otherwise, as to any other matters relating to the Company, the 2015 Plan or the Shares.

Very truly yours,

/s/ MORGAN, LEWIS & BOCKIUS LLP

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**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Axsome Therapeutics, Inc. 2015 Omnibus Incentive Compensation Plan of our report dated August 25, 2015 (except for the paragraph under the caption "Amendment to Certificate of Incorporation" within Note 1 and Note 16, as to which the date is October 30, 2015), with respect to the consolidated financial statements of Axsome Therapeutics, Inc. included in its Registration Statement (Form S-1 No. 333-207393) for the year ended December 31, 2014, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP  
New York, New York  
December 16, 2015

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**AXSOME THERAPEUTICS, INC.  
2015 OMNIBUS INCENTIVE COMPENSATION PLAN**

**NONQUALIFIED STOCK OPTION SUMMARY OF GRANT**

Axsome Therapeutics, Inc., a Delaware corporation (the “Company” or “Employer”), pursuant to its 2015 Omnibus Incentive Compensation Plan (the “Plan”), hereby grants to the individual listed below (the “Participant”), a nonqualified stock option to purchase shares of common stock of the Company (“Company Stock”) that may become vested and exercisable as set forth below (the “Option”). The Option is subject in all respects to the terms and conditions set forth herein, in the Nonqualified Stock Option Grant Agreement attached hereto as Exhibit A (the “Nonqualified Stock Option Grant Agreement”) and the Plan, each of which is incorporated herein by reference and made part hereof. Unless otherwise defined herein, capitalized terms used in this Nonqualified Stock Option Summary of Grant (the “Summary of Grant”) and the Nonqualified Stock Option Grant Agreement will have the meanings set forth in the Plan.

Participant: [NAME]

Date of Grant: [DATE]

Total Number of Shares Granted: [NUMBER] of shares of Company Stock

Exercise Price: [FMV on Date of Grant]

Exercisability of the Option: Except as set forth herein, the Option will vest and become exercisable on the following dates (each, a “Vesting Date”), provided that the Participant continues to be employed by, or provide service to, the Employer from the Date of Grant through the applicable Vesting Date:

[Insert Vesting Schedule]

The Option will be fully vested and exercisable on [Insert Date] if the Participant is employed by, or providing services to, the Employer on such date.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Company has caused its duly authorized officers to execute and attest this Agreement, effective as of the Date of Grant.

AXSOME THERAPEUTICS, INC.

\_\_\_\_\_  
Name: Herriot Tabuteau, M.D.  
Title: Chief Executive Officer

I hereby acknowledge delivery of the Plan and the Plan prospectus together with this Summary of Grant and the Nonqualified Stock Option Grant Agreement. Additional copies of the Plan and the Plan prospectus are available by contacting Constance Ames, Vice President, Finance at [comes@axsome.com](mailto:comes@axsome.com).

Agreed and accepted:

\_\_\_\_\_  
Participant

\_\_\_\_\_  
Date

**EXHIBIT A**

**AXSOME THERAPEUTICS, INC.**

**NONQUALIFIED STOCK OPTION GRANT AGREEMENT  
(Pursuant to the 2015 Omnibus Incentive Compensation Plan)**

This Nonqualified Stock Option Grant Agreement (this "Agreement") is delivered by Axsome Therapeutics, Inc., a Delaware corporation (the "Company" or "Employer"), pursuant to the Summary of Grant delivered with this Agreement to the individual named in the Summary of Grant (the "Participant"). The Summary of Grant, which specifies the Participant, the date as of which the grant is made (the "Date of Grant"), the vesting schedule and other specific details of the grant is incorporated herein by reference.

1. **Option Grant.** Upon the terms and conditions set forth in this Agreement and in the Company's 2015 Omnibus Incentive Compensation Plan (the "Plan"), the Company hereby grants to the Participant a nonqualified stock option to purchase the number of shares of common stock of the Company ("Company Stock") set forth in the Summary of Grant (the "Option"). The Participant hereby acknowledges the receipt of a copy of the official prospectus for the Plan. Copies of the Plan and the official Plan prospectus are available by contacting Constance Ames, Vice President, Finance at [comes@axsome.com](mailto:comes@axsome.com). This Agreement is made pursuant to the Plan and is subject in its entirety to all applicable provisions of the Plan. Capitalized terms used herein and not otherwise defined will have the meanings set forth in the Plan. The Participant agrees to be bound by all of the terms and conditions of the Plan.

2. **Exercisability of the Option.**

(a) The Option will become vested and exercisable as set forth in the Summary of Grant, provided that the Participant continues to be employed by, or provide service to, the Employer through the Vesting Date (as defined in the Summary of Grant).

