

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

**Achaogen, Inc.**

Debtor.<sup>1</sup>

Chapter 11

Case No. 19-10844 (BLS)

**Re: D.I. 292**

**NOTICE OF FILING TRANSITIONAL SERVICES AGREEMENT**

**PLEASE TAKE NOTICE** that on June 22, 2019, the Debtor filed the asset purchase agreement dated June 20, 2019, between the Debtor and Cipla USA Inc. (the “Cipla Plazomicin Sale Agreement”) (D.I. 292).

**PLEASE TAKE FURTHER NOTICE** that, in connection with the Cipla Plazomicin Sale Agreement, attached hereto as **Exhibit A** is the Transitional Services Agreement dated July \_\_, 2019, between the Debtor and Cipla USA Inc. (the “TSA”).

**PLEASE TAKE FURTHER NOTICE** that the Debtor reserves all rights to modify, amend, and/or supplement the TSA.

Dated: July 19, 2019  
Wilmington, Delaware

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

*/s/ Paige N. Topper*

\_\_\_\_\_  
Derek C. Abbott (No. 3376)  
Andrew R. Remming (No. 5120)  
Matthew O. Talmo (No. 6333)  
Paige N. Topper (No. 6470)  
1201 North Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Tel.: (302) 658-9200  
Fax: (302) 658-3989  
dabbott@mnat.com  
aremming@mnat.com  
mtalmo@mnat.com  
ptopper@mnat.com

<sup>1</sup> The last four digits of Debtor’s federal tax identification number are (3693). The Debtor’s mailing address for purposes of this chapter 11 case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.



- and -

Richard L. Wynne (CA 120349)  
(*admitted pro hac vice*)  
Erin N. Brady (CA 215038)  
(*admitted pro hac vice*)  
**HOGAN LOVELLS US LLP**  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, California 90067  
Telephone: (310) 785-4600  
Facsimile: (310) 785-4601  
richard.wynne@hoganlovells.com  
erin.brady@hoganlovells.com

- and -

Christopher R. Bryant (NY 3934973)  
(*admitted pro hac vice*)  
John D. Beck (NY 4956280)  
(*admitted pro hac vice*)  
**HOGAN LOVELLS US LLP**  
390 Madison Avenue  
New York, NY 10017  
Telephone: (212) 918-3000  
Facsimile: (212) 918-3100  
chris.bryant@hoganlovells.com  
john.beck@hoganlovells.com

*Counsel for Debtor and Debtor in Possession*

**EXHIBIT A**

**TRANSITIONAL SERVICES AGREEMENT**

## **TRANSITIONAL SERVICES AGREEMENT**

This Transitional Services Agreement (this “Agreement”), dated as of July \_\_, 2019, by and between Achaogen, Inc., a Delaware corporation (“Achaogen”) and Cipla USA Inc., a Delaware corporation (the “Buyer”, and together with Achaogen, the “Parties”):

WHEREAS, Achaogen and Buyer entered into an Asset Purchase Agreement, dated as of June 20, 2019 (the “Purchase Agreement”) with respect to the Plazomicin Business<sup>1</sup> which provides, among other things, for the sale of certain assets and the transfer of certain liabilities of Achaogen identified therein, to Buyer (as set forth more fully in the Purchase Agreement, the “Transaction”);

WHEREAS, the U.S. Bankruptcy Court for the District of Delaware entered an order approving the Transaction on July \_\_, 2019, on the terms set forth therein and in the Purchase Agreement;

WHEREAS, following the Closing contemplated by the Purchase Agreement, Buyer will own and operate the Purchased Assets; and

WHEREAS, the Parties have a need for, and have requested that the other Party provide the Services (as defined below) during the Post-Closing Access and Cooperation Period, or such other period as provided in the Exhibits, and the Parties have agreed to provide the Services to the other Party and its Affiliates during the Post-Closing Access and Cooperation Period, or such other period as provided in the Exhibits, pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, and for the mutual benefits to be derived from this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **ARTICLE I DEFINITIONS**

Capitalized terms used in this Agreement, unless defined herein, shall have the meanings assigned to them in the Purchase Agreement.

