IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	**Re: D.I. 30**

ORDER (I) APPROVING THE SALE OF CERTAIN ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS, AND (II) GRANTING RELATED RELIEF

Upon the *Debtor's Motion for (I) an Order Pursuant To Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of the Debtor; (B) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtor's Assets Free and Clear of Claims, Liens and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief*, on April 15, 2019 [D.I. 30] (the "Sale Motion");[2] and the Bankruptcy Court having entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of*

[1] The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

[2] Unless otherwise indicated, capitalized terms used, but not defined, herein have the meaning ascribed to them in the Sale Motion, the Bidding Procedures or the Sale Agreement (as defined herein), as the context requires.

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Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief, on May 1, 2019 [D.I. 123] (the "Bidding Procedures Order"), which, among other things, (i) approved the Bidding Procedures for the sale of all or substantially all of the Debtor's assets, (ii) approved the form and manner of notice of the Auction and Sale Hearing (as each such term is defined below); (iii) approved the manner in which the notice of the assumption and assignment of the designated executory contracts and unexpired leases would be given; and the Debtor having solicited bids in accordance with the Bidding Procedures; and the Debtor having conducted the Auction in accordance with the Bidding Procedures; and the Debtor, following the conclusion of the Auction, having selected Heritage Global Partners, Inc. (the "Buyer") as having the highest or otherwise best Qualified Bid for certain equipment of the Debtor (the "Purchased Assets") set forth in an asset purchase agreement dated June 23, 2019 (the "Sale Agreement") and attached hereto as Exhibit A; and the Bankruptcy Court having conducted and concluded a hearing on June 25, 2019 (the "Sale Hearing"), to consider approval of the sale of the Purchased Assets free and clear of all Liens (as defined below), Claims (as defined in section 101(5) of title 11 of the United States Code (the "Bankruptcy Code")) and other interests; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale and upon the record of the hearing to consider approval of the Bidding Procedures (the "Bidding Procedures Hearing"), the Sale Hearing, the *Declaration of Blake Wise in Support of the First Day Relief* [D.I. 3], and the *Declaration of Philip C. Cassel in Support of Entry of the Sale Order* D.I. [__], and this Chapter 11 Case (as defined herein) and proceedings, and after due deliberation thereon, and good cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. **Bankruptcy Petition**. On April 15, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing this case (this "Chapter 11 Case").

B. **Jurisdiction and Venue**. The Bankruptcy Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Final Order**. This order ("Sale Order") constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing the Sale, the Debtor and the Buyer intend to close the Sale as soon as practicable, and there is no just reason for delay in the implementation of this Sale Order. Specifically, the Sale must be approved and consummated promptly in order to maximize the value to the Debtor, its estate, its creditors, and all other parties in interest. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

D. **Statutory Predicates**. The statutory predicates for the relief sought in the Sale Motion are sections 105, 363, 364, 365, and 541 of the Bankruptcy Code, Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and

[3] This Sale Order shall be deemed to incorporate all findings of fact and conclusions of law made on the record at the hearing for consideration of the entry of the Bidding Procedures Order and the Sale Hearing (as defined herein) pursuant to Bankruptcy Rule 7052. In addition, findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate pursuant to Bankruptcy Rule 7052.

Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

E. **Notice**. As evidenced by the certifications of service previously filed with the Bankruptcy Court, and based on the representations of counsel at the Bidding Procedures Hearing and the Sale Hearing, proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures Hearing, the Auction, the Sale Agreement, this Sale Order and the Sale Hearing have been provided in accordance with the Bidding Procedures Order, sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014 and the Bidding Procedures Order, and Local Rule 6004-1. Such notice was good and sufficient and appropriate under the particular circumstances and all known creditors of the Debtor and other parties in interest in the Chapter 11 Case were offered a reasonable opportunity to object and be heard. No other or further notice of the Sale Motion, including, without limitation, the Sale Agreement, the Auction, the Sale Hearing, or of the entry of this Sale Order was or is necessary or shall be required.

F. The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

G. No trustee or examiner has been appointed in the Chapter 11 Case.

H. The disclosures made by the Debtor concerning the Sale Motion, the Sale Agreement, the Sale, the Buyer, and the Sale Hearing were good, complete and adequate.

I. **Opportunity to Object**. A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all creditors of the Debtor and other parties in interest in the Chapter 11 Case, including, without limitation, the following: (i) the United States Trustee for Region 3; (ii) counsel to the Creditors' Committee, the Prepetition Lender and DIP

Lender (as such terms are defined below); (iii) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtor; (iv) various federal, state, county and city tax and regulatory authorities; (v) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtor or its advisors as a potential buyer of the Purchased Assets; (vi) local and state environmental authorities and the Environmental Protection Agency; (vii) local, state and federal authorities and agencies that have issued licenses or permits to the Debtor with respect to the operation and use of the Purchased Assets; (viii) all of the Debtor's known creditors, and (ix) all parties requesting notice pursuant to Bankruptcy Rule 2002.

J. **Title in the Purchased Assets**. The Purchased Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Purchased Assets.

K. **Business Justification**. The Debtor has demonstrated a sufficient basis and compelling circumstances to sell the Purchased Assets to the Buyer. Such action is an appropriate exercise of the Debtor's business judgment and in the best interest of the Debtor, the estate and its creditors. Such business reasons include, but are not limited to, the facts that (i) the Successful Bid set forth in the Sale Agreement constitutes the highest and best offer for the Purchased Assets and (ii) the Sale Agreement and the Closing will present the best opportunity to realize the value of the Purchased Assets. Entry of this Sale Order (and all provisions hereof) is a condition precedent to the Buyer consummating the Sale Agreement.

L. **Opportunity to Bid**. The Debtor and its professionals marketed the Purchased Assets appropriately and conducted the marketing and sale process (including the Auction) as set

forth in the Sale Motion in good faith without collusion and in accordance with the Bidding Procedures and the Bidding Procedures Order. The marketing process set forth in the Bidding Procedures and the Bidding Procedures Order was fair in substance and procedure and afforded a full and fair opportunity for any party to make a higher or otherwise better offer to purchase the Purchased Assets. Based upon the record of these proceedings, all creditors of the Debtor, other parties in interest in the Chapter 11 Case, and all prospective buyers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.

M. **Auction**. The Debtor, in the exercise of its reasonable discretion, and in consultation with (i) the Official Committee of Unsecured Creditors appointed in this Chapter 11 Case (the "Creditors' Committee") and (ii) Silicon Valley Bank, N.A., in its capacity as the Prepetition Lender and DIP Lender (hereinafter, the "Prepetition Lender" and the "DIP Lender," respectively) under the Debtor in Possession Credit and Security Agreement dated as of April 15, 2019 (the "DIP Credit Agreement"), conducted an auction (the "Auction") which concluded on June 4, 2019, for the Purchased Assets being purchased by the Buyer. In conducting the Auction, the Debtor has complied in all respects with the Bidding Procedures and Bidding Procedures Order with respect to the Auction.

N. **Highest or Otherwise Best Offer**. The total consideration provided by the Buyer for the Purchased Assets is the highest and otherwise best offer for the Purchased Assets received by the Debtor. At the conclusion of the Auction, the Debtor, in exercising its reasonable discretion, following consultation with the Creditors' Committee, Prepetition Lender, and DIP Lender determined that the Buyer submitted the highest or otherwise best offer for the Purchased Assets, and that American Laboratory Trading Inc. (the "Back-up Bidder"), submitted the second highest or otherwise best offer for the Purchased Assets, as more specifically

identified in its respective purchase agreement. Thus, the Debtor declared the Buyer the Successful Bidder for the Purchased Assets in accordance with the Bidding Procedures, the Bidding Procedures Order and the Sale Agreement, and designated the Back-up Bidder (subject to entering into definitive documentation), and such determinations constitute the valid and sound exercise of the Debtor's business judgment. The Debtor, the Buyer, the Back-up Bidder, and their respective agents and representatives, have complied in all respects with the Bidding Procedures and Bidding Procedures Order.

O. **Good Faith Purchaser**. The Sale Agreement and the Sale have been negotiated by the Debtor and the Buyer, and their respective agents and representatives, in good faith, at arms' length, and without collusion or fraud. The terms and conditions of the Sale Agreement, including the consideration to be paid by the Buyer to the Debtor for the Purchased Assets pursuant to the Sale Agreement , are fair and reasonable, and the Sale, including each part thereof with respect to the Buyer, is in the best interest of the Debtor, its estate, and its creditors.

P. The Buyer is a "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code and any other applicable bankruptcy or non-bankruptcy law with respect to the sale and assignment of the Purchased Assets.

Q. The Sale Agreement was not controlled by an agreement between or among potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Debtor and the Buyer have not engaged in any conduct that would cause or permit the Sale Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Buyer is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code. The Buyer is not an "affiliate" or "insider" of the Debtor as defined in section 101 of the Bankruptcy Code, and no common identity of incorporation, director, or

stockholder existed or will exist between the Buyer, on the one hand, and the Debtor, on the other hand, prior to or after the Closing Date.

R. An injunction against creditors of the Debtor and third parties pursuing Liens and Claims against the Buyer is necessary to induce the Buyer to close the Sale; the issuance of such an injunction is therefore necessary to avoid irreparable injury to the Debtor's estate, and will benefit all creditors of the Debtor.

S. The Buyer has acted in good faith in its negotiations with the Debtor, submitting a bid, and participating in the Auction, and finalizing the terms of the Sale Agreement.

T. **Corporate Power and Authority**. The Debtor has full corporate power and authority to execute and deliver the Sale Agreement and to perform all of its respective obligations thereunder, and the sale of the Purchased Assets has been duly and validly authorized by all corporate authority necessary to consummate the Sale. No consents or approvals, other than as expressly provided for in the Sale Agreement, and the entry of this Sale Order, are required by the Debtor to consummate the Sale.

U. **Free and Clear**. The Buyer would not have entered into the Sale Agreement to acquire the Purchased Assets, and would exercise its right to terminate the Sale Agreement, if the sale of the Purchased Assets were to be transferred to it other than free and clear of all Liens and Claims, or if the Buyer would, or in the future could, be liable for any such Liens or Claims. A sale of the Purchased Assets other than one free and clear of all Liens and Claims would adversely impact the Debtor's estate, and would yield substantially less value for the Debtor's estate, with less certainty than the Sale. Therefore, the Sale contemplated in the Sale Agreement is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

V. **Satisfaction of 363(f) Standards**. The Debtor may sell and assign the Purchased Assets free and clear of all Liens and Claims because, with respect to each creditor asserting a Lien or Claim , one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Liens or Claims who did not object or who withdrew their objections to this Sale Order are deemed to have consented to the Sale Motion and the sale and assignment of the Purchased Assets to the Buyer pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens or Claims who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens or Claims, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such holders allege a Lien or Claim in the same order of priority, with the same validity, force and effect that such holder had prior to the Sale, and subject to any claims and defenses the Debtor and its estate may possess with respect thereto; *provided*, that the Debtor will cause the proceeds of the Sale to be remitted pursuant to paragraph 27 of this Sale Order.