(b) The exercisability of the Option is cumulative, but shall not exceed 100% of the shares of Company Stock subject to the Option. If the schedule set forth in the Summary of Grant would produce fractional shares of Company Stock, the number of shares of Company Stock for which the Option becomes exercisable shall be rounded down to the nearest whole share of Company Stock.

3. **Term of Option.**

(a) The Option will have a term of ten years from the Date of Grant and will terminate at the expiration of that period, unless it is terminated at an earlier date pursuant to the provisions of this Agreement or the Plan. Notwithstanding the foregoing, in the event that on the last business day of the term of the Option, the exercise of the Option is prohibited by applicable law, including a prohibition on purchases or sales of Company Stock under the Company's insider trading policy, the term of the Option shall be extended for a period of 30 days following the end of the legal prohibition, unless the Committee determines otherwise.

(b) The Option will automatically terminate upon the happening of the first of the following events:

(i) The expiration of the [NUMBER]-[PERIOD] period after the Participant ceases to be employed by, or provide service to, the Employer, if the termination is for any reason other than Disability, death or Cause.

(ii) The expiration of the one-year period after the Participant ceases to be employed by, or provide service to, the Employer on account of the Participant's Disability.

(iii) The expiration of the one-year period after the Participant ceases to be employed by, or provide service to, the Employer, if the Participant dies while employed by, or providing service to, the Employer or within 90 days after the Participant ceases to be so employed or provide such services on account of a termination described in subsection (i) above.

(iv) The date on which the Participant ceases to be employed by, or provide service to, the Employer for Cause. In addition, notwithstanding the prior provisions of this Section 3, if the Participant engages in conduct that constitutes Cause after the Participant's employment or service terminates, the Option will immediately terminate.

Notwithstanding the foregoing, in no event may the Option be exercised after the date that is immediately before the tenth anniversary of the Date of Grant; provided, however, that if the term of the Option is extended pursuant to Section 3(a) above, in no event may the Option be exercised after the date that is immediately before the expiration of the extended term of the Option. Any portion of the Option that is not exercisable at the time the Participant ceases to be employed by, or provide service to, the Employer will immediately terminate.

4. **Exercise Procedures.**

(a) Subject to the provisions of Sections 2 and 3 above, the Participant may exercise part or all of the exercisable Option by giving the Company written notice of intent to exercise in the manner provided in this Agreement, specifying the number of shares of Company Stock as to which the Option is to be exercised. At such time as the Committee shall determine, the Participant shall pay the Exercise Price (i) in cash, (ii) unless the Committee determines otherwise, by delivering shares of Company Stock owned by the Participant, which shall be valued at their Fair Market Value on the date of exercise, or by attestation (on a form prescribed by the Committee) to ownership of shares of Company Stock having a Fair Market Value on the date of exercise at least equal to the Exercise Price, (iii) by payment through a broker in accordance with procedures permitted by Regulation T of the Federal Reserve Board, (iv) by withholding shares of Company Stock subject to the exercisable Option, which have a Fair Market Value on the date of exercise equal to the Exercise Price, or (v) by such other method as the Committee may approve, to the extent permitted by applicable law. The Committee may impose from time to time such limitations as it deems appropriate on the use of shares of Company Stock to exercise the Option.

(b) The obligation of the Company to deliver shares of Company Stock upon exercise of the Option shall be subject to all applicable laws, rules, and regulations and such

approvals by governmental agencies as may be deemed appropriate by the Committee, including such actions as Company counsel shall deem necessary or appropriate to comply with relevant securities laws and regulations. The Company may require that the Participant (or other person exercising the Option after the Participant's death) represent that the Participant is purchasing shares of Company Stock for the Participant's own account and not with a view to or for sale in connection with any distribution of the shares of Company Stock, or such other representation as the Committee deems appropriate.

(c) All obligations of the Company under this Agreement shall be subject to the rights of the Company as set forth in the Plan to withhold amounts required to be withheld for any taxes, if applicable. Subject to Committee approval, the Participant may elect to satisfy any tax withholding obligation of the Employer with respect to the Option by having shares of Company Stock withheld up to an amount that does not exceed the applicable withholding tax rate for federal (including FICA), state and local tax liabilities. Unless the Committee determines otherwise, share withholding for taxes shall not exceed the Participant's minimum applicable tax withholding amount.

(d) Upon exercise of the Option (or portion thereof), the Option (or portion thereof) will terminate and cease to be outstanding.

5. **No Shareholder Rights.** Neither the Participant, nor any person entitled to exercise the Participant's rights in the event of the Participant's death, shall have any of the rights and privileges of a stockholder with respect to the shares of Company Stock subject to the Option, until certificates for shares of Company Stock have been issued upon the exercise of the Option.