- 1.1. Achaogen shall have the meaning specified in the preamble hereto.
- 1.2. Administrative Representative(s) shall have the meaning specified in Section 4.1.
- 1.3. Affiliate shall have the meaning set forth in the Purchase Agreement.
- 1.4. Agreement shall have the meaning specified in the preamble hereto.

---

<sup>1</sup> Capitalized terms used in this Agreement, unless defined herein, shall have the meanings assigned to them in the Purchase Agreement.

1.5. Bankruptcy Case shall mean Achaogen's Chapter 11 Case (No. 19-10844) currently pending in the Bankruptcy Court.

1.6. Buyer shall have the meaning specified in the preamble hereto.

1.7. Exhibits shall mean Exhibit A and Exhibit B attached to this Agreement and incorporated herein by this reference for all purposes.

1.8. Fees shall have the meaning specified in Section 3.1.

1.9. Party shall have the meaning set forth in the preamble hereto.

1.10. Personnel shall have the meaning specified in Section 2.3.

1.11. Post-Closing Access and Cooperation Period shall have the meaning specified in the Purchase Agreement.

1.12. Provider shall mean Achaogen, in connection with Services provided by Achaogen under Exhibit A, or Buyer, in connection with Services provided by Buyer under Exhibit B, as the context requires.

1.13. Purchase Agreement shall have the meaning specified in the recitals hereto.

1.14. Recipient shall mean Buyer, in connection with Services received under Exhibit A, or Achaogen, in connection with Services received under Exhibit B, as the context requires.

1.15. Service(s) shall have the meaning specified in Section 2.1(a).

1.16. Transaction shall have the meaning specified in the recitals hereto.

## ARTICLE II SERVICES TO BE PROVIDED

2.1. Services; Term.

(a) Without limiting any provisions of the Purchase Agreement, or any provisions of the Sale Order, and subject to the terms and conditions set forth herein (including Section 7.1) and on the Exhibits, Provider shall provide the services designated on the Exhibits (the "Services" and each a "Service") to Recipient during the Post-Closing Access and Cooperation Period; *provided*, that if the applicable Exhibit specifies a period of service shorter than such period with respect to a Service, Provider shall be obligated to provide such Service only for such shorter period and the Post-Closing Access and Cooperation Period with respect to such Service shall refer to such earlier date on which the shorter period ends. Termination of a Service under Section 7.1 shall not relieve Provider of its obligations to provide the remaining non-terminated Services.

(b) Buyer may terminate any or all Services provided by Achaogen under Exhibit A prior to the period as specified thereon, upon written notice to Achaogen; *provided*,

*however*, that, without the prior written consent of Achaogen (such consent not to be unreasonably withheld, conditioned or delayed), such termination shall not become effective prior to the date that is 10 days after receipt by Achaogen of such written notice; and *provided, further*, that in each case Buyer shall pay to Achaogen, promptly after demand therefor from Achaogen, any and all accrued and unpaid Fees of the service providers set forth in Schedule I to Exhibit A, including, without limitation, any retention bonuses or other accrued incentives to the extent payable thereunder. Once a Service is terminated by Buyer, Achaogen shall not be obligated to later reinstate such Service. Buyer may not terminate any Services provided to Achaogen at any time absent Achaogen's express written consent.

(c) Except as set forth in the Purchase Agreement, Provider shall not have any obligation to provide services other than the Services. Recipient may, during the term of this Agreement, request that Provider provide services in addition to the Services and Provider shall reasonably consider all such requests in good faith. Except as set forth in the Purchase Agreement, if Provider determines to provide any such additional service, the Parties shall negotiate in good faith the terms on which that additional service will be provided and, if those terms are mutually agreed upon, the additional service will be deemed to form part of the Services and the applicable Exhibit shall be updated to reflect such addition. The foregoing provision shall not be construed as imposing any obligation on the part of either Party to enter into any other agreement or agreements with the other Party, nor construed as an agreement by either Party to negotiate with the other Party in the event that Provider determines not to provide the relevant additional service in accordance with the provisions hereof.

