IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.	Case No. 19-10844 (BLS)
Debtor.[1]	**Requested Hearing Date:** **January 9, 2020 at 10:30 a.m. (ET)** **Requested Objections Due:** **January 7, 2020 at 12:00 p.m. (ET)**

MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SALE OF THE CHINA PURCHASED ASSETS OF THE DEBTOR TO XUANZHU (HK) BIOPHARMACEUTICAL LIMITED FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS AND (II) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the "Debtor") hereby moves (the "Motion")[2] for entry of an order, substantially in the form attached hereto as Exhibit A (the "Sale Order"), (a) approving the asset purchase agreement (the "Xuanzhu Sale Agreement") by and between Achaogen, Inc. and Xuanzhu Biopharmaceutical Limited ("Xuanzhu"), dated as of December 29, 2019, for the sale (the "Sale") of the China Purchased Assets (as defined in the Stipulation (as defined herein)), (b) providing that the Sale will be free and clear of Liens, encumbrances, Claims and interests, and (c) granting related relief, including approving that certain *Stipulation Amending the Cipla Sale Documents* (the "Stipulation") entered into between the Debtor, Xuanzhu and Cipla USA Inc. ("Cipla") in order to rescind the transfer of the China Purchased Assets to enable the Debtor to transfer such assets to Xuanzhu. In support of this Motion, the Debtor respectfully represents as follows:

[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 548 Market Street, #70987, San Francisco, California 94104-5401.

[2] Unless otherwise indicated, capitalized terms used, but not defined herein, have the meanings ascribed to them in the Bidding Procedures, the Bidding Procedures Order, the Stipulation, or Xuanzhu Sale Agreement (as such terms are defined herein), as applicable.

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtor consents to the entry of a final order by the Bankruptcy Court in connection with this Motion to the extent that it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory predicates for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Local Rule 6004-1.

Background

General Case Background

4. On April 15, 2019 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing this case (the "Chapter 11 Case"). The Debtor continues to operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. An official committee of unsecured creditors (the "Committee") was appointed in this Chapter 11 Case on April 23, 2019. No trustee or examiner has been appointed in this Chapter 11 Case.

5. A description of the Debtor's business and the facts and circumstances leading to this Chapter 11 Case are set forth in the *Declaration of Blake Wise in Support of First Day Relief* [D.I. 3] (the "First Day Declaration") and incorporated herein by reference.

The Prior Sale and Auction Process

6. On the Petition Date, the Debtor filed a motion for court approval of certain bidding procedures (the "Bidding Procedures") designed for the Debtor to maximize value for its assets through an expedited sale process [D.I. 30]. By order entered on May 1, 2019 [D.I. 123] (the "Bidding Procedures Order"), the Court approved the Bidding Procedures for the purpose of soliciting the highest and best offers to purchase all or substantially all of the Debtor's assets.

7. In accordance with the Bidding Procedures, the Debtor commenced an auction (the "Auction") for substantially all of its assets on June 3, 2019, at 10:00 a.m.

8. At the conclusion of the Auction, the Debtor designated (i) Cipla as the Successful Bidder for the global rights to ZEMDRI (Plazomicin) and the Debtor's assets related thereto, subject to a license of the China Assets (as defined in the Stipulation) (the "Global Rights") and (ii) Qilu Antibiotics Pharmaceutical Co., Ltd. ("Qilu") as the Successful Bidder for a license of the China Assets. Additionally, the Debtor designated Cipla as the Back-up Bidder for the China Assets. *See Notice of Completion of Auction and Selection of Successful Bidder* [D.I. 266] (the "Notice of Auction Results").

9. Thereafter, on or about June 20, 2019, the Debtor entered into an asset purchase agreement with Cipla (the "Cipla Plazomicin Sale Agreement") for the Global Rights (including the China Purchased Assets, subject to the Debtor's right to license the China Assets.[3]

[3] The Debtor also entered into a number of other asset purchase agreements for certain of its assets, including entering into an asset purchase agreement with Cipla dated June 20, 2019 for the C-Scape program assets.

In order to effectuate the Debtor's license of the China Assets to Qilu, the Cipla Plazomicin Sale Agreement provided that the Debtor, as licensor, would enter into a license agreement with Qilu—or, if requested by the Debtor, another third party—for the China Assets (the "License Agreement"), and that upon the payment by Qilu of a one-time licensing fee to the Debtor and the effectiveness of the License Agreement, the Debtor would immediately assign to Cipla, and Cipla would immediately assume, the rights and only those obligations of the Debtor, as licensor, under the License Agreement. When Cipla and the Debtor executed the Cipla Plazomicin Sale Agreement, the Debtor was still negotiating a license agreement with Qilu for the China Assets.

10. On or about July 1, 2019, the Debtor ceased most of its operations, dismissing all but a few of its remaining employees.

11. On July 23, 2019, the Court entered an order (the "Cipla Sale Order" and with the Cipla Plazomicin Sale Agreement, the "Cipla Sale Documents") approving the Cipla Plazomicin Sale Agreement [D.I. 371]. The Debtor and Cipla consummated the transaction the same day.

12. Qilu, as the Successful Bidder for the China Assets, and Cipla, as the Back-up Bidder for the China Assets, thereafter failed to close their respective transactions for the China Assets.

The Xuanzhu Proposal

13. In light of the failure of Qilu and Cipla to close their respective transactions, the Debtor had no choice but to immediately seek out an alternative buyer for the China Purchased Assets—both to mitigate its damages and to maximize the value of such assets. The Debtor's investment banker, Cassel Salpeter & Co LLC, contacted ten potential buyers, five

of which expressed an interest in acquiring the China Purchased Assets. This effort continued for nearly ten weeks.

14. As part of this effort, in or about August 2019, the Debtor contacted Xuanzhu, advising that the transaction for the China Assets had not closed and that the Debtor was seeking to identify a party that would be interested in acquiring the China Assets if the relevant parts of the Cipla transaction could be reversed. Xuanzhu had first become aware of the China Assets in or about November 2018, and aggressively pursued the opportunity through April 2019 when Achaogen filed the Chapter 11 Case, but had declined to proceed with a purchase of the assets. Upon further consideration and review of the opportunity, Xuanzhu then presented a written proposal to the Debtor to purchase (as opposed to licensing) the China Purchased Assets. Xuanzhu's proposal (i) contemplated that Xuanzhu would pay consideration of $4.5 million to acquire the China Purchased Assets (without assuming any executory contracts) and (ii) requested certain bid protections.

15. Xuanzhu's proposal—which provided significantly less consideration than the offers the Debtor had previously accepted from Cipla and Qilu—was the only acceptable offer the Debtor received during the renewed marketing period. Thus, the Debtor, in consultation with the DIP Lender and the Committee, determined that the Xuanzhu proposal was the highest and best, viable offer for the China Purchased Assets, and decided to move forward with Xuanzhu's proposal.

16. On October 15, 2019, the Debtor entered into a letter of intent ("LOI") with Xuanzhu, which among other things, provided Xuanzhu with certain bid protections including a $200,000 expense reimbursement and $225,000 break-up fee. The Court approved the Debtor's entry into the LOI on October 31, 2019 [D.I. 516], and entered orders extending the

LOI's protections in subsequent orders entered on November 26, 2019 [D.I. 531] and December 19, 2019 [D.I. 545].

17. On December 29, 2019, the Debtor entered into an asset purchase agreement with Xuanzhu memorializing the terms and conditions for the purchase and sale of the China Purchased Assets (the "Xuanzhu Sale Agreement"). A copy of the Xuanzhu Sale Agreement is attached to the Sale Order as Exhibit A.

The Cipla Stipulation

18. Xuanzhu's proposal contemplates that it will purchase—as opposed to license—the Chinese Purchased Assets, which consist of (i) the "China Intellectual Property" (including, without limitation, the "Company China IP Registrations", the "Company Owned China Intellectual Property" and the "Company Used China Intellectual Property") (as such terms are defined in the Xuanzhu Sale Agreement), and (ii) all other Purchased Assets relating only to the "China Plazomicin Business," other than the Excluded IP (each as defined in the Xuanzhu Sale Agreement). As such, and because the Cipla Sale Order effectuated the transfer of the China Plazomicin Business to Cipla, it became necessary to rescind the transfer of these assets to Cipla. The Debtor, Cipla and Xuanzhu thus negotiated the Stipulation. A copy of the Stipulation is attached to the Sale Order as Exhibit B. The Stipulation provides that so long as (i) the Court approves the Xuanzhu Sale Agreement (as defined below) and the Stipulation and (ii) the transactions under the Xuanzhu Sale Agreement (as defined below) close (the "Xuanzhu Closing"), then immediately prior to the Xuanzhu Closing, the sale and transfer of the portion of the China Purchased Assets that occurred under the Cipla Plazomicin Sale Agreement shall be automatically rescinded in their entirety and shall have no further force or effect (the "China

Purchased Assets Rescission").[4] As a result of the China Purchased Assets Rescission, the Debtor will be able to transfer the China Purchased Assets to Xuanzhu.

19. The Debtor is requesting that the Court approve the Xuanzhu Sale Agreement and the Stipulation, which will both mitigate the Debtor's damages, and maximize the value of the China Purchased Assets for itself, its estate and its creditors.

Local Rule 6004-1 Requirements

20. In accordance with Local Rule 6004-1(b)(iv), the Debtor notes the following regarding the Sale:

a. No Sale to an Insider. Xuanzhu is not an insider of the Debtor within the meaning set forth in section 101(31) of the Bankruptcy Code.

b. Agreements with Management. No agreements with management have been entered into in connection with the Sale.

c. Releases. The Sale will not include any release of any party.

d. Private Sale/No Competitive Bidding. Although the Debtor is not by this Motion proposing a bidding process or an Auction, the China Purchased Assets have already been the subject of an exhaustive marketing process. As detailed herein, the Debtor believes the Xuanzhu Sale Agreement constitutes the best, and potentially only, opportunity for the Debtor to maximize the value of the China Purchased Assets for the benefit of the Debtor's estate and creditors. Further, the Debtor maintains the ability to entertain higher or otherwise better offers for the China Purchased Assets.

e. Closing and Other Deadlines. The proposed Sale contemplates that (i) the Sale Order must be entered by no later than January 10, 2020 and (ii) the Sale must close by no later than January 10, 2020.

f. Good Faith Deposit. Xuanzhu has deposited U.S. $2,000,000 by wire transfer to US Bank, National Association, as master escrow agent.

[4] Notwithstanding anything in this Motion or the Stipulation, each of the Debtor, Cipla and Xuanzhu expressly reserves all of the respective claims, rights at law and/or equity, entitlements, remedies, causes of action and/or defenses that it has or may have with respect to the Auction, the Cipla Sale Documents, the License Agreement, and/or actions or inactions that any of the other Parties have taken, may take or will seek to take in the future with respect to the Debtor or its assets during the course of this chapter 11 case.

g. Interim Arrangements with Proposed Buyer. There are no interim arrangements with Xuanzhu.

h. Use of Sale Proceeds. The proceeds of the Sale shall be applied in accordance with the Final DIP Order and paragraph 27 of the Sale Order.

i. Tax Exemption. The anticipated terms of the Sale do not address the use of tax exemptions.

j. Record Retention. The Debtor will retain property necessary for the wind down. *See* Xuanzhu Sale Agreement § 10.15.

k. Sale of Avoidance Actions. The anticipated terms of the Sale do not involve the sale of avoidance actions. *See* Sale Order ⁋ 28.

l. Requested Findings as to Successor Liability. The proposed Sale Order includes a finding that the Sale will not subject Xuanzhu to any liability whatsoever (including any successor liability) with respect to the operation of the Debtor's business. *See* Sale Order ¶¶ X, 21–22.

m. Sale Free and Clear of Liens, Claims, Encumbrances and Other Interests. By this Motion the Debtor is requesting authority to transfer good title in, to and under the China Purchased Assets free and clear of all liens, to the fullest extent permissible under section 363(f) of the Bankruptcy Code. *See* Sale Order ¶¶ W, 12.

n. Credit Bid. Credit bidding is inapplicable.

o. Relief from Bankruptcy Rule 6004(h). By this Motion the Debtor is requesting relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h). *See* Sale Order ¶ 31.

21. As set forth above and in the *Declaration of Nicholas K. Campbell, Chief Restructuring Officer of the Debtor, in Support of the (I) Sale of the China Purchased Assets of the Debtor to Xuanzhu (HK) Biopharmaceutical Limited and (II) Entry of the Sale Order* (the "Campbell Declaration"), filed contemporaneously herewith, the Debtor, in its business judgment, believes that the Xuanzhu Sale Agreement represents the highest and best offer it will obtain for the Sale of the China Purchased Assets.

Relief Requested

22. By this Motion, the Debtor seeks entry of an order approving the Xuanzhu Sale Agreement, (b) providing that the Sale will be free and clear of Liens, encumbrances, Claims and interests, and (c) granting related relief, including approving the Stipulation.

Basis For Relief Requested

23. As detailed in the Xuanzhu Sale Agreement, the proposed sale will provide value and crucial funding for the Debtor's bankruptcy estate where value may not otherwise exist. The Debtor conducted a fulsome marketing process both before and after filing this Chapter 11 Case to identify parties interested in purchasing, among other things, the China Purchased Assets. Although the Auction resulted in a Successful Bidder and a Back-up Bidder for the China Purchased Assets, both failed to consummate their respective transactions. During a renewed marketing period, the Debtor received interest from five (5) parties; however, Xuanzhu was the only party who submitted a bid acceptable to the Debtor from a monetary and timing perspective. Therefore, given the circumstances, the Debtor believes that the Xuanzhu Sale Agreement presents the best, and potentially only, opportunity for the Debtor to maximize the value of the China Purchased Assets by bringing in $4.5 million to the benefit of the Debtor's bankruptcy estate and creditors.

A. The Sale and Stipulation Reflect a Sound Exercise of the Debtor's Business Judgment.

24. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to

carry out the provisions of this title." 11 U.S.C. § 105(a). In pertinent part, Bankruptcy Rule 6004 states that, "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." Fed. R. Bankr. P. 6004(f)(1).

25. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, bankruptcy courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See, e.g.*, *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056, 2001 Bankr. LEXIS 980, at *29 (Bankr. D. Del. Apr. 2, 2001); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reason exists for completing the sale and that the transaction is in good faith).

26. The proposed Sale and Stipulation are a sound exercise of the Debtor's business judgment. After the Successful Bidder and Back-up Bidder failed to close their respective transactions for the China Purchased Assets, the Debtor was left with a valuable asset at a time that it was barely operating and starving for liquidity. The Debtor promptly canvassed the market for potential purchasers, and Xuanzhu was the only party who put forth an actionable offer. After due consideration of the terms of the Xuanzhu offer, the Debtor concluded that Xuanzhu's offer was the highest and best offer for the China Purchased Assets and proceeded to negotiate the definitive terms of the transaction. The resulting Xuanzhu Sale Agreement is the product of arm's-length negotiations between the Debtor and Xuanzhu, and includes consideration to be paid under the Xuanzhu Sale Agreement which, while less than that offered

by the Successful Bidder or Backup Bidder, is both fair and reasonable under the circumstances. Similarly, the Stipulation is the product of arm's length negotiations among the Debtor, Xuanzhu and Cipla and, moreover, is a necessary component of the proposed Sale as it will effectuate the China Purchased Assets Rescission and enable the Debtor to transfer the China Purchased Assets to Xuanzhu. Further, the DIP Lender and the Committee have been consulted with respect to the proposed transaction and support entry of the Sale Order. In light of the foregoing, the Debtor believes that each of the Xuanzhu Sale Agreement and Stipulation should be approved as a sound exercise of the Debtor's business judgment.

B. The Debtor May Sell the China Purchased Assets Free and Clear of Liens, Claims, Encumbrances and Other Interests.

27. In accordance with section 363(f) of the Bankruptcy Code, a debtor in possession may sell property under section 363(b) "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied: (a) such a sale is permitted under applicable non-bankruptcy law; (b) the party asserting such a lien, claim, or interest consents to such sale; (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f).

28. The Debtor's DIP Lender has consented to the Sale. All parties asserting a lien on the Debtor's assets will be served with the Motion and the proposed Xuanzhu Sale Agreement and will have the opportunity to object and be heard. Furthermore, bankruptcy courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL

1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Considering that any remaining objections to this Motion must be resolved by consent of the objecting party or a determination by the Bankruptcy Court, the Debtor expects that it can satisfy at least the second and fifth subsections of section 363(f) of the Bankruptcy Code.

29. Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corporation* v. *Chambersburg Beverage, Inc. (In re White Motor Credit Corp.),* 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). The Debtor will serve notice of the Motion on holders of all such interests and each will have an opportunity to object to the Sale. Accordingly, the Debtor requests that the Sale be approved "free and clear," with any liens, claims, encumbrances and interests to attach to the proceeds of the Sale with the same validity, extent and priority, and subject to the same rights and defenses, as existed immediately prior to the Sale. All net proceeds of the Sale will be remitted pursuant to paragraph 27 of the Sale Order.

C. The Sale Has Been Proposed in Good Faith.

30. The Debtor additionally requests that the Bankruptcy Court find that Xuanzhu be entitled to the protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale of the China Purchased Assets. Section 363(m) of the Bankruptcy Code provides, in pertinent part:

> The reversal or modification on appeal of an authorization under subsection (b) . . . of this section of a sale . . . of property does not affect the validity of a sale ... under such authorization to an entity that purchased . . . such property in good faith, whether or not such

> entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

31. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal. By its terms, section 363(m) of the Bankruptcy Code applies to sales of interests in tangible assets.

32. Although the Bankruptcy Code does not define "good faith purchaser," the Third Circuit, construing section 363(m) of the Bankruptcy Code, has stated that "the phrase encompasses one who purchases in 'good faith' and for 'value'." *In re Abbotts Dairies of Pa. Inc.,* 788 F.2d 143, 147 (3d Cir. 1986). To constitute lack of good faith, a party's conduct in connection with the sale must usually amount to "fraud, collusion between the purchaser and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders." *Id.* (citing *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)); *see also In re Bedford Springs Hotel, Inc.,* 99 B.R. 302, 305 (Bankr. W.D. Pa. 1989); *In re Perona Bros., Inc.,* 186 B.R. 813, 839 (D.N.J. 1995). Due to the absence of a bright line test for good faith, the determination is based on the facts of each case, concentrating on the "integrity of [an actor's] conduct during the sale proceedings." *In re Pisces Leasing Corp.,* 66 B.R. 671, 673 (E.D.N.Y. 1986) (quoting *Rock Indus. Machinery Corp.,* 572 F.2d at 1198 (7th Cir. 1978)).

33. As required by section 363(m) of the Bankruptcy Code, both the Debtor and Xuanzhu have acted in good faith in negotiating the Xuanzhu Sale Agreement. There is no evidence of fraud or collusion. To the contrary, as discussed throughout this Motion, the Sale of the China Purchased Assets will be the culmination of (i) extensive pre- and postpetition marketing processes, (ii) an Auction, (iii) a second round of postpetition marketing following

Qilu's and Cipla's failure to consummate their respective transactions, and (iv) a negotiated sale agreement among sophisticated parties. Xuanzhu is not an insider of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code, and all negotiations were conducted on an arm's-length, good faith basis.

