

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

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

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*Counsel for Workday, Inc.*

In re:

INVITAE CORPORATION., *et al.*,  
  
Debtors.<sup>1</sup>

Case No. 24-11362 (MBK)

Chapter 11

(*Jointly Administered*)

**WORKDAY, INC.’S OBJECTION AND RESERVATION OF RIGHTS RELATED TO  
THE NOTICE TO CONTRACT PARTIES TO POTENTIALLY  
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
[DOC. NO. 365]**

Workday, Inc. (“**Workday**”) submits this limited objection and reservation of rights with respect to the potential assumption and/or assignment of Workday contracts as set forth in the *Notice to Contract Parties to Potentially Assumed Executory Contracts and Unexpired Leases* [Doc. No. 365] (“**Assumption Schedule**”).

<sup>1</sup> 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’ claims and noticing agent at [www.kcellc.net/invitae](http://www.kcellc.net/invitae). The Debtors’ service address in these chapter 11 cases is 1400 16th Street, San Francisco, California 94103.



## **BACKGROUND**

1. Workday and Invitae Corporation (“**Invitae**”) are parties to a *Master Subscription Agreement* (as amended, “**MSA**”) pursuant to which Workday provides payroll, benefits, and other cloud-based enterprise management services to Invitae and its debtor-affiliates (“**Debtors**”).

2. Since entering into the MSA, Invitae has also executed various order forms, including Order Form # 00314561.0, Order Form # 00332785.0, Order Form # 00333101, and Order Form # 00394167.0 (together, the “**Order Forms**”).<sup>2</sup>

3. On February 16, 2024, this Court entered the *Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Assumed Contracts, and (VI) Authorizing the Sale of Assets* [Doc. No. 57] (“**Bidding Procedures Order**”).

4. On April 24, 2024, the Debtors filed the *Notice of Successful Bidder with Respect to the Auction Held on April 17 and 24, 2024* [Doc. No. 362]. On April 25, 2024, the Debtors filed a *Notice of (I) Filing of the Asset Purchase Agreement and Proposed Sale Order with Respect to the LabCorp Sale Transaction, (II) Modified Cure Objection Deadline, and (III) Rescheduled Sale Hearing* [Docket No. 364] (“**Sale Notice**”).

5. On April 25, 2024, the Debtors also filed the Assumption Schedule which lists the following Workday contracts to be assumed as part of the Sale:

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<sup>2</sup> The term “Order Forms” is defined in the MSA to mean “the separate ordering documents under which Customer subscribes to the Workday Service pursuant to this Agreement that have been fully executed by the parties,” and the MSA includes any fully executed order forms.

Debtor Entity	Case Number	Contract Counterparty	Document Title	Effective Date	Proposed Cure
Invitae Corporation	24-11362 (MBK)	Workday, Inc.	Master Subscription Agreement	1/25/22	\$45,955.81
Invitae Corporation	24-11362 (MBK)	Workday, Inc.	Order Form 00314561.0	1/25/22	\$0
Invitae Corporation	24-11362 (MBK)	Workday, Inc.	Order Form 00332785.0	1/28/22	\$0
Invitae Corporation	24-11362 (MBK)	Workday, Inc.	Order Form 00394167.0	3/31/23	\$0
Invitae Corporation	24-11362 (MBK)	Workday, Inc.	Order Form #33101		\$0

See Assumption Schedule, pg. 363-364 of 370.

6. The Debtors list a cure amount of \$45,955.81 for the MSA, and \$0.00 for each of the other Workday contracts/order forms listed on the Assumption Schedule (“**Proposed Cure Amount**”).

#### **OBJECTION**

7. Pursuant to § 365(b)(1) of the Bankruptcy Code, a debtor may assume an executory contract only if it cures (or provides adequate assurance that it will promptly cure) all monetary defaults and provides adequate assurance of future performance. Specifically, a cure under § 365(b)(1) means paying all unpaid amounts due under the contract. *See In re Network Access Solutions Corp.*, 330 B.R. 67, 76 (Bankr. Del. 2005); *see also In re Superior Toy & Manufacturing Co., Inc.*, 78 F. 3d 1169 (7<sup>th</sup> Cir. 1996) (“[T]he language of §365(b)(1) is unequivocal. A party to an executory contract must be paid all amounts due him under the contract before the contract may be assumed.”).