## 2.2. Terms and Conditions of Services.

(a) In no event will Provider be required to provide any Service that it believes does not comply or is not compatible with applicable law or third party obligations.

(b) Provider may in its discretion provide the Services either through its own resources or the resources of its Subsidiaries or Affiliates or by contracting with reputable independent contractors; *provided* that, except as provided in Article V, Provider shall not be obligated to procure any Service(s) from any third party for the benefit of Recipient.

(c) The provision of the Services may be limited by third-party licenses relating to systems and processes. If the provision of any such Service to Recipient requires the use of independent systems that are subject to a third party license, separate licenses shall be obtained by Recipient at no cost to Provider. If Recipient is unable or unwilling to obtain such separate licenses, Provider shall not be obligated to provide such Service under this Agreement to the extent such license is required therefor.

(d) Under no circumstances shall Provider be obligated to provide any Service requiring an opinion, advice or representation as to which liability may be created for Provider or its Affiliates due to claims from any other person or entity, including, without limitation, any Governmental Authority (e.g., legal opinions or advice, tax opinions or advice, compliance opinions or advice).

(e) The Parties acknowledge that the provision of Services hereunder may require Provider to enter into new or amended agreements with third parties. Provider shall use commercially reasonable efforts (in the case of Achaogen, taking into account its financial condition and status as a Chapter 11 debtor) to enter into such agreements for a time period not to exceed the Post-Closing Access and Cooperation Period. Recipient shall be consulted in connection with any such agreements; *provided* that in the event that Recipient does not accept the terms of any such agreement, Provider shall not be obligated to provide the Service for which such agreement was required. Recipient shall be responsible for all costs and expenses associated with or arising in connection with such new or amended agreements (including (i) the reasonable costs associated with the negotiation thereof and (ii) any costs or expenses associated with or arising in connection with early termination of a Service by Recipient) to the extent that such new or amended agreements relate to the provision of Services.

2.3. Personnel. Buyer shall only be responsible for Fees of the services providers set forth in Schedule I to Exhibit A hereto (the “Personnel”) to the extent the Personnel (or any other service providers) provide the Services for or on behalf of Buyer. Buyer may directly engage some or all of the Personnel (or any other service providers) to provide services on its behalf, including any of the Services; provided, that Buyer shall continue to be responsible to pay Achaogen for any Fees for any Services provided within the scope of this Agreement. Nothing in this Agreement shall prohibit Buyer, through its Administrative Representative, to (i) directly engage the Personnel or any other person in any capacity following the expiration or termination of this Agreement; (ii) interact with the Personnel with respect to the Services provided hereunder; or (iii) have direct oversight over the provision of Services by the Personnel. In the event that any service provider set forth on Schedule I to Exhibit A is no longer willing or able to perform services within the scope of this Agreement, Buyer and Achaogen shall work jointly to identify a replacement.

### ARTICLE III FEES

3.1. General. Services shall be billed by Provider in accordance with the terms set forth in the Exhibits in an amount equal to the costs, including out-of-pocket costs and expenses, to be incurred by Provider in providing such Services, except as otherwise set forth therein (the “Fees”). Further, each Party shall pay reasonable professional fees borne by the other Party in connection with the performance, management, and facilitation of obligations under this Agreement, to the extent such professional services are required for the provision of Services; provided, that Buyer shall not be responsible for the fees of MERU, LLC or any of its Affiliates, including in connection with Nick Campbell’s services as Administrative Representative in accordance with Section 4.1 hereunder. For the avoidance of doubt, MERU, LLC will not be obligated to perform any services at the request of Buyer or otherwise. Notwithstanding anything contained in this Agreement, neither Party shall be responsible for any Fees or other costs or expenses that arise from the negligence, intentional misconduct, or violation of law of the other Party or any of its Affiliates, agents or representatives.