6. **Change of Control.** The provisions of the Plan applicable to a Change of Control will apply to the Option, and, in the event of a Change of Control, the Committee may take such actions as it deems appropriate pursuant to the Plan; provided that, if the Option continues in effect after a Change of Control and the Participant's employment or service is terminated by the Employer without Cause upon or within 12 months following the Change in Control, any unvested portion of the Option shall become fully vested upon such cessation of employment or service.

7. **Restrictions on Exercise.** Except as the Committee may otherwise permit pursuant to the Plan, only the Participant may exercise the Option during the Participant's lifetime and, after the Participant's death, the Option will be exercisable (subject to the limitations specified in the Plan) solely by the legal representatives of the Participant, or by the person who acquires the right to exercise the Option by will or by the laws of descent and distribution, to the extent that the Option is exercisable pursuant to this Agreement.

8. **Entire Agreement.** This Agreement contains the entire agreement of the parties with respect to the Option granted hereby and may not be changed orally but only by an instrument in writing signed by the party against whom enforcement of any change, modification or extension is sought.

9. **Grant Subject to Plan Provisions.** This grant is made pursuant to the Plan, the terms of which are incorporated herein by reference, and in all respects will be interpreted in accordance with the Plan. This grant is subject to interpretations, regulations and determinations concerning the Plan established from time to time by the Committee in accordance with the provisions of the Plan, including, but not limited to, provisions pertaining to (a) rights and obligations with respect to withholding taxes, (b) the registration, qualification or listing of the shares, (c) changes in capitalization of the Company and (d) other requirements of applicable law. The Committee will have the authority to interpret and construe this grant pursuant to the terms of the Plan, and its decisions will be conclusive as to any questions arising hereunder.

10. **Assignment and Transfers.** Except as the Committee may otherwise permit pursuant to the Plan, the rights and interests of the Participant under this Agreement may not be sold, assigned, encumbered or otherwise transferred except, in the event of the death of the Participant, by will or by the laws of descent and distribution. In the event of any attempt by the Participant to alienate, assign, pledge, hypothecate, or otherwise dispose of the Option or any right hereunder, except as provided for in this Agreement, or in the event of the levy or any attachment, execution or similar process upon the rights or interests hereby conferred, the Company may terminate the Option by notice to the Participant, and the Option and all rights hereunder will thereupon become null and void. The rights and protections of the Company hereunder will extend to any successors or assigns of the Company and to the Company's parents, subsidiaries, and affiliates. This Agreement may be assigned by the Company without the Participant's consent.

11. **No Employment or Other Rights.** This Agreement will not confer upon the Participant any right to be retained in the employment of the Company and will not interfere in any way with the right of the Company to terminate the Participant's employment at any time. The right of the Company to terminate at will the Participant's employment at any time for any reason is specifically reserved.

12. **Notice.** Any notice to the Company provided for in this instrument will be addressed to the Company in care of Constance Ames, Vice President, Finance at the Company's corporate headquarters, and any notice to the Participant will be addressed to such Participant at the current address shown on the payroll records of the Company, or to such other address as the Participant may designate to the Company in writing. Any notice will be delivered by hand, sent by telecopy or enclosed in a properly sealed envelope addressed as stated above, registered and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

13. **Recoupment Policy.** The Participant agrees that, subject to the requirements of applicable law, if the Participant breaches any restrictive covenant agreement between the Participant and the Employer or otherwise engages in activities that constitute Cause either while employed by, or providing service to, the Employer or within two years thereafter, the Option shall terminate, and the Company may rescind any exercise of the Option and delivery of shares upon such exercise, as applicable on such terms as the Committee shall determine, including the right to require that in the event of any such rescission, (a) the Participant shall return to the Company the shares received upon the exercise of the Option or, (b) if the Participant no longer owns the shares, the Participant shall pay to the Company the amount of any gain realized or

payment received as a result of any sale or other disposition of the shares (or, in the event the Participant transfers the shares by gift or otherwise without consideration, the Fair Market Value of the shares on the date of the breach of any restrictive covenant agreement or activity constituting Cause), net of the price originally paid by the Participant for the shares. The Participant agrees that payment by the Participant shall be made in such manner and on such terms and conditions as may be required by the Committee and the Employer shall be entitled to set off against the amount of any such payment any amounts otherwise owed to the Participant by the Employer. In addition, the Participant agrees that the Option shall be subject to any applicable clawback or recoupment policies, share trading policies and other policies that may be implemented by the Board from time to time.

14. **Applicable Law.** The validity, construction, interpretation and effect of this Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to the conflicts of laws provisions thereof.

15. **Application of Section 409A of the Code.** This Agreement is intended to be exempt from section 409A of the Code and to the extent this Agreement is subject to section 409A of the Code, it will in all respects be administered in accordance with section 409A of the Code.