8. The Proposed Cure Amount—\$45,955.81—does not correctly reflect all outstanding balances under the MSA and Order Forms.

9. The MSA is the master contract between Workday and Invitae. The Order Forms are subject to, and integrated with, the MSA, so they cannot be selectively assumed or rejected.<sup>3</sup>

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<sup>3</sup> Pursuant to the terms of the MSA, the MSA includes “the SLA, Security Exhibit, Data Processing Exhibit, and any other exhibits, addenda, or attachments hereto, and any fully executed Order Form.”

Accordingly, assumption of any Workday Order Form requires assumption of the MSA together with all the other Workday Order Forms.

10. The third and final installment payment due under the Order Form 00314561.0 is \$986,668 and came due on January 28, 2024. The service period associated with that installment payment (Subscription Period 3) covers January 28, 2024 through January 27, 2025. It appears that Debtors’ proposed \$45,955.81 cure amount may be a proration based on based on Invitae’s February 13, 2024 petition date. While proration may be appropriate for determining what amount of the invoice would be entitled to administrative priority, for purposes of curing an executory contract, the entire \$986,668 amount outstanding should be the cure amount. In addition, the Debtors have an outstanding *postpetition* balance due under Order Form 00394167.0 in the amount of \$64,571. The following invoices (copies of which are attached hereto as **Exhibit A**), which make up the total outstanding due, have been issued to the Debtors and remain unpaid:

<b>Invoice</b>	<b>Memo</b>	<b>Invoice Date</b>	<b>Total Amount Due</b>
WD-321028	Order Form 00314561.0 – payment 3 of 3	December 29, 2023	\$986,668
WD-330076	Order Form 00394167.0 – payment 2 of 2	March 31, 2024	\$64,571
<b>TOTAL:</b>			<b>\$1,051,239</b>

11. In addition to the outstanding balance above, other *postpetition* balances may come due under the MSA that must be paid at the time of assumption and/or assignment under Bankruptcy Code § 365(b)(1). In other words, the Debtors continue using services under the MSA *postpetition*, and the total cure amount may increase depending on the actual date of assumption and/or assignment and the payments by the Debtors. To the extent any *postpetition* invoices are issued and have not been paid by the Debtors prior to assumption in the ordinary course, such *postpetition* invoices must be paid at the time of assumption as part of the cure amount.

12. Any order approving assumption and/or assignment of the Workday contracts must identify the MSA and the Order Forms as set forth in the table above along with the correct cure amounts (*i.e.*, at least the total outstanding obligations).

13. To be clear, Workday reserves all rights with respect to all postpetition invoices related to the MSA and Order Forms, including the right to require payment in full of all postpetition invoices in conjunction with any assumption of the MSA and Order Forms, and the right to require the assignee to provide adequate assurance of future performance related to all outstanding postpetition invoices.

**RESERVATION OF RIGHTS**

14. Nothing contained in this objection shall constitute a waiver or limitation of Workday's rights and remedies under the MSA or any other contract or agreement with the Debtors, including any right to payment for any amounts that are due thereunder. Workday reserves all rights under the MSA and Order Forms, as well as all rights with respect to administrative expense claims related to the MSA and Order Forms.

15. Workday also reserves the right to withdraw this objection or revise the stated cure amount pending further investigation.

For the reasons above, Workday respectfully requests that the Court enter an order (1) requiring that (a) any assumption provide for payment of the entire outstanding balance now due; (b) any assumption correctly identify the MSA and all Order Forms as detailed above; and (c) any assumption provide for payment of any postpetition amounts outstanding under the MSA and Order Forms; and (2) reserving all of Workday's rights under the MSA and Order Forms, including all rights with respect to administrative expense claims related to the MSA and Order Forms.