3.2. Payments. Payment of Fees shall be made in the manner specified in the Exhibits. Interest shall be payable on any amounts which are not paid by the due date for payment. Interest shall accrue and be calculated on a daily basis at an annual rate equal to the prime rate

(which shall mean the “prime rate” published in the “Money Rates” section of The Wall Street Journal) plus 1.5% or, if less, the maximum rate allowed by law. Recipient shall be entitled to set off or reduce payments of the Fees by any amounts owed to it by Provider under this Agreement or any other agreement, at which time the interest hereunder shall stop accruing.

#### **ARTICLE IV ADMINISTRATIVE REPRESENTATIVES**

4.1. Administrative Representatives. Nick Campbell, Managing Partner of MERU, LLC and Chief Restructuring Officer of Achaogen, and Biplab Mazumdar, Head – Director, Finance of Buyer, shall serve as administrative representatives (“Administrative Representatives”) of Achaogen and Buyer, respectively, to facilitate day-to-day communications and performance under this Agreement. Each Party may treat an act of an Administrative Representative of the other Party as being authorized by such other Party. Each Party may replace its Administrative Representative by giving written notice of the replacement to the other Party.

#### **ARTICLE V THIRD PARTY AGREEMENTS**

5.1. To the extent that it is not practicable to have Recipient as the contracting Party for a third-party obligation relating to any Service, and with the consent of Recipient, Provider shall, at Recipient’s expense, use commercially reasonable efforts (in the case of Achaogen, taking into account its financial condition and status as a Chapter 11 debtor) to cause all such third-party contracts to extend to and be enforceable by Recipient, or to assign such contracts to Recipient. In the event that such contracts are not extendable or assignable, Provider shall act as agent for Recipient in the pursuit of any claims, issues, demands or actions against such third-party provider at Recipient’s expense. Notwithstanding the foregoing, nothing under this Agreement shall require any Party to assume any third-party contract or agreement without the express written consent of both Parties (which may be withheld for any reason or no reason).

#### **ARTICLE VI AUTHORITY; INFORMATION; COOPERATION**

6.1. Information Regarding Services. Recipient shall make available to Provider any information required or reasonably requested by Provider regarding the performance of any Service. Provider shall be entitled to rely upon the genuineness, validity and truthfulness of any document, instrument or other writing presented by Recipient in connection with this Agreement. Provider shall not be liable for any impairment of any Service caused by its not receiving information, either timely or at all, or by its receiving inaccurate or incomplete information from Recipient that is required or reasonably requested regarding that Service.

6.2. Cooperation. Without limiting any provisions of the Purchase Agreement, or any provisions of the Sale Order, the Parties shall cooperate with each other in all reasonable respects in matters relating to the provision and receipt of Services.



**ARTICLE VII  
MISCELLANEOUS**

7.1. Termination. In addition to the termination provisions set forth in Section 2.1(b) hereunder:

(a) This Agreement shall automatically terminate upon the conclusion of the Post-Closing Access and Cooperation Period, or such shorter period as specified in the Exhibits, and may otherwise be terminated or extended by the Parties in accordance with Section 7.1(b)-(d).

(b) A Party may terminate this Agreement solely with respect to a particular Service by giving written notice to the other Party if the other Party commits a material breach of any of its obligations under this Agreement with respect to that Service and fails to cure such breach within 14 calendar days after receipt of written notice of such breach by the terminating Party unless such breach is incapable of being cured within such time.

(c) A Party may terminate this Agreement by giving written notice to the other if the other Party commits a material breach of any of its obligations under Section 3.2 and fails to cure such breach within 14 calendar days after receipt of written notice of such breach by the terminating Party unless such breach is incapable of being cured within such time.

(d) Following the termination or the expiration of this Agreement or a particular Service, Recipient shall promptly pay all amounts accrued and payable hereunder. Article VII and Sections 2.1, 3.2, and 7.11 and the last sentence of Section 2.2(e) shall survive the termination or the expiration of this Agreement or a particular Service.

