



Caption in Compliance with D.N.J. LBR 9004-1(b)

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY
In re: INVITAE CORPORATION, <i>et al.</i> , Debtors. ¹

Chapter 11
Case No. 24-11362 (MBK)
(Joint Administration Requested)

Order Filed on February 16, 2024
by Clerk
U.S. Bankruptcy Court
District of New Jersey

**ORDER AUTHORIZING THE APPOINTMENT
OF KURTZMAN CARSON CONSULTANTS LLC AS
CLAIMS AND NOTICING AGENT EFFECTIVE AS OF THE PETITION DATE**

The relief set forth on the following pages, numbered three (3) through ten (10), is
ORDERED.

DATED: February 16, 2024


Honorable Michael B. Kaplan
United States Bankruptcy Judge

¹ The last four digits of Debtor Invitae Corporation's tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor's tax identification number may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors' service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



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Debtors: INVITAE CORPORATION, *et al.*

Case No. 24-11362 (MBK)

Caption of Order: ORDER AUTHORIZING THE APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT EFFECTIVE AS OF THE PETITION DATE

Upon the *Debtors' Application for Entry of an Order Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date* (the "Application"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an order (this "Order") authorizing the Debtors to, pursuant to section 156(c) of title 28 of the United States Code and section 105(a) of the Bankruptcy Code, appoint Kurtzman Carson Consultants LLC ("KCC") as claims and noticing agent in the Debtors' chapter 11 cases (the "Claims and Noticing Agent") in their chapter 11 cases, pursuant to the terms of the Services Agreement, effective as of the Petition Date, all as more fully set forth in the Application; and upon the First Day Declaration and the Gershbein Declaration; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; and this Court having found that the Debtors' notice of the Application was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Application and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Application.

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Application establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Application is **GRANTED** as set forth herein.
2. The Debtors are authorized to retain KCC as Claims and Noticing Agent, effective as to the Petition Date, pursuant to the terms of the Services Agreement, in the form attached hereto as **Exhibit 1**, and KCC is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application (collectively, the “Claims and Noticing Services”).
3. Any services KCC will provide relating to the Debtors’ schedules of assets and liabilities and statements of financial affairs shall be limited to administrative and ministerial services. The Debtors shall remain responsible for the content and accuracy of their schedules of assets and liabilities and statements of financial affairs.
4. KCC shall serve as the custodian of Court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.
5. KCC is authorized and directed to provide public access to every proof of claim unless otherwise ordered by the Court and to obtain a post office box or address for the receipt of proofs of claim.

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6. KCC is authorized to take such other action to comply with all duties set forth in the Application.

7. The Debtors are authorized to compensate KCC for the Claims and Noticing Services in accordance with the terms of the Services Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by KCC and the rates charged therefor, and to reimburse KCC for all reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for KCC to file fee applications or otherwise seek Court approval for the payment of compensation for services rendered and reimbursement of expenses incurred.

8. KCC shall maintain records of all services, showing dates, categories of services, fees charged, and expenses incurred, and shall serve monthly invoices on (a) the Debtors, (b) the U.S. Trustee, (c) counsel for the Debtors, (d) counsel to any official committee appointed to monitor the expenses of the Debtors in these chapter 11 cases, (e) counsels to the Required Holders, (f) counsel to the Prepetition Secured Agent, and (g) any other party in interest that specifically requests service of the monthly invoices.

9. Parties shall have ten (10) days from receipt of the invoice to review such invoice and raise any objections, either formally through the filing of an objection with the Court or informally through a writing served on KCC, to the fees and expenses being requested by KCC. If an objection is interposed, the parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Services Agreement or KCC's monthly invoices; provided that the parties may seek resolution of the matter from the Court if such efforts prove unsuccessful. If no

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objection has been raised, the Debtors are authorized to pay KCC the full amount of the requested fees and expenses upon expiration of the ten (10) day review without further order of the Court.

If an objection has been raised, the Debtors may not pay the objected to amount pending agreement of the parties or entry of an order of this Court authorizing payment. Notwithstanding anything to the contrary contained in the Services Agreement, including paragraph II(E) thereof, no late charges shall accrue on any invoices.

10. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC under this Order shall be an administrative expense of the Debtors' estates. KCC may apply its retainer to all prepetition invoices, which retainer shall be replenished to the original retainer amount and, thereafter, KCC may hold its retainer during these chapter 11 cases as security for the payment of fees and expenses incurred under the Services Agreement.

11. The indemnification, contribution and reimbursement provisions in the Services Agreement are approved, subject to the following modifications, applicable during the pendency of these chapter 11 cases:

- (a) KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement unless the indemnification, contribution, or reimbursement is approved by the Court.
- (b) Notwithstanding anything to the contrary in the Services Agreement, the Debtors shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is either:
 - (i) judicially determined (that determination having become final) to have arisen from KCC's gross negligence, willful misconduct, bad faith, self-dealing, or fraud;
 - (ii) for a contractual dispute in which the Debtors allege the breach of KCC's obligations under the Services Agreement, unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or
 - (iii) settled without the

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Debtors' consent prior to a judicial determination as to sub-clauses (a) or (b) above, but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement, as modified by this Order.

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal) and (ii) the entry of an order closing these chapter 11 cases, KCC believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement, as modified by this Order, including, without limitation, the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtors may not pay any such amounts to KCC before the entry of an order of this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, and/or reimbursement and not a provision limiting the duration of the Debtors' obligation to indemnify or make contributions or reimbursements to KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

12. In the event KCC is unable to provide the Claims and Noticing Services set out in this Order, KCC shall immediately notify the Clerk and counsel for the Debtors and, upon approval of the Court, shall cause all original proofs of claim and computer information to be turned over to another claims and noticing agent with the advice and consent of the Clerk and counsel for the Debtors.

13. Notwithstanding anything contained in the Application, the Gershbein Declaration, or the Services Agreement to the contrary, during the chapter 11 cases, any limitation of liability including, but not limited to, section IX of the Services Agreement shall be of no force or effect.

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14. Notwithstanding anything to the contrary contained in the Services Agreement, (i) the 1.5% late charge in paragraph II(E) of the Services Agreement shall not be assessed during the pendency of these chapter 11 cases; (ii) the payment of invoices within ten (10) days of receipt in paragraph II(E) of the Services Agreement shall not be applicable during the pendency of these cases; (iii) during the pendency of these chapter 11 cases, if the advance payment of an invoice is reasonably expected to exceed \$10,000 in any single month as set forth in paragraph IIE of the Services Agreement, at the time it requests advance payment from the Debtors, KCC shall provide notice to the U.S. Trustee and any statutory committee appointed in these cases; and (iv) during the pendency of these chapter 11 cases, prior to any prepayment of fees and expenses for print notice and media publication as set forth in paragraph IIE of the Services Agreement, KCC shall provide three (3) business days' notice to the U. S. Trustee and any statutory committee appointed in these cases.

15. Notwithstanding anything to the contrary contained in the Services Agreement, including section XIII thereof, the Court shall have exclusive jurisdiction over KCC's engagement during the pendency of these chapter 11 cases.

16. Notwithstanding anything to the contrary contained in the Services Agreement, including paragraph II(A) thereof, KCC shall provide at least thirty (30) days' notice of any increases in its billing rates, subject to the parties-in-interest's right to object to any such increases.

17. Notwithstanding anything to the contrary contained in the Application, the Gershbein Declaration, or the Services Agreement, including section VIII thereof, by this Order

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the Court is not authorizing KCC to establish accounts with financial institutions in the name of and as agent for the Debtors.

18. Notwithstanding anything to the contrary contained in the Services Agreement, including section VI thereof, termination of KCC's retention shall only commence upon entry of an order by this Court terminating KCC's retention.

19. Notwithstanding anything to the contrary in the Services Agreement, in the event that any of these chapter 11 cases convert to a case under chapter 7 of the Bankruptcy Code, the chapter 7 trustee appointed to such case or cases shall have no obligation to continue the engagement of KCC.

20. The Debtors may submit a separate retention application, pursuant to section 327(a) of the Bankruptcy Code and/or any applicable law, for work that is to be performed by KCC but that is not specifically authorized by this Order.

21. KCC shall not cease providing claims processing services during these chapter 11 cases for any reason, including nonpayment, without an order of the Court.

