Fill in this information to identify the case:

Debtor 1 Achaogen, Inc.

Debtor 2 (Spouse, if filing) _____

United States Bankruptcy Court for the: District of Delaware

Case number 19-10844

Official Form 410

Proof of Claim

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) **that you received.**

Part 1: Identify the Claim

1. **Who is the current creditor?**

Distance Learning Providers LLC
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Where should notices to the creditor be sent?

Distance Learning Providers LLC
Name

800 Wilshire Blvd, Suite 200
Number Street

Los Angles CA 90017
City State ZIP Code

Contact phone (206) 218-2633

Contact email pcormier@dlproviders.com

Where should payments to the creditor be sent? (if different)

Distance Learning Providers LLC
Name

800 Wilshire Blvd, Suite 200
Number Street

Los Angeles CA 90017
City State ZIP Code

Contact phone (206) 218-2633

Contact email pcormier@dlproviders.com

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MAY 13 2019
KURTZMAN CARSON CONSULTANTS

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

_ _

4. **Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing? _____



19108441905130000000000002

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. **Do you have any number you use to identify the debtor?**
   - ☑ No
   - ☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

7. **How much is the claim?** $ 35,165.00 . **Does this amount include interest or other charges?**
   - ☑ No
   - ☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. **What is the basis of the claim?**
   Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
   Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
   Limit disclosing information that is entitled to privacy, such as health care information.
   Services performed

9. **Is all or part of the claim secured?**
   - ☑ No
   - ☐ Yes. The claim is secured by a lien on property.

   Nature of property:
   - ☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
   - ☐ Motor vehicle
   - ☐ Other. Describe: _____

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   MAY 13 2019
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   Basis for perfection: _____
   Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

   Value of property: $_____
   Amount of the claim that is secured: $_____
   Amount of the claim that is unsecured: $_____ (The sum of the secured and unsecured amounts should match the amount in line 7.)
   Amount necessary to cure any default as of the date of the petition: $_____
   Annual Interest Rate (when case was filed)_____%
   - ☐ Fixed
   - ☐ Variable

10. **Is this claim based on a lease?**
    - ☑ No
    - ☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $_____

11. **Is this claim subject to a right of setoff?**
    - ☑ No
    - ☐ Yes. Identify the property: _____

12. **Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

	Amount entitled to priority
☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	$_____
☐ Up to $3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	$_____
☐ Wages, salaries, or commissions (up to $13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	$_____
☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	$_____
☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	$_____
☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies.	$_____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

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_____
Signature

Print the name of the person who is completing and signing this claim:

Name: Patricia Goncalves Cormier
First name Middle name Last name

Title: Finance Manager

Company: Distance Learning Providers LLC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 800 Wilshire Blvd, Suite 200
Number Street

Los Angeles CA 90017
City State ZIP Code

Contact phone: 206-218-2633 Email: pcormier@dlproviders.com

Invoice

Distance Learning Providers, Inc.
800 Wilshire Blvd, Suite 200
Los Angeles, CA 90017

Date	Invoice #
11/14/2018	2

Bill To
Achaogen, Inc. Stephen Hucko 1 Tower Place South San Francisco, CA 94080

P.O. No.	Terms	Due Date
AGP104308	Net 30	12/14/2018

Quantity	Description	Rate	Amount
0.5	Program Launch & Setup - 50% SOW Line 1.1 - 1.6 & PO Line Item 1	14,500.00	7,250.00
0.5	Annual Portal License Fee - 50% SOW Line 2.1 & PO Line Item 2	15,000.00	7,500.00
1	September Program Management	3,000.00	3,000.00
1	October Program Management	3,000.00	3,000.00
		Total	$20,750.00

Invoice

Distance Learning Providers, Inc.
800 Wilshire Blvd, Suite 200
Los Angeles, CA 90017

Date	Invoice #
12/27/2018	4

Bill To
Achaogen, Inc. Stephen Hucko 1 Tower Place South San Francisco, CA 94080

P.O. No.	Terms	Due Date
AGP104308	Net 30	1/26/2019

Quantity	Description	Rate	Amount
4	November and December Event Management Fees	195.00	780.00
1	November Program Management	3,000.00	3,000.00
1	December Program Management	3,000.00	3,000.00
		Total	$6,780.00

Invoice

Distance Learning Providers, Inc.
800 Wilshire Blvd, Suite 200
Los Angeles, CA 90017

Date	Invoice #
2/28/2019	6

Bill To
Achaogen, Inc. Stephen Hucko 1 Tower Place South San Francisco, CA 94080

P.O. No.	Terms	Due Date
AGP104308	Net 30	3/30/2019

Quantity	Description	Rate	Amount
3	January and February Event Management Fees	195.00	585.00
1	January Program Management	3,000.00	3,000.00
1	February Program Management	3,000.00	3,000.00
		Total	$6,585.00

Invoice

Distance Learning Providers, Inc.
800 Wilshire Blvd, Suite 200
Los Angeles, CA 90017

Date	Invoice #
2/28/2019	7

Bill To
Achaogen, Inc. Stephen Hucko 1 Tower Place South San Francisco, CA 94080

P.O. No.	Terms	Due Date
AGP104308	Net 30	3/30/2019

Quantity	Description	Rate	Amount
2	January Speaker Fees	350.00	700.00
1	February Speaker Fees	350.00	350.00
		Total	$1,050.00

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ACHAOGEN

EXHIBIT A TO

MASTER SERVICES AGREEMENT BETWEEN

ACHAOGEN, INC. AND DISTANCE LEARNING PROVIDERS, INC.