7.2. Amendments; Waivers. To be effective, any amendment or waiver to or under this Agreement must be in writing and be signed by each Party. Neither the failure of any Party to exercise any right, power or remedy provided under this Agreement or to insist upon compliance by the other Party with its obligations hereunder, nor any custom or practice of the Parties at variance with the terms hereof shall constitute a waiver by such Party of its right to exercise any such right, power or remedy or to demand such compliance, or otherwise affect such Party's rights, powers, remedies, duties, or obligations under the Purchase Agreement or Sale Order.

7.3. Expenses. Except as otherwise expressly provided in this Agreement, each Party will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the transactions contemplated herein, including all fees and expenses of its lawyers, consultants and other agents. Further, each Party will bear its respective fees and expenses incurred in connection with any dispute that arises under this Agreement.

7.4. Limitation on Liability. Notwithstanding any other provision of this Agreement to the contrary, in no event will any Party or any of its Affiliates be liable for any special, incidental, indirect, exemplary, punitive or consequential damages (including lost profits, loss of revenue or lost sales) in connection with any claims, losses, damages or injuries arising out of the

conduct of such Party pursuant to this Agreement, regardless of whether the nonperforming Party was advised of the possibility of such damages or not.

7.5. Independent Contractor Status. Nothing in this Agreement shall constitute or be deemed to constitute a partnership or joint venture between the Parties. Neither Party is now, nor shall it be made by this Agreement, an agent, employee or legal representative of the other Party or any of its Affiliates for any purpose pursuant to this Agreement. Each Party is and shall be an independent contractor in the performance of Services hereunder and nothing herein shall be construed to be inconsistent with this status.

7.6. Governing Law; Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY LEGAL ACTION, SUIT, DISPUTE OR PROCEEDING ARISING UNDER, OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURTS OF COMPETENT JURISDICTION LOCATED IN THE STATE OF DELAWARE OR IN THE BANKRUPTCY COURT (FOR SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION) AND EACH OF THE PARTIES HERETO IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, GENERALLY AND UNCONDITIONALLY, AND WAIVES ANY OBJECTIONS AS TO VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT HEREBY. NOTWITHSTANDING THE FOREGOING CONSENT TO JURISDICTION, SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION, EACH OF THE PARTIES AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF THE BANKRUPTCY COURT.

7.7. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

7.8. Entire Agreement. This Agreement and the Purchase Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof.

7.9. Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing. Any such notice, request, demand, claim or other communication hereunder shall be deemed duly given or made upon receipt when it shall be delivered by hand, certified or registered mail, electronic mail or facsimile to the Party to which it is addressed at such Party's address specified below, or at such other address as such Party shall have designated by notice in accordance with this Section 7.9:

If to **Achaogen**:

Achaogen, Inc.  
1372 Peachtree Street, NW, Suite 2121  
Atlanta, GA 30309  
Attn: Nick Campbell, Managing Partner  
Email: nick@wearemeru.com

with a copy (which will not constitute notice) to:

Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, California 90067  
Attn: Richard Wynne, Esq.  
Erin Brady, Esq.  
Email: rick.wynne@hoganlovells.com  
erin.brady@hoganlovells.com

If to **Buyer**:

Cipla USA Inc.  
c/o Cipla Ltd.  
House, Peninsula Business Park  
Ganapatrao Kadam Marg, Lower Parel West  
Mumbai, Maharashtra 400013, India  
Attn: A.S. Kumar, Esq., Global General Counsel  
Email: as.kumar@cipla.com  
co.secretary@cipla.com

with a copy (which will not constitute notice) to:

Kelley Drye & Warren LLP  
101 Park Avenue, 27<sup>th</sup> Floor  
New York, New York 10178  
Attn: Deepak Nambiar, Esq.  
Email: DNambiar@KelleyDrye.com

7.10. Interpretation. Article and section captions are not a part of this Agreement and are provided solely for the convenience of the Parties.

7.11. Confidentiality. Section 5.6 of the Purchase Agreement is incorporated into this Agreement *mutatis mutandis*.

7.12. Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is

determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by applicable Law.