34. As required by Bankruptcy Rule 2002, all parties with an interest in the China Purchased Assets will receive notice of this Motion and the proposed Sale and will be provided an opportunity to be heard. The Debtor submits that, under the facts and circumstances of this Chapter 11 Case, such notice is adequate and satisfies the requisite notice provisions required under section 363(b) of the Bankruptcy Code. Under the circumstances, Xuanzhu should be afforded the benefits and protections that section 363(m) of the Bankruptcy Code provides to a good faith purchaser.

Waiver of Bankruptcy Rule 6004(h)

35. Under Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). To preserve the value of the Debtor's estate and limit the costs of administering the China Purchased Assets, it is important that the Debtor close the proposed sale and fulfill its obligations under the Xuanzhu Sale Agreement as soon as possible. Accordingly, the Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rule 6004(h).

Notice

36. Notice of this Motion will be provided to: (a) the Office of the United

States Trustee for the District of Delaware; (b) counsel to Xuanzhu; (c) counsel to the Committee; (d) counsel to the DIP Lender; (e) counsel to Cipla; (f) counsel to Qilu; (g) all parties asserting a security interest in the China Purchased Assets to the extent any such interest is reasonably known to the Debtor; (h) the Department of Health and Human Services; (i) all entitites known to have expressed an interest in a transaction with respect to the China Purchased Assets or that have been identified by the Debtor or its advisors as a potential buyer of the China Purchased Assets; (j) 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 China Purchased Assets; and (k) any other party that has requested notice pursuant to Local Rule 2002-1(b). The Debtor respectfully submits that no further notice of this Motion is required under the circumstances.

WHEREFORE, the Debtor respectfully requests the Court grant the relief requested in this Motion and such other and further relief as the Court may deem just and proper.

Dated: December 29, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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

- and -

Richard L. Wynne (CA 120349) *admitted pro hac vice*
Erin N. Brady (CA 215038) *admitted pro hac vice*

HOGAN LOVELLS US LLP
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 90067
Telephone: (310) 785-4600
Facsimile: (310) 785-4601
richard.wynne@hoganlovells.com
erin.brady@hoganlovells.com

- and -

Christopher R. Bryant (NY 3934973) *admitted pro hac vice*
John D. Beck (TX 24073898) *admitted pro hac vice*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
chris.bryant@hoganlovells.com
john.beck@hoganlovells.com

Counsel for Debtor and Debtor in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.	Case No. 19-10844 (BLS)
Debtor.[1]	**Requested Hearing Date:** **January 9, 2020 at 10:30 a.m. (ET)** **Requested Objections Due:** **January 7, 2020 at 12:00 p.m. (ET)**

NOTICE OF MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE SALE OF THE CHINA PURCHASED ASSETS OF THE DEBTOR TO XUANZHU (HK) BIOPHARMACEUTICAL LIMITED FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS AND (II) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that today, the above-captioned debtor and debtor-in-possession (the "Debtor") filed the attached **Motion For Entry Of An Order (I) Approving The Sale Of The China Purchased Assets Of The Debtor To Xuanzhu (HK) Biopharmaceutical Limited Free And Clear Of Liens, Encumbrances, Claims And Interests And (II) Granting Related Relief** (the "Motion").

PLEASE TAKE FURTHER NOTICE that objections, if any, to the Motion must (a) be in writing; (b) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before **January 7, 2020 at 12:00 p.m. (ET)** (the "Objection Deadline"); and (c) served so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT only objections made in writing and timely filed and received, in accordance with the procedures above, will be considered by the Bankruptcy Court at such hearing.

PLEASE TAKE FURTHER NOTICE THAT A HEARING ON THE MOTION WILL BE HELD ON **JANUARY 9, 2020 AT 10:30 A.M. (ET)** BEFORE THE HONORABLE BRENDAN L. SHANNON, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, 6TH FLOOR, COURTROOM #1, WILMINGTON, DELAWARE 19801.

[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 548 Market Street, #70987, San Francisco, California 94104-5401.

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: December 29, 2019
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Paige N. Topper

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

- and -

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

- and -

Christopher R. Bryant (NY 3934973) *admitted pro hac vice*
John D. Beck (TX 24073898) *admitted pro hac vice*
HOGAN LOVELLS US LLP
390 Madison Avenue
New York, NY 10017
Telephone: (212) 918-3000
Facsimile: (212) 918-3100
chris.bryant@hoganlovells.com
john.beck@hoganlovells.com

Counsel for Debtor and Debtor in Possession

Exhibit A

Sale Order

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. ___**

ORDER UNDER SECTIONS 105(a) AND 363 OF THE BANKRUPTCY CODE AND RULES 6004 AND 9014 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (I) APPROVING THE SALE OF THE CHINA PURCHASED ASSETS OF THE DEBTOR TO XUANZHU (HK) BIOPHARMACEUTICAL LIMITED FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS AND GRANTING RELATED RELIEF, AND (II) APPROVING THE STIPULATION AMENDING THE CIPLA SALE DOCUMENTS

Upon (I) the Debtor's *Motion for Entry of an Order (I) Approving the Sale of the China Purchased Assets of the Debtor to Xuanzhu (HK) Biopharmaceutical Limited Free and Clear of Liens, Encumbrances, Claims and Interests and (II) Granting Related Relief* on December 29, 2019 [D.I. __] (the "Motion") and (II) the *Stipulation Amending the Cipla Sale Documents*, attached hereto as Exhibit B (the "Stipulation" and with the Motion, the "Sale Motion");[2] and the Debtor having selected Xuanzhu (HK) Biopharmaceutical Limited ("Buyer") as having the highest or otherwise best bid for the China Purchased Assets (as defined in the Stipulation) set forth in the asset purchase agreement dated December 29, 2019 (along with the corresponding exhibits and schedules, the "Xuanzhu Sale Agreement"), attached hereto as Exhibit A; and Buyer having agreed to assume the Assumed Liabilities of the Debtor identified in the Xuanzhu Sale

[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 548 Market Street, #70987, San Francisco, CA 94104.

[2] Unless otherwise indicated, capitalized terms used, but not defined herein, have the meanings ascribed to them in the Sale Motion, the Bidding Procedures, the Bidding Procedures Order or the Xuanzhu Sale Agreement (as defined herein), as applicable. No provisions, including defined terms, contained in the Xuanzhu Sale Agreement, or any other agreement, document, instrument or otherwise entered into or delivered in connection therewith, shall be binding on or applicable to any other buyer of the Debtor's assets, except as otherwise set forth in this Sale Order.

Agreement pursuant to the terms and conditions set forth in the Xuanzhu Sale Agreement; and the Bankruptcy Court having commenced a hearing on January 9, 2020, to consider approval of (i) the sale of the China Purchased Assets under the Xuanzhu Sale Agreement (the "Sale") 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 (ii) the assumption and assignment of certain liabilities; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale; and the Court having determined that the legal and factual bases set forth at the Sale Hearing and in the Sale Motion, the Stipulation, the Declaration of Blake Wise in Support of the First Day Relief [D.I. 3], the Declaration of Nicholas K. Campbell in Support of Entry of the Sale Order D.I. [___], the Declaration of James S. Cassel in Support of Entry of the Sale Order D.I. [___], and the Declaration of F. Leslie Boyd, Ph.D., In Support of the Entry of Order Approving Sale of Debtor's Assets to Xuanzhu (HK) Biopharmaceutical Limited 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*

[3] This Sale Order shall be deemed to incorporate all findings of fact and conclusions of law made on the record at 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.

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). Since time is of the essence in closing the Sale referenced herein, the Debtor and Buyer intend to close the Sale as soon as practicable given that there is no just reason for delay in the implementation of this Sale Order. Specifically, the Sale must be approved and consummated promptly, and by no later than January 12, 2020, 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 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, proper, timely, adequate and sufficient notice of the Sale Motion, the Xuanzhu Sale Agreement, this Sale Order and the Sale Hearing, have been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014, 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 Xuanzhu Sale Agreement, 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 Xuanzhu Sale Agreement, the Sale, 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 Committee, the Prepetition Lender and DIP Lender (as such terms are defined below); (iii) all parties asserting a security interest in the China 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, including the Department of Health and Human Services; (v) all entities known to have expressed an interest in a transaction with respect to the China Purchased Assets or that have been identified by the Debtor or its advisors as a potential buyer of the China 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 China Purchased Assets; (viii) the contract counterparties whose contracts are identified as being assigned; (ix) all of the Debtor's known creditors, (x) all parties requesting notice pursuant to

Bankruptcy Rule 2002, (xi) Cipla USA Inc. ("Cipla") and (xii) Qilu Antibiotics Pharmaceutical Co., Ltd. ("Qilu").

J. **Debtor's Ownership of the China Purchased Assets**. Pursuant to the Cipla Plazomicin APA and Cipla Plazomicin Sale Order (the "Cipla Sale Documents"), the Debtor agreed to transfer to Cipla the global rights and assets with respect to the Plazomicin Business (as defined in the Cipla Plazomicin APA), including the China Purchased Assets (other than the China Trademarks), subject to the right of the Debtor to grant a license of the China Purchased Assets to a third party (that would be assumed by Cipla) (the "Cipla Transaction"). The terms of the Cipla Sale Documents also provided the Debtor with the right to license the China Purchased Assets to a third party if the Successful Bidder and Back-up Bidder for such assets were unwilling to close their respective transactions. Following the Auction (as further discussed below), Qilu, as the Successful Bidder for the China Purchased Assets, and Cipla, as the Back-up Bidder for the China Purchased Assets, thereafter failed to close their respective transactions for the China Purchased Assets. Thereafter, in or about August 2019, Buyer was contacted by the Debtor and advised that the transactions for the China Purchased Assets had not closed and that the Debtor was seeking to identify a party that would be interested in licensing or acquiring the China Purchased Assets if the relevant parts of the Cipla Transaction could be reversed. Buyer then presented a written proposal to the Debtor to purchase the China Purchased Assets (rather than license such assets), which led to (i) the parties' negotiation and execution of a letter of intent ("LOI") dated October 15, 2019, (ii) the entry by the Bankruptcy Court of an order on October 31, 2019 [D.I. 516] (as amended on December 19, 2019 [D.I. 545], the "LOI Order") which approved certain provisions in the LOI until January 10, 2020, and (iii) the negotiation and entry into the Xuanzhu Sale Agreement for the sale of the China Purchased Assets. To

effectuate the structure of the sale to Buyer, on December 29, 2019, (i) the Debtor, Cipla and Buyer entered into the Stipulation to, among other things, rescind the Debtor's transfer of the China Purchased Assets, and (ii) Cipla and Buyer entered into the License and Mutual Support Agreement (the "Support Agreement"), each subject to the Bankruptcy Court's entry of this Sale Order.

K. **Title in the China Purchased Assets**. The China 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 China Purchased Assets.

L. **Business Justification**. The Debtor has demonstrated a sufficient basis and compelling circumstances to sell the China Purchased Assets to Buyer pursuant to the terms and conditions of the Xuanzhu Sale Agreement. 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 fact that (i) the Debtor is no longer operating, and thus cannot otherwise monetize the China Purchased Assets; (ii) the Buyer's bid set forth in the Xuanzhu Sale Agreement constitutes the highest and best offer for the China Purchased Assets; and (iii) the Xuanzhu Sale Agreement and the Closing will present the best opportunity to realize the value of the China Purchased Assets. Entry of this Sale Order (and all provisions hereof) is a condition precedent to Buyer consummating the Xuanzhu Sale Agreement. The Buyer's agreement to purchase the China Purchased Assets is conditioned upon its ability to consummate the proposed transaction by no later than January 10, 2020.

M. **Sale Process**. In accordance with the Debtor's Bidding Procedures (the "Bidding Procedures") approved by this Court on May 1, 2019 [D.I. 123] (the "Bidding Procedures

Order"), the Debtor and its professionals marketed the China Purchased Assets appropriately by conducting an extensive marketing and sale process in good faith without collusion. Pursuant to the Bidding Procedures Order, the Debtor, in the exercise of its reasonable discretion and in consultation with (a) the Official Committee of Unsecured Creditors (the "Committee") appointed in this Chapter 11 Case and (b) 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") for a sale of the Debtor's assets. At the conclusion of the Auction, the Debtor designated multiple buyers as the winning bidders for certain assets, including Qilu as the Successful Bidder for a license for the China Purchased Assets. The Debtor also designated Cipla as the Back-up Bidder for the same asset; *provided*, *that*, in the event Qilu could not close, Cipla, as the Back-up Bidder was to purchase, rather than license, the China Purchased Assets. Qilu and Cipla thereafter failed to close their respective transactions for the China Purchased Assets.[4]

N. **Highest or Otherwise Best Offer**. The Debtor, in the exercise of its reasonable discretion and in consultation with the Committee and the DIP Lender, began a second marketing effort for the China Purchased Assets (the "Second Round Marketing Effort"). This Second Round Marketing Effort lasted approximately ten (10) weeks. Within that time frame, the Debtor's investment banker, Cassel Salpeter & Co., LLC ("Cassel"), contacted approximately ten (10) potential buyers; five (5) of which expressed an interest in acquiring the China Purchased Assets, but only Buyer proceeded to submit a bid that the Debtor viewed as acceptable. Based on the foregoing, the Debtor determined that Buyer's bid represented the

[4] The Sale is subject to the reservation of rights set forth in paragraph 29 below.

highest and best offer for the China Purchased Assets. Thus, the Debtor entered into the Xuanzhu Sale Agreement with Buyer for the China Purchased Assets and entered into the Stipulation with Buyer and Cipla to facilitate the Sale. Such determinations and actions constitute the valid and sound exercise of the Debtor's business judgment.

O. **Opportunity to Bid**. The marketing process set forth in the Bidding Procedures and the Bidding Procedures Order, and the Second Round Marketing Effort described in Paragraph N above, 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 China Purchased Assets. In addition, Buyer memorialized its proposal to purchase the China Purchased Assets in the LOI, which was publicly filed with the Bankruptcy Court on October 22, 2019 (as Exhibit A to D.I. 504), for approval of its proposed break-up fee, expense reimbursement and related provisions. Since that time, the Debtor has not received any other bids or expressions of interest for the China Purchased Assets. Based upon those circumstances and 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 China Purchased Assets.

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

Q. 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 of the China Purchased Assets that Buyer is acquiring pursuant to the Xuanzhu Sale Agreement.

R. The Xuanzhu 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 Buyer have not engaged in any conduct that would cause or permit the Xuanzhu Sale Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. Buyer is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code. 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 Buyer, on the one hand, and the Debtor, on the other hand, immediately prior to or after the Closing Date.

S. An injunction against creditors of the Debtor and third parties pursuing Liens, Claims and Excluded Liabilities against Buyer is necessary to induce 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.

T. **Corporate Power and Authority**. The Debtor has full corporate power and authority to execute and deliver each of the Xuanzhu Sale Agreement and the Stipulation and to perform all of its obligations thereunder, and the sale of the China 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 Xuanzhu Sale Agreement, and the entry of this Sale Order, are required by the Debtor to consummate the Sale.

U. **Transfer and Sale of Assumed Liabilities; Assumption and Assignment in Best Interest**. The transfer and sale of the Assumed Liabilities by the Debtor and the assignment thereof to Buyer, pursuant to the terms of the Xuanzhu Sale Agreement and this Sale Order, are integral to the Xuanzhu Sale Agreement and in the best interest of the Debtor, its estate and its creditors, and represent the reasonable exercise of sound and prudent business judgment by the Debtor. Accordingly, such transfer and sale to Buyer and the assumption and assignment of the Assumed Liabilities are reasonable, enhance the value of the Debtor's estate, and do not constitute unfair discrimination. As among the Debtor and Buyer, nothing in this Sale Order shall enlarge or restrict any obligations of the Debtor or Buyer under the Xuanzhu Sale Agreement with respect to the Assumed Liabilities.

V. **Free and Clear**. Buyer would not have entered into the Xuanzhu Sale Agreement to acquire the China Purchased Assets, and would exercise its right to terminate the Xuanzhu Sale Agreement, if the sale of the China Purchased Assets were to be transferred to it other than free and clear of all Liens, Claims and Excluded Liabilities (other than the Assumed Liabilities, the Stipulation and the Support Agreement), or if Buyer would, or in the future could, be liable for any such Liens, Claims or Excluded Liabilities (other than the Assumed Liabilities, the Stipulation and the Support Agreement). A sale of the China Purchased Assets other than one free and clear of all Liens, Claims and Excluded Liabilities (other than the Assumed Liabilities, the Stipulation and the Support Agreement) 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 Xuanzhu Sale Agreement is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

W. **Satisfaction of 363(f) Standards**. The Debtor may sell and assign the China Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities, because, with respect to each creditor asserting a Lien, Claim or Excluded Liability, 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, Claims or Excluded Liabilities 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 China Purchased Assets to Buyer pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, or Excluded Liabilities 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, Claims or Excluded Liabilities, if any, attach to the proceeds of the Sale ultimately attributable to the China Purchased Assets in which such holders allege a Lien, Claim or Excluded Liability 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 and paragraph 27 of this Sale Order; *provided*, that the Debtor will cause the proceeds of the Sale to be remitted pursuant to paragraph 27 of this Sale Order.

X. **No Successor Liability**. The transactions contemplated under the Xuanzhu Sale Agreement do not amount to a consolidation, merger, or de facto merger of Buyer with the Debtor and/or the Debtor's estate, there is not substantial continuity between the Debtor and Buyer, there is no common identity between the Debtor and Buyer, there is no continuity of enterprise between the Debtor and Buyer, Buyer is not a mere continuation of the Debtor or its estate, and Buyer does not constitute a successor to the Debtor or its estate in any way. Buyer

would not have acquired the China Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" or similar theories.

Y. **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 Buyer has entered into the Xuanzhu Sale Agreement or is consummating the Sale with any fraudulent or otherwise improper purpose.

Z. **Fair Consideration**. The consideration provided for by Buyer for the China Purchased Assets indicated in the Xuanzhu Sale Agreement 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.

AA. **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 in respect of the Sale as of the Closing Date.

BB. **Sale Transactions Not a *Sub Rosa* Plan**. The sale and assignment of the China Purchased Assets and Assumed Liabilities outside of a plan of reorganization pursuant to the Xuanzhu 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.

CC. The Sale contemplated by the Xuanzhu 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. The Sale and the Stipulation are approved.

2. **Objections Overruled**. All objections and responses to the Sale Motion, 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; provided, however, that the reservations of rights set forth in footnote 4 and in paragraph 29 herein shall survive entry of this Sale Order.