DATED APRIL 18, 2018

This **Exhibit A** ("Exhibit") effective as of **May 10, 2018** ("Effective Date") is by and between **Achaogen, Inc.** ("Achaogen") and **Distance Learning Providers, Inc.** ("Company"), and issued pursuant to the Master Services Agreement dated May 8, 2018 by and between Achaogen and Company ("Agreement"). Achaogen and Company may be referred to each as a "Party" or collectively as the "Parties" to this Exhibit.

WHEREAS, Achaogen desires to retain Company to perform services for Achaogen; and

WHEREAS, Company desires to perform such services as an independent contractor for Achaogen.

NOW, THEREFORE, Achaogen and Company hereby agree to the following terms and conditions:

1. Contact. Company's principal contact at Achaogen shall be:

   Name: Erin Flores

   Title: Administrative Assistant III

2. Services. Company will provide Services outlined in "WORK ORDER 2018-1" dated April 25, 2018, attached hereto and incorporated herein as Appendix I ("Services").

3. Timeline. The Services will begin upon execution of Exhibit, and will be completed by December 31, 2019.

4. Deliverables.

   4.1 Achaogen's Contribution. Achaogen will provide information as necessary for the completion of Services.

   4.2 Company's Contribution:

   4.2.1 Company will provide to Achaogen regular project updates by email and periodic project planning teleconferences.

4.2.2 Upon completion of the Services, Company will provide Achaogen with Services described in Appendix I.

5. Fees and Expenses. For the Services, Achaogen agrees to pay Company a fixed price of up to **$254,500** per the following schedule described in Appendix I.

6. Billing.

6.1 The invoices for the Services under this Exhibit shall be marked with the following:

i. A brief description and date of Services performed;

ii. **Purchase Order Number** TBD; and

iii. The following statement: "Services performed pursuant to Exhibit A of the Master Services Agreement dated April 8, 2018 and associated with the program code Gen-1710-Market Research"

6.2 Company will submit its invoices for services and expenses to Achaogen by regular mail or by email as noted below:

By regular mail: Achaogen, Inc.
Attn: Accounting
One Tower Place, Suite 300
South San Francisco, CA 94080

By electronic mail: accounting@achaogen.com

IN WITNESS WHEREOF, the Parties hereto have executed this Exhibit on the date(s) set forth below and it will be effective as of the day and year first above written.

ACHAOGEN, INC.

DocuSigned by:
By: Tobin Schilke
063B73AE5438471...

Name: Tobin Schilke

Title: CFO

Date: 5/10/2018

DISTANCE LEARNING PROVIDERS, INC.

DocuSigned by:
By: Mustafa Bengali
FD3AF41D19F44FF...

Name: Mustafa Bengali

Title: Director

Date: 5/14/2018

DocuSign Envelope ID: 2B9084CC-AD2D-48C7-8572-78772883607C

APPENDIX I

DISTANCE LEARNING PROVIDERS
Medical Communications Solutions

WORK ORDER 2018-1

This Work Order (this "**Work Order**") is made effective this 25th day of April 2018 by and between Achaogen, Inc. ("**Achaogen**") and Distance Learning Providers, Inc. ("**Vendor**") pursuant to and subject to the terms and provisions of the Master Services Agreement ("**MSA**") dated April 18, 2018.

1.0 BACKGROUND

The proposed scope of work outlined in this document has been prepared in response to a proposal request by **Erin Flores** at Achaogen for management of the **1:1 Expert on Demand** program for Achaogen. The project as outlined in this document is based upon DLP's proprietary Expert on Demand™ speaker program series that will provide a platform for educating HCP's on the efficacy and safety of PLAZOMICIN while using peer influence in a *one-on-one* targeted and personalized approach. The one-on-one or small group environment provides an ideal environment for learning, whereby the Key Opinion Leader (KOL) can best understand the audiences' needs and knowledge gaps to deliver a message that is meaningful and relevant to the HCP.

2.0 SCOPE

The scope of work requested of DLP for Achaogen's PLAZOMICIN brand includes:

a) 300 *Expert on Demand* programs during the 2018/2019 fiscal years
b) Onboarding and management of approximately 30 speakers over the contract period. Speaker contracting, tier recommendations, profiles, online personal accounts and 1 x hosted on demand training covering programs logistics, compliance as pertaining to the Expert on Demand program

c) Onboarding and management of approximately 55 sales force personnel including online personal accounts and 1 x hosted on demand training covering programs logistics, compliance as pertaining to the Expert on Demand program
d) Hosting, version management and electronic distribution of program content to relevant stakeholders. Approved program content slide deck to be provided by client
e) Dedicated account management with customized reports
f) Provide moderation for each program to initiate and facilitate the call as well as verify:
    i. Speaker and HCP attendance
    ii. Correct content was used as indicated at time of program registration
g) Live call center support for speakers, representatives and participating healthcare professionals between 8:00 AM to 4:00 PM Pacific Time *(when required, additional hours may be added).*
h) Direct payments to speakers – full account reconciliations and budget tracking by event.
i) Aggregate spend reporting for all payment made to speakers
j) The geographic scope for this project will cover territories in the United States.