W. **No Successor Liability**. The transactions contemplated under the Sale Agreement do not amount to a consolidation, merger, or de facto merger of the Buyer with the Debtor and/or the Debtor's estate, there is not substantial continuity between the Debtor and the Buyer, there is no common identity between the Debtor and the Buyer, there is no continuity of enterprise between the Debtor and the Buyer, the Buyer is not a mere continuation of the Debtor or its estate, and the Buyer does not constitute a successor to the Debtor or its estate in any way. The Buyer would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" or similar theories.

X. **No Fraudulent Transfer**. The Sale is not for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession or the District of Columbia. Neither the Debtor nor the Buyer have entered into the Sale Agreement or is consummating the Sale with any fraudulent or otherwise improper purpose.

Y. **Fair Consideration**. The consideration provided for by the Buyer for the Purchased Assets indicated in the Sale Agreement is the highest and best available under the circumstances and constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, section 548 of the Bankruptcy Code or any similar state or federal law), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession or the District of Columbia.

Z. **Compliance with Bankruptcy Code**. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) of the Bankruptcy Code and all of the applicable requirements of such sections have been or will be complied with the Sale as of the Closing Date.

AA. **Sale Transaction Not a Sub Rosa Plan**. The sale of the Purchased Assets, outside of a plan of reorganization pursuant to the Sale Agreement neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale does not constitute a *sub rosa* chapter 11 plan.

BB. The Sale contemplated by the Sale Agreement is in the best interest of the Debtor, its estate, its creditors, interest holders and all other parties in interest in the Chapter 11 Case; and it is therefore,

ORDERED, ADJUDGED AND DECREED THAT:

1. **Relief Granted**. The relief requested in the Sale Motion is hereby granted in its entirety.

2. **Objections Overruled**. All objections and responses to the Sale Motion, the Auction, this Sale Order or the relief granted herein (including all reservations of rights included therein) that have not been overruled, withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits with prejudice.

3. **Notice**. Notice of the Sale Motion, the Auction, the Sale Hearing and the Sale was fair and equitable under the circumstances and complied in all respects with the Bidding Procedures, sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, and 9007 and Local Rule 6004-1.

4. **Prior Findings of Fact and Conclusions of Law**. The Bankruptcy Court's findings of fact and conclusions of law in the Bidding Procedures Order, including the record of the Bidding Procedures Hearing, are incorporated herein by reference.

5. **Approval**. The Sale Agreement (and all ancillary documents related thereto) is hereby approved and authorized in all respects and shall be deemed in full force and effect, and the Debtor and the Buyer are hereby authorized, empowered and directed to fully perform under, consummate, and implement the terms of the Sale Agreement and to execute, deliver and perform under, any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Sale Agreement and this Sale Order, including, without limitation, deeds, assignments, patents, stock powers, transfers of

membership interests and other instruments of transfer, and to take all further actions as may reasonably be requested by the Debtor or the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession any or all of the Purchased Assets, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Sale Agreement, without any further corporate action or orders of the Bankruptcy Court. Notwithstanding anything set forth in this Sale Order to the contrary, all rights, duties and obligations of the Buyer may be assigned to a designee (including an Affiliate) of the Buyer in accordance with the Sale Agreement; *provided*, that the Buyer is, and shall remain, primarily and irrevocably responsible for the full performance of the Buyer's duties and obligations under the Sale Agreement notwithstanding any such designation or the terms thereof.

6. **Good Faith**. The Buyer is a good faith purchaser of the Purchased Assets set forth in the Sale Agreement and is hereby granted and entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the Sale Agreement or obligation or right granted pursuant to the terms of this Sale Order (unless stayed pending appeal prior to the Closing Date), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Sale Order and the Sale Agreement, as the case may be.

7. **Section 363(n) of the Bankruptcy Code**. The Sale approved by this Sale Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) or any other section of the Bankruptcy Code.

8. **Documentation**. The Debtor is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Sale contemplated by the Sale Agreement, any related agreements and this Sale Order, including amended and restated certificates or articles of incorporation, by-laws, or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate, and all such officials are hereby authorized to accept the foregoing. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. **Cooperation**. The Debtor is hereby authorized and directed to cooperate with the Buyer as reasonably requested by the Buyer or as required of the Debtor under the Sale Agreement, and take all actions and execute all documents which the Buyer reasonably and in good faith determines is necessary or desirable to ensure that the Sale related to the Buyer is consummated in accordance with the Sale Agreement, and the Debtor is authorized to make such modifications or supplements reasonably acceptable to the Debtor and the Buyer to any bill of sale or other document or instrument executed or to be executed in connection with the Closing to facilitate such consummation as contemplated by the Sale Agreement.

10. **Duty to Close**. Neither the Debtor nor the Buyer shall have any obligation to proceed with the Closing until all conditions precedent to their respective obligations to proceed have been met, satisfied or waived in accordance with the terms of the Sale Agreement; *provided*, the Debtor shall consult in good faith with the DIP Lender and the Creditors' Committee prior to waiving any conditions precedent with respect thereto.

11. **Valid Transfer**. Effective as of the Closing of the Sale, the sale of the Purchased Assets by the Debtor to the Buyer pursuant to the terms of the Sale Agreement shall constitute a legal, valid and effective transfer of the Purchased Assets, notwithstanding any requirement for approval or consent by any person, and shall vest the Buyer with all right, title, and interest of the Debtor in and to the Purchased Assets, free and clear of all Liens and Claims pursuant to section 363(f) of the Bankruptcy Code constitutes a legal, valid, and effective assignment and delegation of any and all obligations, liabilities. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute, for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Purchased Assets to the Buyer pursuant to the Sale Agreement and/or a bill of sale or assignment transferring indefeasible right, title and interest in the Purchased Assets and all other rights and interests associated with or appurtenant to such Purchased Assets, including, without limitation, warranty rights, and other non-executory contract rights, to the Buyer all to the extent set forth in the Sale Agreement.

12. **Free and Clear**. Upon the occurrence of the Closing under the Sale Agreement, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell, assign, convey, and transfer the Purchased Assets to the Buyer. Except, and solely, to the extent specifically provided in the Sale Agreement or this Sale Order, the sale and assignment of the Purchased Assets, to the Buyer

pursuant to the Sale Agreement vests the Buyer with all right, title and interest of the Debtor in and to the Purchased Assets, free and clear of any and all Liens, Claims, and liabilities of any kind or nature whatsoever, whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise, with all such Liens and Claims to attach only to the proceeds of the sale and assignment of such Purchased Assets with the same priority, validity, force, and effect as they now have in or against such Purchased Assets; *provided*, that the Debtor will cause the proceeds of all Sale to be remitted pursuant to paragraph 27 of this Sale Order. The Sale Motion shall be deemed to have provided sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all Liens and Claims in accordance with Local Rule 6004-1. Following the Closing, no holder of any Lien or Claim on any of the Purchased Assets subject to the Closing may interfere with the Buyer's enjoyment of the Purchased Assets based on or related to such Lien or Claim, or any actions that the Debtor may take or fail to take in its Chapter 11 Case and no interested party may take any action to prevent, interfere with or otherwise enjoin consummation of the Sale.

13. The term "Lien" as used in this Sale Order shall include, without limitation, all liens, interests, rights, encumbrances, rights of offset, recoupment rights, reversionary rights, assignment rights, rights to specific performance, restrictions, leases, option rights or claims, obligations, liabilities, indentures, loan agreements, guaranties, demands, contractual commitments or interests in respect of the Debtor or any property of the Debtor, equity interests, licenses, instruments, conditional sale rights or other title retention agreements, rights of first refusal, reversionary rights, consent rights, contract rights, rights of recovery, reimbursement

rights, contribution claims, indemnity rights, regulatory violations, judgments, decrees of any court or foreign or domestic governmental or quasi-governmental entity, debts arising in any way in connection with any agreements, acts or failures to act and reclamations rights whether choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected including, without limitation, the following: (i) any "Lien" as such term is defined the Sale Agreement; (ii) any employment or labor agreements; (iii) all mortgages, deeds of trust, hypothecations, pledges, security interests or charges of any kind or nature; (iv) any pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitations, any pension plan of the Debtor; (v) any other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitations, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), as amended, (b) the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as amended, (c) Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, as amended, (d) the Federal Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, as amended, (e) the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, as amended, (f) the Worker Adjustment and Retraining Act of 1988, 29 U.S.C. §§ 2101 *et seq.*, (g) the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.*, as amended, (h) the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, as amended, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with any of the Debtor or any of its respective predecessors; (vi) any claims that might arise under or pursuant to any bulk sales or similar law; (vii) any claims that might arise under or pursuant to any tax statutes or ordinances,

including, without limitation, the Internal Revenue Code of 1986, as amended; (viii) any claims that might arise under or pursuant to theories of successor liability, including any theories on product liability grounds; and (ix) any environmental or other liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature arising from existing conditions on or prior to the Closing Date or relating to a period on or prior to the Closing Date, whether arising before or after the Closing Date.

14. The provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of Liens and Claims shall be self-executing and, without limiting the obligations of the Debtor under the Sale Agreement or hereunder including under paragraph 16 hereof, neither the Debtor nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order.

15. With regard to the forms of, timing, and other terms concerning the consideration to be provided by the Buyer to the Debtor as set forth in the Sale Agreement, the Buyer is directed to comply with its respective obligations thereunder, and the Debtor, any liquidating trustee appointed in this Chapter 11 Case, and their successors and assigns, are hereby authorized to enforce all such provisions. As further set forth in paragraph 33 hereof, the Bankruptcy Court shall retain exclusive jurisdiction with regard to any and all issues, disputes, controversies, causes of action, and/or claims with regard to, or arising under, such provisions, including, without limitation, the enforcement thereof .

16. **Authorization to Creditors**. On and immediately after the Closing Date, each of the Debtor's applicable creditors is authorized to execute such documents and take all other

actions as may be reasonably necessary to release its Liens, if any, in the Purchased Assets subject to such Sale, as such Liens may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanics liens, *lis pendens* or other documents, instruments, notices or agreements evidencing any Lien against or in the Purchased Assets shall not have delivered to the Debtor before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction that the person or entity has with respect to the Purchased Assets subject to the Sale, then with regard to the Purchased Assets, (i) the Debtor and the Buyer are authorized and directed to execute and file such termination statements, releases, instruments of satisfaction or other documents on behalf of the person or entity with respect to such Purchased Assets and (ii) the Debtor or the Buyer is authorized and directed to file, register or otherwise record a certified copy of this Sale Order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens against the Purchased Assets. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, local, tribal, or foreign government agency, department, or office.

17. **Authorization to Government Agencies**. Each and every Governmental Authority, filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state, and local official, and any other persons and entity who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the Sale Agreement or this Sale Order. All such entities described above in this paragraph are

authorized to strike all recorded Liens against the Purchased Assets from their records, official and otherwise.