7.13. Counterparts; Third Party Beneficiaries. This Agreement may be executed in two or more counterparts, each of which shall be deemed to constitute an original of the same Agreement, and all of which together shall constitute one single Agreement. A complete set of counterparts shall be made available to each Party. No Person not a party to this Agreement shall have rights under this Agreement as a third-party beneficiary or otherwise.

*[Remainder of page left intentionally blank]*

IN WITNESS WHEREOF, this Agreement has been signed by or on behalf of each of the parties as of the day first above written.

**Achaogen:**

ACHAOGEN, INC.

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

Name:

Title:

**Buyer:**

CIPLA USA INC.

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

Name:

Title:

**EXHIBIT A****TRANSITION SERVICES FROM ACHAAGEN TO BUYER**

The services described herein exclusively constitute the Services to be provided by Achaogen to Buyer pursuant to the Agreement. All capitalized terms used herein and not defined shall have the meaning set forth in the Agreement, or if not defined therein, the Purchase Agreement.

<b>Types of Service</b>	<b>Estimated Monthly Fees<sup>1</sup></b>	<b>Time Period</b>
Back office services related to accounting, bookkeeping, payment processing, tax, and other similar support services to maintain the books and records and ensure continuity of business.	\$56,000	Closing – October 21, 2019
Facilitate the introduction between (i) Buyer and (ii) Sean Doyle, Head of Operations & Infrastructure at Achaogen, and Protiviti Inc. (collectively, the “ <u>Data Facilitators</u> ”); <i>provided, however</i> , this Service shall not extend beyond such introduction with the Data Facilitators, and Buyer shall be responsible for any engagement of the Data Facilitators in connection with the extraction of pertaining information from Box, Inc. related to the Purchased Assets.	At Buyer’s expense	Closing – October 21, 2019

---

<sup>1</sup> Includes actual costs related to work performed including, but not limited to, salary, taxes, benefits, accrued Incentives (as defined below) and fees and expenses related to the Personnel.

## **SCHEDULE I TO EXHIBIT A**

### **PERSONNEL PROVIDED**

#### Caitlin Hurd - Controller

##### *Manage Accounts Receivable (AR) / Accounts Payable (AP) Process*

- Review and approve incoming invoices in line with the Oracle workflow process making sure AP is properly accounted for in the AP subledger
  - Bifurcate books and records between Buyer and the Achaogen estate
  - Send weekly report of post-Closing invoices to Buyer to review and approve for processing
- Coordinate with the 3PL regarding invoicing and AR during the transition
- Review bank accounts for product revenue and other operating related deposits to record in the AR subledger
- Approve payment runs in Oracle and wire and ACH transfers in Silicon Valley Bank, N.A. (“SVB”)
- Reconcile AP payments to cash disbursements in Oracle
- Respond to inquiries from vendors and consultants

##### *Maintain Books and Records*

- Record and reconcile subledgers including cash, AR and AP
- Prepare monthly product revenue entries using agreed upon gross to net assumptions
- Record monthly journal entries for payroll, credit cards, AR and AP reclasses, interest accruals and prepaid amortizations
- Track and record royalty payments and manage reconciliation process
- Prepare monthly inventory rollforward to track inventory movements
- Complete reconciliations for remaining asset and balance sheet accounts
- Close the books monthly and prepare financial statements

##### *Business Continuity and Transition*

- Provide all payments with respect to Executory Contracts after the Closing until such contracts are either rejected or assumed and assigned to Buyer, as directed by Buyer
- Assist with the preparation and review of reports related to government price reporting and coordinate with external consultant to ensure timely reporting
- Assist with the transfer of government price reporting and other programs from Achaogen to Buyer
- Review and summarize billing, milestone or payment terms for key assumed contracts

##### *Cure Amounts*

- Payment of Cure Amounts to contract counterparties for contracts assumed by Buyer under the Purchaser Agreement.
- Maintain records regarding payment of Cure Amounts.