3. **Notice**. Notice of the Sale Motion, the Sale, the Xuanzhu Sale Agreement, the Sale Hearing and the Stipulation was fair and equitable under the circumstances and complied in all respects with 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**.

a. **The Xuanzhu Sale Agreement and the Sale**. The Xuanzhu 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 Buyer are hereby authorized, empowered and directed to fully perform under, consummate, and implement the terms of the Xuanzhu Sale Agreement and the Sale, 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 Xuanzhu 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 Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to Buyer or reducing to possession any or all of the China Purchased Assets, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Xuanzhu 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 Buyer may be assigned to a designee (including an Affiliate) of Buyer in accordance with the Xuanzhu Sale Agreement; *provided*, that Buyer is, and shall remain, primarily and irrevocably responsible for the full performance of Buyer's duties and obligations under the Xuanzhu Sale Agreement notwithstanding any such designation or the terms thereof.

b. **The Stipulation**. The Stipulation is hereby approved and authorized in all respects and shall be deemed in full force and effect, and the Debtor, Buyer and Cipla are hereby authorized, empowered and directed to fully perform under, consummate, and implement the terms of the Stipulation 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 Stipulation.

6. **Good Faith**. Buyer is a good faith purchaser of the China Purchased Assets 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 Xuanzhu 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 Xuanzhu 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 Xuanzhu 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 Buyer as reasonably requested by Buyer or as required of the Debtor under the Xuanzhu Sale Agreement, and take all actions and execute all documents which Buyer reasonably and in good faith determines is necessary or desirable to ensure that the Sale related to Buyer is consummated in accordance with the Xuanzhu Sale Agreement, and the Debtor is authorized to make such modifications or supplements reasonably acceptable to the Debtor and 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 Xuanzhu Sale Agreement.

10. **Duty to Close**. Neither the Debtor nor 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 Xuanzhu Sale Agreement; *provided*, the Debtor shall consult in good faith with the DIP Lender and the Committee prior to waiving any conditions precedent with respect thereto.

11. **Valid Transfer**. Effective as of the Closing of the Sale, (i) the sale and assignment of the China Purchased Assets by the Debtor to Buyer pursuant to the terms of the Xuanzhu Sale Agreement shall constitute a legal, valid and effective transfer of the China Purchased Assets, notwithstanding any requirement for approval or consent by any person, and shall vest Buyer with all right, title, and interest of the Debtor in and to the China Purchased Assets, free and clear of all Liens, Claims and Excluded Liabilities (other than the Assumed Liabilities, the Stipulation and the Support Agreement) pursuant to section 363(f) of the Bankruptcy Code, and (ii) the assumption of the Assumed Liabilities by Buyer constitutes a legal, valid, and effective assignment and delegation of any and all obligations, liabilities, and claims in respect thereof to Buyer and, other than to the extent expressly provided in this Sale

Order and/or constituting Excluded Liabilities under the Xuanzhu Sale Agreement, divests the Debtor of all right, title and interest in, and all obligations and liability with respect to, the Assumed 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 China Purchased Assets to Buyer pursuant to the Xuanzhu Sale Agreement and/or a bill of sale or assignment transferring indefeasible right, title and interest in the China Purchased Assets and all other rights and interests associated with or appurtenant to the China Purchased Assets, including, without limitation, warranty rights, intellectual property rights (including, without limitation, rights to all associated patents, regulatory approvals, permits, and registrations) and other non-executory contract rights, to Buyer all to the extent set forth in the Xuanzhu Sale Agreement, the Stipulation and the Support Agreement.

12. **Free and Clear**. Except to the extent specifically provided in the Xuanzhu Sale Agreement or this Sale Order, upon the occurrence of the Closing, 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 China Purchased Assets under the Xuanzhu Sale Agreement to Buyer. Except, and solely, to the extent specifically provided in the Xuanzhu Sale Agreement, the Stipulation, the Support Agreement or this Sale Order, the sale and assignment of the China Purchased Assets pursuant to the Xuanzhu Sale Agreement vests Buyer with all right, title and interest of the Debtor in and to the China Purchased Assets, free and clear of any and all Liens, Claims, Excluded Liabilities, and other liabilities of any kind or nature whatsoever (except for Assumed Liabilities, the Stipulation and the Support Agreement), 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, Claims and Excluded Liabilities to attach only to the proceeds of the sale and assignment of the China Purchased Assets with the same priority, validity, force, and effect as they now have in or against the China Purchased Assets, subject to paragraph 27 of this Sale order; *provided*, that the Debtor will cause the proceeds of the 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 China Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. Following a Closing, no holder of any Lien or Claim on any of the China Purchased Assets subject to the Closing (other than with respect to Assumed Liabilities, the Stipulation and the Support Agreement) may interfere with Buyer's enjoyment of the China 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 in the Xuanzhu 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 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 China Purchased Assets free and clear of Liens, Claims and Excluded Liabilities (other than Assumed Liabilities, the Stipulation and the Support Agreement) shall be self-executing and, without limiting the obligations of the Debtor under the Xuanzhu Sale Agreement or hereunder including under paragraph 16 hereof, neither the Debtor nor 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 Buyer to the Debtor as set forth in the Xuanzhu Sale Agreement, 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 China Purchased Assets

subject to the 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 China 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 China Purchased Assets subject to the Sale, then with regard to such China Purchased Assets, (i) each of the Debtor and Buyer is 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 the China Purchased Assets and (ii) each of the Debtor or Buyer, as applicable, 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 China 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 China Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the Xuanzhu Sale Agreement or this Sale Order. All such entities described above in this

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

18. **Direction to Surrender Possession or Control**. All persons or entities, presently or on or after the Closing Date, in possession or control of some or all of the China Purchased Assets subject to the Sale, are directed to surrender possession or control of such China Purchased Assets to Buyer on the Closing Date or at such time thereafter as Buyer may request.

19. **Licenses and Permits**. To the extent provided in the Xuanzhu Sale Agreement and available under applicable law, Buyer shall be authorized, as of the Closing Date, to operate under any Governmental Authorization, rights granted in respect of IP agreements, if any, or other Intellectual Property, constituting part of the China Purchased Assets, any other license, permit, registration, and any other governmental approval of the Debtor with respect to the China Purchased Assets and all such licenses, permits, registrations, and Governmental Authorizations, Intellectual Property, and any other approvals are deemed to have been, and hereby are, directed to be transferred to Buyer as of the Closing Date. To the extent any license or permit necessary for the operation of the business of the Debtor is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, Buyer shall apply for and obtain any necessary license or permit promptly after the Closing Date and the Debtor is hereby authorized and directed to use commercially reasonable efforts to cooperate with Buyer in connection with any such application as Buyer deems reasonably necessary or desirable, subject to the provisions of the Xuanzhu Sale Agreement.

20. To the extent provided by section 525 of the Bankruptcy Code, no Governmental Authority may revoke or suspend any Governmental Authorization or other approval, permit or license relating to the operation of the China Purchased Assets sold, transferred, or conveyed to

Buyer on account of the filing or pendency of this Chapter 11 Case or the consummation of the Sale.

21. **No Successor Liability**. 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 Xuanzhu Sale Agreement or any other event occurring in the Chapter 11 Case under any theory of law or equity (other than with respect to Assumed Liabilities assumed by Buyer pursuant to the Xuanzhu Sale Agreement, the Stipulation and the Support Agreement), (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 for the Assumed Liabilities, the transfer of the China Purchased Assets to Buyer under the Xuanzhu Sale Agreement shall not result in 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 (including, without limitation, for any Excluded Liabilities), (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 Excluded Liability, or (iii) having any liability or responsibility to the Debtor except as is expressly set forth in the Xuanzhu Sale Agreement. 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 (other than with respect to Assumed Liabilities, the Stipulation and the Support Agreement), and the Sale Motion

shall be deemed to have provided sufficient notice of the Sale and assignment of the China Purchased Assets free and clear of all such liabilities and obligations in accordance with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules.

22. **Examples of No Successor Liability**. Without limiting the generality, effect or scope of the foregoing, as a result of and following the Closing of the Sale, 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 China Purchased Assets on or prior to the 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 Buyer shall constitute valid and valuable consideration for the release of any potential claims of successor liability against Buyer which releases shall be deemed to have been given in favor of Buyer by

all holders of Liens, Claims and Excluded Liabilities (other than Assumed Liabilities, the Stipulation and the Support Agreement) against the Debtor or the China Purchased Assets.

23. **Injunction**. Subject to paragraph 30, and except to the extent expressly included in the Assumed Liabilities, 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 any of the China Purchased Assets at any time, trade creditors and all other creditors holding any Liens, Claims or Excluded Liabilities of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the China 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 China Purchased Assets, the operation of the Debtor's business, on or prior to the Closing Date, the Sale (other than Buyer's obligations under the Xuanzhu Sale Agreement, and all other ancillary agreements, documents or instruments entered into in connection with the Xuanzhu Sale Agreement, including, without limitation, the Stipulation and the Support Agreement), or the transfer of the China Purchased Assets to 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 Buyer or any of its affiliates, predecessors, successors, or assigns or any of its 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), their property or the China 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 Xuanzhu 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 China Purchased Assets or conduct the businesses associated with the China Purchased Assets. Following the Closing Date, no Person that was the holder of a Lien on, in or against any of the China Purchased Assets prior to the Closing Date shall interfere with Buyer's title to, license of, or use and enjoyment of the China Purchased Assets based on or related to such Lien, or any actions that the Debtor may take in the Debtor's case.

24. **No Bulk Sales; 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 Xuanzhu Sale Agreement or this Sale Order. Other than Cassel, no broker, finder, or financial advisor was involved in consummating the Sale or the other transactions, and, other than any commissions to which Cassel may be entitled under the order of this Court approving Cassel's engagement (the "Cassel Order"), no commissions are due to any person or entity in

connection with the Sale or the other such transactions. 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, to the extent applicable, the Debtor is authorized to apply proceeds of the Sale to the fees and expenses of Cassel in accordance with the Cassel Order including, without limitation, any provisions in such order regarding determination of the value of any consideration received by the Debtor.

25. **Fees and Expenses; Indemnity**. Any amounts payable or otherwise reimbursable by the Debtor under the Xuanzhu Sale Agreement or any of the documents delivered by the Debtor in connection with the Xuanzhu Sale Agreement shall be paid under the terms of and in the manner provided in the Xuanzhu 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 Buyer or its successors or assigns (such agreement to be provided in Buyer's or its successor's or assign's respective sole discretion).

26. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the Xuanzhu Sale Agreement, the Stipulation 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 Buyer that the Xuanzhu Sale Agreement, the Stipulation 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.

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 Excluded Asset or other 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 order of the Bankruptcy Court approving the Debtor's post-petition financing (collectively, the "DIP Order"), including paragraph 46(b) thereof; *provided*, that an amount equal to $[--] shall be deemed a "Supplemental Wind Down Reserve Payment" (as defined in the DIP Order) and shall be placed in a segregated account and used in accordance with paragraph 46 of the DIP Order, which, for the avoidance of doubt, shall be used to fund Case Professional Fees and Expenses (as defined in the DIP Order), administrative claims pursuant to section 503(b) of the Bankruptcy Code, and claims entitled to priority status pursuant to sections 502 and 507 of the Bankruptcy Code. 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; or (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, all of which shall

attach to the proceeds of the Sale. Notwithstanding anything to the contrary in the Bidding Procedures, Bidding Procedures Order, DIP Loan Agreement, or DIP Order, the Sale approved pursuant to this Sale Order must be closed by no later than January 12, 2020.

28. **Certain Actions and Claims**. Notwithstanding anything to the contrary contained in the Xuanzhu Sale Agreement, Buyer shall not receive any claims and/or causes of actions under chapter 5 of the Bankruptcy Code that may be related to the China Purchased Assets, the Debtor's Professionals retained in the Chapter 11 Case, the DIP Lender or Prepetition Lender (each, as defined in the DIP Order), or otherwise, nor shall Buyer receive any claims and/or causes of action relating to the Debtor's prior efforts to sell the China Purchased Assets in this Chapter 11 Case.

29. **Reservation of Rights**. Notwithstanding anything to the contrary in this Sale Order or the Stipulation, each of the Debtor, Cipla and Xuanzhu expressly reserves all of the respective claims, rights at law and/or equity, entitlements, remedies, causes of action and/or defenses that it has or may have with respect to the Auction, the Cipla Sale Documents, the License Agreement, and/or actions or inactions that any of the other parties have taken, may take or will seek to take in the future with respect to the Debtor or its assets during the course of this Chapter 11 Case.

30. **Binding Order**. This Sale Order shall be binding upon and govern the acts of all persons and entities, including, without limitation, the Debtor, Buyer, and, as it relates to the Stipulation, Cipla, 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 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 China Purchased Assets. The Xuanzhu Sale Agreement, the Stipulation and the Sale shall not be subject to rejection or avoidance under any circumstances. This Sale Order, the Stipulation and the Xuanzhu Sale Agreement shall inure to the benefit of the Debtor, its estates, its creditors, Buyer and their 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 after the date of its entry, are hereby waived, and this Sale Order shall be fully 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 Buyer to deliver any notice provided for in the Xuanzhu Sale Agreement and allow Buyer to take any and all actions permitted under the Xuanzhu 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 Xuanzhu Sale Agreement and the Stipulation, 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 Xuanzhu Sale Agreement, the Stipulation or the rights and duties of the parties hereunder or thereunder or any issues relating to the Xuanzhu Sale Agreement, Stipulation 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 China 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 Xuanzhu Sale Agreement or this Sale Order and, to the extent of any such conflict, subject to paragraph 37, the terms of this Sale Order and the Xuanzhu Sale Agreement shall control.

35. **Further Assurances**. From time to time, as and when requested by the other, the Debtor and 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, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in Buyer its right, title and interest in and to the China Purchased Assets, subject to the provisions of the Xuanzhu Sale Agreement.

36. **Provisions Related to Governmental Authorities**. To the extent applicable, nothing contained in this Sale Order and any implementing Sale Documents (collectively, the "Documents") shall: (i) authorize the sale, assignment or other transfer to Buyer of any agreements, grants, grant funds, licenses, permits, authorizations, contracts, leases, or other interests of the federal government (collectively, "Federal Interests"), without compliance by the Debtor and/or 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 or Buyer to assert all available defenses thereto, including, without limitation, that any or all such rights are barred under applicable non-bankruptcy 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. § 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. Notwithstanding the foregoing, nothing in this paragraph 36 shall be interpreted to require Buyer to assume any contracts, agreements or licenses that the Debtor had entered into with any Governmental Authority, including but not limited to the United States. Without limiting the foregoing and for the avoidance of doubt, the Debtor's ownership rights to Intellectual Property developed under U.S. federally-funded grants

and contracts are subject to the United States' rights under applicable statutes, regulations and/or contracts governing the terms of such federal funding. As used in this paragraph 36, the term "Intellectual Property" shall have the meaning ascribed to it in the Xuanzhu Sale Agreement; the terms "Product" and "Regulatory Approval" shall have the meanings ascribed to them in the Xuanzhu Sale Agreement; and the term "Inventory" shall mean any inventory of the Debtor, including, without limitation, finished goods, raw materials or work in process. The term "Intellectual Property" shall also include "Subject Inventions" as defined under 48 C.F.R. § 27.301 and "Data" as defined under 48 C.F.R. § 27.401. Such rights of the United States include, but are not limited to, nonexclusive, nontransferable, irrevocable, paid up licenses to practice, or have practiced for or on its behalf, the Intellectual Property throughout the world, as provided by contracts between the United States and the Debtor. Such rights of the United States shall also include licenses to data developed and/or funded by the United States under federally-funded contracts between the United States and the Debtor. To the extent that the contracts between the United States and the Debtor granted the United States any property rights in any of the Debtor's Inventory pursuant to F.A.R. 52.245-1, such rights are expressly preserved. Additionally, the United States has rights to Intellectual Property developed by the Debtor under the Bayh-Dole Act, 35 U.S.C. §§ 200-212, as implemented by 37 C.F.R. Part 401. Nothing in the Documents shall waive, alter, or otherwise limit the United States' rights to the Intellectual Property and Inventory referenced in this paragraph.

37. **Governing Terms**. Unless otherwise provided herein, to the extent this Sale Order is inconsistent with any prior order or pleading in this Chapter 11 Case, or the terms of the Xuanzhu Sale Agreement (including all ancillary documents executed in connection with the Xuanzhu 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: January __, 2020

_____
THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

Xuanzhu Sale Agreement

ASSET PURCHASE AGREEMENT

by and between

ACHAOGEN, INC.,

SELLER

and

XUANZHU (HK) BIOPHARMACEUTICAL LIMITED

PURCHASER

DATED AS OF DECEMBER 29, 2019

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of December 29, 2019, by and between Achaogen, Inc., a Delaware corporation, debtor and debtor in possession (the "Seller" or "Debtor"), and Xuanzhu (HK) Biopharmaceutical Limited, a Hong Kong private limited company (the "Purchaser"). Capitalized terms have the meanings given below.

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 (the "Business");

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, subject to and upon the terms and conditions herein, the Seller desires to sell, assign, transfer, convey and deliver and cause its Subsidiaries to sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser desires to purchase and acquire from the Seller, all of the China Purchased Assets, subject to the terms and conditions described in this Agreement;

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 Bankruptcy Rules and the Transaction 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 China Purchased Assets, and the assumption of certain Liabilities associated therewith, 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:

"Acquired China Intellectual Property" has the meaning set forth in Section 2.1(c).

"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 with respect to the Seller or otherwise as a result of the transactions contemplated in this Agreement.

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

"Allocation" has the meaning set forth in Section 2.7(a).

"Allocation Statement" has the meaning set forth in Section 2.7(a).

"Alternative Transaction" means a written agreement between the Debtor and a third party for an alternative transaction regarding the China Purchased Assets to the transactions contemplated by this Agreement.

"AMP Assets" means all of the assets of the Seller, wherever located, relating to the AMP Development Program, including China Intellectual Property, Contracts and Governmental Authorizations.

"AMP Development Program" means the AMP development program of the Seller relating to novel beta-lactam agents.

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.9(a)(vi).

"Assumed Liabilities" has the meaning set forth in Section 2.3.

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

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

"Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure.

"Bill of Sale" has the meaning set forth in Section 2.9(a)(i).

"Budget" has the meaning set forth in the DIP Loan Agreement.

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

"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.

"Business Payments" has the meaning set forth in Section 5.13.

"Chapter 5 Actions and Claims" means, with respect to any Person, all avoidance actions, claims or causes of action that constitute property of such Person's bankruptcy estate under section 541 of the Bankruptcy Code, including claims and causes of action under chapter 5 of the Bankruptcy Code or any other applicable law, and all proceeds therefrom.

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

"China Intellectual Property" mean all Intellectual Property pertaining to only the China Territory, but not including the Excluded IP.

"China Intellectual Property Assignment" has the meaning set forth in Section 2.9(a)(vi).

"China IP Agreements" means all agreements (including outstanding decrees, orders, judgments, settlement agreements, or stipulations) to which the Seller or any of its Subsidiaries is a party which contain provisions: (i) granting to any Person rights in Company Owned China Intellectual Property or Company Used China Intellectual Property; (ii) granting to the Seller or any Subsidiary thereof any rights in Company Used China Intellectual Property; (iii) consenting to another Person's use of Company Owned China Intellectual Property or Company Used China Intellectual Property, or covenanting not to sue any Person for infringement of any such China Intellectual Property; (iv) restricting the Seller's or any of its Affiliates' use of Company Owned China Intellectual Property or any Company Used China Intellectual Property; or (v) otherwise relate to China Intellectual Property covering the Product.

"China Plazomicin Business" means Seller's Business related to the Product pertaining to the China Territory, including the Exploitation of the Product.