18. **No Successor Liability**. The Buyer and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, employees, principals and shareholders (or equivalent) are not and shall not be (i) deemed a "successor" in any respect to the Debtor or its estate as a result of the consummation of the Sale contemplated by the Sale Agreement or any other event occurring in the Chapter 11 Case under any theory of law or equity, (ii) deemed to have, de facto or otherwise, merged, or consolidated with or into the Debtor or its estate, (iii) deemed to have a common identity with the Debtor, (iv) deemed to have a continuity of enterprise with the Debtor, or (v) deemed to be a continuation or substantial continuation of the Debtor or any enterprise of the Debtor. Except as otherwise expressly provided in this Sale Order and/or the Sale Agreement the transfer of the Purchased Assets to the Buyer under the Sale Agreement shall not result in the Buyer or its affiliates, predecessors, successors, assigns, members, partners, directors, officers, employees, or principals and shareholders (or equivalent) (i) having any liability or responsibility for any claim against the Debtor or against an insider of the Debtor, (ii) having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien, or (iii) having any liability or responsibility to the Debtor except as is expressly set forth in the Sale Agreement or this Sale Order. The Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation described in the foregoing sentence, and the Sale Motion shall be deemed to have provided sufficient notice as to the Sale and assignment of the Purchased Assets free and clear of all such liabilities and obligations in accordance with Local Rule 6004-1.

19. **Examples of No Successor Liability**. Without limiting the generality, effect or scope of the foregoing, as a result of and following the Closing, the Buyer and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent) shall have no successor or vicarious liabilities of any kind or character, including, without limitation, any theory of antitrust, environmental, transferee liability, continuity of enterprise, mere continuation, labor law, bulk sales law, employment or benefits law, alter ego, veil piercing, escheat, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity or otherwise with respect to the Debtor or any obligations of the Debtor relating to the period prior to the Closing Date whether arising before or after the Closing Date, including, without limitation, United States or foreign pension liabilities or liabilities on account of any federal, state or other taxes arising, accruing or payable under, out of, in connection with, or in any way relating to or calculated or determined with respect to or based in whole or in any part upon the operation of the Purchased Assets or the on or prior to such Closing Date or any taxes in connection with, or in any way related to, the cancellation of debt of the Debtor or its Affiliates. The consideration given by the Buyer shall constitute valid and valuable consideration for the release of any potential claims of successor liability against the Buyer which releases shall be deemed to have been given in favor of the Buyer by all holders of Liens and Claims, against the Debtor or the Purchased Assets.

20. **Injunction**. Subject to paragraph 30, all persons and entities, including, but not limited to, the Debtor, employees, former employees, all debt security holders, equity holders, licensors, administrative agencies, governmental units (as defined in section 101(27) of the

Bankruptcy Code), tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, other parties in possession of the Purchased Assets at any time, trade creditors and all other creditors holding any Liens or Claims of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the Purchased Assets (whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtor, the Purchased Assets, the operation of the Debtor's business, on or prior to the Closing Date, the Sale (other than the Buyer's obligations under this Sale Order and the Sale Agreement, and all other ancillary agreements, documents or instruments entered into in connection with the Sale Agreement), or the transfer of the Purchased Assets to the Buyer shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing in any manner any action, claim or other proceeding of any kind, directly or indirectly, against the Buyer or any of its respective affiliates, predecessors, successors, or assigns or any of its respective current and former members, officers, directors, employees, managed funds, investment advisors, attorneys, employees, partners, principals, affiliates, shareholders (or equivalent), financial advisors and representatives (each of the foregoing in its individual capacity), its property or the Purchased Assets. In connection with the foregoing, actions that are barred hereby include, without limitation: (i) the commencement or continuation of any action or other proceeding, (ii) the enforcement, attachment, collection, or recovery of any judgment, award, decree or order, (iii) the creation, perfection, or enforcement of any Lien, Claim, interest, or encumbrance, (iv) the assertion of any right of setoff, subrogation, recoupment, reversion,

assignment or specific performance of any kind, (v) the commencement or continuation of any action that does not comply with, or is inconsistent with, the provisions of this Sale Order, any actions contemplated or taken in respect hereof, or the Sale Agreement, and (vi) the revocation, termination or failure or refusal to renew any Governmental Authorization or other license, permit, registration, or governmental authorization or approval to operate any of the Purchased Assets or conduct the businesses associated with such Purchased Assets. Following the Closing Date, no Person that was the holder of a Lien on, in or against the Purchased Assets prior to the Closing Date shall interfere with the Buyer's title to, license of, or use and enjoyment of the Purchased Assets based on or related to such Lien, or any actions that the Debtor may take in the Debtor's case.

21. **No Bulk Sale; No Brokers**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale or the other transactions contemplated under the Sale Agreement or this Sale Order. Other than Cassel Salpeter & Co., LLC ("Cassel"), no broker, finder, or financial advisor was involved in consummating the Sale or the other transaction, and, other than Cassel, no commissions are due to any person or entity in connection with the Sale or the other such transactions. The Buyer is not and will not become obligated to pay any fee or commission or like payment to any broker, finder, or financial advisor as a result of the consummation of the Sale or the other transactions based upon any arrangement made by or on behalf of the Debtor; *provided*, that the Debtor is authorized to apply proceeds of the Sale to the fees and expenses of Cassel in accordance with the order of this Court approving Cassel's engagement including, without limitation, any provisions in such order regarding determination of the value of any consideration received by the Debtor.

22. **Fees and Expenses; Indemnity**. Any amounts payable or otherwise reimbursable by the Debtor under the Sale Agreement or any of the documents delivered by the Debtor in connection with the Sale Agreement, including without limitation (i) any allowed claims for breach thereof, (ii) any amounts relating to the indemnity provided by the Debtor under the Sale Agreement, if any, and (iii) any purchase price or other adjustments, shall be paid under the terms of and in the manner provided in the Sale Agreement without further order of the Bankruptcy Court, as an allowed administrative claim in an amount equal to such payment in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code, and shall not be discharged, modified, or otherwise affected by any reorganization plan for the Debtor, except by written agreement with the Buyer or its successors or assigns (such agreement to be provided in such Buyer's or its successor's or assign's respective sole discretion).

23. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Sale Agreement or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the Debtor and the Buyer that the Sale Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

24. **Lease**. Notwithstanding anything in this Sale Order or the Sale Agreement to the contrary, that certain lease dated as of August 12, 2016, as amended by that certain First Amendment to Lease dated as of April 7, 2017, Second Amendment to Lease dated as of July 20, 2017, Third Amendment to Lease dated as of August 17, 2017, and that certain Fourth Amendment to Lease dated as of November 29, 2018 (collectively, as amended, the "Lease"),

between AP3-SF2 CT South LLC (the "Landlord") and the Debtor for certain premises (the "Premises") in that certain building located at One Tower Place, South San Francisco, California, any leasehold estate created by the Lease, any subleases or sublease estates related thereto, any security deposits or letters of credit related to the Lease or any sublease, or any fixtures constituting a portion of the Premises within, on, or about the Premises is not, and shall not be deemed to be, assumed by the Debtor, assumed by the Debtor and assigned to the Buyer, sold by the Debtor to the Buyer, or rejected by the Debtor, pursuant to this Sale Order or any of the underlying agreements with the Buyer, and the respective rights, remedies, defenses, powers, duties, and obligations of the Debtor and the Landlord arising under, or in connection with, the Lease and Premises are hereby preserved. The Debtor shall retain all rights afforded to it under the Bankruptcy Code to assume, assume and assign, or reject the Lease and/or any subleases related thereto notwithstanding entry of this Sale Order.

25. **Landlord Indemnity; Insurance**. Heritage shall pay for any and all loss and damage to any portion of the property located at One Tower Place, South San Francisco, California 94080 (the "Property"), and all improvements thereon, and any injury to and/or death of any persons whatsoever, solely to the extent arising wholly or in part from the access to and activities upon the Property by Heritage and/or Heritage's employees, agents, vendors or contractors (collectively, "Heritage's Agents"), and shall keep the Property free and clear of all mechanics' and materialmen's liens and claims for labor and/or materials arising out of any activity upon the Property by Heritage or Heritage's Agents. Heritage shall defend, indemnify and hold the Landlord, and its members, managers, partners, agents, officers, directors, employees and affiliates free and harmless against all claims, liens, losses, damages, injuries or death, and against all consequent costs and expenses (including, without limitation, attorneys'

fees and expenses and all costs of enforcement of this indemnity) of whatever kind or nature, to the extent arising in whole or in part from any activity upon the Property by Heritage or Heritage's Agents; *provided*, that the foregoing shall not apply to (i) the mere discovery (as opposed to the exacerbation by Heritage or Heritage's Agents) of any pre-existing condition at the Property or (ii) ordinary wear and tear occasioned during the reasonable removal of the Heritage Purchased Assets in accordance with industry standards.

26. In addition, prior to entering the Property, Heritage shall provide the Landlord with evidence of insurance in form, substance and amount as may be reasonably required by the Landlord in connection with Heritage's entry into, and removal from, the Property of the Heritage Purchased Assets, and Heritage shall maintain such insurance at its own cost until such time as Heritage no longer has access to the Property for such purpose. The Debtor shall comply with the applicable provisions of the Lease, applicable laws and regulations, and shall obtain all required permits and approvals, in connection with the removal and disposal of any hazardous materials related to the removal of the Heritage Purchased Assets from the Property. For the avoidance of doubt, the Heritage Purchased Assets do not include any of the Included Furniture or Optional Furniture referenced and defined in Section 18 of the Debtor's sublease to Sana Biotechnology, Inc. dated October 25, 2018, and the Debtor is not selling or transferring the same to Heritage pursuant to the Heritage Sale Agreement or this Sale Order.

27. **No Waiver of Rights Under the DIP Loan Documents and Prepetition Loan Documents.** Nothing in this Sale Order shall be deemed to waive, release, extinguish, or estop the Debtor, its estate or its creditors from asserting, or impairing or diminishing such rights to assert, any right (including any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any assets of the Debtor remaining after the completion of the

Closing. All proceeds from the consummation of the Sale shall be treated in accordance with the provisions of the DIP Credit Agreement and the applicable order of the Bankruptcy Court approving the Debtor's post-petition financing (collectively, the "DIP Order"), including, but not limited to, the provisions in the DIP Order governing the use of Cash Collateral (as defined therein); *provided*, notwithstanding anything to the contrary contained in this Sale Order or in the Sale Document, from and after the closing of the Sale, the Debtor is hereby authorized and directed to hold all cash proceeds of the Sale in a segregated account and, pending further order of the Bankruptcy Court, such proceeds shall not be used for any purpose, other than for payment of obligations arising under the key employee retention plan that was approved by the Bankruptcy Court. Nothing in this Sale Order shall (i) be deemed a waiver of the rights and remedies of the DIP Lender under the DIP Credit Agreement, any documents relating thereto, or the DIP Order; (ii) affect in any way the validity, perfection, priority or enforcement of the liens and claims granted to the DIP Lender under or pursuant to the DIP Credit Agreement and DIP Order; (iii) affect or limit in any way the validity, perfection, priority or enforcement of the Prepetition Loan Liens, the Prepetition Loan Obligations, the Prepetition Loan Collateral (each as defined in the DIP Order), or the Adequate Protection Liens, Adequate Protection Obligations, Adequate Protection Claims, (each as defined in the DIP Order) or any other rights and protections granted to the Prepetition Lender under the Prepetition Loan Agreement (as defined in the DIP Order) and the DIP Order; or (iv) affect in any way the validity or priority of the KEIP/KERP Plan Amount (as defined in the DIP Order), all of which shall attach to the proceeds of the Sale. For the avoidance of doubt, nothing herein shall affect the Creditors' Committee's rights to commence a Challenge or other rights as set forth in the DIP Order. Notwithstanding anything to the contrary in the Bidding Procedures, Bidding Procedures Order, DIP Loan

provided however, the Debtor may use the cash proceeds of the Sale for operations with the consent of the Committee and DIP Lender.