3.0 PROGRAM RECRUITMENT

The primary channel in marketing and presenting these programs to potential healthcare professionals will remain with the PLAZOMICIN sales force. Distance Learning Providers role in program marketing will be to design, develop, produce and/or update all program-marketing materials.

4.0 DLP CONNECT®

DLP CONNECT® is a robust technology platform which will serve as a centralized gateway for representatives and speakers to schedule, confirm, and check on the status of all Expert on Demand programs.

Key functionalities and features include:

- Representatives are able to access speaker details including bio, CV, photographs, specialty area information, (subject to speakers completing their profiles in the DLP Connect portal)

- Individual "tiered" user accounts are created for all representatives, district and regional managers. Representatives are able to view and track activities of their territory and district managers and regional directors are able to query program for their own districts and regions

- Track and confirm events. Representatives and faculty members track the confirmation status of their registered events and receive event confirmations and reminders via email

- All payments to speakers and an other expenses related to each event is recorded and tracked by the portal

- Individual speaker accounts provide up to date information to speakers regarding their programs and payments.

- Manager accounts provide a hierarchical overview of all programs

5.0 Program Content

Clinical content related to each program will be provided by Achaogen, derived from the approved curriculum and divided into meaningful segments that will serve as topics for each 1:1 program (to be selected by representative, on behalf of attending HCP, at time of program request). The selected topic will serve as the presentation slide deck for the program and form an on-label foundation for discussion between the speaker and the healthcare provider(s).

6.0 Event Management

- DLP schedules the best possible match between the requested time(s) and date(s) for the program and the speaker's availability. The meeting is subsequently confirmed and confirmation emails are sent to the representative, speaker and healthcare provider (*if email is available*).
- DLP sends a reminder email to the representative, speaker and healthcare provider *(if email is available)* one day prior to each program.
- At the scheduled date and time, DLP will host the call making every effort to ensure that the speaker and the Achaogen representative and participating healthcare provider(s) are present and that the meeting begins on time.
- The representative closes the event in DLP Connect, certifying for compliance and entering event attendees.
- Once representative closes the event, DLP authorizes and pays the speaker for presentation services.

7.0 Program Budget:

No.	Item	Qty	Per Unit ($)	Total ($)
1	**Launch & Setup**			
1.1	Portal Setup	1	$5,000	$5,000
1.2	Brand/Program(s) Setup	1	$2,000	$2,000
1.3	Speaker/Representative Training Setup on-line (1)	2	$1,000	$2,000
1.4	Third Party/Agency Setup	0	$5,000	$0
1.5	Program Materials Design, Approval (2)	1	$2,500	$2,500
1.6	Speaker On-boarding (contracting, account setup)	30	$100	$3,000
Total Launch & Setup Fees				**$14,500**
2	**Technology Fee**			
2.1	Annual Portal License Fee	1.5	$10,000	$15,000
Total Technology				**$15,000**
3	**Event Management**			
3.2	Event Management Virtual, 1-on-1 Expert on Demand (3)	300	$195	$58,500
3.4	Program Management (1 brand x 18 months)	18	$3,000	$54,000
3.5	Expedited Scheduling		$0	$0
3.6	Program Cancellations (4)		$0	$0
3.7	Event Registration by phone/call center		$0	$0
3.8	Program Edits, Re-scheduling		$0	$0
Event Speaker Fees Management				**$112,500**
4	**Speaker Payment Processing**			
4.1	Event Speaker Fee Payments (5)	300	$25	$7,500
Total Event Management Fees				**$7,500**
Grand Total (not including pass through expenses)				**$149,500**

No.	SPEAKER FEES - PASS THROUGH COSTS	Qty	Per Unit ($)	Total ($)
5	**Speaker Compensation (Estimated)**			
5.2	1-on-1 Expert on Demand - Speaker Fees	300	$350	$105,000
Total Estimated Faculty Compensation				**$105,000**

Total estimated 2018/2019 Expert on Demand Costs (including speaker fees) $254,500

1. Online training setup fee is not inclusive of any writing, recording, editing and/or production of training content.

2. All program materials designed for print will be provided to Achaogen in print ready electronic format including an electronic proof. A separate quote for printing will be provided by DLP when Achaogen requires DLP to print any program materials.

Distribution of program materials is not included in the scope of this project. When DLP is asked to distribute program materials, DLP will charge the actual shipping cost plus a $5.95 handling fee per shipment.

3. Assumed that meal expenses for individual offices during and Expert on Demand program will be paid for and reported by the Achaogen representatives

4. Program cancellation is defined to include only events cancelled with sufficient notice to the speaker, for which no cancellation fees are due to the speaker.