"China Product Trademarks" means the China Trademarks used or held for use by the Seller or its Affiliates for the Product in the China Plazomicin Business and any registrations thereof or any pending applications relating thereto, including any unregistered China Trademark rights related to the Product as may exist through use before, on or after the Closing Date within or pertaining to the China Territory (for clarity, excluding any Seller Corporate Names).

"China Purchased Assets" has the meaning set forth in Section 2.1.

"China Territory" means the People's Republic of China, Hong Kong, Macau and Taiwan.

"China Trademarks" means trademarks, trade names, service marks, designs, logos, brand names, emblems, signs or insignia, slogans, Internet addresses and domain names, other similar designations of source or origin and general intangibles of like nature, together with the registrations and applications for registrations pertaining to any of the foregoing, any derivations of any of the foregoing, all goodwill associated therewith, and rights to sue for past infringement thereof within or pertaining to the China Territory.

"Cipla" has the meaning set forth in Section 2.11(a).

"Cipla Closing Date" has the meaning set forth in Section 2.11(a).

"Cipla Plazomicin APA" has the meaning set forth in Section 2.9(a)(ii).

"Cipla Plazomicin Sale Order" has the meaning set forth in Section 2.11(a).

"Cipla Plazomicin Transaction" has the meaning set forth in Section 2.11(a).

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

"Closing" has the meaning set forth in Section 2.8.

"Closing Date" has the meaning set forth in Section 2.8.

"Closing Payment" has the meaning set forth in Section 2.5(a)(i).

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

"Collective Bargaining Agreement" means any written or oral agreement, memorandum of understanding or other contractual obligation between the Seller and any labor organization or other authorized employee representative representing Service Providers.

"Commercially Available China IP" has the meaning set forth in Section 3.9(e).

"Company China IP Registrations" means all of the Seller's China Intellectual Property that is subject to any issuance registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in the China Territory, including registered China Trademarks, domain names and Copyrights, issued and reissued Patents and pending applications or filings for any of the foregoing, but not including the Seller Corporate Names.

"Company Owned China Intellectual Property" means all China Intellectual Property owned or purported to be owned, in whole or in part by the Seller or any of its Subsidiaries, and required only for and used or held only for use in connection with the China Plazomicin Business, including the China Intellectual Property as set forth on Schedule 2.1(c) and subject to Section 2.1, but not including the Seller Corporate Names or the Excluded IP.

"Company Used China Intellectual Property" means the Seller's rights and interest in all China Intellectual Property owned or controlled by a Third Party and licensed or otherwise made available to the Seller or any Subsidiary or used or held for use by the Seller or any Subsidiary, in whole or in part, that is required only for and used or held only for use in connection with the China Plazomicin Business, in each case, subject to Section 2.1, other than Commercially Available IP and the Excluded IP.

"Confidential Information" means any information that is not generally known to the public and that is or has been used, developed or obtained by the Seller and its Affiliates to the extent it relates to the China Purchased Assets, including: (i) products or services; (ii) fees, costs and pricing structures; (iii) designs and specifications; (iv) analyses; (v) drawings, photographs and reports; (vi) computer software, including electronic mail, operating systems, applications and program listings; (vii) flow charts, transaction summaries and models, manuals and documentation; (viii) databases; (ix) financial reports, investment summaries, and accounting and business methods; (x) ideas, formulas, compositions, inventions, devices, new developments, methods and processes, whether patentable or unpatentable and whether or not reduced to practice; (xi) suppliers, customers and clients and supplier, customer, contact or client lists and other marketing data or plans; (xii) know-how; (xiii) manufacturing and production processes and techniques; (xiv) research and development information; (xv) files and records; and (xvi) all similar and related information in whatever form, except that Confidential Information will not include any information that (1) has been published in a form generally available to the public or becomes part of the public domain, other than as a result of a disclosure by the parties hereto or their respective representatives; (2) was known or was otherwise in possession of the receiving party prior to the time of disclosure of such information by the disclosing party or (3) is developed by the receiving party independent of and without reference to any Confidential Information disclosed by the disclosing party under this Agreement.

"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.

"Copyrights" means all copyrights, including copyrights in software and in the content contained on any Web site, artwork (including editable jpeg images), packaging material, patient information leaflets, promotional material, advertising material, and those which are registered, applied for registration or used, whether registrable or not, by the Seller, and rights to sue for past infringement thereof.

"C-Scape Assets" means all of the assets of the Seller, wherever located, relating to the C-Scape Development Program, including China Intellectual Property, Contracts and Governmental Authorizations.

"C-Scape Development Program" means the C-Scape development program of the Seller which consists of a potential therapeutic including clavulanic acid and ceftibuten.

"Data Room" has the meaning set forth in Section 3.12.

"Deposit" has the meaning set forth in Section 2.6.

"DIP Loan Agreement" means the Senior Secured Superpriority Debtor-in-Possession Loan and Security Agreement, dated as of April 15, 2019, by and among the Seller, and Silicon Valley Bank, as lender.

"Employee Plan" means any written: (i) "employee benefit plan" as defined in Section 3(3) of ERISA; (ii) compensation, employment, consulting, severance, termination protection, change in control, transaction bonus, retention or similar plan, agreement, arrangement, program or policy; or (iii) other plan, agreement, arrangement, program or policy providing for compensation, bonuses, profit-sharing, equity or equity-based compensation or other forms of incentive or deferred compensation, vacation benefits, insurance (including any self-insured arrangement), medical, dental, vision, prescription or fringe benefits, life insurance, relocation or expatriate benefits, perquisites, disability or sick leave benefits, employee assistance program, workers' compensation, supplemental unemployment benefits or post-employment or retirement benefits (including compensation, pension, health, medical or insurance benefits), in each case (A) that is sponsored, maintained, administered, contributed to or entered into by the Seller for the current or future benefit of any current or former Service Provider or (B) for which the Seller has any direct or indirect liability.

"Environmental Law" means any Law concerning: (i) the treatment, disposal, emission, discharge, Release or threatened Release of Hazardous Material; or (ii) the protection of the environment (including natural resources, air and surface or subsurface land or waters).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and any rules or regulations promulgated thereunder.

"Excluded Assets" has the meaning set forth in Section 2.1(j).

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Exploitation", and related terms such as "Exploit", shall mean, with respect to the Product or any other product, the research, development, manufacture, having manufactured, testing, storage, import, export, distribution, sale, licensing, use, having used, offering for sale, having sold, disposition, registering, holding or keeping (whether for disposal or otherwise), commercializing, advertising, marketing and promotion of the Product or such other product, as

applicable, and applying for and receiving regulatory approvals, including from the FDA (on compliance with all requirements including clinical trials) related to the Product or such other product, and including the outsourcing of any of the foregoing activities in each case within or pertaining to the China Territory.

"FDA" means the United States Food and Drug Administration.

"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 Bankruptcy Rule 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.

"Hazardous Material" means any waste or other substance that is listed, defined, designated or classified as hazardous, radioactive or toxic or a pollutant or a contaminant under any Environmental Law, including any admixture or solution thereof, and including petroleum and all derivatives thereof or synthetic substitutes therefor, asbestos or asbestos-containing materials in any form or condition and polychlorinated biphenyls.

"Hovione" means Hovione Limited, a company with its principal place of business at Loughbeg, Ringaskiddy, Cork, County Cork, Ireland.

"Intellectual Property means all of the following anywhere in the world and all legal rights, title or interest in the following arising under Law: (i) all Patents and applications for Patents and all related reissues, reexaminations, divisions, renewals, extensions, provisionals, continuations and continuations-in-part, including any future applications or filings of the foregoing; (ii) all Copyrights, Copyright registrations and Copyright applications, copyrightable works and all other corresponding rights; (iii) all mask works, mask work registrations and mask work applications and all other corresponding rights; (iv) all advertising material, trade dress and trade names, logos, Internet addresses and domain names, China Trademarks and service marks and related registrations and applications, including any intent to use applications, supplemental registrations and any renewals or extensions, all other indicia of commercial source or origin and all goodwill associated with any of the foregoing; (v) all inventions (whether patentable or unpatentable and whether or not reduced to practice), know how, technology, technical data, trade secrets, confidential business information, manufacturing and production processes and techniques, research and development information, clinical trial data and information, safety data and pharmacovigilance data, financial, marketing and business data, pricing and cost information, business and marketing plans, advertising and promotional materials, customer, distributor, reseller and supplier lists and information, correspondence, records, and other documentation, and other proprietary information of every kind; (vi) all computer software (including source and object code), firmware, development tools, algorithms, files, records, technical drawings and related documentation, data and manuals; (vii) all databases and data collections; (viii) all licenses and permits to the extent transferable; (ix) all rights pertaining to the foregoing, including those arising under international treaties and convention rights, (x) all rights and powers to assert, defend and recover title to any of the foregoing, (xi) all rights to assert, defend, sue, and recover damages for any past, present and future infringement, misuse, misappropriation, impairment, unauthorized use or other violation of any rights in or to any of the foregoing, (xii) all proceeds, income, royalties, damages and payments now and/or hereafter due and payable under and/or in respect of all of the foregoing (including with respect to past, present or future infringement or violation thereof), (xiii) all administrative rights arising from the foregoing, including the right to prosecute applications and oppose, interfere with or challenge the applications of others, the rights to obtain renewals, continuations, divisions, and extensions of legal protection pertaining to any of the foregoing, and (xiv) all other intellectual property rights irrespective of not being registered or applied for registration.

"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 any 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 (other than with respect to any Company Used China Intellectual Property), encumbrance, claim 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, option, restriction of any kind, including any restriction on use, transfer, receipt of income or exercise of any other attribute of ownership or other arrangement, and including any agreement to give any of the foregoing.

"LOI" means the letter of intent between the Seller and Purchaser, executed October 15, 2019, as approved by the Transaction Procedures Order [Dkt. No. 516].

"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 China 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 Excluded Assets or Excluded Liabilities; (B) any outbreak or escalation of war or major hostilities or any act of terrorism; (C) changes in Laws, United States generally accepted accounting principles or enforcement or interpretation thereof; (D) changes that generally affect the industries and markets in which the Seller operates which does not disproportionately affect Seller; (E) changes in financial markets, general economic conditions (including prevailing interest rates, exchange rates, commodity prices and fuel costs) or political conditions; (F) any failure, in and of itself, of the Seller to meet any published or internally prepared projections, budgets, plans or forecasts of revenues, earnings or other financial performance measures or operating statistics; (G) 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; (H) 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); (I) 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 (J) any change in or termination of the relationship of the Seller with its Service Providers, customers or suppliers.

"Materials of Environmental Concern" means all substances defined as Hazardous Substances, Oils, Pollutants or Contaminants in the National Oil and Hazardous Substances

Pollution Contingency Plan, 40 C.F.R. § 300.5, or defined as such by, or regulated as such under, any Environmental Law.

"Non-Proration Items" has the meaning set forth in Section 9.2.

"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).

"Other Seller Taxes" has the meaning set forth in Section 9.2.

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

"Patent" means all patents and industrial designs, including any continuations, divisionals, continuations-in-part, renewals, reissues and applications for any of the foregoing, and rights to pursue future applications and filings for any of the foregoing and to rights to sue for past infringement thereof.

"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.

"Petition Date" means April 15, 2019, the date on which the Petition was filed in the Bankruptcy Court.

"Post-Closing Access and Support Period" has the meaning set forth in Section 10.15(a).

"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.

"Product" means plazomicin sulfate for Exploitation within the China Territory.

"Proration Items" has the meaning set forth in Section 9.2.

"Purchase Price" has the meaning set forth in Section 2.5.

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

"Receivables" has the meaning set forth in Section 2.2(q).

"Regulatory Approval" shall mean (a) any approval by the FDA of any "new drug application" or "premarket approval application" (as such terms are used under the United States

Federal Food, Drug, and Cosmetic Act) with respect to a product and (b) any other approval, decision, license, registration, designation or authorization by a Governmental Authority necessary to lawfully Exploit a product, in each case of clauses (a) and (b), together with any approval of any subsequent submissions, supplements or amendments thereto or any applications therefor.

"Regulatory Documentation" shall mean original documents in any format in the possession or control of the Seller and/or its Subsidiaries as of the Closing, of all Regulatory Approvals, dossiers, quality specifications for the manufacture, import, release and testing of the Product and its components and all correspondence with, or reports or other materials submitted to, any Governmental Authority related to the Exploitation of the Product, including all U.S. and non-U.S. regulatory applications, filings, submissions and approvals (including all Investigational New Drug Applications and New Drug Applications with the FDA, and foreign counterparts thereof, all Regulatory Approvals and all complaint files, periodic safety reports and adverse drug experience reports) for the Product, the Exploitation of the Product or use of any China Purchased Asset or related to the China Plazomicin Business, and all technical and other information contained therein, and all correspondence with the FDA and other Governmental Authorities relating to any of the foregoing, including correspondence related to any serious adverse events associated with the Product.

"Release" means the release, spill, emission, leaking, pumping, pouring, emptying, escaping, dumping, injection, deposit, disposal, discharge, dispersal, leaching or migrating of any Hazardous Material into the environment.

"Sale Hearing" means the hearing to be conducted by the Bankruptcy Court to approve this Agreement and seek 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 China Purchased Assets to the Purchaser as a private sale under Section 363 of the Bankruptcy Code, 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 and the Support Agreement; (ii) authorizing consummation of the transactions contemplated hereby; (iii) containing findings that the transactions contemplated by this Agreement and the Support Agreement are undertaken by the Seller and the Purchaser (solely in its capacity as such) at arm's length and without collusion, and that the Purchaser acted in good faith, within the meaning of sections 363(m) and (n) of the Bankruptcy Code; (v) assuring that the Purchaser shall not assume any of the Sellers' liabilities and will not be subject to successor liability for any claims or causes of action of any kind or character against the Seller, whether known or unknown, unless expressly assumed as an Assumed Liability pursuant to this Agreement and the Support Agreement; (vi) providing that the Bankruptcy Court shall retain jurisdiction to hear any disputes arising in connection with the transactions contemplated by this Agreement and the Support Agreement, and (vii) providing that the Sale Order shall be effective immediately upon entry and shall be excepted from the 14-day stay period under Rule 6004(h) of the Bankruptcy Rules; provided, that the form of Sale

Order substantially set forth in Exhibit E shall be deemed acceptable to the Purchaser and the Seller.

"Schedule" means a schedule included in the Seller Disclosure Schedule and the other schedules attached hereto.

"SEC" means the Securities and Exchange Commission.

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

"Seller Corporate Names" means those China Trademarks, names and logos of Seller or any of its Affiliates other than the China Product Trademarks, including any China Trademarks that consist of or include any corporate name or corporate logo of Seller or any of its Affiliates.

"Seller Disclosure Schedule" has the meaning set forth in ARTICLE 3.

"Seller SEC Documents" means all forms, statements, documents and reports filed or furnished by the Seller with the SEC since January 1, 2015, as amended through the date hereof.

"Service Provider" means any director, officer, employee or individual independent contractor of the Seller.

"Stipulation" means that certain *Stipulation Amending the Cipla Sale Documents* dated December 29, 2019, among the Seller, the Purchaser and Cipla to be filed with the Bankruptcy Court.

"Straddle Period" means any taxable period beginning before the Closing Date and ending after the Closing Date.

"Subsidiary" means, with respect to a specified Person, any corporation or other Person of which equity securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held directly or indirectly by the specified Person. When used in this Agreement without reference to a particular Person, "Subsidiary" means a Subsidiary of the Seller. Notwithstanding the foregoing, under no circumstance will the Seller be deemed a Subsidiary of the Purchaser notwithstanding the possession by the Purchaser (whether or not exercised) of any rights of control with respect to the Seller.

"Successful Offeror" means the counterparty to the Debtor under an Alternative Transaction or other party who shall have submitted the highest and otherwise best offer in accordance with the Transactions Procedures and the Transaction Procedures Order.

"Supplement" has the meaning set forth in Section 5.12.

"Support Agreement" has the meaning set forth in Section 2.9(a)(iv).

"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), sales, 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 (including any Governmental Authority) other than the Seller, the Purchaser or any of their respective Affiliates.

"Transaction Procedures" means the procedure governing the receipt and consideration of other offers for the China Purchased Assets in the event that the Seller enters into an Alternative Transaction as provided in the LOI and in this Agreement.

"Transaction Procedures Order" means the order entered by the Bankruptcy Court on October 31, 2019, approving the LOI and the Transaction Procedures [Dkt. No. 516].

"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 China Purchased Assets. In accordance with the provisions of this Agreement and the Sale Order, at and effective as of the Closing, the Seller will, and/or will cause its Subsidiaries 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 all of the properties and assets of the Seller relating to the China Plazomicin Business as of the Closing Date, free and clear of all Liens and Claims other than the Assumed Liabilities, including the following (all of the assets to be sold, conveyed, assigned, transferred or delivered to the Purchaser are referred to as the "China Purchased Assets"):

(a) [Intentionally Omitted.]

(b) [Intentionally Omitted.]

(c) China Intellectual Property. All Company Owned China Intellectual Property and all Company Used China Intellectual Property including: (i) any related Patents, Copyrights, and China Trademarks therein, (ii) all of the Seller's and Subsidiaries' China Territory Intellectual Property rights in connection with the Product (except for Commercially Available China IP and the Seller Corporate Names), (iii) the Company Owned China Intellectual Property set forth on Schedule 2.1(c); and (iv) any other Company Used China Intellectual Property set forth on Schedule 3.9(a) of the Seller Disclosure Schedule, but not including the Excluded IP (collectively, the "Acquired China Intellectual Property"); provided, that the Purchaser may, in its sole discretion, remove any Intellectual Property from the Acquired China Intellectual Property at any time prior to Closing by giving written notice thereof to Seller, and such removed Intellectual Property shall not be deemed to be Acquired China Intellectual Property or China Purchased Assets hereunder; provided, further, that any such removal of China Intellectual Property shall not, in and of itself, reduce the Purchase Price or any other consideration or obligation owed by Purchaser hereunder, or cause Seller to be in breach of its representations, warranties or covenants under this Agreement;

(d) [Intentionally Omitted.]

(e) Authorizations. All Governmental Authorizations pertaining solely to the China Territory held by the Seller, to the extent transferable, relating to any China Purchased Assets, Assumed Liabilities or the China Plazomicin Business, including all Regulatory Approvals, to the extent transferable, held by the Seller or any Subsidiary with respect to the Exploitation of the Product, and all rights under, interests in and deposits under the foregoing, and pending applications for any thereof, including the Governmental Authorizations and Regulatory Approvals listed on Schedule 3.6 of the Seller Disclosure Schedule.

(f) Correspondence. All correspondence with or to any Governmental Authority (including letters, minutes and official contact reports relating to any communications with any Governmental Authority) relating solely to any China Purchased Assets, Assumed Liabilities or the China Plazomicin Business that are within the Seller's control or accessible to the Seller, including any Regulatory Documentation;

(g) [Intentionally Omitted.]