Agreement, or DIP Order, the date by which the Sale approved pursuant to this Sale Order must be closed is fifteen (15) days after the date of entry of this Sale Order.

28. **Back-Up Bid**. The Back-up Bid submitted by the Back-up Bidder shall remain open and irrevocable as set forth in the Bidding Procedures and Bidding Procedures Order, and in the event that the Successful Bidder shall fail to close for whatever reason on the Purchased Assets, the Debtor and the Back-up Bidder shall close on the Sale, subject to final negotiations on the Back-up Bidder's bid and executing a sale agreement with the Back-up Bidder, within the time period set forth in the Bidding Procedures and Bidding Procedures Order.

29. **Good Faith Deposits**. Notwithstanding anything to the contrary in the Bidding Procedures or Bidding Procedures Order, the good faith deposit of the Back-up Bidder shall be retained by the Debtor in the event that the Back-up Bidder, in the reasonable discretion of the Debtor, and after five (5) business days' written notice to the Back-up Bidder, shall fail to proceed with, or consummate, its bid, including, without limitation, by failing to negotiate in good faith with the Debtor, failing to execute its asset purchase agreement, or failing to close on the sale in accordance with the terms of its asset purchase agreement which is the subject of its bid.

30. **Binding Order**. This Sale Order shall be binding upon and govern the acts of all persons and entities, including, without limitation, the Debtor, the Buyer, the Back-up Bidder, and their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of the Debtor (whether known or unknown), all non-Debtor parties to all Governmental Authorities, filing agents, filing officers, title agents, recording agencies, governmental departments, secretaries of state, federal, state, and

local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets. The Sale Agreement and the Sale shall not be subject to rejection or avoidance under any circumstances. This Sale Order and the Sale Agreement shall inure to the benefit of the Debtor, its estates, its creditors, the Buyer and its respective successors and assigns.

31. **No Stay of Order**. The provisions of Bankruptcy Rules 6004 and 6006, and to the extent applicable under Bankruptcy Rules, Rules 54(b) and 62(a) of the Federal Rules of Civil Procedure, staying the effectiveness of this Sale Order for fourteen (14) days are hereby waived, and this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Any party desiring to appeal this Sale Order must exercise due diligence in filing an appeal, pursuing a stay and obtaining a stay prior to the Closing, or risk its appeal being foreclosed as moot.

32. **Lift of Automatic Stay**. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Bankruptcy Court, to allow the Buyer to deliver any notice provided for in the Sale Agreement and allow the Buyer to take any and all actions permitted under the Sale Agreement.

33. **Retention of Jurisdiction**. The Bankruptcy Court shall retain exclusive jurisdiction to (i) interpret, implement and enforce the terms and provisions of this Sale Order, the Bidding Procedures Order, and the Sale Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection

therewith, in all respects, (ii) decide any disputes concerning this Sale Order, the Sale Agreement or the rights and duties of the parties hereunder or thereunder or any issues relating to the Sale Agreement and this Sale Order including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, and (iii) enforce the injunctions set forth herein.

34. **Subsequent Plan Provisions**. Unless otherwise provided herein, nothing contained in any chapter 11 plan confirmed in the Debtor's case or any order confirming any such plan or any other order in the Debtor's case (including any order entered after any conversion of this case into a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Sale Agreement or this Sale Order and, to the extent of any such conflict, subject to this paragraph 34, the terms of this Sale Order and the Sale Agreement shall control.

35. **Further Assurances**. From time to time, as and when requested by the other, the Debtor and the Buyer, as the case may be, shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale with respect to the Buyer, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in the Buyer its right, title and interest in and to the Purchased Assets, subject to the provisions of the Sale Agreement.

36. **Provisions Related to Governmental Authorities**. Notwithstanding any provision to the contrary in the Sale Motion, this Sale Order, and any implementing Sale

documents (collectively, the "Documents") nothing shall: (i) authorize the assumption, sale, assignment or other transfer to the Buyer of any agreements, grants, grant funds, licenses, permits, authorizations, contracts, leases, agreements or other interests of the federal government (collectively, "Federal Interests"), without compliance by the Debtor and/or the Buyer with all terms of the Federal Interests and with all applicable non-bankruptcy law; (ii) be interpreted to set cure amounts or require the government to novate, approve or otherwise consent to the assumption, sale, assignment or other transfer of any Federal Interests; (iii) affect the government's rights to offset or recoup any amounts due under, or relating to, the Federal Interests or the rights of the Debtor to assert all available defenses thereto, including, without limitation, that any or all such rights are barred under applicable law, are hereby preserved; or (iv) confer exclusive jurisdiction to the Bankruptcy Court with respect to the Federal Interests, except to the extent set forth in 28 U.S.C. Section 1334 (as limited by any other provisions of the United States Code). In addition, nothing in the Documents (i) releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Sale Order or (ii) divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Sale Order or to adjudicate any defense asserted under this Sale Order.

37. **Governing Terms**. To the extent this Sale Order is inconsistent with the Bidding Procedures Order or any other prior order or pleading in this Chapter 11 Case, or the terms of the Sale Agreement (including all ancillary documents executed in connection with such Sale Agreement), this Sale Order shall govern.

38. **Headings**. The headings in this Sale Order are for purposes of reference only and shall not limit or otherwise affect the meaning of the Sale Order.

Wilmington, Delaware

Dated: June 25, 2019

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EQUIPMENT PURCHASE AGREEMENT

by and between

ACHAOGEN, INC.,

SELLER

and

HERITAGE GLOBAL PARTNERS, INC.,

PURCHASER

DATED AS OF June 23, 2019

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EQUIPMENT PURCHASE AGREEMENT

THIS EQUIPMENT PURCHASE AGREEMENT (this "Agreement") is made and entered into as of June 23, 2019, by and between Achaogen, Inc., a Delaware corporation (the "Seller"), and Heritage Global Partners, Inc., a California corporation (the "Purchaser").

RECITALS

WHEREAS, the Seller is a biopharmaceutical company focused on the development and commercialization of innovative antibacterial agents for multi-drug resistant gram-negative infections;

WHEREAS, on April 15, 2019, the Seller filed a voluntary petition (the "Petition") for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") (Case No. 19-10844-BLS), and is operating and managing its businesses as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Purchaser was the Successful Bidder at the Auction for the Purchased Assets;

WHEREAS, subject to and upon the terms and conditions herein, the Seller desires to sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser desires to purchase and acquire from the Seller, all of the Purchased Assets;

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order approving such sale free and clear of all Liens and Claims, all as more specifically provided in this Agreement, and in accordance with sections 105, 363 and 365 of the Bankruptcy Code and other applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Bidding Procedures Order; and

WHEREAS, the Seller and the Purchaser have negotiated in good faith and at arm's length for the purchase and sale of the Purchased Assets, subject to the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, agreements, representations and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1
DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. For the purposes of this Agreement:

"Affiliate" means, with respect to a specified Person, a Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the specified Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. Notwithstanding the foregoing, under no circumstance will the Purchaser and the Seller be deemed Affiliates of one another notwithstanding the possession by the Purchaser (whether or not exercised) of any rights of control with respect to the Seller.

"Agreement" has the meaning set forth in the Preamble.

"Auction" means the bankruptcy auction of the Seller's assets, conducted by the Seller pursuant to the Bidding Procedures Order.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bidding Procedures" means the procedure governing the solicitation of bids and the conduct of the Auction for the Purchased Assets under the supervision of the Bankruptcy Court which are attached as Exhibit 1 to the Bidding Procedures Order.

"Bidding Procedures Order" means the order entered by the Bankruptcy Court on May 1, 2019, approving the Bidding Procedures (Dkt. No. 123).

"Bill of Sale" has the meaning set forth in Section 2.5(a)(i).

"Business Day" means any day other than Saturday, Sunday or any day on which banking institutions in Delaware are closed either under applicable Law or action of any Governmental Authority.

"Chapter 11 Case" means the case commenced by the Seller under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (Case No. 19-10844-BLS).

"Claim" has the meaning set forth in section 101(5) of the Bankruptcy Code.

"Closing" has the meaning set forth in Section 2.4.

"Closing Date" has the meaning set forth in Section 2.4.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, including the regulations promulgated thereunder.

"Contract" means any contract, agreement, lease, license, commitment, understanding, franchise, warranty, guaranty, mortgage, note, bond or other instrument or consensual obligation that is legally binding.

"Deposit" has the meaning set forth in Section 2.3.

"Equipment" means all furniture, fixtures, equipment, and other personal property owned by the Seller described on Schedule 1 hereto.

"Final Order" means an order of the Bankruptcy Court or other court of competent jurisdiction: (i) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all respects without the possibility for further appeal or rehearing thereon; (ii) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired; and (iii) as to which no stay is in effect; provided, however, that the filing or pendency of a motion under Federal Rule of Bankruptcy Procedure 9024(b) shall not cause an order not to be deemed a "Final Order" unless such motion shall be filed within fourteen (14) calendar days of the entry of the order at issue. In the case of: (A) the Sale Order, a Final Order shall also consist of an order as to which an appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, but as to which the Purchaser, in its sole and absolute discretion, elects to proceed with Closing; and (B) any other order that is required hereunder to be a Final Order, a Final Order shall also consist of an order as to which an appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been filed, but as to which the Purchaser, in its sole and absolute discretion, elects to proceed.

"Governmental Authority" means any: (i) nation, region, state, county, city, town, village, district or other jurisdiction; (ii) federal, state, local, municipal, foreign or other government; (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department or other entity and any court or other tribunal); (iv) multinational organization exercising judicial, legislative or regulatory power; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of any nature of any federal, state, local, municipal, foreign or other government.

"Governmental Authorization" means any approval, consent, ratification, waiver, license, permit, registration or other authorization issued or granted by any Governmental Authority.

"Judgment" means any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Authority or arbitrator.

"Knowledge of the Seller" or "the Seller's Knowledge" means the actual knowledge of the Chief Executive Officer of the Seller after due inquiry into the facts or circumstances supporting any representation, warranty or statement qualified by such terms.

"Law" means any applicable federal, state, local, municipal, foreign, international, multinational, or other constitution, law, statute, treaty, rule, regulation, ordinance or code.

"Liability" means any liability or obligation, whether known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, due or to become due.

"Lien" means any possessory or non-possessory lien, license, encumbrance or charge against or other interest in any property or assets, whether voluntary or involuntary and whether statutory or contractual, including any mortgage, deed of trust, deed to secure debt, pledge, assignment, hypothecation, security interest, attachment, judgment, levy, conditional sale agreement, right of first refusal, right of first offer or other arrangement, and including any agreement to give any of the foregoing.