22. The Debtors and KCC are authorized to take all steps necessary or appropriate to carry out this Order.

23. KCC declares that it does not now have, nor has it ever had any contract or agreement with XClaim Inc. or with any other party under which KCC provides, provided, or will provide exclusive access to claims data and/or under which KCC would be compensated for claims data made available by KCC.

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24. In the event of any inconsistency between the Services Agreement and this Order, this Order shall govern.

25. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Application or otherwise deemed waived.

26. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

27. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

28. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

29. The requirement set forth in 9013-1(a)(3) of the Local Bankruptcy Rules for the District of New Jersey (the "Local Rules") that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Application or otherwise waived.

30. Any party may move for modification of this Order in accordance with Local Rule 9013-5(e).

31. A true copy of this Order shall be served on all required parties pursuant to Local Rule 9013-5(f).

32. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit 1

Services Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 15th day of December 2023, between Invitae Corporation (together with its affiliates and subsidiaries, the “Company”),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable and documented transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement; provided that any expenses under this section exceeding \$10,000 in the aggregate require pre-approval by the Company, not to be unreasonably withheld or delayed.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, except to the extent caused by KCC's breach of this Agreement, gross negligence, or willful misconduct, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable within ten (10) days of the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable



KCC AGREEMENT FOR SERVICES

Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement. KCC agrees that all Company data submitted to KCC by or on behalf of the Company shall remain the exclusive property of the Company.

IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.



KCC AGREEMENT FOR SERVICES

V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) material breach of contract by, gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of receipt of the invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.



KCC AGREEMENT FOR SERVICES

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's breach of contract, gross negligence or willful misconduct arising out of or related to KCC's performance under this Agreement. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC



KCC AGREEMENT FOR SERVICES

does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC. Pursuant to Section V of this Agreement, KCC and its employees, agents, professionals, and representatives shall safeguard and protect the confidentiality of the Company's non-public records, systems, procedures, software, and other information received in connection with the services provided under this Agreement with no less care than KCC would take to safeguard and protect the confidentiality of its own confidential information.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:



KCC AGREEMENT FOR SERVICES

Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Invitae Corporation
1400 16th St.
San Francisco, CA 94103
Attn: Ana Schrank
Tel: (415) 269-0631
E-Mail: ana.schrank@invitae.com

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which



KCC AGREEMENT FOR SERVICES

may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]

Exhibit B

Gershbein Declaration

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Joshua A. Sussberg, P.C. (*pro hac vice* pending)
Nicole L. Greenblatt, P.C. (*pro hac vice* pending)
Francis Petrie (*pro hac vice* pending)
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msirota@coleschotz.com
wusatine@coleschotz.com
fyudkin@coleschotz.com
dharris@coleshotz.com

-and-

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
Spencer A. Winters, P.C. (*pro hac vice* pending)
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
spencer.winters@kirkland.com

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

*Proposed Co-Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

INVITAE CORPORATION, *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11362 (MBK)

(Joint Administration Requested)

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF DEBTORS’
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING THE
APPOINTMENT OF KURTZMAN CARSON CONSULTANTS LLC AS
CLAIMS AND NOTICING AGENT EFFECTIVE AS OF THE PETITION DATE**

¹ The last four digits of Debtor Invitae Corporation’s tax identification number are 1898. A complete list of the Debtors in these chapter 11 cases and each such Debtor’s tax identification number may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/invitae. The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.

I, Evan Gershbein, being duly sworn, state the following under penalty of perjury:

1. I am an Executive Vice President of Corporate Restructuring of Kurtzman Carson Consultants LLC (“KCC”), a chapter 11 administrative services firm whose offices are located at 222 N. Pacific Coast Hwy, 3rd Floor, El Segundo, CA 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this “Declaration”) is made in support of the *Debtors’ Application for Entry of an Order Authorizing the Appointment of Kurtzman Carson Consultants LLC as Claims and Noticing Agent Effective as of the Petition Date* (the “Application”).²