(h) Books and Records. All information, books, records, files and papers, and information and records relating to any China Purchased Asset, Assumed Liability, or the China Plazomicin Business that are within the Seller's control or accessible to the Seller, including any original documentation relating solely to the Acquired China Intellectual Property, all records of disclosure under the Physician Payments Sunshine Act (42 U.S.C. §1320a-7h) and any other applicable Laws, in each case in any format;

(i) Claims. All of the Seller's claims, causes of action, defenses and rights of recovery or set-off, rights of subrogation and all other rights of any kind (each of the foregoing, a "Legal Right") against Third Parties relating to or arising from any of the China Purchased Assets or Assumed Liabilities (excluding all Legal Rights against any Third Party (including Cipla and Qilu Antibiotics Pharmaceutical Co.) relating to or arising from the "Auction", the "Cipla Sale Documents", the "License Agreement" (as such terms are defined in the Stipulation), and/or actions or inactions that any Third Party has taken, may take or will seek to take in the future with respect to the Seller or its assets during the course of the Chapter 11 Case);

(j) [Intentionally Omitted.]

Section 2.2 Excluded Assets. Notwithstanding the terms of Section 2.1, the Seller will retain and will not sell, convey, assign, transfer or deliver to the Purchaser, and the Purchaser will not purchase or acquire, and the China Purchased Assets do not include, any of the following assets described below (the "Excluded Assets"):

(a) Equity Interests. All equity interests in the Seller and its Subsidiaries;

(b) Employee Plans. All rights and interests related to the Employee Plans.

(c) Books and Records. All minute books and records, stock ledgers, Tax records and all other materials that the Seller is required by Law to retain or which relate

primarily to an Excluded Asset or Excluded Liability; provided, however, that the Seller shall provide the Purchaser with reasonable access to and copies of any such materials;

(d) Insurance. All insurance providing coverage for current or former directors and officers, and all claims and proceeds to the extent related to the Excluded Assets and Excluded Liabilities;

(e) Claims. All rights, claims or causes of action that the Seller may have against any Person with respect to any Excluded Assets or Excluded Liability;

(f) Chapter 5 Actions and Claims. All Chapter 5 Actions and Claims;

(g) Estate Claims. All estate claims of the Seller (except to the extent constituting China Purchased Assets pursuant to Section 2.1(i));

(h) Accounts and Deposits. All: (i) cash, cash equivalents, bank deposits, investment accounts, lockboxes, certificates of deposit, marketable securities, bank accounts, corporate credit cards and other similar cash items; and (ii) deposits, pre-payments, refunds, rebates, credits and similar items, including rent and utility deposits, prepaid rent and all other prepaid charges and expenses, in each case attributable to any period of time (or portion thereof) ending on or prior to the Closing Date;

(i) Prepaid Expenses. All prepaid charges and expenses of the Seller to the extent related to the Excluded Assets;

(j) Real Property. All rights in respect to any real property leased by the Seller.

(k) Tax Refunds. All rights to refunds, rebates, credits or similar benefits relating to Taxes and other governmental charges of whatever nature attributable to any period of time (or portion thereof) ending on or prior to the Closing Date;

(l) Equipment. All furniture, fixtures, equipment, and other similar personal property owned by the Seller, including all trade fixtures, supplies, computer equipment, applications, systems and motor vehicles owned by the Seller, including any substitutions or replacements thereof, which may occur within the ordinary course of business, made between the date of this Agreement and the Closing Date, regardless of where located;

(m) C-Scape Assets and AMP Assets. All of the C-Scape Assets and all of the AMP Assets;

(n) Excluded IP. Any Company Owned Intellectual Property (as defined in Cipla Plazomicin APA), Company Used Intellectual Property (as defined in Cipla Plazomicin APA) or other Intellectual Property rights, title and interest of any kind that (i) pertain only to territories outside the China Territory, (ii) pertain to more than one territory when at least one

territory is outside the China Territory and at least one territory is inside the China Territory, or (iii) is otherwise required for Cipla to Exploit the Product (as defined in the Cipla Plazomicin APA) in the territories outside the China Territory (collectively, the "Excluded IP");

(o) Cipla Assets. Any Assets sold to Cipla under the Cipla Plazomicin APA, other than those which are rescinded under the Sale Order;

(p) Non-Plazomicin Assets. All of the Seller's assets and properties not related to the China Plazomicin Business (including the Seller Corporate Names and related domain names and internet addresses, and all assets relating to the Seller's Tie2 program), subject to Section 5.17;

(q) Receivables. All accounts receivable and other receivables (together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto) arising from or relating to the China Purchased Assets or the China Plazomicin Business prior to the Closing, and all causes of action pertaining to the collection of the foregoing ("Receivables"); and

(r) This Agreement. All of the Seller's rights under this Agreement, the Support Agreement and all agreements ancillary to the foregoing (including payments comprising part of the Purchase Price).

Section 2.3 Assumed Liabilities. In accordance with the provisions of this Agreement and the Sale Order, at the Closing, the Purchaser will assume and pay or perform and discharge when due the following Liabilities of the Seller, in each case other than the Excluded Liabilities (the "Assumed Liabilities"):

(a) Post-Closing Liabilities. All Liabilities arising after the Closing under the the Governmental Authorizations included in the China Purchased Assets to the extent that such Liabilities are related to and are required to be performed during the periods after Closing;

(b) Transfer Taxes. All Liabilities for Transfer Taxes borne by the Purchaser pursuant to Section 9.1.

Section 2.4 Excluded Liabilities. Notwithstanding any other provision of this Agreement and the Support Agreement or any other writing to the contrary, the Purchaser is assuming only the Assumed Liabilities and except for the Assumed Liabilities, it is not assuming, nor shall it agree to pay, perform, be responsible for or discharge, any other Liability of the Seller or any Affiliate of the Seller or the Business including the China Plazomicin Business, of whatever nature, whether presently in existence or arising hereafter, and whether absolute, contingent, accrued, known or unknown (the "Excluded Liabilities"). Without limiting the generality of the prior sentence, Excluded Liabilities include the following:

(a) Operating Liabilities. All Liabilities which are not Assumed Liabilities to the extent relating to claims, events or conditions arising out of or relating in any way to the

operation of the Business or the ownership of the China Purchased Assets prior to the Closing, including as a result of the manufacture, design, use, operation, storage, acquisition, development or construction of a China Purchased Asset during the period prior to the Closing, and any Liabilities for warranty claims and product liability claims or similar claims, whether occurring prior to or post-Closing, and all Liabilities to customers relating to any Product sold by or on behalf of the Seller or any of its Subsidiary prior to the Closing;

(b) Taxes. Any Liability for Taxes of the Seller or attributable to the China Plazomicin Business or the China Purchased Assets for any period of time (or portion thereof) ending on or prior to the Closing Date (other than the Taxes expressly assumed by the Purchaser pursuant to Section 9.1 and the obligations of the Purchaser under Section 2.5), and any Liability for Taxes attributable to the Excluded Assets at any time;

(c) Employee Liabilities. All Liabilities and obligations arising out of, relating to or in connection with any Person employed by, or acting as an independent contractor on the property of or on behalf of, the Seller or its Affiliates at any time, including those related to payment, claims or benefits under workers' compensation Laws or any other Law;

(d) Employee Plans. All Liabilities related to the Employee Plans or the Service Providers.

(e) Costs. All Liabilities of the Seller for costs and expenses incurred in connection with this Agreement and the Support Agreement and the transactions contemplated hereby;

(f) Recalls. All Liabilities arising out of or relating to the voluntary or mandatory recall or market withdrawal of any Product or post-sale warning in respect of any Product sold by or on behalf of any of the Seller or its Affiliates prior to the Closing;

(g) Breach of Law. Liabilities arising out of or based on any violation, on or prior to the Closing Date, of any statute, law, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which Seller, its Affiliates, or the Business is subject, including any criminal acts by Seller or its Affiliates;

(h) Litigation Claims. Any litigation claims against the Seller, including any tort claims, breach of contract claims, employment claims and discrimination claims;

(i) Chargebacks. Liabilities arising from chargebacks or related charges by Seller or its Affiliates prior to Closing, and all Liabilities arising out of or relating to the return of any Product, or for any credits, rebates, refunds or other amounts payable in respect of any Product, sold by or on behalf of any of the Seller or its Affiliates or prior to the Closing

(j) Trade Accounts Payable. Any Liability for trade accounts payable;

(k) Environmental. Any Liabilities arising under any Environmental Law;

(l) Real Property. Any Liabilities arising from or relating to any lease agreement or real property interest of Seller or its Affiliates, or any other real estate that was otherwise used in connection with the Business;

(m) Transaction Expenses. Any Liabilities of Seller or its Affiliates arising under or relating to this Agreement and the Support Agreement, including any broker, finder, agent or other fees or commissions in connection with the transactions contemplated hereunder;

(n) Indebtedness. Any Liability in respect of any indebtedness for borrowed money of the Seller, including any Liability in respect of the Senior Secured Superpriority Debtor-in-Possession Loan and Security Agreement, dated as of April 15, 2019, by and among the Seller, and Silicon Valley Bank, as lender;

(o) BARDA Liabilities. To the extent permitted by Law, any Liability arising out of or relating to any Contracts with or grants made by the U.S. Biomedical Advanced Research and Development Authority, including any clawback of funds granted to the Seller;

(p) Excluded Assets. Any Liability arising out of or related to any Excluded Asset; and

(q) Other. Any Liabilities that are not Assumed Liabilities.

For the avoidance of doubt, all Liabilities arising out of, relating to or incurred in connection with the China Purchased Assets arising out of and related to period after the Closing shall be Liabilities of the Purchaser.

Section 2.5 Consideration.

(a) The consideration conveyed by Seller for the China Purchased Assets (the "Purchase Price") consists of: (i) cash in the amount of U.S. $4,500,000 at Closing (the "Closing Payment"); and (ii) assumption by the Purchaser of the Assumed Liabilities.

(b) The Purchaser shall pay all amounts due pursuant to this Section 2.5 in United States Dollars, in each case, by wire transfer of immediately available funds to the bank account(s) the Seller designates in writing from time to time.

(c) All references to "Seller" in this Section 2.5 shall be deemed to include any trustee, administrator, receiver, receiver-manager, interim receiver or monitor or similar officer or entity appointed in any respect of the Seller under Chapter 11 or Chapter 7 of the Bankruptcy Code and any Person appointed as a successor to the Seller pursuant to a confirmed Chapter 11 plan or otherwise.

(d) If the Purchaser is required by law in any jurisdiction within the China Territory or any other jurisdiction, to make any deduction or withholding on any amount of Taxes on account of any payment to be made to the Seller hereunder, then (a) the amount of

payment due from the Purchaser shall be increased to the extent necessary to ensure that, after making such deduction, the Seller receives and retains (free of any liability in respect of that deduction) a sum equal to the sum which would have been received and retained if no such deduction had been required, (b) the Purchaser shall timely and properly remit any such Taxes to the appropriate Governmental Authority, and (c) the Purchaser shall provide to the Seller, within ninety (90) days of receipt, all original Tax receipts or other government certifications from the Governmental Authority with respect to the Tax so withheld, or if a Tax receipt cannot legally be issued in the name of the Seller, then a schedule showing the amount of any Tax so withheld. For the avoidance of doubt, it is the intention and agreement of the Parties that the Seller shall receive cash proceeds in the amount of $4,500,000 (which includes the Deposit) upon consummation of the transaction. Any refund or credit of any such Tax paid or withheld by the Purchaser to the Seller shall be paid immediately to Purchaser.

Section 2.6 Deposit. The parties acknowledge that the Purchaser previously delivered a good faith cash deposit to the Seller, equal to U.S. $1,000,000 by wire transfer to US Bank, National Association, as master escrow agent. The parties also acknowledge that the Purchaser delivered to the master escrow agent an additional U.S. $1,000,000 upon execution of this Agreement for an aggregate deposit of U.S. $2,000,000 (the "Deposit") which shall be credited in full towards the Closing Payment.

Section 2.7 Allocation of Purchase Price.

(a) Within sixty (60) days after the Closing Date, the Purchaser shall deliver to the Seller, or any trustee appointed under the terms set forth in any bankruptcy plan confirmed by the Seller (as applicable), an allocation statement (the "Allocation Statement"), setting forth its calculation of the allocation of the sum of the Purchase Price and the Assumed Liabilities, as adjusted for payments made pursuant to ARTICLE 9, among the China Purchased Assets, in accordance with and solely for the purposes of section 1060 of the Code and any comparable provisions of state or local Law (the "Allocation"). The Seller will review the Allocation Statement and the Allocation, and, to the extent the Seller disagrees with the content of the Allocation Statement, the Seller will inform the Purchaser of such disagreement within thirty (30) days after receipt of the Allocation Statement. The Seller and the Purchaser will attempt in good faith to resolve any such disagreement. If the Seller and the Purchaser are unable to reach a good faith agreement on the content of the Allocation Statement within ninety (90) days of the Closing Date, the Seller and the Purchaser will each use its own allocation statement. For purposes of this Section 2.7, all actions of the Seller may be the obligations or rights of a liquidating trustee of the Seller's estate.

(b) If the Purchaser and the Seller agree on the Allocation Statement, the Purchaser and the Seller will report the Allocation of the Purchase Price in a manner consistent with the Allocation Statement and will act in accordance with the Allocation Statement in the preparation and filing of all Tax Returns and for all other Tax, financial accounting or other purposes, in any litigation, or otherwise, except as required by applicable Law.

(c) The Purchaser and the Seller will promptly inform one another of any challenge by any Governmental Authority to the Allocation made pursuant to this Section 2.7 and agree to consult with and keep each other informed with respect to the status of, and any discussion, proposal or submission with respect to, such challenge.

Section 2.8 Closing. The closing of the transactions contemplated by this Agreement and the Support Agreement (the "Closing") will take place at the offices of Hogan Lovells US LLP, 4085 Campbell Avenue, Suite 100, Menlo Park, California 94025, subject to the satisfaction or waiver of the conditions set forth in Section 6.1 and Section 6.2 hereto, no later than January 10, 2020, starting at 11:59 p.m., prevailing Eastern 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." All actions to be taken and all documents to be executed and delivered by the parties hereto at the Closing shall be deemed to have been taken and executed simultaneously, and no action shall be deemed taken nor any document executed and delivered until all have been taken, executed and delivered.

Section 2.9 Closing Deliveries.

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

(i) the Sale Order;

(ii) written proof in a form reasonably satisfactory to Purchaser (which may be the Sale Order in substantially the form set forth in Exhibit E) that that certain agreement between the Seller and Cipla USA Inc. ("Cipla") dated June 20, 2019 (the "Cipla Plazomicin APA"), and any and all related documents or instructions, have been terminated, rescinded or abandoned in all respects to the extent that they relate to the China Purchased Assets;

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

(iv) an assignment and assumption agreement in the form of Exhibit B (the "Assignment and Assumption Agreement") executed by the Seller.

(v) 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);

(vi) an intellectual property assignment agreement in the form of Exhibit C (the "China Intellectual Property Assignment") executed by the Seller;

(vii) the License and Mutual Support Agreement by and between Cipla and the Purchaser in the form of Exhibit D (the "Support Agreement") executed by Cipla; and

(viii) 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 and the Support Agreement (which shall not prejudice the rights of the Seller or subject the Seller to any additional Liabilities).

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

(i) the Closing Payment by wire transfer of immediately available funds to an account designated by the Seller prior to the Closing, less the amount of the Deposit and any interest thereon at the rate specified, if any, in the master escrow agreement with US Bank, National Association (the "Escrow Agreement");

(ii) the Assignment and Assumption Agreement executed by the Purchaser;

(iii) evidence of the ability to satisfy the Assumed Liabilities (other than those to be satisfied in cash on the Closing Date) to the extent necessary to satisfy the Bankruptcy Code, or as required by order of the Bankruptcy Court;

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

(v) 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

(vi) the China Intellectual Property Assignment executed by the Purchaser;

(vii) [Intentionally Omitted]; and

(viii) such other instruments of assumption as the Seller reasonably requests for the purpose of consummating the transactions contemplated by this Agreement and the Support Agreement (which shall not prejudice the rights of the Purchaser or subject the Purchaser to any Liabilities beyond the Assumed Liabilities).

Section 2.10 Consents. Notwithstanding any other provision of this Agreement and the Support Agreement, this Agreement does not effectuate or operate as an assignment of any Contract to the extent that such Contract is not assignable under the Bankruptcy Code without the consent of the other party or parties thereto, and the consent of such other party has not been given or received, as applicable, as of the Closing. As to any China Purchased Asset, including any Governmental Authorization, the Seller will use commercially reasonable efforts to obtain as promptly as practicable prior to the Closing (and, prior to the entry by the Bankruptcy Court of an order confirming a Chapter 11 plan or dismissing the Chapter 11 Case, and subject to the availability of funds for such purpose, use commercially reasonable efforts to continue seeking

after the Closing, if consent is not obtained prior to the Closing), the consent of the other parties to transfer such China Purchased Asset to the Purchaser or, if required, novation thereof to the Purchaser or, alternatively, written confirmation from such parties reasonably satisfactory to the Seller and the Purchaser that such consent is not required. In no event, however, will the Seller be obligated to pay any money to any Person or to offer or grant financial or other accommodations to any Person in connection with obtaining any consent, waiver, confirmation, novation or approval with respect to any such Contract. If any required consent, waiver, confirmation, novation or approval is not obtained with respect to any such China Purchased Asset prior to the Closing, then to the extent permitted by applicable Law, the Seller and the Purchaser will cooperate to establish an agency type or other similar arrangement reasonably satisfactory to the Seller and the Purchaser under which the Purchaser would obtain (including by means of subcontracting, sublicensing or subleasing arrangement), to the extent practicable, all rights, and assume the corresponding Assumed Liabilities thereunder for the period of time that the Purchaser shall receive such rights, or under which the Seller would enforce, for the benefit of the Purchaser, with the Purchaser assuming and agreeing to pay the Seller's Liabilities and expenses (other than Excluded Liabilities) for the period of time that the Purchaser shall receive such benefits, any and all rights of the Seller against a Third Party to any such China Purchased Asset. In such event: (a) the Seller will promptly pay to the Purchaser when received all moneys relating to the period on or after the Closing Date received by it under any China Purchased Asset not transferred pursuant to this Section 2.10; and (b) for the period of time set forth in clause (a) the Purchaser will promptly pay, perform or discharge when due any Assumed Liabilities arising thereunder after the Closing Date but not transferred to the Purchaser pursuant to this Section 2.10. The failure by the Purchaser or the Seller to obtain any required consent, waiver, confirmation, novation or approval with respect to any Contract will not relieve any party from its obligation to consummate at the Closing the transactions contemplated by this Agreement and the Support Agreement. The Purchaser acknowledges that no adjustment to the Purchase Price will be made for any China Purchased Assets that are not assigned and that the Purchaser will have no claim against the Seller after the Closing in respect of any such unassigned China Purchased Assets.