5. Event speaker fees will be processed on a monthly payment schedule aggregated into a single check paid each month (please see Speaker Payment Process below).

6. For services that fall outside the established scope of work, DLP rates are as follows:

Category	$/hour
Legal/Regulatory	$250
Programming	$95
Program Management/Analysis I	$95
Analysis II	$75
Analysis III / Administrative	$45

8.0 Speaker Payment Process

Speaker payments related to 'Fees for Services' will be aggregated into a single check for all events completed by the speaker for each 30-day period. Payments to speakers for all out-of-pocket expense will also be aggregated into a single check for all expense reports approved for the speaker every 30-day period.

Payments to each speaker for both classes of payments (fees for services and reimbursable expenses) will be mailed in two separate checks for each class, within 7 days of the closing of each 30-day payment period.

DLP will maintain a separate bank account dedicated to processing only speaker payments for fees for services and reimbursable expenses.

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9.0 Terms

DLP will invoice 50% of all costs listed in lines items 1.1 – 1.6 and 2.1 at contract execution and the balance 50% at the launch of the DLP Connect portal for Achaogen.

All other fees will be invoiced monthly as incurred.

Terms are NET 30 days from receipt of invoice.

IN WITNESS WHEREOF, this Work Order has been executed and delivered by the parties hereto as of the date first above written.

DISTANCE LEARNING PROVIDERS, INC.	**ACHAOGEN, INC.**
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

South San Francisco, CA 94080
Email: contracts@achaogen.com

If to Company:

Distance Learning Providers
800 Wilshire Blvd, #820
Los Angeles, CA 90017

19.5 Severability. If any Section or provision of this Agreement is determined to be invalid or unenforceable by a court of competent jurisdiction, the validity of other Sections and provisions of this Agreement shall not be affected.

19.6 Waiver. The waiver or failure of either Party to enforce any claim or breach of any Section or provision of this Agreement shall not be deemed to constitute a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every Section and provision of this Agreement.

19.7 Obligations. Each Party agrees that it will conduct its obligations under this Agreement in compliance with all applicable federal, state and local laws and regulations.

19.8 Counterparts. This Agreement may be signed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Any signature page delivered by facsimile or electronic image transmission shall be binding to the same extent as an original signature page. Any Party that delivers a signature page by facsimile or electronic image transmission shall deliver an original counterpart to the other Party upon request.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) set forth below and it will be effective as of the day and year first above written.

DISTANCE LEARNING PROVIDERS

By: DocuSigned by: Mustafa Bengali FD3AF41D19F44FF...

Name: Mustafa Bengali

Title: Director

Date: 4/19/2018

ACHAOGEN, INC.

By: DocuSigned by: Tobin Schilke 063B73AE5438471...

Name: Tobin Schilke

Title: CFO

Date: 4/20/2018

DocuSign Envelope ID: 9A074678-3DEC-4C24-A162-1AD9AACCC5D1

ACHAOGEN

MASTER SERVICES AGREEMENT

This **Master Services Agreement** ("Agreement"), effective as of **April 18, 2018** ("Effective Date") is by and between **Achaogen, Inc.**, a Delaware corporation, having a place of business at One Tower Place, Suite 300, South San Francisco, California 94080, U.S.A. ("Achaogen"), and **Distance Learning Providers**, a company, having a place of business at 800 Wilshire Blvd., #820, Los Angeles, CA 90017 ("Company"). Achaogen and Company may be referred to each as a "Party" or collectively as the "Parties" to this Agreement.

WHEREAS, Company is engaged in the business of providing research and/or development services; and

WHEREAS, Achaogen wishes to engage Company for the purposes of providing certain services to assist Achaogen in the execution of particular drug development programs.

NOW, THEREFORE, Achaogen and Company hereby agree to the following terms and conditions:

1.0 SCOPE OF AGREEMENT.

1.1 Exhibits. Achaogen may from time to time engage Company to perform specific services. The nature, details, requirements, specifications, obligations, and fees associated with these services will be defined in one or more Exhibits to this Agreement. Upon execution by both Achaogen and Company, each Exhibit shall be deemed incorporated into and made part of this Agreement

1.2 Performance Standard. In the provision of services pursuant to any Exhibit hereto, Company hereby agrees to use best efforts to provide those services in accordance with Achaogen's instructions and to meet all obligations, as identified in this Agreement and any Exhibits hereto.

1.3 Conflict of Documents. In the event of a conflict between the terms and provisions of this Agreement and any Exhibit or other documentation, the Parties' rights and obligations shall be controlled by the terms of this Agreement, unless such Exhibit or other properly-executed documentation expressly states the Parties' mutual intent to amend this Agreement.

1.4 Achaogen Materials. In the event that any Exhibit requires the transfer to Company of tangible materials from Achaogen, including without limitation chemical or biological materials ("Achaogen Materials"), then Company: (a) shall use Achaogen Materials solely for the purpose of performing such Exhibit; (b) shall store, handle, use and dispose of Achaogen Materials in compliance with all applicable laws, rules and regulations; (c) shall not

transfer Achaogen Materials to any third party, nor permit the use of Achaogen Materials at any facility other than Company's facilities, without the prior express written consent of Achaogen; and (d) shall not use Achaogen Materials in humans, nor permit others to do so, unless expressly provided for in an Exhibit.