"Material Adverse Effect" means any event, change, circumstance, effect or other matter that has a material adverse effect on: (i) the condition or value of any material portion of the Purchased Assets; or (ii) the ability of the Seller to consummate timely the transactions contemplated by this Agreement; provided, however, that none of the following, either alone or in combination, will constitute, or be considered in determining whether there has been, a Material Adverse Effect: any event, change, circumstance, effect or other matter resulting from or related to: (A) any outbreak or escalation of war or major hostilities or any act of terrorism; (B) changes in Laws, United States generally accepted accounting principles or enforcement or interpretation thereof; (C) changes that generally affect the industries and markets in which the Seller operates; (D) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions; (E) any action taken or failed to be taken pursuant to or in accordance with this Agreement or at the request of, or consented to by, the Purchaser; (F) the filing or continuation of the Chapter 11 Case or any action approved by the Bankruptcy Court (or any other Governmental Authority in connection with any such Proceeding); (G) the execution or delivery of this Agreement, the consummation of the transactions contemplated by this Agreement or the public announcement or other publicity with respect to any of the foregoing; or (H) any matter of which the Purchaser is aware of on the date of this Agreement.

"Order" means any writ, judgment, decree, injunction or similar order, writ, ruling, directive or other requirement of any Governmental Authority (in each case whether preliminary or final).

"Outside Date" has the meaning set forth in **Error! Reference source not found.**.

"Person" means an individual or an entity, including a corporation, limited liability company, general or limited partnership, trust, association or other business or investment entity, or any Governmental Authority.

"Petition" has the meaning set forth in the Recitals.

"Proceeding" means any action, arbitration, audit, examination, investigation, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, and whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

"Purchased Assets" has the meaning set forth in Section 2.2.

"Purchase Price" has the meaning set forth in Section 2.2.

"Purchaser" has the meaning set forth in the Preamble.

"Sale Hearing" means the hearing to be conducted by the Bankruptcy Court to approve this Agreement and seeking entry of the Sale Order.

"Sale Order" means, collectively, one or more orders of the Bankruptcy Court in form and substance acceptable to the Purchaser and the Seller: (i) approving the sale of the Purchased Assets to the Purchaser (or such other bidder chosen as the winning bidder at the Auction) free and clear of all Claims and Liens pursuant to section 363(f) of the Bankruptcy Code, on the terms and conditions set forth in this Agreement; (ii) approving the back-pp bidder chosen at the Auction and the asset purchase agreement submitted by such back-up bidder; (iii) authorizing consummation of the transactions contemplated hereby; (iv) containing a finding that the transactions contemplated by this Agreement are undertaken by the Seller and the Purchaser (solely in its capacity as such) at arm's length, without collusion and in good faith by the Purchaser within the meaning of section 363(m) of the Bankruptcy Code; (v) providing that the Bankruptcy Court shall retain jurisdiction to hear any disputes arising in connection with the transactions contemplated by this Agreement, and (vi) permitting the Purchaser to waive, in its sole discretion, the 14-day stay period under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

"Schedule" means the schedules attached hereto, if any.

"Seller" has the meaning set forth in the Preamble.

"Successful Bidder" means the bidder who shall have submitted the highest or otherwise best bid at the conclusion of the Auction in accordance with the Bidding Procedures and Bidding Procedures Order.

"Supplement" has the meaning set forth in Section 5.7.

"Tax" means: (i) any federal, state, local, foreign or other tax, charge, fee, duty (including customs duty), levy or assessment, including any income, gross receipts, net proceeds, alternative or add-on minimum, corporation, ad valorem, turnover, real property, personal property (tangible or intangible), s ales, use, franchise, excise, value added, stamp, leasing, lease, user, transfer, fuel, excess profits, profits, occupational, premium, interest equalization, windfall profits, severance, license, registration, payroll, environmental (including Taxes under section 59A of the Code), capital stock, capital duty, disability, estimated, gains, wealth, welfare, employee's income withholding, other withholding, unemployment or social security or other tax of whatever kind (including any fee, assessment or other charges in the nature of or in lieu of any tax) that is imposed by any Governmental Authority; (ii) any interest, fines, penalties or additions resulting from, attributable to, or incurred in connection with any items described in this paragraph or any related contest or dispute; and (iii) any Liability for the Taxes of another Person.

"Tax Return" means any report, return, declaration, claim for refund, or information return or statement related to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Third Party" means any Person and/or group of Persons other than the Seller, the Purchaser or any of their respective Affiliates.

"Transfer Taxes" has the meaning set forth in Section 9.1.

Section 1.2 Construction. Any reference in this Agreement to an "Article," "Section," "Exhibit" or "Schedule" refers to the corresponding Article, Section, Exhibit or Schedule of or to this Agreement, unless the context indicates otherwise. The table of contents and the headings of Articles and Sections and Schedules are provided for convenience only and are not intended to affect the construction or interpretation of this Agreement. All words used in this Agreement are to be construed to be of such gender or number as the circumstances require. The words "including," "includes" or "include" are to be read as listing non-exclusive examples of the matters referred to, whether or not words such as "without limitation" or "but not limited to" are used in each instance. Where this Agreement states that a party "shall", "will" or "must" perform in some manner or otherwise act or omit to act, it means that the party is legally obligated to do so in accordance with this Agreement. Any reference to a statute is deemed also to refer to any amendments or successor legislation as in effect at the relevant time. Any reference to a Contract or other document as of a given date means the Contract or other document as amended, supplemented and modified from time to time through such date. Words such as "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The word "extent" and the phrase "to the extent" when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not merely mean "if." References to "any" shall mean "any and all," and "or" is used in the inclusive sense of "and/or."

ARTICLE 2
THE TRANSACTION

Section 2.1 Sale and Purchase of Purchased Assets. In accordance with the provisions of this Agreement and the Sale Order at the Closing, the Seller will, to the extent transferable under applicable Law, sell, convey, assign, transfer and deliver to the Purchaser, and the Purchaser will purchase and acquire from the Seller, all of the Seller's right, title and interest in and to the Equipment, free and clear of all Liens and Claims (the "Purchased Assets").

Section 2.2 Consideration. The consideration for the Purchased Assets shall consist of cash in the amount of Two Hundred Twenty-Five Thousand Dollars ($225,000) (the "Purchase Price").

Section 2.3 Deposit. Prior to the date the Purchaser delivered an executed copy of this Agreement to the Seller, the Purchaser provided a good faith cash deposit to the Seller (the "Deposit") in the amount of $18,000 by wire transfer to US Bank, National Association as master escrow agent pursuant to wire instructions to be provided to the Purchaser upon its

request. The Deposit shall be applied by the Seller to the satisfaction of the Purchase Price at the Closing (subject to the other provisions of this Agreement).

Section 2.4 Closing. The closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of Hogan Lovells US LLP, 4085 Campbell Avenue, Suite 100, Menlo Park, California 94025, no later than June 26, 2019, starting at 10:00 a.m., prevailing Pacific time, if not conducted electronically at the option of the parties hereto. The date and time on and at which the Closing actually occurs is referred to in this Agreement as the "Closing Date."

Section 2.5 Closing Deliveries.

(a) At the Closing, the **Seller** will deliver or cause to be delivered to the Purchaser:

(i) a bill of sale in the form of Exhibit A (the "Bill of Sale") executed by the Seller;

(ii) a certificate, dated as of the Closing Date, executed by the Seller confirming the satisfaction of the conditions specified in Sections 6.1(a) and 6.1(b); and

(iii) such other instruments of sale, transfer, conveyance and assignment as the Purchaser reasonably requests for the purpose of consummating the transactions contemplated by this Agreement.

(b) At the Closing, the **Purchaser** will deliver or cause to be delivered to the Seller or for the Seller's benefit:

(i) the Purchase Price by wire transfer of immediately available funds to an account designated by the Seller prior to the Closing, less the amount of the Deposit in the master escrow agreement with US Bank, National Association;

(ii) the Bill of Sale executed by the Purchaser;

(iii) a certificate, dated as of the Closing Date, executed by the Purchaser confirming the satisfaction of the conditions specified in Sections 6.2(a) and 6.2(b); and

(iv) such other instruments of assumption as the Seller reasonably requests for the purpose of consummating the transactions contemplated by this Agreement.

Section 2.6 Access for Removal of Purchased Assets. Purchaser shall be responsible at its expense for ensuring that all of the Purchased Assets are removed from the premises within fourteen (14) days following the Closing. Seller agrees to provide Purchaser or Purchaser's representatives with unobstructed access to the Purchased Assets, without charge to Purchaser, to permit Purchaser to effectuate such removal on a timely basis. Prior to entering the Seller's premises to remove the Purchased Assets, Purchaser shall provide the Seller's landlord, AP3-SF2 CT South LLC, with evidence of insurance reasonably satisfactory to such landlord and indemnify the landlord on terms agreed to by the Purchaser and the landlord to be set forth in the

Sale Order. Notwithstanding any other provision of this Agreement, Seller agrees that nothing in this Agreement shall be construed to require Purchaser to remove any item containing hazardous substances. For the purposes of this provision, the term "hazardous substances" shall mean, either individually or collectively, any chemical, solid, liquid, gas, or other substance having the characteristics identified in, listed under, or designated pursuant to (i) the Comprehensive Environmental Response, Compensation and liability Act of 1980 (CERCLA) as amended, 42 USCA Section 9601 (4), as a "hazardous substance," (ii) the Resource, Conservation and Recovery Act. 42 USCA Sections 6903(5) and 6921, as a "hazardous waste," or (iii) any other laws, statutes, or regulations of a government or political subdivision or agency thereof, as presenting an imminent and substantial danger to the public health or welfare or to the environment, or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Purchaser as follows:

Section 3.1 Organization. The Seller is a corporation duly organized and validly existing and in good standing under the Laws of the State of Delaware. Except as a result of the filing of the Petition, the Seller has all requisite power and authority to conduct its business as presently conducted.

Section 3.2 Authority and Enforceability. Subject only to the entry of the Sale Order, the Seller has all requisite corporate power, authority and capacity to execute and deliver this Agreement and the other agreements contemplated hereunder and to perform its obligations under this Agreement and such other agreements. Subject only to the entry of the Sale Order, the execution, delivery and performance of this Agreement and the other agreements contemplated hereunder and the consummation of the transactions contemplated by this Agreement and such other agreements by the Seller have been duly authorized by all necessary action on the part of the Seller. The Seller has duly and validly executed and delivered this Agreement. Assuming the due authorization, execution and delivery of this Agreement by the Purchaser and subject to the entry of the Sale Order, this Agreement constitutes the valid and binding obligation of the Seller, enforceable against the Seller in accordance with its terms.

Section 3.3 No Conflict. Subject only to the entry of the Sale Order, and except in any case that has not had, and would not reasonably be expected to have, a Material Adverse Effect, neither the execution, delivery and performance of this Agreement by the Seller, nor the consummation by the Seller of the transactions contemplated by this Agreement, will: (a) conflict with or violate the Seller's organizational documents; (b) result in a breach or default under, or create in any Person the right to terminate, cancel, accelerate or modify, or require any notice, consent or waiver under, any material Contract; (c) violate any Law or Judgment applicable to the Seller or the Purchased Assets; or (d) require the Seller to obtain any Governmental Authorization.