Section 2.11 Seller Acknowledgments. The Seller has advised the Purchaser, and the Purchaser hereby acknowledges that anything to the contrary notwithstanding:

(a) on July 23, 2019 (the "Cipla Closing Date"), pursuant to the Cipla Plazomicin APA and the Bankruptcy Court's order approving the Cipla Plazomicin APA (the "Cipla Plazomicin Sale Order"), the Seller transferred to Cipla the global rights and assets with respect to the Plazomicin Business (as defined in the Cipla Plazomicin APA) (including the China Purchased Assets (other than the China Trademarks)) (the "Cipla Plazomicin Transaction"), subject to the right of the Seller to grant a license of the China License Rights to a third party (that would be assumed by Cipla);

(b) the Seller has no operations, limited resources (financial or otherwise), and no employees; and

(c) the Seller intends to exit bankruptcy and dissolve as soon as practicable in 2020.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE SELLER

The Seller represents and warrants to the Purchaser as follows, except as (i) disclosed in the Seller SEC Documents available prior to the date hereof or (ii) set forth on the disclosure schedule delivered by the Seller to the Purchaser concurrently with the execution and delivery of this Agreement and the Support Agreement and dated as of the date of this Agreement (the "Seller Disclosure Schedule"):

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 the China Plazomicin Business as presently conducted. The Seller is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, except for those jurisdictions where failure to be so qualified would not reasonably be expected to have, a Material Adverse Effect. The Seller has heretofore delivered to the Purchaser true and complete copies of the certificate of incorporation, bylaws or other material governing documents of the Seller and its Subsidiaries as currently in effect. The Seller does not have any Subsidiaries other than Achaogen UK Ltd. and Achaogen Ireland Limited.

Section 3.2 Authority and Enforceability. Subject only to the entry of the Transaction Procedures Order and the Sale Order, the Seller has all requisite corporate power, authority and capacity to execute and deliver this Agreement and the Support Agreement and the other agreements contemplated hereunder and to perform its obligations under this Agreement and the Support Agreement and such other agreements. Subject only to the entry of the Transaction Procedures Order and the Sale Order, the execution, delivery and performance of this Agreement and the Support Agreement and the other agreements contemplated hereunder and the consummation of the transactions contemplated by this Agreement and the Support 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 and the Support Agreement. Assuming the due authorization, execution and delivery of this Agreement and the Support 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 Transaction Procedures Order and the Sale Order, neither the execution, delivery and performance of this Agreement and the Support Agreement by the Seller, nor the consummation by the Seller of the transactions contemplated by this Agreement and the Support Agreement, will: (a) conflict with or violate the organizational documents of Seller or any of its Subsidiaries; (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, approval, or waiver under, any material Contract to which the Seller or its Subsidiaries are a party or to which the China Purchased Assets are bound in any case with or without notice or lapse of time or both (other than needed consents for transfer of licenses to Company Used China Intellectual Property); (c) violate any Law or Judgment applicable to the Seller or its Subsidiaries, the China Plazomicin Business or the China Purchased Assets; (d) result in the imposition of any Lien or other encumbrance on any of the assets of the Seller; or (e) require the Seller to obtain any Governmental Authorization or otherwise require any consent, approval or notice to any Governmental Authority.

Section 3.4 Title to Assets; Liens. Except as set forth on Schedule 3.4 of the Seller Disclosure Schedule, subject to the entry of the Sale Order, at Closing, the Purchaser will be vested with good and marketable title to all of the China Purchased Assets, which China Purchased Assets shall be conveyed free and clear of any Liens or Claims by order of the Bankruptcy Court. No Subsidiary of the Seller owns or has any interest in the China Purchased Assets.

Section 3.5 Claims, Litigation and Disputes. Except as set forth on Schedule 3.5 of the Seller Disclosure Schedule, there are currently no pending or, to the Knowledge of the Seller, threatened in writing, lawsuits, administrative or regulatory proceedings, actions, orders, arbitration or reviews, or formal complaints or investigations or inquiries, including grand jury subpoenas by any Person, concerning or against the Seller or any of its Subsidiaries, or to which the China Plazomicin Business or any of the China Purchased Assets may be subject.

Section 3.6 Compliance With Laws; Governmental Authorizations. Each of the Seller and its Subsidiaries are in compliance with all Laws, Orders, ordinances, decrees, rules or regulations of any Governmental Authority applicable to the China Plazomicin Business or the China Purchased Assets, except such noncompliance which has not had, and would not reasonably be expected to have, a Material Adverse Effect. Schedule 3.6 of the Seller Disclosure Schedule sets forth all material Governmental Authorizations held by the Seller. The Seller has in effect the Governmental Authorizations necessary to conduct the China Plazomicin Business in all material respects as it is currently being conducted in accordance with the Laws of any Governmental Authority having jurisdiction over its properties or activities, except for any such failure to obtain a Governmental Authorization that has not had, and would not reasonably be expected to have, a Material Adverse Effect (it being understood that it shall be the sole and exclusive obligation of the Purchaser to obtain any Governmental Authorizations necessary for future operations, provided that the Seller shall provide reasonable assistance regarding the transfer of any Governmental Authorizations held by the Seller in accordance with Section 5.15). The Seller has not received any written notice from a Governmental Authority of any proceeding, inquiry, investigation, violation or alleged violation of any Laws or Orders related to the China Plazomicin Business or the China Purchased Assets or of any pending or threatened withdrawal, suspension or termination of a Governmental Authorization. All material fees and charges due and payable with respect to the Governmental Authorizations held by the Seller have been made in full.

Section 3.7 Environmental Matters. To the Seller's Knowledge, the operation of the Business by the Seller is being conducted in material compliance with all applicable Environmental Laws and under all environmental, health and safety Governmental Authorizations and other authorizations required under all applicable Environmental Laws to operate the Business as it is currently being operated. All such Governmental Authorizations or other authorizations are in full force and effect. No material penalty has been assessed and no investigation or review is pending or, to the Knowledge of the Seller, threatened in writing by any Governmental Authority with respect to any alleged failure by the Seller to comply with any applicable Environmental Law or to have any material environmental, health or safety Governmental Authorization or other authorization required under any applicable Environmental Law in connection with the operation of the Business. To the Seller's Knowledge, there are no past or present facts, circumstances or conditions, including the Release of any Materials of Environmental Concern that could reasonably be expected to result in a material claim under applicable Environmental Laws against the Seller.

Section 3.8 Contracts. The Seller is not a party to any Contracts that is material to the operation of the China Plazomicin Business.

Section 3.9 China Intellectual Property.

(a) Schedule 3.9(a) of the Seller Disclosure Schedule sets forth a true and complete list of all of the Company Owned China Intellectual Property, Company Used China Intellectual Property and China IP Agreements, including a true and complete list of all: (i) Patents and Patent applications, including serial numbers for each filed application and Patent numbers for each issued Patent, included in the foregoing; (ii) China Trademark registrations, applications and material unregistered China Trademarks, included in the foregoing; (iii) domain names, included in the foregoing; and (iv) Copyright registrations, applications and material unregistered Copyrights, included in the foregoing. The Seller has provided to the Purchaser true and complete copies of all China IP Agreements that are included in the Acquired China Intellectual Property, together with all amendments and material written notices relating to the foregoing. Each China IP Agreement included in the Company Owned China Intellectual Property, Company Used China Intellectual Property and Acquired China Intellectual Property is valid and binding on the Seller and, to Seller's Knowledge, the other parties thereto in accordance with its terms and is in full force and effect. Neither the Seller nor, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of breach or default of or any intention to terminate, any China IP Agreement included in the Acquired China Intellectual Property. No Subsidiary of the Seller owns or has any interest in the Acquired China Intellectual Property or any other China Intellectual Property relating to the China Plazomicin Business.

(b) Except for United Stated federal research grants and customary funding arrangements with Governmental Authorities, no funding, facility or personnel of any Governmental Authority were used, directly or indirectly, to develop or create, in whole or in

part, the Product or any Company Owned China Intellectual Property or Company Used China Intellectual Property.

(c) Except as set forth in Schedule 3.9(c) in the Seller Disclosure Schedule, the Seller solely and exclusively owns all Company Owned China Intellectual Property and is properly licensed under or has the valid and enforceable right to use all Company Used China Intellectual Property, free and clear of all Liens and Claims, and none of such rights will be affected by the consummation of the transactions contemplated by this Agreement and the Support Agreement (subject to any necessary consents for the transfer of any Company Used China Intellectual Property). The Seller is neither party to or bound by any Contract that impairs its ability to use, sell, transfer, assign, license or convey any of the Company Owned China Intellectual Property. There are no inquiries, investigations, Claims, opposition, interference, or cancellation proceedings challenging or contesting any of the Company Owned China Intellectual Property, or to the Seller's Knowledge, the Company Used China Intellectual Property, and the Seller has not received written notice from any Third Party: (i) alleging infringement by the Seller of China Intellectual Property rights of any Person; or (ii) challenging or threatening to challenge the Seller's right, title, or interest with respect to its ownership, use of, or continued use or right to preclude others from using any Acquired China Intellectual Property as currently used, or the validity, enforceability or registrability of any such China Intellectual Property. To the Seller's Knowledge, the Seller has not infringed, misappropriated or otherwise violated any China Intellectual Property of any Person, and neither the conduct of the China Plazomicin Business nor the Acquired China Intellectual Property (or any use thereof) infringes, misappropriates or otherwise violates the rights of any Person including any China Intellectual Property owned or purported to be owned by any Third Party.

(d) To Seller's Knowledge, no Third Party is purporting to or infringing, misappropriating, diluting, or otherwise violating any Acquired China Intellectual Property. The Seller has not brought or threatened in writing a Claim against any Person: (i) alleging infringement, misappropriation or other violation of Acquired China Intellectual Property; or (ii) challenging any Person's ownership or use of, or the validity, enforceability or registrability of any Acquired China Intellectual Property. The Seller has not licensed or transferred ownership of, or, except in the ordinary course of business and as would not adversely affect such China Intellectual Property, granted or authorized the retention of any license or right under or with respect to, or authorized the retention of any right with respect to ownership of, any Acquired China Intellectual Property. No Third Party has brought or threatened in writing a Claim against the Seller: (i) challenging any Person's ownership or use of, or the validity, enforceability or registrability of any Acquired China Intellectual Property; or (ii) alleging infringement of any Third Party's China Intellectual Property relating to Exploitation of the Product and/or the China Plazomicin Business by the Seller. The Seller is not aware of any Third Party China Intellectual Property that would be infringed by operation of the China Plazomicin Business, including Exploitation of the Product.

(e) Except for commercially available China Intellectual Property, including commercially available software and other China Intellectual Property licensed to the Seller

under so-called "shrink-wrap" licenses (collectively, "Commercially Available China IP") and the Excluded IP that will be licensed to the Purchaser by Cipla pursuant to the Support Agreement, the Company Owned China Intellectual Property and the Company Used China Intellectual Property is the only Intellectual Property used by Seller in or necessary for the operation of the China Plazomicin Business by the Seller, including all licenses relating to aminoglycocide necessary for the Exploitation of the Product. The Company Owned China Intellectual Property and, to the Seller's Knowledge, the Company Used China Intellectual Property: (i) has been duly maintained, including the payment of all required fees, and all necessary documents, recordations and certificates have been filed with the relevant governmental entity for the purposes of prosecuting, perfecting and maintaining and such China Intellectual Property; (ii) to the Knowledge of the Seller, is subsisting, in full force and effect and there are no orders, materials, information, facts or circumstances that would render any such China Intellectual Property invalid, cancelled, abandoned or unenforceable or that would materially affect any pending application or renewal for any such China Intellectual Property; (iii) has not been cancelled, expired or abandoned or adjudged invalid or unenforceable; and (iv) to the Knowledge of the Seller, is valid and enforceable (except for pending Patent applications in various jurisdictions, which by their nature as applications are not yet enforceable). To the Seller's Knowledge and based on reasonable search and inquiry, no China Intellectual Property owned or Controlled by a Third Party prevents the Seller from operation of the China Plazomicin Business, including the Exploitation of the Product.

(f) The Seller has taken commercially reasonable measures to protect its rights, title and interests in and to all Company Owned China Intellectual Property and Company Used China Intellectual Property, and to maintain, protect, and preserve the security, confidentiality, value and ownership of all material non-public Company Owned China Intellectual Property and Company Used China Intellectual Property relating to the China Plazomicin Business, including by implementing commercially reasonable security measures and requiring any Person to whom the Seller provides access to such non-public Company Owned China Intellectual Property to execute and deliver to the Seller a valid and enforceable (except as enforceability may be limited by: (i) Laws of general application relating to bankruptcy, insolvency and the relief of debtors; and (ii) Laws governing specific performance, injunctive relief and other equitable remedies) confidentiality agreement in customary form.

(g) All current and, to Seller's Knowledge, former directors, officers, and employees of Seller who are or were involved in, or who have participated in or contributed to, the conception, development, creation, reduction to practice, improvement to or modification of the Product or Acquired China Intellectual Property or any other China Intellectual Property used by Seller or held for use in the China Plazomicin Business have executed and delivered to the Seller a written agreement that (i) includes customary confidentiality terms and (ii) assigns to the Seller any China Intellectual Property rights conceived, developed, created, or reduced to practice by such director, officer or employee in the course of services performed for the Seller by such director, officer or employee. No current or, to Seller's Knowledge, former director, officer or employee of Seller retains any China Intellectual Property rights to the Acquired China Intellectual Property.

(h) The consummation of the transactions contemplated hereunder will not result in the loss or impairment of or payment of any additional amounts with respect to, nor require the consent of any other Person in respect of, Purchaser's right to own, use or hold for use any Acquired China Intellectual Property as owned, used or held for use in the conduct of the China Plazomicin Business as currently conducted.

Section 3.10 Taxes. Except as set forth in Schedule 3.10 in the Seller Disclosure Schedule, (a) the Seller has filed or has caused to be filed on a timely basis all Tax Returns that are or were required to be filed with respect to the China Purchased Assets; (b) all such Tax Returns accurately reflect all Taxes and other Liabilities required to be reflected thereon; (c) all Taxes due and payable by the Seller with respect to the China Purchased Assets, whether or not shown on a Tax Return, have been paid in full, other than those Taxes which have been stayed by the filing of the Petition; (d) the Seller has not requested or consented to extend to a date later than the Closing Date the time in which any Tax may be assessed or collected by any Governmental Authority with respect to the China Purchased Assets; (e) no deficiency or proposed adjustment which has not been settled or otherwise resolved for any amount of Tax has been proposed, asserted or assessed by any Governmental Authority against the Seller with respect to the China Purchased Assets and there is no action, suit, taxing authority proceeding or audit now in progress, pending or, to the Knowledge of the Seller, threatened in writing against or relating to the Seller with respect thereto; (f) there are no pending audits by any taxing authority in connection with the China Purchased Assets; (g) the Seller is not a party to, or bound by, any Tax indemnity, Tax-sharing, or Tax allocation agreement that relates to the China Purchased Assets (other than as set forth in this Agreement); and (h) there are no Liens for Taxes (other than for current Taxes not yet due and payable or Liens for Taxes filed as a result of the Chapter 11 Case) upon the China Purchased Assets.

Section 3.11 Action. To the Knowledge of the Seller no action or omission by Cipla or by Qilu Antibiotics Pharmaceutical Co. has occurred since the Cipla Closing Date that would make any of the representations and warranties set forth in this Article III with respect to the China Purchased Assets inaccurate.

Section 3.12 Data Room. The data room furnished to the Purchaser by the Seller and accessed at https://achaogen.securevdr.com/ (the "Data Room") included and shall include, for at least one (1) year after Closing, all Proprietary Data (as that term is defined in the Support Agreement), and the Purchaser shall have unfettered access to the Data Room for at least one (1) year after the Closing.

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 Hong Kong 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 the Support Agreement and to perform its obligations under this Agreement and the Support Agreement. The execution, delivery and performance of this Agreement and the Support 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 and the Support Agreement. Assuming the due authorization, execution and delivery of this Agreement and the Support 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 and the Support Agreement, nor the consummation by the Purchaser of the transactions contemplated by this Agreement and the Support 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 material 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, subject only to the entry of the Sale Order.

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 and the Support 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 and the Support 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 and the Support Agreement.

Section 4.6 No Knowledge of Breach or Inaccuracy. To the Purchaser's knowledge, as of the date of this Agreement, there is no 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 China Plazomicin Business and the China Purchased Assets as it has deemed appropriate, which investigation, review and analysis was done by the Purchaser and its representatives. 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, including the related portions of the Disclosure Letter). The Purchaser acknowledges and agrees that: (a) 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 Business, the China Plazomicin Business, the China Purchased Assets, the Assumed Liabilities or any other matter relating to the transactions contemplated by this Agreement, and the Purchaser is purchasing the China Purchased Assets from the Seller "as is" and "where is"; 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 Business, the China Plazomicin Business, 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.

ARTICLE 5
COVENANTS

Section 5.1 Access and Investigation. Until the Closing, subject to existing confidentiality agreements and upon reasonable advance notice from the Purchaser, the Seller will allow the Purchaser and its representatives reasonable access during normal business hours and without unreasonable interference with the operation of the China Plazomicin Business to such materials and information about the China Plazomicin Business in the possession of the Seller as the Purchaser may reasonably request.

Section 5.2 Operation of the China Plazomicin Business.

(a) Until the Closing, except: (i) as required by Law, including in connection with the Chapter 11 Case (it being understood that no provision of this Section 5.2 will require the Seller to make any payment to any of its creditors with respect to any amount owed to such creditors on the Petition Date or which would otherwise violate the Bankruptcy Code); (ii) as expressly set forth in this Agreement and the Support Agreement or Section 5.2 of the Seller Disclosure Schedule; or (iii) as otherwise consented to by the Purchaser (which consent will not be unreasonably withheld, conditioned or delayed), the Seller will operate, and will conduct the China Plazomicin Business in the ordinary course of business in all material respects and use its

commercially reasonable efforts to (1) preserve intact the China Plazomicin Business's relationships with its suppliers, customers and others doing business with it, subject to the limitation that any payments necessary for the forgoing shall be provided for and within the amounts in the Budget approved from time to time; (2) shall continue to maintain all advertising material, all documentation that would constitute acquired Regulatory Documentation and all books and records on a basis consistent with past practice; and shall (3) continue to make all necessary or appropriate filings and payments with and to Governmental Authorities in connection with the China Plazomicin Business and the China Intellectual Property in a timely manner, and maintain in effect all existing Regulatory Approvals and Governmental Authorizations required for the ongoing operation of the China Plazomicin Business as presently conducted.