2.0 PAYMENT TERMS.

2.1 No Obligation. This Agreement shall not give effect to any performance or payment obligations of either Party. No such obligations shall be effective until defined in a duly-executed Exhibit pursuant to this Agreement.

2.2 Payment Terms. Company will submit all invoices for services and expenses for services conducted under any Exhibits separately from all other services conducted under the Agreement and any other associated Exhibit(s) or amendment(s) thereto. Achaogen will pay each invoice within thirty (30) days of receipt in the absence of a good faith dispute.

2.3 Payment Disputes. If Achaogen has a good faith dispute regarding a Company invoice submitted to Achaogen, Achaogen may withhold payment for the disputed services, provided that Achaogen pays the undisputed amount and notifies Company in writing of the specific amount and nature of the dispute within thirty (30) days of receipt of Company's invoice. In the event of any dispute, Company will continue to perform services until the dispute is resolved. Failure to so diligently perform services shall be considered a material breach of this Agreement, regardless of the ultimate outcome of such dispute.

2.4 Final Invoices for Completed Services. Company shall submit invoices for all outstanding payments within ninety (90) days following the completion of all services and associated milestones in a relevant Exhibit. Requests for payments received after this period may be refused by Achaogen.

3.0 DISCLAIMER OF WARRANTY.

3.1 Any information or research material provided to Company by Achaogen is experimental in nature and is provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ACHAOGEN MAKES NO REPRESENTATION OR WARRANTY THAT USE OF INFORMATION OR MATERIALS WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT.

4.0 CONFIDENTIALITY.

4.1 Definition of Confidential Information. "Confidential Information" means all information or know-how, and any tangible embodiments thereof, provided by or on behalf of one Party to the other Party, either in connection with the

discussions and negotiations pertaining to any project pursuant to this Agreement or in the course of performing any Exhibit pursuant to this Agreement, whether in graphic, written, electronic or oral form, identified at the time of disclosure as confidential, or which by its context would reasonably be deemed to be confidential. Confidential Information may include, without limitation, data, knowledge, lists, schedules, practices, processes, ideas, research plans, engineering designs and drawings, research data, research materials, manufacturing processes and techniques, scientific, manufacturing, marketing and business plans, and financial and personnel matters relating to the disclosing Party or to its present or future products, sales, suppliers, customers, employees, investors or business. Unless otherwise agreed by the Parties, the existence of discussions and negotiations pertaining to this Agreement and of this Agreement and any associated projects, are Confidential Information.

4.2 Exclusions from Definition of Confidential Information. Notwithstanding the foregoing, information or know-how of a Party will not be deemed Confidential Information of such Party for purposes of this Agreement if such information or know-how:

4.2.1 was lawfully known to the receiving Party, other than under an obligation of confidentiality or non-use, at the time of disclosure to such receiving Party;

4.2.2 was generally available or known to parties reasonably skilled in the field to which such information or know-how pertains, or was otherwise part of the public domain, at the time of its disclosure to such receiving Party;

4.2.3 became generally available or known to parties reasonably skilled in the field to which such information or know-how pertains, or otherwise became part of the public domain, after its disclosure to such receiving Party through no activity or omission on the part of the receiving Party;

4.2.4 was disclosed to such receiving Party, other than under an obligation of confidentiality or non-use, by a third party who had no obligation to the disclosing Party not to disclose such information to others; or

4.2.5 was independently discovered or developed by such receiving Party, as evidenced by their written records created contemporaneous with the time of such independent discovery or development, without the use of or reference to the Confidential Information belonging to the disclosing Party and prior to any subsequent disclosure by the receiving Party.

4.3 Each Party acknowledges the proprietary nature of Confidential Information and agrees that each Party's Confidential Information shall remain the sole and exclusive property of the disclosing Party. Accordingly, each Party agrees, at a minimum, to apply such protections to the disclosing Party's

Confidential Information as the receiving Party applies to its own Confidential Information, and to limit the reproduction, disclosure, distribution, release, transfer, or use of the other Party's Confidential Information to the minimum necessary to fulfill performance obligations to the disclosing Party pursuant to this Agreement and any associated Exhibits.

4.4 Each Party may disclose Confidential Information of the other Party to the extent that such disclosure is required to be disclosed by law or regulation, administrative or judicial order; provided, however, that in each case such Party will first have given prompt notice to such other Party and given such other Party a reasonable opportunity to take appropriate action to limit disclosure; provided, further, that in each case, the Confidential Information disclosed in response to such requirement will be limited to that information that is legally required to be disclosed in response, as determined in good faith by counsel to the Party that is obligated to disclose Confidential Information.

4.5 Each Party acknowledges and agrees that any breach of this Article 4 of this Agreement by either Party, including, without limitation, actual or threatened disclosure or transfer of the other Party's Confidential Information, could cause the non-breaching Party to suffer irreparable harm, for which no remedy at law would afford appropriate compensation. Accordingly, each Party hereby agrees that the non-breaching Party shall be entitled to seek an injunction and/or specific performance of the breaching Party's obligation under this Agreement as well as such further equitable or legal relief as may be granted by a court of competent jurisdiction.