Section 3.4 Title to Assets; Liens. As of the date of this Agreement, the Seller has good and marketable title to the Purchased Assets, and subject to the entry of the Sale Order, at

Closing, the Purchaser will be vested with good and marketable title to all of the Purchased Assets, which Purchased Assets shall be conveyed free and clear of any Liens or Claims by order of the Bankruptcy Court pursuant to the Sale Order.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Seller as follows:

Section 4.1 Organization and Good Standing. The Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of California and has all requisite corporate power and authority to conduct its business as it is presently conducted.

Section 4.2 Authority and Enforceability. The Purchaser has all requisite corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of the Purchaser. The Purchaser has duly and validly executed and delivered this Agreement. Assuming the due authorization, execution and delivery of this Agreement by the Seller and subject to the entry of the Sale Order, this Agreement constitutes the valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to: (a) Laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (b) Laws governing specific performance, injunctive relief and other equitable remedies.

Section 4.3 No Conflict. Neither the Purchaser's execution, delivery and performance of this Agreement, nor the consummation by the Purchaser of the transactions contemplated by this Agreement, will: (a) conflict with or violate the Purchaser's organizational documents; (b) result in a breach or default under or create in any Person the right terminate, cancel, accelerate or modify, or require any notice, consent or waiver under, any Contract to which the Purchaser is a party or by which the Purchaser is bound, in any case with or without due notice or lapse of time or both; (c) result in the imposition of any Lien or other encumbrance on any of the assets of the Purchaser; (d) violate any Law or Judgment applicable to the Purchaser; or (e) require the Purchaser to obtain any Governmental Authorization or make any filing with any Governmental Authority.

Section 4.4 Legal Proceedings. There is no Proceeding pending or, to the Purchaser's knowledge, threatened against the Purchaser that questions or challenges the validity of this Agreement or that may prevent, delay, make illegal or otherwise interfere with the ability of the Purchaser to consummate any of the transactions contemplated by this Agreement.

Section 4.5 Availability of Funds . The Purchaser has immediately available cash in an amount sufficient to allow the Purchaser to perform all of its obligations under this Agreement.

Section 4.6 No Knowledge of Breach or Inaccuracy. The Purchaser has no knowledge of any breach of, or inaccuracy in, or any fact, event, breach, condition or occurrence that may constitute a breach of, or inaccuracy in, any representation or warranty made by the Seller in this Agreement.

Section 4.7 Independent Investigation. The Purchaser has conducted its own independent investigation, review and analysis of the Purchased Assets as it has deemed appropriate, which investigation, review and analysis was done by the Purchaser and its representatives. The Purchaser acknowledges that it and its representatives have been provided adequate access to the personnel, properties, premises and records of the Seller for such purpose. In entering into this Agreement, the Purchaser acknowledges that it has relied solely upon the aforementioned investigation, review and analysis and not on any factual representations or opinions of the Seller or its representatives (except the representations and warranties set forth in Article 3). The Purchaser hereby acknowledges and agrees that: (a) the Purchaser is purchasing the Purchased Assets from the Seller "as is" and "where is" and, other than the representations and warranties set forth in Article 3, none of the Seller, any of its Affiliates, or any of their respective officers, directors, employees, agents, representatives or stockholders make or have made any representation or warranty, express or implied, at law or in equity, as to any matter whatsoever relating to the Purchased Assets or any other matter relating to the transactions contemplated by this Agreement including as to merchantability or fitness for any particular use or purpose; and (b) none of the Seller, any of its Affiliates, or any of their respective officers, directors, employees, agents, representatives or stockholders will have or will be subject to any Liability or indemnification obligation to the Purchaser or any other Person resulting from the distribution to the Purchaser or its Affiliates or representatives of, or the Purchaser's use of, any information relating to the Purchased Assets or any other matter relating to the transactions contemplated by this Agreement, including any descriptive memoranda, summary business descriptions or any information, documents or material made available to the Purchaser or its Affiliates or representatives, whether orally or in writing, in certain "data rooms," management presentations, functional "break-out" discussions, responses to questions submitted on behalf of the Purchaser or in any other form in expectation of the transactions contemplated by this Agreement.

ARTICLE 5
COVENANTS

Section 5.1 Consents and Filings; Commercially Reasonable Efforts.

(a) Subject to the terms and conditions of this Agreement, each of the parties will use their respective commercially reasonable efforts: (i) to take promptly, or cause to be taken, all actions, and to do promptly, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement; and (ii) as promptly as practicable after the date of this Agreement, to obtain all Governmental Authorizations from, and make all filings with, all Governmental Authorities, and to obtain all other consents, waivers, approvals and other authorizations from, all other Third Parties, that are necessary or advisable in connection with the authorization, execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement.

(b) Each of the Seller and the Purchaser will promptly notify the other of any communication it or any of its Affiliates receives from any Governmental Authority relating to the transactions contemplated by this Agreement, and will permit the other party to review in advance any proposed communication by such party to any Governmental Authority. Neither the Seller nor the Purchaser will agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry relating to the transactions contemplated by this Agreement unless it consults with the other party in advance and, to the extent permitted by such Governmental Authority, gives the other party the opportunity to attend and participate at such meeting. Each of the Seller and the Purchaser will coordinate and cooperate fully with each other in exchanging such information and providing such assistance as the other party may reasonably request in connection with the foregoing. Each of the Seller and the Purchaser will provide each other with copies of all correspondence, filings or communications between them or any of their representatives, on the one hand, and any Governmental Authority or members of its staff, on the other hand, with respect to this Agreement and the transactions contemplated by this Agreement.

Section 5.2 Public Announcements. Prior to the Closing, except with respect to the Supplement and other required disclosures with the Bankruptcy Court, neither the Purchaser nor the Seller will issue any press release or make any other public announcement relating to this Agreement or the transactions contemplated hereby without the prior written approval of the other party (which approval will not be unreasonably withheld, conditioned or delayed), unless required by applicable Law or by any listing agreement with any national securities exchange. Except with respect to the Supplement and other required disclosures with the Bankruptcy Court, prior to issuing any such press release or making any such other public announcement as required by applicable Law or by any listing agreement with any national securities exchange and without the other party's prior written approval, the disclosing party will give the other party a copy of the proposed press release or other public announcement and reasonable opportunity to comment on the same.

Section 5.3 Bulk Transfer Laws. The Seller shall ensure that the Sale Order shall provide either that: (a) the Seller has complied with any applicable bulk sale or bulk transfer Laws of any jurisdiction in connection with the transactions contemplated by this Agreement; or (b) compliance with such Laws described in the foregoing clause (a) is not necessary or appropriate under the circumstances.

Section 5.4 Bankruptcy Court Matters.

(a) The Purchaser and the Seller will use their respective good faith and commercially reasonable efforts to cause the Sale Order to become a Final Order as soon as practicable after its entry.

(b) The Seller shall:

(i) cause the Bankruptcy Court to enter the Sale Order by 11:59 p.m. prevailing Eastern time on June 24, 2019; and

(c) consummate the Closing as promptly as practicable after entry of the Sale Order, but in no event later than 11:59 p.m. prevailing Pacific time on or before July 9, 2019 (the "Outside Date").

(d) The Purchaser will promptly take such actions as are reasonably requested by the Seller to assist in obtaining entry of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance by the Purchaser of its obligations under this Agreement and all other agreements, instruments, certificates and other documents to be entered into or delivered in connection with the transactions contemplated by this Agreement and demonstrating that the Purchaser is a good faith buyer under section 363(m) of the Bankruptcy Code.

(e) If an appeal is taken, or petition for certiorari or motion for rehearing or re-argument filed, or a stay pending appeal is requested from either the Bidding Procedures Order or the Sale Order, the Seller will promptly notify the Purchaser of such appeal, petition, motion or stay request and the Seller, with input from the Purchaser, will take all reasonable steps to defend against such appeal, petition, motion or stay request. Notwithstanding the foregoing, nothing in this Agreement precludes the parties from consummating the transactions contemplated by this Agreement if the Sale Order has been entered and has not been stayed and the Purchaser, in its sole discretion, waives in writing the condition set forth in Section 6.1(d) that the Sale Order be a Final Order.

(f) The Seller and the Purchaser shall comply with all of their respective obligations under the Bidding Procedures Order and Sale Order (after the entry of such order by the Bankruptcy Court).

(g) The Seller shall comply (or obtain an order waiving compliance) with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement. The Seller shall serve on all required Persons, including: (i) all Persons who are known to possess or assert a Claim or Lien against or interest in the Purchased Assets; (ii) all applicable Governmental Authorities; (iii) all other Persons required by any order of the Bankruptcy Court, the Bankruptcy Code or the Bankruptcy Rules; and (iv) using commercially reasonable efforts to serve any other Persons that the Purchaser reasonably may request, any notice of the motions, hearings, or orders necessary to comply with its obligations under this Section 5.4 and to consummate the transactions contemplated hereby.

Section 5.5 Bankruptcy Court Approval. The Purchaser and the Seller acknowledge that, under the Bankruptcy Code, the sale of Purchased Assets is subject to approval of the Bankruptcy Court. The Purchaser and the Seller acknowledge that to obtain such approval, the Seller must demonstrate that it has taken reasonable steps to obtain the highest or best value possible for the Purchased Assets, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Purchased Assets to prospective bidders, entertaining higher or better offers from qualified bidders and, if necessary, conducting an Auction and selling the Purchased Assets to another qualified bidder. The Purchaser acknowledges and agrees that it is

not entitled to receive a break-up fee, reimbursement of its expenses or any other "bid protections" of any kind.

Section 5.6 [Reserved].

Section 5.7 Post-Auction Supplement. Following the conclusion of the Auction, the Seller filed with the Bankruptcy Court a supplement (the "Supplement") which informed the Bankruptcy Court of the results of the Auction.

Section 5.8 Further Actions. Subject to the other express provisions of this Agreement, upon the request of either party to this Agreement, the other party will execute and deliver such other documents, instruments and agreements as the requesting party may reasonably require for the purpose of carrying out the intent of this Agreement and the transactions contemplated by this Agreement.

ARTICLE 6
CONDITIONS PRECEDENT TO OBLIGATION TO CLOSE

Section 6.1 Conditions to the Obligation of the Purchaser. The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to each of the following conditions (any of which may be waived by the Purchaser, in whole or in part, in its sole and absolute discretion):

(a) Accuracy of Representations and Warranties. The representations and warranties of the Seller in Article 3 must be true and correct in all respects as of the Closing (other than representations and warranties which by their terms are made as of a specific date, which shall have been true and correct in all respects as of such date), except where the failure of such representations and warranties to be so true and correct (disregarding all materiality qualifiers contained therein for this purpose) has not had, and would not reasonably be expected to have, a Material Adverse Effect;

(b) Performance of Covenants. All of the covenants and obligations that the Seller is required to perform or comply with under this Agreement on or before the Closing Date must have been duly performed and complied with in all material respects;

(c) No Action. There must not be in effect any Law or Judgment that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement;

(d) Sale Order. The Sale Order must be a Final Order and must be in form and content satisfactory to the Purchaser; and

(e) Transaction Documents. The Seller must have delivered or caused to be delivered each document under Section 2.5(a).