(b) Until the Closing, except: (i) as required by Law, including in connection with the Chapter 11 Case (it being understood that no provision of this Section 5.2 will require the Seller to make any payment to any of its creditors with respect to any amount owed to such creditors on the Petition Date or which would otherwise violate the Bankruptcy Code); (ii) as expressly set forth in this Agreement and the Support Agreement or Schedule 5.2 of the Seller Disclosure Schedule; (iii) as otherwise consented to by the Purchaser (which consent will not be unreasonably withheld, conditioned or delayed); or (iv) pursuant to any orders approving debtor in possession financing and/or use of cash collateral, or any KEIP/KERP orders or other orders affecting employees, entered by the Bankruptcy Court in the Chapter 11 Case, the Seller will not:

(i) amend or terminate any material Contract that could reasonably be expected to have an adverse impact on the China Purchased Assets or delay the Closing;

(ii) amend the certificate of incorporation, by-laws or other governing documents of the Seller or any Subsidiary;

(iii) waive or release any material right or claim with respect to the China Purchased Assets;

(iv) sell, lease, transfer, license or otherwise dispose of, or permit any Lien on any portion of, the China Purchased Assets, other than in respect of inventory in the ordinary course of business;

(v) incur or suffer to exist any indebtedness for borrowed money except any such indebtedness that is an Excluded Liability;

(vi) acquire, by merger or consolidation with, or by purchase of all or a substantial portion of the assets or stock of, or by any other manner, any business or entity, make any investment in any Person;

(vii) transfer or dispose of, abandon, lapse, allow to lapse, sell, assign, subject to any Lien, grant any right or license to, any Acquired China Intellectual Property, or disclose (except as necessary in the conduct of the China Plazomicin

Business consistent with past practice) to any Person, other than Purchaser or its representatives, any trade secret, formula, process or know-how that is not a matter of public knowledge prior to such disclosure;

(viii) grant any refunds, credits, rebates or other allowances to any supplier, vendor, customer or distributor related to the China Plazomicin Business except in the ordinary course of business;

(ix) settle, or offer or propose to settle, any material claim or Action arising out or relating to the China Plazomicin Business or relating to the transactions contemplated by this Agreement and the Support Agreement;

(x) fail to pay any Tax on or before the date when it becomes due and payable; or

(xi) agree in writing to take any of the foregoing actions.

Section 5.3 Employee Matters. The Purchaser shall have the right, but not the obligation, to offer employment on an at-will basis or otherwise engage any of the Service Providers, at any time on or after the Closing Date, on such terms and conditions established by the Purchaser in its sole discretion. In no event shall the Purchaser be obligated to hire any engage any Service Providers for any period following the Closing. The Purchaser shall have no obligation to continue or assume any Employee Plan of the Seller or to offer any Employee Plan to Service Providers.

Section 5.4 Consents and Filings; Commercially Reasonable Efforts.

(a) Subject to the terms and conditions of this Agreement and the Support 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 the Support 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, waiver approvals or authorizations of, declarations, filings or registrations with, or notices to all other Third Parties, that are necessary or advisable in connection with the authorization, execution and delivery of this Agreement and the Support Agreement and the consummation of the transactions contemplated by this Agreement and the Support Agreement, including the transfer and/or assignment of the China Purchased Assets to Purchaser as contemplated herein, in either case, in form and substance reasonably satisfactory to Purchaser.

(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 the Support 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 and the Support 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 Support Agreement and the transactions contemplated by this Agreement and the Support Agreement.

Section 5.5 Supplements to Disclosure Schedules. The Seller may, from time to time up to seven (7) Business Days prior to the Closing (unless a shorter period is approved by the Purchaser), by written notice to the Purchaser, supplement the Seller Disclosure Schedule or add a schedule to the Seller Disclosure Schedule (such added schedule to be deemed a supplement hereunder) in order to disclose any matter which, if occurring prior to the date of this Agreement, would have been required to be set forth or described in the Seller Disclosure Schedule or to correct any inaccuracy or breach in the representations and warranties made by the Seller in this Agreement; provided, that any such supplement shall give Purchaser an unconditional right to terminate this Agreement under Section 7.1(a)(ii) within seven (7) Business Days of the receipt by the Purchaser of any supplement to the Seller Disclosure Schedules. Subject to this Section 5.5, none of such supplements to the Seller Disclosure Schedule will be deemed to cure the representations and warranties to which such matters relate with respect to the satisfaction of the conditions set forth in Section 6.1(a) or otherwise affect any other term or condition contained in this Agreement and the Support Agreement; provided, however, that, unless the Purchaser delivers a notice of termination with respect to such matter as contemplated by Section 7.1(a)(ii) within seven (7) Business Days of the receipt by the Purchaser of any supplement to the Seller Disclosure Schedule pursuant to this Section 5.5, the Purchaser will be deemed to have waived any and all rights to terminate this Agreement pursuant to Section 7.1(a)(ii) or otherwise arising out of or relating to the contents of such supplement and the resulting breach or breaches of the representations and warranties and the Purchaser will be deemed to have accepted the contents of such supplement for all purposes of this Agreement and the Support Agreement; and provided, further, that from and after the date the Sale Order has been entered, the Seller will have no Liability pursuant to this Agreement and the Support Agreement for any matters arising out of or relating to any of the matters disclosed on the Seller Disclosure Schedule, as supplemented or amended by the Seller prior to the date the Sale Order has been entered.

Section 5.6 Confidentiality. Effective upon the Closing Date, all confidentiality agreements between the Seller and the Purchaser concerning the Seller, the Business (including the China Plazomicin Business) or the transactions contemplated hereby shall terminate except as set forth in this Section 5.6 (other than with respect to the Excluded Assets and Excluded Liabilities). Following the Closing, the Seller will, and will instruct its directors, officers,

Service Providers and advisors to, hold in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Law, all Confidential Information, except to the extent that such Confidential Information: (a) must be disclosed in connection with the obligations of the Seller pursuant to this Agreement and the Support Agreement; (b) can be shown to have been in the public domain through no fault of the Seller; (c) becomes a matter of public record as a result of the Chapter 11 Case and filings made with the Bankruptcy Court with respect thereto; or (d) was later lawfully acquired by the Seller from sources other than those related to its prior ownership of the Business. Notwithstanding the foregoing, in no event will this Section 5.6 limit or otherwise restrict the right of the Seller to disclose such Confidential Information: (i) to its and its Affiliates' respective directors, officers, Service Providers, agents and advisors to the extent reasonably required to facilitate any delivery or performance of this Agreement and the Support Agreement; (ii) to any Governmental Authority or arbitrator to the extent reasonably required in connection with any Proceeding relating to the enforcement of this Agreement and the Support Agreement; or (iii) as otherwise required by applicable Law.

Section 5.7 Public Announcements. Prior to the Closing, neither the Purchaser nor the Seller will issue any press release or make any other public announcement relating to this Agreement and the Support 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. 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 5.8 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 and the Support Agreement; or (b) compliance with such Laws described in the foregoing clause (a) is not necessary or appropriate under the circumstances.

Section 5.9 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) [Intentionally Omitted.]

(c) The Seller and the Purchaser shall use their respective commercially reasonable efforts to consummate the Closing as promptly as practicable after entry of the Sale Order, but in no event later than 11:59 p.m. prevailing Eastern Time on or before January 10, 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 the Support 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 the Support Agreement and demonstrating that the Purchaser is a good faith buyer entitled to the protections of sections 363(m) and (n) 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 Transaction 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 at the Seller's expense 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, Purchaser has received the protections afforded under Sections 363(m) and (n) of the Bankruptcy Code, 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 Transaction Procedures Order and the Sale Order after the entry of the Sale 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 and the Support 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 China 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; (iv) Cipla; and (v) 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 5.9 and to consummate the transactions contemplated hereby.

Section 5.10 Bankruptcy Court Approval. The Purchaser and the Seller acknowledge that, under the Bankruptcy Code, the sale of China Purchased Assets is subject to approval of the Bankruptcy Court. The Purchaser and the Seller acknowledge that to obtain such approval pursuant to the Sale Order, the Seller must demonstrate that it has taken reasonable steps in the exercise of its business judgment to obtain the highest and best value for the China Purchased Assets, including giving such notice of the transactions contemplated by this Agreement and the Support Agreement to creditors and other interested parties as may be ordered by the Bankruptcy Court, providing information about the China Purchased Assets to prospective offerors in accordance with the provisions of this Agreement, entertaining higher or better offers from

qualified offerors in accordance with the provisions of this Agreement and, if necessary, proposing to the Bankruptcy Court a sale of the China Purchased Assets to another offeror that has entered into an Alternative Transaction in accordance with the provisions of this Agreement. The Seller acknowledges and agrees that Purchaser is entitled to receive the termination fee and expense reimbursement on the terms and conditions provided in Section 7.2(d) of this Agreement.

Section 5.11 No Solicitation.

(a) Subject to the terms of Section 5.11(c), Seller agrees that from the date of this Agreement until the earlier to occur of the termination of this Agreement pursuant to Article VII and the Closing, neither it nor any of its Subsidiaries shall, nor shall it nor any of its Subsidiaries authorize or permit any of the officers, directors, employees, investment bankers, attorneys, accountants, representatives, consultants or other agents retained by it ("Representatives") or any of its Subsidiaries to directly or indirectly: (i) solicit, initiate, encourage, induce or knowingly facilitate the communication, making, submission or announcement of any Alternative Transaction or take any action that could reasonably be expected to lead to an Alternative Transaction; (ii) furnish any non-public information relating to the China Purchased Assets to any Person in connection with or in response to any proposal or inquiry that could lead to an Alternative Transaction; (iii) engage in discussions or negotiations with any Person with respect to any proposal or inquiry that could lead to an Alternative Transaction (other than informing such Persons of the terms of this Section 5.11); (iv) approve, endorse or recommend any proposal regarding an Alternative Transaction; (v) execute or enter into any letter of intent or similar document or any Contract contemplating or otherwise relating to any Alternative Transaction; or (vi) grant any waiver or release under any confidentiality, standstill or similar agreement (other than to the Purchaser); provided, however, that, notwithstanding anything contained in this Section 5.11(a), Seller may furnish nonpublic information and may enter into a confidentiality or nondisclosure agreement regarding the China Purchased Assets to, and enter into discussions or negotiations with, any Person in response to a bona fide written proposal regarding an Alternative Transaction if: (A) Seller is not in material breach of this Section 5.11; (B) Seller concludes, in good faith, based on the advice of outside legal counsel, that the failure to take such action is reasonably likely to result in a breach of the fiduciary duties of the Seller under applicable Law; (C) at least two (2) Business Days prior to furnishing any such nonpublic information to, or entering into discussions with, such Person, Seller gives Purchaser written notice of the identity of such Person and of Seller's intention to furnish nonpublic information to, or enter into discussions with, such Person; and (D) at least two (2) Business Days prior to furnishing any such nonpublic information to such Person, Seller furnishes such nonpublic information to Purchaser (to the extent such nonpublic information has not been previously furnished by Seller to Purchaser). Without limiting the generality of the foregoing, each party acknowledges and agrees that, in the event any Representative of such party (whether or not such Representative is purporting to act on behalf of such party) takes any action that, if taken by such party, would constitute a breach of this Section 5.11 by such party, the taking of such action by such Representative shall be deemed to constitute a breach of this Section 5.11 by such party for purposes of this Agreement.

(b) If the Seller or any of its Representatives receives a proposal or inquiry regarding an Alternative Transaction at any time pre-Closing, then the Seller shall promptly and in no event later than the latter of 24 hours and the next Business Day after the Seller becomes aware of such proposal or inquiry advise the Purchaser orally and in writing of such proposal or inquiry (including the identity of the Person making or submitting such proposal or inquiry and the material terms thereof). Such party shall keep Purchaser fully informed on a current basis with respect to the status and terms of any such proposal or inquiry and any modification or proposed modification thereto.

(c) From the date of this Agreement until the earlier to occur of the termination of this Agreement pursuant to Article VII and the Closing, except as set forth in this Section 5.11(c), Seller shall not enter into (or permit any Subsidiary to enter into) any agreement in principle, letter of intent, term sheet, acquisition agreement, merger agreement, option agreement, joint venture agreement, partnership agreement or any other Contract relating to any Alternative Transaction. Notwithstanding the foregoing, at any time prior to the Closing, Seller may enter into (or permit any Subsidiary to enter into) such a Contract, if: (i) Seller promptly notifies the Purchaser, in writing, at least two (2) Business Days (the "Notice Period") before entering into (or causing a Subsidiary to enter into) an Alternative Transaction Contract, of its intention to take such action, which notice shall state expressly that Seller has received a proposal for an Alternative Transaction and that Seller intends to enter into an Alternative Transaction; (ii) Seller attaches to such notice the most current version of the proposed Alternative Transaction Contract (which version shall be updated on a prompt basis) and the identity of the potential Successful Offeror; (iii) Seller shall, and shall cause its Subsidiaries to, and shall use its commercially reasonable efforts to cause its and its Subsidiaries' Representatives to, during the Notice Period, negotiate with the Purchaser in good faith to make such adjustments in the terms and conditions of this Agreement so that such Alternative Transaction ceases to constitute an Alternative Transaction which Seller is required to negotiate or accept under applicable law, if the Purchaser, in its discretion, agrees to make such adjustments (it being agreed that in the event that, after commencement of the Notice Period, there is any material revision to the terms of an Alternative Transaction, including, any revision in price, the Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remains in the Notice Period subsequent to the time Seller notifies the Purchaser of any such material revision); and (iv) Seller determines in good faith, after consultation with its independent financial advisor, if any, and its outside legal counsel, that such Alternative Transaction continues to require Seller's negotiation or acceptance under applicable law after taking into account any adjustments made by the Purchaser during the Notice Period in the terms and conditions of this Agreement.

(d) In the event that Purchaser adjusts the terms and conditions of this Agreement in response to an Alternative Transaction proposal and Purchaser becomes the Successful Offeror, Purchaser shall be entitled to reimbursement of such reasonable, additional professional fees, costs and expenses incurred by Purchaser at Closing not to exceed $100,000; provided, however, such amount shall be taking into consideration when assessing the competing offers.

(e) Each party shall immediately cease and cause to be terminated any existing discussions, negotiations and communications with any Person that relate to any Alternative Transaction as of the date of this Agreement and cause the destruction or return by such Person (or its agents or advisors) of any nonpublic information provided to such Person (or its agents or advisors).

Section 5.12 Transaction Supplement. In the event that the Debtor enters into an Alternative Transaction, the Seller will promptly file with the Bankruptcy Court a supplement (the "Supplement") that will inform the Bankruptcy Court of that event. The Supplement will identify, among other things: (i) the Successful Offeror as the proposed purchaser of the China Purchased Assets; (ii) the amount and form of consideration to be paid by the Successful Offeror for the China Purchased Assets; and (iii) the Assumed Liabilities to be assumed by the Successful Offeror. In addition, the Seller will attach to the Supplement: (a) the proposed or revised proposed Sale Order, with any revisions necessary to reflect the Alternative Transaction, approving the sale to the Successful Offeror; (b) a copy of the Alternative Transaction for the Successful Bidder and all related documents for the sale of the China Purchased Assets; and (c) any additional information or documentation relevant to the Successful Bidder. The Seller will file the Supplement on the docket for the Chapter 11 Case as promptly as is reasonably practicable prior to the Sale Hearing, and may give notice of such filing to parties in interest in the Chapter 11 Case, but will not be required to serve the same on any persons or entities other than the Purchaser and the Official Committee of Unsecured Creditor.

Section 5.13 Payments Received. The Seller, on the one hand, and the Purchaser, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which belongs to the other and will account to the other for all such receipts. Without limiting the generality of the foregoing, the Seller (prior to the entry by the Bankruptcy Court of an order confirming a Chapter 11 plan or dismissing the Chapter 11 Case) agrees to cooperate with the Purchaser, at the sole cost of the Purchaser, to inform parties owing payments to the China Plazomicin Business after the Closing that constitute China Purchased Assets (the "Business Payments") of the accounts of the Purchaser that should receive such Business Payments following the Closing and otherwise reasonably assist the Purchaser to ensure that such Business Payments are made to such accounts. The Seller, on the one hand, and the Purchaser, on the other hand, hereby agrees that any payments mistakenly received by it or its respective Affiliates shall be promptly transferred and delivered back to the other party or its Affiliate, as applicable.

Section 5.14 Cessation of Use of Acquired China Intellectual Property. For the avoidance of doubt and notwithstanding anything in this Agreement and the Support Agreement to the contrary: (a) the Seller acknowledges and agrees that, from and after the Closing, the Seller shall not have any right, title or interest in or to any Acquired China Intellectual Property; and (b) from and after the Closing, the Seller shall cease and discontinue any and all use or other Exploitation of any and all Acquired China Intellectual Property.

Section 5.15 Transfer of Governmental Authorizations and China IP Registrations. From and after the date hereof, the Seller, on the one hand (subject to the availability of funds for such purpose), and the Purchaser, on the other hand, shall, and shall cause their respective Affiliates to, reasonably cooperate to transfer to the Purchaser as of the Closing (or as soon as reasonably practicable thereafter) all Company China IP Registrations and Governmental Authorizations included in the China Purchased Assets, including any that is necessary for the import, manufacture, distribution, marketing and sale by the Purchaser of the products of the China Plazomicin Business under applicable Law, in each case, to the extent such Company China IP Registrations and Governmental Authorizations are transferable, and to enable the continued maintenance of any Company China IP Registrations; provided that: (a) any reasonable, documented out-of-pocket costs associated with such cooperation by the Seller after the Closing (including the *pro rata* portion of the costs of any Service Provider directly providing such cooperation after the Closing, as determined by the amount of time dedicated by such Service Provider to such cooperation as a proportion of all time dedicated by such Service Provider to the Seller) shall be borne by the Purchaser; and (b) nothing in this Section 5.15 shall be deemed to require the Seller to remain a debtor in the Chapter 11 Case or maintain its corporate existence for any period of time; provided that the foregoing shall not be deemed to require the Seller to take any action in violation of the DIP Loan Agreement.

Section 5.16 Further Actions.

(a) The Seller shall use its commercially reasonable efforts to assist the Purchaser in negotiating and entering into a new supply agreement with Hovione or identifying an alternative supplier.

(b) The Purchaser shall pay the cost of maintaining the Data Room following the Closing as contemplated by Section 3.12.

(c) [Intentionally Omitted.]

(d) [Intentionally Omitted.]

(e) [Intentionally Omitted.]

(f) 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 and the Support Agreement.

Section 5.17 Use of Seller Corporate Names. Notwithstanding anything to the contrary in this Agreement and the Support Agreement, the Purchaser and any successor or permitted assignee under Section 10.5 shall have a non-exclusive, non-transferable, royalty free, fully paid-up license to use the Seller Corporate Names within the China Territory.

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 and the Support Agreement is subject to the Purchaser becoming the Successful Offeror and to the satisfaction, on or before the Closing Date, of 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 and the Support 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 and the Support Agreement;

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

(e) No Material Adverse Effect. There shall not have occurred any event or occurrence (regardless of whether such event or occurrence constitutes a breach of any representation, warranty, or covenant of the Seller under this Agreement and the Support Agreement) after the date of this Agreement which has had, or would reasonably be expected to have, a Material Adverse Effect; and

(f) Transaction Documents. The Seller must have delivered or caused to be delivered each document under Section 2.9(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 and the Support Agreement, is subject to the Purchaser becoming the Successful Offeror and 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 and the Support 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 and the Support Agreement;

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

(e) Transaction Documents. The Purchaser must have delivered or caused to be delivered to the Seller each document that Section 2.9(b) requires it to deliver; and

ARTICLE 7
TERMINATION

Section 7.1 Termination Events.

(a) This Agreement may, by written notice given before the Closing, be terminated (other than those provisions which, by their terms, survive termination, including Section 7.2(d)):

(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 (A) 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 conditions 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; (B) Purchaser elects to terminate this Agreement as provided in Section 5.5; or (C) any other condition set forth in Section 6.1 remains unsatisfied 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 (A) 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; or (B) any other condition set forth in Section 6.2 remains unsatisfied 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 and the Support 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;

(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; or

(b) This Agreement shall terminate automatically (other than those provisions which, by their terms, survive termination including Section 7.2(d)) in the event, and only at the time that, in compliance with Section 5.11, Seller enters into a binding, written agreement governing an Alternative Transaction and Purchaser elects in writing not to submit a further offer to purchase the China Purchased Assets or to top an offer presented by a party for an Alternative Transaction.