4.6 The Parties' obligations under this section shall survive for a seven (7) year period following the expiration or termination of this Agreement.

5.0 TERM/TERMINATION.

5.1 Unless earlier terminated pursuant to Section 5.2 below, the term of this Agreement will commence on the Effective Date and will continue for a period of five (5) years ("Term").

5.2 Achaogen has the right to terminate this Agreement or any associated Exhibit with thirty (30) days prior written notice to Company; provided, however, that this Agreement shall continue to govern any Exhibits until such projects are complete. In the event of a material breach of this Agreement by Company, Achaogen may terminate this Agreement immediately. In the event of a material breach because of Achaogen's failure to pay an undisputed amount, Achaogen shall have fourteen (14) days from its receipt of written notice of breach to cure the breach, prior to effectiveness of the Company's termination.

5.3 Termination or expiration of this Agreement (by either Party) or any individual Exhibit (by Achaogen) shall not affect the rights and obligations of the Parties accrued prior to the effective date of termination or expiration.

5.4 The rights and duties under Articles 3, 4, 6, 7, 8, 10, 11, 12, 13, 14, 16 and 18 shall survive the termination or expiration of this Agreement.

6.0 PROPERTY OWNERSHIP AND RETENTION; INVENTIONS.

6.1 All Achaogen Confidential Information, Achaogen Materials and other information and materials supplied to Company shall remain the sole and exclusive property of Achaogen. Within ten (10) days after receipt of a written request by Achaogen, Company shall: (a) return to Achaogen all of Achaogen's Confidential Information, Achaogen Materials and other information and materials supplied to Company or created by Company in connection with this Agreement, including without limitation all copies of such information and materials; and (b) certify in writing to Achaogen that all such information and materials have been returned. All research results, including all data, protocols, analysis, conclusions and reports forming, including or being derived from such research results, in each case as created by Company alone or jointly with Achaogen during the term of and in the course of performing services for an Exhibit under this Agreement ("Research Results") shall be the sole and exclusive property of Achaogen.

6.2 Company shall disclose promptly in writing to Achaogen each invention, discovery, improvement, copyrightable work, design, process or other information, whether or not patentable, that was discovered, conceived, made, reduced to practice, or developed by Company in the course of performing an Exhibit, or using any information or materials provided to Company by or on behalf of Achaogen, or based on or derived from any Research Results (collectively, the "Inventions"). Company shall at all times create and maintain accurate, dated and detailed records related to each Invention, including without limitation records sufficient under the patent laws of the United States to establish the date of conception and the inventor(s) of any patentable invention.

6.3 Company will and hereby does assign to Achaogen any and all right, title and interest in, to and under all Inventions. Before beginning performance of any Exhibit, Company shall ensure that all persons performing such services shall assign to Company all rights to Inventions and agree to assist Company in obtaining and enforcing proprietary rights to such Inventions. With respect to any "Subject Inventions," as defined in Federal Acquisition Regulation 52.227-11, Patent Rights-Ownership by the Contractor (Dec 2007), each Company assignment to Achaogen pursuant to this Article is made subject to the requirements of Federal Acquisition Regulation 52.227-11, it being understood that both Company and Achaogen intend for all Subject Inventions to be included in Company's assignment to Achaogen under this section in consideration of Achaogen's contribution, independent of this Agreement, of funds, business opportunities, facilities, equipment, materials, information, know-how, consultation, and/or management assistance to Company.

6.4 Company shall in good faith assist Achaogen, at Achaogen's expense, in any reasonable manner to obtain and enforce patents, copyrights and other proprietary rights in the Inventions, including without limitation reviewing and executing documents pertaining to patent applications. Company shall, upon Achaogen's request, instruct its employees to execute all instruments and documents required for the filing and prosecution of applications for United States and foreign letters patent directed to any Invention(s).

7.0 AUDIT & INSPECTION.

7.1 Rights. Company shall maintain and Achaogen, or Achaogen's authorized representative, shall have the right to audit all Records of Company related to this Agreement or any Exhibit, including Records related to costs incurred or anticipated to be incurred directly or indirectly in performance of an Exhibit. This right shall include a right to inspect at all reasonable times of the Company's facilities engaged in performing an Exhibit. As used in this Agreement, "Records" includes books, records, ledgers, laboratory notebooks, data logs, documents, procedures and practices, and other data, as well as items pertinent to quality assurance and control including, but not limited to, standard operating procedures, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

7.2 Notice. Achaogen or its representative shall provide a minimum of two (2) weeks prior notice before an audit or inspection at a Company site, and shall not conduct an audit or inspection at a Company site more than once in any six (6) month period, unless material defects are discovered during the initial examination, in which case a follow-up audit may be scheduled within the six (6) month time frame to resolve any material defect. For purposes of this Agreement, a "Material Defect" shall include cost accounting inaccuracies of greater than or equal to five percent (5%) of the total amount paid by Achaogen under an individual Exhibit, or a substantial discrepancy in data associated with an individual Exhibit.