Theresa Gonzales - AP Clerk

- Scan and code invoices as either pre- or post-Closing
- Initiate invoices through Oracle workflow for approval
- Release invoices for payment batches in Oracle
- Set up wire templates for transfers at SVB
- Set up new vendors in Oracle

Palash Kundu - ERP Manager

- Set up Oracle access for new users or changes for existing users
- Set up process to bifurcate and label invoices for Achaogen estate and Buyer
- Manage the re-routing of Achaogen invoices that are missing purchase orders and assisting in making sure these get to accounting for processing
- Manage the re-routing of Buyer invoices where the original purpose order or invoice requestor is no longer with Achaogen and assisting in making sure these get to accounting for approval and processing
- Set up new bank information and integrate into Oracle

### **SYSTEMS & REPORTING**

Buyer will assume the Executory Contracts to the extent set forth in the Purchase Agreement and/or make available the financial and IT systems currently used by Achaogen, subject to the terms of any applicable third-party contracts and the extent required by Achaogen to perform the Services hereunder and for the duration set forth herein.

Achaogen will submit weekly payable reports to Buyer by Tuesday of each week for the disbursements proposed to be paid for that week. Buyer will send the approved payables and funding to Achaogen no later than 9:00 a.m. prevailing Pacific Time on Wednesday of each week. Achaogen will make disbursements by Friday of the same week unless agreed to separately with Buyer.

### **BILLING**

Achaogen will invoice Buyer for services rendered on a monthly basis. All invoices will be paid on receipt of the applicable invoice therefor. Fees and expenses will be paid on a cost basis with no mark up; provided, that Services performed by the Personnel (or any additional or replacement personnel approved by Buyer, such consent not to be unreasonably withheld, conditioned or delayed) shall be paid for by Buyer. For salaried employees and/or fixed costs, Achaogen will provide a detailed break-out of the allocation between Buyer and the Achaogen estate. For the avoidance of doubt, the allocation will be based on the time dedicated to each activity. To the extent that (i) the Parties jointly determine it is necessary to provide full-time employees with retention bonuses or other incentives (“Incentives”) to remain employed through the duration of this Agreement and (ii) with the exception of the incentives to be paid to Caitlin Hurd as set forth in the following sentence, the payment of such Incentives is approved by the Bankruptcy Court, Buyer shall be solely responsible for funding the cost of such



Incentives. Achaogen and Buyer have jointly determined that it is necessary and appropriate to provide certain incentives to Caitlin Hurd, and agree to Fees of \$4,168 per week<sup>3</sup>, and a one-time Incentive payment of \$36,400, for her full-time commitment (40 hours or more per week) through October 21, 2019. Notwithstanding the foregoing, Buyer shall not be required to pay such Incentive to Caitlin Hurd if it terminates her Services for cause (which shall include fraud, embezzlement, misappropriation of funds, or commission of a felony, each in connection with her performance of the Services, or complete abandonment of her duties hereunder), or if she resigns prior to October 21, 2019.

---

<sup>3</sup> Includes salary, insurance/benefits, and payroll taxes.

**EXHIBIT B****TRANSITION SERVICES FROM BUYER TO ACHAOPEN**

The services described herein exclusively constitute the Services to be provided by Buyer to Achaopen pursuant to the Agreement. All capitalized terms used herein and not defined shall have the meaning set forth in the Agreement, or if not defined therein, the Purchase Agreement.

<b>Types of Service</b>	<b>Time Period</b>
Upon reasonable advance notice, provide Achaopen and Achaopen's affiliates with access during reasonable business hours to Buyer's personnel and the books and records related to the Purchased Assets in accordance with <u>Section 10.15(b)</u> of the Purchase Agreement.	Post-Closing Access and Cooperation Period
Maintain records of any payments and distributions made by or on account of Achaopen's estate in connection with the Purchased Assets, and provide such other information as reasonably requested by Achaopen, including accounting, tax and other information that is reasonably required Achaopen to prepare periodic reports during its Chapter 11 Case.	Post-Closing Access and Cooperation Period

**BILLING**

Buyer will invoice Achaopen for Services rendered on a monthly basis, except for payments in connection with Additional Contracts hereunder, which Buyer shall be responsible for. All invoices will be paid on receipt of the applicable invoice therefor. Fees and expenses will be paid on a cost basis with no mark up.