3. KCC is comprised of industry-leading professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. KCC’s professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases and experience in matters of this size and complexity. KCC’s professionals have acted as debtor’s counsel or official claims and noticing agent in many large bankruptcy cases in this district and others. *See, e.g., In re Cyxtera Techs., Inc.*, No. 23-14853 (JKS) (Bankr. D.N.J. June 6, 2023) (authorizing employment and retention of KCC as debtors’ claims and noticing agent); *In re Cloudeeva, Inc.*, No. 14-24874 (KCF) (Bankr. D.N.J. July 24, 2014) (same); *In re RIH Acquisitions NJ, LLC*, No. 13-34483 (GMB) (Bankr. D.N.J. Nov. 8, 2013) (same); *In re Wave2Wave Comms., Inc.*, No. 12-13896 (DHS) (Bankr. D.N.J. Mar. 29, 2012) (same); *In re the Newark Group, Inc.*, No. 10-27694 (NLW) (Bankr. D.N.J. June 6, 2010) (same); *In re Adamar of New Jersey, Inc.*, No. 09-20711 (JHW) (Bankr. D.N.J.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Application.

May 1, 2009) (same); *In re Tarragon Corp.*, No. 09-10555 (DHS) (Bankr. D.N.J. Jan. 19, 2009) (same); *In re Avaya Inc.*, No. 23-90088 (DRJ) (Bankr. S.D. Tex. Feb. 14, 2023) (same); *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) (same); *In re First Guaranty Mortgage Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. July 1, 2022) (same); *In re Philippine Airlines, Inc.*, No. 21-11569 (SCC) (Bankr. S.D.N.Y. Sept. 9, 2021) (same); *In re Superior Energy Services, Inc.*, No. 20-35812 (DRJ) (Bankr. S.D. Tex. Dec. 8, 2020) (same); *In re Oasis Petroleum Inc.*, No. 20-34771 (MI) (Bankr. S.D. Tex. Sept. 8, 2020) (same); *In re Briggs & Stratton Corp.*, No. 20-43597-399 (BSS) (Bankr. E.D. Mo. Aug. 20, 2020) (same); *In re Hi Crush Inc.*, No. 20-33495 (DRJ) (Bankr. S.D. Tex. July 13, 2020) (same); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. June 16, 2020) (same); *In re Skillsoft Corp.*, No. 20-11532 (MFW) (Bankr. D. Del. June 16, 2020) (same); *In re Avianca Holdings S.A.*, No. 20-11133 (MG) (Bankr. S.D.N.Y. May 13, 2020) (same); *In re Speedcast International Limited*, No. 20-32243 (MI) (Bankr S.D. Tex. Apr. 24, 2020) (same); *In re the McClatchy Company*, No. 20-10418 (MEW) (Bankr. S.D.N.Y. Feb. 14, 2020) (same); *In re Halcon Resources Corp.*, No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 7, 2019) (same); *In re Legacy Reserves Inc.*, No. 19-33395 (MI) (Bankr. S.D. Tex. June 6, 2019) (same); *In re Windstream Holdings, Inc.*, No. 19-22312 (RDD) (Bankr S.D.N.Y. Feb. 28, 2019) (same); *In re Waypoint Leasing Holdings Ltd.*, No. 18-13648 (SMB) (Bankr. S.D.N.Y. Nov. 27, 2018) (same); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) (same).

4. As agent and custodian of the Court records pursuant to 28 U.S.C. § 156(c), KCC will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the “Clerk”) the services specified in the Application and the Services Agreement, and at the Debtors’ request, any related administrative, technical, and support services specified in the Application and the Services

Agreement. In performing such services, KCC will charge the Debtors the rates set forth in the Services Agreement.

5. KCC represents, among other things, the following:
 - (a) KCC is not a creditor of the Debtors;
 - (b) KCC is a “disinterested person” within the meaning of section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code;
 - (c) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
 - (d) By accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
 - (e) In its capacity as the Claims and Noticing Agent in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
 - (f) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
 - (g) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
 - (h) In its capacity as Claims and Noticing Agent in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
 - (i) KCC shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
 - (j) KCC will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
 - (k) None of the services provided by KCC as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk’s office.