Section 6.2 Conditions to the Obligations of the Seller. The obligation of the Seller to perform any obligations hereunder, including to consummate the transactions contemplated by this Agreement, is subject to the satisfaction, on or before the Closing Date, of each of the following conditions (any of which may be waived by the Seller, in whole or in part):

(a) Accuracy of Representations and Warranties. The representations and warranties of the Purchaser in Article 4 must be true and correct in all respects as of the Closing (other than representations and warranties which by their terms are made as of a specific date, which shall have been true and correct in all respects as of such date), except where the failure of such representations and warranties to be so true and correct (disregarding all materiality qualifiers contained therein for this purpose) has not had, and would not reasonably be expected to have, a material adverse effect on the Purchaser's ability to timely complete the transactions contemplated by this Agreement;

(b) Performance of Covenants. All of the covenants and obligations that the Purchaser is required to perform or comply with under this Agreement on or before the Closing Date must have been duly performed and complied with in all material respects;

(c) No Action. There must not be in effect any Law or Judgment that would prohibit or make illegal the consummation of the transactions contemplated by this Agreement;

(d) Sale Order. The Sale Order must be a Final Order and must be in form and content satisfactory to the Seller; and

(e) Transaction Documents. The Purchaser must have delivered or caused to be delivered to the Seller each document that Section 2.5(b) requires it to deliver.

ARTICLE 7
TERMINATION

Section 7.1 Termination Events.

(a) This Agreement may, by written notice given before the Closing, be terminated:

(i) by mutual consent of the Purchaser and the Seller;

(ii) **by the Purchaser** (so long as the Purchaser is not then in material breach of any of its representations, warranties or covenants contained in this Agreement), if there has been a breach of any of the Seller's representations, warranties or covenants contained in this Agreement which would result in the failure of the condition set forth in Section 6.1(a) or Section 6.1(b), as applicable, to be satisfied, and which breach has not been cured within ten (10) days after written notice of such breach has been delivered to the Seller from the Purchaser or cannot be cured by the Outside Date;

(iii) **by the Seller** (so long as the Seller is not then in material breach of any of its representations, warranties or covenants contained in this Agreement), if there has been a breach of any of the Purchaser's representations, warranties or covenants contained in this Agreement which would result in the failure of a condition set forth in Section 6.2(a) or Section 6.2(b), as applicable, to be satisfied, and which breach has not been cured within ten (10) days after written notice of such breach has been delivered to the Purchaser from the Seller or cannot be cured by the Outside Date;

(iv) **by either the Purchaser or the Seller**, if there is in effect a Final Order restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; provided, however, that the right to terminate this Agreement under this Section 7.1(a)(iv) will not be available to any party whose failure to fulfill any covenant or obligation under this Agreement is the cause of or resulted in the action or event described in this Section 7.1(a)(iv) occurring; or

(v) **by the Purchaser** if: (A) the Chapter 11 Case is dismissed or converted into a case under chapter 7 of the Bankruptcy Code; or (B) an examiner with expanded powers or trustee is appointed in the Chapter 11 Case.

(b) [Reserved].

Section 7.2 Effect of Termination.

(a) If this Agreement is terminated pursuant to Section 7.1, this Agreement and all rights and obligations of the parties under this Agreement automatically end without Liability against any other party or its Affiliates, except that Section 5.2 (*Public Announcements*), **Error! Reference source not found.** (*General Provisions*) (except for Section 0.11 (*Specific Performance*)) and this Section 7.2 shall remain in full force and survive any termination of this Agreement. Notwithstanding the foregoing, in the event this Agreement is terminated by a party because of the knowing and intentional breach of this Agreement by the other party or because one or more of the conditions to the terminating party's obligations under this Agreement is not satisfied as a result of the other party's knowing and intentional failure to comply with its obligations under this Agreement, the terminating party's right to pursue all legal rights and remedies hereunder and under applicable Law will survive such termination unimpaired.

(b) Without in any way limiting the foregoing, following entry by the Bankruptcy Court of an order authorizing the sale of the Purchased Assets to the Purchaser, if the Purchaser fails to consummate the sale as the result of a breach by the Purchaser of any of its obligations under this Agreement, the Deposit shall be forfeited to the Seller as liquidated damages.

(c) [Reserved].

(d) [Reserved].

ARTICLE 8
NO SURVIVAL

Section 8.1 No Survival of Representations and Warranties and Certain Covenants. Each of the representations, warranties and covenants (other than covenants that, by their terms, survive the Closing or termination of this Agreement) in this Agreement or any agreement or certificate to be executed or delivered in connection with the transactions contemplated by this Agreement shall terminate at the Closing or upon termination of this Agreement pursuant to Section 7.1 and, following the Closing or the termination of this Agreement, as the case may be,

no party shall make any claim whatsoever for any breach of any such representation, warranty or covenant hereunder, subject to Section 7.2.

ARTICLE 9
TAX MATTERS

Section 9.1 Transfer Taxes. The Purchaser will pay in a timely manner all applicable sales, use, ad valorem and similar Taxes ("Transfer Taxes"), arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement.

Section 9.2 Personal Property Taxes. Seller shall convey the Purchased Assets to Purchaser free and clear from and personal property tax obligations, satisfaction of which shall be Seller's sole obligation.

ARTICLE 10
GENERAL PROVISIONS

Section 10.1 Notices. All notices and other communications under this Agreement must be in writing and are deemed duly delivered when: (a) delivered, if delivered personally or by nationally recognized overnight courier service (costs prepaid); (b) sent by facsimile with confirmation of transmission by the transmitting equipment (or, the first Business Day following such transmission if the date of transmission is not a Business Day) or by email; or (c) received or rejected by the addressee, if sent by United States of America certified or registered mail, return receipt requested; in each case to the following addresses or facsimile numbers and marked to the attention of the individual (by name or title) designated below (or to such other address, facsimile number or individual as a party may designate by notice to the other party):

If to the **Seller**:

Achaogen, Inc.
One Tower Place, Suite 400
South San Francisco, California 94080
Attn: Blake Wise, Chief Executive Officer
Email: bwise@achaogen.com

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

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

If to the **Purchaser**:

Heritage Global Partners, Inc.
12625 High Bluff Drive, Suite 305
San Diego, CA 92130
Attn: Nick Dove
Email: ndove@hginc.com

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

Heritage Global Partners, Inc.
30665 Northwestern Highway, Suite 200
Farmington Hills, MI 48334
Attn: James Sklar, Esquire
Email: jsklar@hginc.com

Section 10.2 Amendment. Except as otherwise expressly contemplated by this Agreement, this Agreement may not be amended, supplemented or otherwise modified except in a written document signed by each party hereto and that identifies itself as an amendment to this Agreement. Notwithstanding anything to the contrary herein, any deadline set forth in this Agreement that: (a) does not fall on a Business Day shall automatically be extended to the next Business Day; or (b) requires the Bankruptcy Court to either (i) hold a hearing by a specified date, or (ii) enter an order by a specified date, shall be subject to the Bankruptcy Court's availability, calendar or discretion and such deadline shall automatically be extended to such date as the Bankruptcy Court is available or its calendar shall permit it to hold such hearing or enter such order, as applicable. All deadlines set forth herein may be modified by the parties hereto in accordance with this Section 10.2.

Section 10.3 Waiver and Remedies. The parties may, but are not required to: (a) extend the time for performance of any of the obligations or other acts of the other party to this Agreement; (b) waive any inaccuracies in the representations and warranties of the other party to this Agreement contained in this Agreement; or (c) waive compliance with any of the covenants or conditions for the benefit of such party contained in this Agreement. The parties hereto agree that: (i) any such extension or waiver by a party to this Agreement will be valid only if set forth in a written document signed on behalf of the party against whom the extension or waiver is to be effective; (ii) no extension or waiver will apply to any time for performance, inaccuracy in any representation or warranty, or noncompliance with any covenant or condition, as the case may be, other than that which is specified in the written extension or waiver; and (iii) no failure or delay by a party in exercising any right or remedy under this Agreement or any of the documents delivered pursuant to this Agreement, and no course of dealing between the parties, operates as a waiver of such right or remedy, and no single or partial exercise of any such right or remedy precludes any other or further exercise of such right or remedy or the exercise of any other right or remedy. Notwithstanding anything to the contrary herein, any deadline set forth in this Agreement that does not fall on a Business Day shall automatically be extended to the next Business Day.

Section 10.4 Entire Agreement. This Agreement (including the Schedules and Exhibits hereto and the documents and instruments referred to in this Agreement that are to be delivered at the Closing) constitutes the entire agreement between the parties and supersedes any prior understandings, agreements or representations by or between the parties, or either of them, written or oral, with respect to the subject matter of this Agreement.

Section 10.5 Assignment, Successors and No Third Party Rights. This Agreement binds and benefits the parties and their respective successors (including any trustee, receiver, receiver-manager, interim receiver or monitor or similar officer appointed in any respect of the Seller under chapter 11 or chapter 7 of the Bankruptcy Code and any entity appointed as a successor to the Seller pursuant to a confirmed chapter 11 plan). No party may delegate any performance of its obligations under this Agreement, except that the Purchaser may at any time delegate the performance of its obligations (other than the obligation to pay the Purchase Price) to any Affiliate of the Purchaser so long as the Purchaser remains fully responsible for the performance of the delegated obligation. The Purchaser may designate one or more Affiliates, including any special purpose entities that may be organized by the Purchaser for such purpose, to take title to the Purchased Assets or any portion thereof and operate the business going forward, and upon written notice to the Seller of any such designation by the Purchaser, the Seller agrees to execute and deliver all instruments of transfer with respect to the Purchased Assets directly to, and in the name of, the Purchaser's designees. No designation shall affect, in any way, any guaranty of payment and performance provided to the Seller by the Purchaser, and such guaranty shall continue to obligate the guarantor. Nothing expressed or referred to in this Agreement will be construed to give any Person, other than the parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as may inure to a successor or permitted assignee under this Section 10.5.

Section 10.6 Severability. In the event that any provision of this Agreement, or the application of any such provision to any Person or set of circumstances, shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision to Persons or circumstances other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by applicable Law.

Section 10.7 Exhibits and Schedules. The Exhibits and Schedules to this Agreement are incorporated herein by reference and made a part of this Agreement.

Section 10.8 Interpretation. In the negotiation of this Agreement, each party has received advice from its own attorney. The language used in this Agreement is the language chosen by the parties to express their mutual intent, and no provision of this Agreement will be interpreted for or against either party because that party or its attorney drafted the provision.

Section 10.9 Expenses. Except as otherwise provided herein, each party will pay its own direct and indirect expenses incurred in connection with the preparation and negotiation of this Agreement and the consummation of the transactions contemplated by this Agreement, including all fees and expenses of its advisors and representatives.