7.3 Costs. The costs of any audit or inspection pursuant to this Article will be borne by Achaogen, unless such audit or inspection demonstrates a Material Defect, in which case the costs of the audit and any required re-examination will be borne by Company.

7.4 Records Retention. Company shall retain Records for the longer of three (3) years after final payment, two (2) years after notification from Achaogen that (a) an NDA has been approved by FDA or (b) the subject clinical trial has been terminated, or for any longer period designated by an Exhibit or required by statute, regulation or administrative order.

8.0 REPRESENTATIONS AND WARRANTIES.

8.1 Achaogen and Company each represent and warrant to the other that: (a) this Agreement is a legal and valid obligation binding upon such Party and is

enforceable in accordance with its terms; (b) such Party is duly organized and validly existing under the laws of the state of its incorporation; (c) such Party is duly authorized to execute and deliver this Agreement on its behalf and has taken all corporate actions required to establish such authority; and (d) the execution, delivery and performance of this Agreement by such Party does not conflict with any other agreement, law, regulation, or order of any court, governmental body or administrative or other agency having authority over it.

8.2 Company further represents and warrants to Achaogen that: (a) Company shall perform each Exhibit in a professional manner with personnel of appropriate training and skills, operating in accordance with the highest standards in Company's industry, and in compliance with all applicable federal, state and local laws and regulations; and (b) Company shall not bring to Achaogen or use in the performance of any Exhibit or the creation of any work or product delivered to Achaogen any materials, information or technology belonging to any third party except to the extent Company is lawfully permitted to do so for the benefit of Achaogen.

9.0 **NO EXPORT.** Company shall not, without the express prior written authorization of Achaogen, export to any country outside the United States, either directly or indirectly, any Confidential Information of Achaogen or other information or material received from Achaogen, nor any information, technology, material or product developed pursuant to any Exhibit.

10.0 **INDEPENDENT CONTRACTOR.** Achaogen acknowledges and agrees that Company is an independent contractor. Nothing in this Agreement shall be construed to create a partnership, joint venture, agency, or employment relationship between the Parties. Neither Party shall have actual, apparent or implied authority to act on behalf of, to enter into any third party agreement or bind the other Party to any other obligation whatsoever.

11.0 **INSURANCE.** During the term of this Agreement and for a period of five (5) years after its termination or expiration (the "Insurance Period"), Company shall obtain and maintain product liability insurance and general liability insurance of not less than Three Million United States Dollars ($3,000,000) for a single event and Four Million United States Dollars ($4,000,000) in the annual aggregate, unless otherwise specified in an Exhibit. Company's product and general liability policies shall contain Primary without Right of Contribution wording as well as a cross liability clause. If any Exhibit hereto calls for payment by Achaogen to Company in excess of $2,500,000, or if otherwise requested by Achaogen, Company shall designate Achaogen as an additional insured on all such insurance policies at all times during the Insurance Period. In such event, Company shall send Achaogen written certificates evidencing such insurance coverage within thirty (30) days after the Effective Date and, during the Insurance Period, within thirty (30) days after any policy of insurance required under this Agreement has been renewed or obtained from a different insurance carrier. During the Insurance Period, Company shall notify Achaogen in writing of the following events: (i) the cancellation or lapse of, or

material change in, any policy of insurance required under this Agreement; and (ii) the exhaustion of the aggregate coverage under any such policy during any coverage period. Company shall provide such notices to Achaogen as soon as possible, but in no event later than ten (10) days after any such event. It is understood and agreed that any breach of this Article shall be deemed a material breach of this Agreement.

12.0 **GOVERNING LAW.** This Agreement shall be governed by the internal substantive laws, but not the choice of law rules, of the state of California.

13.0 **INDEMNIFICATION.**

13.1 Company agrees to indemnify Achaogen, including its directors, officers, employees, agents, subcontractors, consultants and other personnel (the "Achaogen Indemnitees"), from any and all costs (including reasonable attorneys' fees), losses, damages, claims or actions arising from any third party claim, demand assessment, action, suit or proceeding ("Claim") related to Company's performance of services under this Agreement and/or any Exhibit, unless such injury is a direct result of the gross negligence or intentional misconduct of Achaogen or any Achaogen Indemnitee.

13.2 Upon receipt of a notice of any claim that may give rise to a right of indemnity Company, Company shall provide prompt written notice thereof to Achaogen of such claim for indemnity. Company shall keep Achaogen informed as to the progress of its defense of any such claim, and shall not compromise or otherwise settle any such claim or lawsuit, or admit liability on the part of Achaogen or any of the Achaogen Indemnitees, without the prior written consent of Achaogen and such Achaogen Indemnitees.

13.3 A breach by Achaogen of its obligations under this Agreement or any obligations contained in the attached Exhibit(s) shall not relieve Company of its obligations under this Article.

14.0 **LIMITATION OF LIABILITY.** Except as set forth in Article 13, neither Party shall have any liability to the other for any indirect or consequential losses or damages suffered by the other Party for claims related to this Agreement, nor for any punitive damages. In any dispute under this Agreement, neither Party shall seek consequential, special, exemplary or punitive damages.