*[Remainder of Page Intentionally Blank]*

Dated: April 30, 2024

**PERKINS COIE LLP**

By: /s/ Tina N. Moss

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*Attorneys for Workday, Inc.*

**CERTIFICATE OF SERVICE**

I, Tina N. Moss, hereby certify that on this 30th day of April 2024, I caused a true and correct copy of the forgoing to be electronically filed with the Court using the CM/ECF System and to be served upon all parties requesting service therefrom. I further certify that I caused a true and correct copy of the foregoing to be served upon the following via first class mail:

Invitae Corporation  
Attn: Tom Brida  
1400 16th Street  
San Francisco, California 94103  
*Debtors*

Nicole L. Greenblatt, P.C.  
Joshua A. Sussberg, P.C.  
Francis Petrie  
Jeffrey Goldfine  
Kirkland & Ellis LLP  
Kirkland & Ellis International LLP  
601 Lexington Avenue  
New York, New York 10022

-and-

Spencer A. Winters, P.C.  
Kirkland & Ellis LLP  
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Chicago, Illinois 60654

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

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Felice R. Yudkin, Esq.  
Daniel J. Harris, Esq.  
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Hackensack, New Jersey 07601

*Co-counsel to the Debtors and Debtors in Possession*

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Jeffrey M. Sponder  
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Office of the United States Trustee  
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Newark, New Jersey 07102-5504  
*U.S. Trustees' Counsel*

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*Counsel to the Official Committee of Unsecured Creditors*

Erin N. Brady, Esq.  
William Intner, Esq.  
Hogan Lovells US LLP  
1999 Avenue of the Stars, Suite 1400  
Los Angeles, California 90067  
*Counsel to the Successful Bidder*

Dated: April 30, 2024

/s/ Tina N. Moss



# **EXHIBIT A**



# INVOICE

**Workday, Inc.**  
6110 Stoneridge Mall Road  
Pleasanton, CA 94588  
United States of America  
Federal Tax ID: 20-2480422  
Tel: +1 (925) 951-9522

**Invoice Number:** WD-321028  
**Invoice Date:** December 29, 2023  
**Due Date:** January 28, 2024  
**Terms:** Net 30  
**PO Number:**  
**Amount Due:** USD 986,668.00

**Bill To:**  
**Invitae Corporation**  
1400 16th St  
San Francisco, CA 94103-5110  
United States of America

**Ship To:**  
**Invitae Corporation**  
1400 16th St  
San Francisco, CA 94103-5110  
United States of America

Memo: Order Form 314561 payment 3 of 3

Item Description	Invoice Line Memo	Amount
Workday Enterprise Cloud Application Subscription Fee		986,668.00
	Net Amount	986,668.00
	Tax:	0.00
	<b>Total</b>	<b>USD 986,668.00</b>

**Please Remit Payments To:**

Via Electronic Funds Transfer (preferred):



Via Mail:  
WORKDAY, INC.  
P.O. Box 886106  
Los Angeles, CA 90088-6106



# INVOICE

**Workday, Inc.**  
6110 Stoneridge Mall Road  
Pleasanton, CA 94588  
United States of America  
Federal Tax ID: 20-2480422  
Tel: +1 (925) 951-9522

**Invoice Number:** WD-330076  
**Invoice Date:** March 1, 2024  
**Due Date:** March 31, 2024  
**Terms:** Net 30  
**Amount Due:** USD 64,571.00

**Bill To:**  
**Invitae Corporation**  
1400 16th St  
San Francisco, CA 94103-5110  
United States of America

**Ship To:**  
**Invitae Corporation**  
1400 16th St  
San Francisco, CA 94103-5110  
United States of America

Memo: Order Form 394167 payment 2 of 2

Item Description	Invoice Line Memo	Amount
Workday Enterprise Cloud Application Subscription Fee		64,571.00
	Net Amount	64,571.00
	Tax:	0.00
	<b>Total</b>	<b>USD 64,571.00</b>

**PO Number:**

**Please Remit Payments To:**

Via Electronic Funds Transfer (preferred):



Via Mail:  
WORKDAY, INC.  
P.O. Box 886106  
Los Angeles, CA 90088-6106