Section 10.10 Limitation on Liability. Notwithstanding any other provision of this Agreement to the contrary, in no event will any party or any of its Affiliates be liable for any special, incidental, indirect, exemplary, punitive or consequential damages (including lost profits, loss of revenue or lost sales) in connection with any claims, losses, damages or injuries arising out of the conduct of such party pursuant to this Agreement, regardless of whether the nonperforming party was advised of the possibility of such damages or not.

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by either party in accordance with such party's specific terms or were otherwise breached by such party. The parties accordingly agree that, prior to the termination of this Agreement pursuant to Section 7.1, in addition to any other remedy to which a non-breaching party is entitled at law or in equity, the non-breaching party is entitled to injunctive relief to prevent breaches of this Agreement by the breaching party and otherwise to enforce specifically the provisions of this Agreement against the breaching party; provided that, the non-breaching party shall only be entitled to injunctive relief if such non-breaching party is not otherwise in breach of this Agreement or if the breaching party is not otherwise entitled to terminate this Agreement. Each party expressly waives any requirement that the other party obtains any bond or provides any indemnity in connection with any action seeking injunctive relief or specific enforcement of the provisions of this Agreement.

Section 10.12 Governing Law; Jurisdiction; Waiver of Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE, WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH OF THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ANY LEGAL ACTION, SUIT, DISPUTE OR PROCEEDING ARISING UNDER, OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE BROUGHT IN THE FEDERAL OR STATE COURTS OF COMPETENT JURISDICTION LOCATED IN THE STATE OF DELAWARE OR IN THE BANKRUPTCY COURT (FOR SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION) AND EACH OF THE PARTIES HERETO IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, GENERALLY AND UNCONDITIONALLY, AND WAIVES ANY OBJECTIONS AS TO VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT HEREBY. NOTWITHSTANDING THE FOREGOING CONSENT TO JURISDICTION, SO LONG AS THE BANKRUPTCY COURT HAS JURISDICTION, EACH OF THE PARTIES AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION WITH RESPECT TO ANY MATTER UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF THE BANKRUPTCY COURT.

Section 10.13 No Joint Venture. Nothing in this Agreement creates a joint venture or partnership between the parties. This Agreement does not authorize any party hereto (a) to bind or commit, or to act as an agent, employee or legal representative of, any other party, except as may be specifically set forth in other provisions of this Agreement, or (b) to have the power to control the activities and operations of any other party. Each party agrees not to hold itself out as having any authority or relationship contrary to this Section 10.13.

Section 10.14 Counterparts; Signatures. The parties may execute this Agreement in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. This Agreement is effective upon delivery of one executed counterpart from each party to the other party. The signatures of all parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending party's signature(s) is as effective as signing and delivering the counterpart in person.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

The parties have executed and delivered this Agreement as of the date indicated in the first sentence of this Agreement.

SELLER:

ACHAOGEN, INC.

By: _____
Name: Blake Wise
Title: Chief Executive Officer

The parties have executed and delivered this Agreement as of the date indicated in the first sentence of this Agreement.

PURCHASER:

HERITAGE GLOBAL PARTNERS, INC.

By: _____
Name: JAMES SKLAR
Title: EVP/General Counsel

EXHIBIT A

FORM OF BILL OF SALE

This **BILL OF SALE** (this "Bill of Sale") is made as of the ___ day of _____, 2019, by and between Achaogen, Inc. ("Seller"), to and in favor of Heritage Global Partners, Inc. ("Purchaser"). Seller and Purchaser are each a "Party" hereto and are collectively referred to herein as the "Parties". All capitalized terms that are not otherwise defined herein shall have the meanings given to such terms in the Agreement (as defined below).

WHEREAS, Seller and Purchaser have entered into that certain Equipment Purchase Agreement dated _____, 2019 (the "Agreement"), pursuant to which the Seller agreed to sell, convey, assign, transfer and deliver to Purchaser, and Purchaser agreed to purchase from Seller, all of Seller's right, title and interest in and to the Purchased Assets, free and clear of all liens, pledges, mortgages, hypothecations and other encumbrances (the "Sale");

WHEREAS, the Bankruptcy Court entered the Sale Order on _____, 2019, approving the Sale of the Purchased Assets to Purchaser on the terms set forth in the Agreement and in the Sale Order; and

WHEREAS, pursuant to the Agreement, Seller has agreed to execute and deliver this Bill of Sale to effectuate the sale, transfer, assignment, conveyance and delivery of the Purchased Assets to Purchaser and its successors and assigns.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. For and in consideration of payment by Purchaser to Seller of the Purchase Price, all upon the terms and subject to the conditions set forth in the Agreement, the receipt, sufficiency and adequacy of which are hereby acknowledged and accepted by Seller, Seller hereby sells, transfers, assigns, conveys and delivers to Purchaser, its successors and assigns, all of Seller's entire right, title and interest in, to and under the Purchased Assets, free and clear of all liens, pledges, mortgages, hypothecations and other encumbrances, the same to be held and enjoyed by Purchaser for its use and enjoyment, and for the use and enjoyment of its successors, assigns and other legal representatives, as the same would have been held and enjoyed by Seller had this sale, transfer, assignment, conveyance and delivery not been made.

2. Seller and Purchaser hereby agree to execute and deliver any and all additional documents that Seller or Purchaser may reasonably request in order to more fully effect the agreements set forth in this Bill of Sale.

3. This Bill of Sale shall be subject to the terms and conditions set forth in the Agreement and the Sale Order. Seller and Purchaser hereby acknowledge and agree that the provisions of this Bill of Sale shall not modify or limit the full force and effect of the terms and provisions of the Agreement or the Sale Order, and that in the event of a conflict between the terms and

provisions of this Bill of Sale and the terms and provisions of the Agreement, the terms and provisions of the Agreement, as approved by the Sale Order, shall prevail, govern and control in all respects without limitation.

4. Section 10.12 of the Agreement is hereby incorporated by reference into this Bill of Sale and shall apply as if fully set forth herein *mutatis mutandis*.

5. The Parties may execute this Bill of Sale in multiple counterparts, each of which constitutes an original as against the party that signed it, and all of which together constitute one agreement. This Bill of Sale is effective upon delivery of one executed counterpart from one Party to the other Party. The signatures of all Parties need not appear on the same counterpart. The delivery of signed counterparts by facsimile or email transmission that includes a copy of the sending Party's signature(s) is as effective as signing and delivering the counterpart in person.

6. The undertakings, covenants and agreements set forth herein shall be binding upon and inure to the benefit of Seller and Purchaser and their respective successors and assigns.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Bill of Sale as of the date first above written.

SELLER:

ACHAOGEN, INC.

By: _____
Name:
Title:

PURCHASER:

HERITAGE GLOBAL PARTNERS, INC.

By: _____
Name:
Title:

SCHEDULE 1

EQUIPMENT

Achaogen ID #	Asset Description
000427	Beckman Avanti Model: JXN-26 with 3 rotors.
000488	Eppendorf Centrifuge 5804R Centrifuge
000241	VWR Waterbath
000554	New Brunswick Innova 43 Incubated Shaker
	Norlake Lab Refrigerator
000520	Labconco BioSafety Cabinet
000567	Don Whitley Scientific Wasp Touch
000407	BioRad CFX96 Real-Time System
	Synbiosis aColyte3 Model ACOL3HD
	VWR Undercounter Fridge
	VWR -20 Freezer
000481	Beckman Coulter Allegra 6KR Centrifuge
000074	Buchi Rotovapor with V300 Vacuum Pump, I-300 Interface
	Sheldon SMI12 Double Stack Incubator
	Mettler Toledo Analytical Balance
000518	NMR Model: Nanalysis NMReady 60 pro, with Sample Warmer
000375	BioRad XRS Imaging System
000487	Perkin Elmer Envision Multimode Plate Reader
000446	Thermo Nanodrop 2000
	BioRad PC Module
	BioRad C1000 Touch Thermal Cycler
	VWR Model 8005 PH Meter
	VWR Balance
	Metler Toledo Analytical Balance
	Sharp Microwave
000420	Molecular Devices Versa Max Plate Reader
000205	Eppendorf 5417C Centrifuge
	Thermo MaxQ 4550 Orbital Incubator Shaker (Quantity of 2)
	Eppendorf D30 BioPhotometer
	Vortex Mixer
	Mini Centrifuge
	Eppendorf 5424 Centrifuge
	Rainin Pipettes
	VWR Heatblock
	Metler Toledo PB1502-S Balance/Scale
	Mettler Toledo MT 5 Analytical Balance System with Marble

Achaogen ID #	Asset Description
	Table, Flow Scientific Enclosure
	VWR 2 Door Deli Style Fridge
	Eppendorf epMotion 96
	Thermo Genesys 30 Spectrophotometer
000519	VWR -80 Freezer
	VWR Freezer
000472	Thermo Scientific Revco UxF
	VWR Freezer
	Thermo Scientific TSX Incubator
000424	Norlake Scientific Incubator
	2 Assorted Refrigerators (one is VWR)
000524	GE AKTA pure System w/ Fraction collector (Inside VWR Refrigerator)
	VWR Refrigerator
	Worthington LS6000 Sample Storage
000464/000541	Lab Therm LT-XC Double Stack Incubator
	Triple Stack Incubated Shaker
000462	Advanced Analytics ZAG System
000461	intellicyt iQue Screener plus
	Mel-Temp melting apparatus
	Precision Systems Thermometer
	Metrohm System including 860 KF Thermoprep, (2) 803 TI Stsnds, 852 Titrande
000151	Jasco DIP-370
	LAXCO LMI 6000 Inverted Microscope (new in box)
000530/000485	Agilent Mass Spectrometer 6130 MSD w 1290 HPLC system & Computer
000509	Huber Cooling Bath
000523	Waters 2695 HPLC System with 2487 Detector
	Leica DMIl Microscope
	Agilent 1100/1200 HPLC System (7 stack)
000445	VWR Freezer
	Thermo Fisher CPQ-00126572 Vanquish Horizon UPLC System (in box)
	Chemglass 20L Reactor with Stand
	Mitor Sensor Display
	Carefusion Alaris SE pump
	Nilfisk 118 Lab Vaccuum
	Antek Systems
	Huber Ministat CC1
	GE Sterile Tube Fuser (In Box)

Achaogen ID #	Asset Description
	Wyatt Dawn Helios II (in box)
	Eppendorf 5804 Centrifuge (in box)
	Jun-Air
	Wave 25 Rocking BioReactor System ReadyToProcess
	Enviroflo Lab Enclosure
	Hudson Liquid Handler SOLO
	BioRad T100 Thermal Cycler (Quantity of 6)
	Mitos Microfluidcs Pump (in box)
000468	Meros High Speed Digitial Microscope
	Agilent Bravo 16050-102 Automated Liquid Handling Platform
	Eppendorf Liquid Handler
	Perkin Elmer EnSpire Alpha Multimode Plate Reader
	Cole Palmer MasterFlex Pump
000507	Brooks Xpeel Automated Plate Seal Removal
000505	Agilent PlateLoc System
	Leica Inverted Scope DMi8 with accessories and computer
	Eppendorf TransferMan 4r Micromanipulator (in box)