15.0 **ASSIGNMENT.**

15.1 Company shall not assign or transfer any of the rights or obligations under this Agreement to a third party without the prior written consent of Achaogen.

15.2 This Agreement shall inure to the benefit of and be binding upon each Party's successors and permitted assignees. No assignment shall relieve either Party of the performance of any accrued obligation, which such Party may then have under this Agreement.

16.0 **ENTIRE AGREEMENT/AMENDMENTS.** This Agreement, together with any Exhibits hereto, represents the entire understanding of the Parties and supersedes any prior or contemporaneous agreements or understandings between Company with Achaogen with respect to the subject matter hereof. Furthermore, no modification, supplement, or new agreement may be executed, prior to the expiration of this Agreement, between Company and Achaogen with respect to the subject matter hereof, without formal written amendment to this Agreement, signed by all parties.

17.0 **COMPLIANCE.**

17.1 Good Laboratory Practices. Company represents and warrants that all Studies designated in a relevant Exhibit as a "GLP Study" shall be conducted in compliance with American Good Laboratory Practices and related regulations for the submission of data intended to enable human clinical trials of pharmaceuticals, including without limitation Title 21 of the United States Code of Federal Regulations ("CFR"), Part 58 (Good Laboratory Practice for Nonclinical Laboratory Studies), and with requirements governing pharmacology and toxicology information submitted to the United States Food and Drug Administration in support of an investigational new drug application, including without limitation as set forth in Title 21 CFR, Part 312.23(a)(8), together with all applicable guidance documents pertaining thereto. Achaogen acknowledges that Company does not warrant or represent that the results of the GLP Study shall be acceptable to any regulatory or governmental agency, nor that the results of the GLP Study shall enable Achaogen to market, commercialize or otherwise exploit the test materials; provided, however, that the foregoing disclaimer shall not be construed to excuse Company from any failure to perform the Studies as required by the first sentence of this section.

17.2 Animal Use. Animals are to be cared for and used in accordance with all applicable federal, state, and local regulations, standards, and guidelines (e.g., NIH guidelines, ILAR Guide for the Care and Use of Laboratory Animals, Animal Welfare Act, AAALAC, International, etc.). For studies conducted in a foreign country, comparable humane animal research regulations and guidelines shall be followed. It is up to the contract facility's Institutional Animal Care and Use Committee (IACUC) to review and approve the animal research protocol. Company shall be responsible for the care and treatment of any animals involved in the study, including seeking any necessary veterinary care.

17.3 No Debarment. Company represents and warrants that: (i) neither Company nor anyone retained by Company as an employee, consultant or contractor is (A) debarred by the United States Food and Drug Administration ("FDA"), including without limitation pursuant to 21 United States Code of Federal Regulations, sections 301 *et seq.* (or similar sanction of any other regulatory agency) or (B) subject of an FDA debarment investigation or proceeding (or similar proceeding of another regulatory agency); and (ii) it will not retain or employ any personnel, and will not knowingly use the services of any

contractor or consultant, who is debarred by the FDA or who is the subject of an FDA debarment investigation or proceeding (or similar sanction or investigation by another regulatory agency) in connection with performing any projects under any Exhibit to this Agreement.

18.0 **CHANGES.** Achaogen may, at any time, without notice, make changes in the work within the general scope of any Exhibits pursuant to this Agreement, including changes in any one or more of the following: (i) description of services; (ii) drawings, designs, or specification; (iii) method of shipping or packing; (iv) place of inspection, acceptance, or point of delivery; (v) time of performance; and (vi) place of performance. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of this Agreement, Achaogen shall make an equitable adjustment in the price and/or delivery schedule and modify this Agreement accordingly. Company must assert its right to an equitable adjustment under this clause within ten (10) days from the date of receipt of the written change order from Achaogen. Failure to agree to any adjustment shall be resolved in accordance with the "Disputes" clause of this Agreement. However, nothing in this Changes clause shall excuse Company from proceeding without delay in the performance of this Agreement as changed. The failure of either Party to enforce this section shall not be construed as a waiver of this section.

19.0 **MISCELLANEOUS.**

19.1 Headings. The Article, Section and Paragraph headings are for reference and convenience only and do not modify or limit the provisions of the Agreement.

19.2 Consideration. Company hereby acknowledges the adequate consideration provided by Achaogen for entering into this Agreement, and that the assignment of any Invention(s) as set forth in this Agreement is not part of the consideration for Achaogen's award of any business to Company under this Agreement.

19.3 Force Majeure. Neither Party shall be responsible or liable for any delay or failure to perform or comply with the terms of this Agreement or Exhibits if such delay or failure is due to an act of God or other occurrence beyond the reasonable control of either Party. Such occurrences include, but are not limited to, fire, explosion, labor strikes, acts of government, weather, civic unrest, judicial actions, or health reform legislation.

19.4 Notices. Any notice required or permitted hereunder shall be in writing and shall be deemed given as of the date it is delivered by hand or sent by overnight courier or registered or certified mail, postage prepaid, to the other Party at the address first given above or to such other addresses as the Parties may direct in writing.

If to Achaogen:

Achaogen, Inc.
One Tower Place, Suite 300