6. Although the Debtors do not propose to retain KCC under section 327(a) of the Bankruptcy Code pursuant to the Application,³ I caused to be submitted for review by our conflicts system the names of all known potential parties-in-interest (the “Potential Parties in Interest”) in these chapter 11 cases. The list of Potential Parties in Interest was provided by the Debtors and included, among other things, the Debtors, non-Debtor affiliates, significant equity holders, the Debtors’ current and former directors and officers, secured creditors, top thirty unsecured creditors, vendors, and other parties. The results of the conflict check were compiled and reviewed by KCC professionals under my supervision. At this time, and as set forth in further detail herein, KCC is not aware of any relationship that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to promptly file a supplemental declaration.

7. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither KCC, nor any of its professionals, have any materially adverse connection to the Debtors, their creditors or other relevant parties. KCC may have relationships with certain of the Debtors’ creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent and/or administrative advisor for another chapter 11 debtor.

8. On May 1, 2023, funds affiliated with GCP Capital Partners LLC (“GCP”) indirectly acquired a controlling equity interest in KCC (the “Acquisition”). Pursuant to the Acquisition, an indirect, non-controlling, beneficial minority interest in KCC was acquired by funds affiliated with J.P. Morgan Investment Management Inc. (“JPMIM”). GCP is a

³ As stated in the Application, such retention will be sought by separate application.

middle-market private equity investment firm based in New York. GCP has made investments in a number of industries, including tech-enabled business services, payments, and select financials. JPMIM is a U.S. registered investment adviser. Designees of GCP are members of the Board of Managers (the “Board”) of KCC’s ultimate parent company, KCC Parent LLC (“Parent”). Parent wholly owns KCC Intermediate LLC, which in turn wholly owns KCC Global Administration, LLC, which in turn wholly owns KCC Topco LLC, which in turn wholly owns KCC. One representative of JPMIM is entitled to attend and observe (but not vote) at all meetings of the Board, but no designee of JPMIM is a member of the Board.

9. KCC searched all entities listed in the list of Potential Parties in Interest against an internal database that includes (a) KCC’s parent entities, affiliates, and subsidiaries and (b) GCP, GCP’s funds, and each such fund’s respective portfolio companies and investments as set forth in the list most recently provided to KCC by GCP. Based solely on the foregoing search, KCC has determined, to the best of its knowledge, that there are no material connections. JPMorgan Chase & Co. is listed on the Potential Parties in Interest List. There are information barriers between JPMIM and the line of business where JPMorgan Chase may be associated with the Debtors.

10. To the extent KCC learns of any other material connections between the funds or investments included in the above-described conflicts search and the Debtors, KCC will promptly file a supplemental disclosure. In addition, KCC may have had, may currently have, or may in the future have business relationships unrelated to the Debtor with one or more GCP or JPMIM entities including, among others, portfolio companies of GCP.

11. KCC has and will continue to represent clients in matters unrelated to these chapter 11 cases. In addition, KCC and its personnel have and will continue to have relationships

in the ordinary course of its business with certain vendors, professionals and other parties in interest that may be involved in the Debtors' chapter 11 cases. KCC may also provide professional services to entities or persons that may be creditors or parties in interest in these chapter 11 cases, which services do not directly relate to, or have any direct connection with, these chapter 11 cases or the Debtors.

12. KCC may have relationships with other professionals to be retained by the Debtors. Certain former partners and associates of Kirkland & Ellis LLP ("K&E"), proposed counsel to the Debtors, currently are employed by KCC. Albert Kass, KCC's Senior Executive Vice President of Corporate Restructuring Services, is a former K&E associate. Mr. Kass' work at K&E was unrelated to the Debtors and these chapter 11 cases. Beth Friedman, a Senior Director with KCC's Corporate Restructuring Services, is a former K&E Restructuring Department Coordinator. Adam Gorman, a Director with KCC's Corporate Restructuring Services, is a former K&E project assistant.

13. To the best of my knowledge, neither KCC nor any of its partners or employees represents any interest materially adverse to the Debtors' estates with respect to any matter upon which KCC is to be engaged. Based on the foregoing, I believe that KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Respectfully submitted,

Dated: February 13, 2024

/s/ Evan Gershbein

Evan Gershbein

Executive Vice President, Corporate Restructuring
Kurtzman Carson Consultants LLC

*Proposed Claims and Noticing Agent of the Debtors and
Debtors in Possession*