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 5.7 (*Public Announcements*), ARTICLE 10 (*General Provisions*) (except for Section 10.11 (*Specific Performance*)) and this Section 7.2 shall remain in full force and survive any termination of this Agreement. Notwithstanding the foregoing, but except as contemplated in Section 7.2(b) below (in which case the forfeiture of the Deposit as liquidated damages shall be the sole and exclusive remedy), 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) Following entry by the Bankruptcy Court of the Sale Order authorizing the sale to the Purchaser as the Successful Offeror, the Deposit shall be forfeited to the Seller as liquidated damages 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; provided, however, that the Deposit shall also be so forfeited if this Agreement is terminated pursuant to Section 7.1(a)(iii) prior to the entry of such Sale Order.

(c) Subject to clause ((b)) above, the Seller shall return the Deposit (with interest thereon at the rate specified, if any, in the Escrow Agreement) to the Purchaser within five (5) Business Days (i) following entry by the Bankruptcy Court of an order authorizing the sale of the China Purchased Assets to a Person other than the Purchaser entered into an Alternative Transaction, in which case clause (d) below shall apply, or (ii) following termination by Purchaser under Section 7.1(b).

(d) In the event that this Agreement is terminated pursuant to Section 7.1(b) in connection with an Alternative Transaction, then Seller shall return the Deposit to Purchaser ;and shall pay to Purchaser (A) an expense reimbursement in an amount equal to the reasonable costs and expenses incurred by Purchaser in connection with the transactions contemplated hereby (including the LOI, the Support Agreement and this Agreement); provided, that such expense reimbursement shall in no event exceed $225,000 plus (B) a termination fee in the amount of $135,000.

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 and the Support 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. Nothing in this Section 8.1 shall limit the ability of Purchaser to seek or obtain a return of the Deposit in accordance with this Agreement or the Escrow Agreement.

ARTICLE 9
TAX MATTERS

Section 9.1 Transfer Taxes. The Purchaser will pay in a timely manner all applicable sales, use, ad valorem, property, transfer, conveyance, documentary, recording, notarial, value added, excise, registration, stamp, gross receipts and similar Taxes and fees ("Transfer Taxes"),

arising out of or in connection with or attributable to the transactions effected pursuant to this Agreement and the Support Agreement, including expenses and fees relating to registering Acquired China Intellectual Property in the name of the Purchaser or its designee, regardless of whether such Transfer Taxes, expenses and fees are imposed by Law on the Purchaser, the China Purchased Assets or the Seller. Any Tax Returns that must be filed in connection with any Transfer Taxes will be prepared by the party that customarily has primary responsibility for filing such Tax Returns pursuant to the applicable Law under and according to which the respective Tax Returns are due to be filed; provided, however, that the preparing party will deliver such Tax Returns for the other party's review and approval (not to be unreasonably withheld, conditioned or delayed) at least ten (10) Business Days prior to the applicable due date. The parties will cooperate with each other in the provision of any information or preparation of any documentation that may be necessary or useful for obtaining any available mitigation, reduction or exemption from any such Transfer Taxes, or otherwise to comply with its obligations with respect to Transfer Taxes.

Section 9.2 Proration items. Personal property Taxes, real property Taxes and other similar Taxes (the "Proration Items") with respect to the China Purchased Assets for any taxable period beginning before the Closing Date and ending after the Closing Date shall be prorated on a per diem basis between the Purchaser and the Seller as of the Closing Date. The amount of the Proration Items attributable to the Seller shall be equal to the amount of Tax for the period multiplied by a fraction, the numerator of which shall be the number of days from the beginning of the period through and including the Closing Date and the denominator of which shall be the entire number of days in the period. For purposes of allocating all other Taxes ("Non-Proration Items") with respect to the China Purchased Assets for any Straddle Period, such Taxes shall be allocated between the pre-Closing portion of such Straddle Period and the post-Closing portion of such Straddle Period based on an interim closing of the books at the end of the day on the Closing Date. The Seller shall bear any Non-Proration Items allocable to the pre-Closing portion of any Straddle Period and any other unpaid Taxes with respect to the China Purchased Assets for Tax periods ending on or prior to the Closing Date (such Non-Proration Items and other pre-Closing Date Taxes, "Other Seller Taxes"). The amount of all such Proration Items attributable to the Seller and the amount of any Other Seller Taxes shall be estimated as of the Closing Date and deducted from the Purchase Price at the Closing; provided, however that final payments with respect to the Proration Items or Other Seller Taxes that are not able to be calculated as of the Closing Date shall be calculated and the Seller (or any successor thereof or any estate) shall pay over any additional amount as soon as practicable after the Closing Date, but no later than five (5) Business Days after determination of such additional amounts.

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 or by email with confirmation of receipt (or, the first Business Day following such transmission if the

date of transmission is not a Business Day); 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**:

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

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

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

following the Closing, with a copy (which will not constitute notice) to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attn: Arik Preis, Esq.
Email: apreis@akingump.com

Morrison & Foerster LLP
250 West 55th Street
New York, NY 10019
Attn: Todd Goren, Esq.
Email: tgoren@mofo.com

If to the **Purchaser**:

Xuanzhu (HK) Biopharmaceutical Limited
FLAT/RM 4312
Office Tower, Convention Plaza
1 Harbour Road, Wanchai

Hong Kong
Attn: Choi Yiau Chong, Director
Email: cyc@sihuanpharm.com

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

Pryor Cashman LLP
7 Times Square
New York, New York 10036-6569
Attn: H. Lawrence Remmel, Esq.
Email: LRemmel@pryorcashman.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 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. Subject to Section 5.5: (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 granting such waiver or extension; (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 and the Support

Agreement that are to be delivered at or prior to 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 Person 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 China 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 China 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 (which includes 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 Person appointed as a successor to the Seller pursuant to a confirmed Chapter 11 plan), 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. The Seller Disclosure Schedule is arranged in sections and paragraphs corresponding to the numbered and lettered sections and paragraphs of ARTICLE 3. The disclosure in any section or paragraph of the Seller Disclosure Schedule, and those in any amendment or supplement thereto, shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered or lettered section or paragraph of ARTICLE 3, except to the extent

that (a) such information is cross-referenced in another part of the Seller Disclosure Schedule; or (b) it is reasonably apparent on the face of the disclosure (without reference to any document referred to therein or any independent knowledge on the part of the reader regarding the matter disclosed) that such information qualifies another representation or warranty of the Seller in ARTICLE 3. The information contained in the Seller Disclosure Schedule is intended only to qualify the representations and warranties of the Seller contained in this Agreement and shall not be deemed to expand in any way the scope or effect of any such representations or warranties. Certain of the information contained in the Seller Disclosure Schedule may not be required to be disclosed pursuant to this Agreement and be included solely for informational purposes. The inclusion of any information in the Seller Disclosure Schedule shall not be construed as an admission or acknowledgement, in and of itself, that such information is material to the Business or the Seller or any of its Subsidiaries. No information contained in the Seller Disclosure Schedule shall be deemed to be an admission of any liability or obligation by the Seller to any third party of any matter whatsoever, including of any violation of Law or breach of any 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. Notwithstanding anything contained in this Section 10.11, the liquidated damages set forth in Section 7.2(b) shall be the sole and exclusive remedy of the Seller if the Purchaser fails to consummate the transactions contemplated under this Agreement and the Support Agreement as the result of a breach by the Purchaser of any of its obligations hereunder.

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.

Section 10.15 Preservation of Records; Post-Closing Access and Cooperation.

(a) For a period equal to the lesser of: (i) eighteen (18) months after the Closing Date; and (ii) the closing of the Chapter 11 Case by the Bankruptcy Court (the "Post-Closing Access and Support Period"), the Purchaser shall preserve and retain all books and records in its possession that are China Purchased Assets (including any documents relating to any governmental or non-governmental claims, actions, suits, proceedings or investigations) relating to the China Purchased Assets prior to the Closing Date.

(b) During the Post-Closing Access and Support Period, subject to existing confidentiality agreements and upon reasonable advance notice from the Seller (or its designee or successor), the Purchaser shall provide reasonable cooperation to the Seller and its representatives (or its designee or successors, which may include the trustee of a liquidating trust) for the purpose of winding-up its affairs and finalizing the administration of the Chapter 11 Case, including its books and records with respect to the China Purchased Assets prior to the Closing Date, at the sole cost of the Seller. During the Post-Closing Access and Support Period, the Purchaser shall cooperate with, and shall permit and use its reasonable commercial efforts to cause, its personnel to cooperate with the Seller (or, its designee or successors) after the Closing and upon receipt of prior written notice, in furnishing information, testimony and other assistance with respect to the China Purchased Assets for periods prior to the Closing Date as reasonably required in connection with any action or proceeding relating to the Chapter 11 Case; provided, that such access does not unreasonably interfere with the Purchaser's business or operations.

[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: Nicholas K. Campbell
Title: Chief Restructuring Officer

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

PURCHASER:

XUANZHU (HK) BIOPHARMACEUTICAL LIMITED

By: _____
Name: CHOI Yiau Chong
Title: Director

[Signature Page to APA]

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 Xuanzhu (HK) Biopharmaceutical Limited, a Hong Kong private limited company ("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 Asset 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 China Purchased Assets, free and clear of all liens, pledges, mortgages, hypothecations and other encumbrances other than the Assumed Liabilities (the "Sale");

WHEREAS, the Bankruptcy Court entered the Sale Order on _____, 2019, approving the Sale of the China 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 China 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 China Purchased Assets, free and clear of all liens, pledges, mortgages, hypothecations and other encumbrances other than the Assumed Liabilities, 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:

XUANZHU (HK) BIOPHARMACEUTICAL LIMITED

By: _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This **ASSIGNMENT AND ASSUMPTION AGREEMENT**, dated as of _____, 2019 (this "Agreement"), among Achaogen, Inc., as assignor (the "Assignor"), a Delaware corporation, and Xuanzhu (HK) Biopharmaceutical Limited, a Hong Kong private limited company, in its capacity as assignee (the "Purchaser"), of the Assumed Liabilities. Assignor and Assignee are each a "Party" hereto and are collectively referred to herein as the "Parties". Capitalized terms not otherwise defined herein shall have the meaning given to such terms in the Purchase Agreement (as defined below).

WHEREAS, the Assignor and Purchaser are parties to the Asset Purchase Agreement, dated as of [_____], 2019 (the "Purchase Agreement"), pursuant to which the Assignor has agreed to sell, assign, transfer, convey and deliver to the Purchaser all of the Seller's right, title and interest in and to the China Purchased Assets and assign to the Purchaser the Assumed Liabilities and the Purchaser has agreed to purchase, acquire and accept all of the Assignor's right, title and interest in the China Purchased Assets and assume the Assumed Liabilities from and after the Closing Date; and

WHEREAS, this Agreement is being provided to evidence the Assignor's assignment to the Purchaser, and the Purchaser's assumption, of the Assumed Liabilities, pursuant to the terms and conditions of the Purchase Agreement from and after the Closing Date.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows.

1. Assignment and Assumption of Liabilities. The Assignor hereby assigns, transfers and sets over unto the Purchaser all of the Assumed Liabilities and the Purchaser hereby assumes the Assumed Liabilities pursuant to the terms and conditions of the Purchase Agreement and Sale Order, including, without limitation, liability for the due performance of all the terms, covenants and conditions of the Assignor pursuant to, arising under or related to the Assumed Liabilities from and after the Closing on the Closing Date. Notwithstanding anything herein to the contrary, this Agreement shall not be deemed to be an assignment by the Assignor to the Purchaser or an assumption by the Purchaser of any of the Excluded Liabilities or Excluded Assets.

2. Headings. The section headings used herein are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

3. Governing Law; Jurisdiction; Waiver of Jury Trial. Section 10.12 of the Purchase Agreement is hereby incorporated by reference into this Agreement and shall apply as if fully set forth herein mutatis mutandis.

4. Severability; Conflicts. 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. In the event of any conflict between the terms and provisions of this Agreement and the Purchase Agreement, the terms and provisions of the Purchase Agreement shall govern and control.

5. Successors and Assigns. This Agreement shall bind the Parties, their legal representatives, and their permitted successors and assigns.

6. Entire Agreement. This Agreement and the Purchase Agreement constitute the entire agreement between the Parties. No amendment or modification of this Agreement shall be binding or valid unless set forth in writing and executed by the Parties.

7. Counterparts. 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 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed on the date first above written.

ASSIGNOR:

ACHAOGEN, INC.

By: _____
Name:
Title:

PURCHASER:

XUANZHU (HK) BIOPHARMACEUTICAL LIMITED

By: _____
Name:
Title:

EXHIBIT C

FORM OF CHINA INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

THIS CHINA INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this "Assignment"), effective as of _____, 2019 (the "Effective Date"), is by and between Xuanzhu (HK) Biopharmaceutical Limited, a Hong Kong private limited company ("Assignee") and Achaogen, Inc., a Delaware corporation ("Assignor").

W I T N E S E T H :

WHEREAS, pursuant to the terms and subject to the conditions of the Asset Purchase Agreement, dated [•], 2019 (the "Asset Purchase Agreement"), between Assignee and Assignor, Assignor has agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, among other things, the China Purchased Assets; and

WHEREAS, pursuant to the Asset Purchase Agreement, Assignor desires to sell, assign, convey, deliver and transfer the entire right, title and interest in, to and under all of the China Intellectual Property included in the China Purchased Assets, including the China Intellectual Property set forth on Exhibit A hereto (the "China Assigned IP"), to Assignee and Assignee desires to acquire the entire right, title and interest in, to and under such China Assigned IP.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and as more fully set forth in the Asset Purchase Agreement and subject to the terms and conditions therein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement.

2. Assignor hereby irrevocably sells, assigns, conveys, delivers and transfers to Assignee the entire right, title and interest in, to and under (i) the China Assigned IP, together with all goodwill associated therewith, in each case to be held and enjoyed by Assignee for its own use and enjoyment as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment and sale had not been made, including the right to claim priority under the International Convention for the Protection of Industrial Property and under any other international arrangement to which the United States of America is or hereafter becomes a signatory (but not, for the avoidance of doubt, any Excluded Liability), (ii) all rights to sue, claim and recover for past, present and future infringement, misappropriation, dilution or other violation of any China Assigned IP, and (iii) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing.

3. Concurrent with the execution of this Assignment, Assignor shall transfer any and all domain names and social media accounts included in the China Assigned IP from Assignor's account to Assignee's account (such that Assignee will be listed as the registrant and/or owner of such domain names and social media accounts in the applicable registrar) and

shall deliver to Assignee all necessary Auth-Info codes and all other required passwords necessary to unlock and control such domain names and social media accounts.

4. Upon the reasonable request by Assignee, Assignor shall execute all documents and take all actions as may be necessary or desirable to enable Assignee to prosecute, perfect, enforce, defend, register and/or record its right, title and interest in, to and under the Assigned IP, in each case, without further compensation but at the expense of Assignee. In the event that Assignor fails to execute any such document or take any such action as set forth in the preceding sentence, Assignor hereby designates Assignee as Assignor's agent, and hereby grants to Assignee a power of attorney with full power of substitution, which power of attorney shall be deemed coupled with an interest, for the purpose of executing such documents or taking such actions.

5. Assignor hereby authorizes and requests the officials of the China Territory, to record and register Assignee as assignee and owner of the entire right, title and interest in, to and under the China Assigned IP.

6. As soon as practicable after execution of this Assignment, Assignor shall, at the cost and expense of the Assignee, use diligent efforts to support transition of the assigned intellectual property from Assignor to Assignee through legal counsel at Cooley LLP, who the Assignor has engaged for acquisition and maintenance of the China Assigned IP, and instruct its legal counsel to cooperate as appropriate with the Assignee in furtherance of the activities contemplated in the Asset Purchase Agreement and this Assignment. Assignor shall also use diligent effort to instruct any inventors and other employees who are under control of the Assignor to cooperate with the Assignee in furtherance of the activities contemplated in the Asset Purchase Agreement and this Assignment, including as appropriate any signatures, oaths, or declarations Assignee may request to file, prosecute, record, or transfer of the China Assigned IP and to cooperate with and assist the Assignee in any litigation or other legal proceedings involving the China Assigned IP.

7. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the choice of law principles thereof. This Assignment is binding upon, and inures to the benefit of, the parties hereto and their respective legal representatives, successors and assigns. No waiver, modification or change of any provision of this Assignment shall be valid unless in writing and signed by the party against whom such claimed waiver, modification or change is sought to be enforced.

8. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have caused this Assignment to be duly executed and delivered as of the Effective Date.

AS ASSIGNOR:

ACHAOGEN, INC.

By: _____
Name:
Title:

STATE OF)
) ss
COUNTY OF)

On the ____ day of _____, ____, before me personally came _____, who is personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and did depose and say to me that he or she executed the same in his or her capacity as _____ of _____, the entity described in and which executed the foregoing instrument, and that he or she executed and delivered said instrument pursuant to authority given by the board of directors of such entity (or other applicable authority of such entity).

_____
Notary Public

(PLACE STAMP AND SEAL ABOVE)

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have caused this Assignment to be duly executed and delivered as of the Effective Date.

AS ASSIGNEE:

XUANZHU (HK) BIOPHARMACEUTICAL LIMITED

By: _____
Name:
Title:

STATE OF)
) ss
COUNTY OF)

On the ____ day of _____, ____, before me personally came _____, who is personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and did depose and say to me that he or she executed the same in his or her capacity as _____ of _____, the entity described in and which executed the foregoing instrument, and that he or she executed and delivered said instrument pursuant to authority given by the board of directors of such entity (or other applicable authority of such entity).

_____
Notary Public

(PLACE STAMP AND SEAL ABOVE)

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EXHIBIT A

CHINA ASSIGNED IP

I. PATENTS

Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
China	200880117193.1 11/21/2008	101868472A	ZL 200880117193.1 05/29/2013	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
Hong Kong	11101563.2 11/21/2008	1147499	HK1147499 01/26/2018	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered (via EP)
Taiwan	097145246 11/21/2008	200927146	I425947 02/11/2014	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201310142186.X 11/21/2008	103360440A	ZL 201310142186.X 08/31/2016	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201080031078.X 05/14/2010	102481307A	ZL 201080031078.X 08/24/2016	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Hong Kong	12111406.1 05/14/2010	1170663	1170663 11/17/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Macau	J/002404(132) 05/14/2010		J/002404 01/24/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
China	201610573991.1 05/14/2010	106188175A		TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Pending

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Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
Hong Kong	17105427.3 05/14/2010	1231886A		TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Pending
Taiwan	107136676 10/18/2018	201922233 6/16/2019		SYNTHESIS OF ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc	Pending
Taiwan	106126088 8/2/2017	201815826 5/1/2018		PLAZOMICIN ANTIBODIES AND METHODS OF USE		Filed

II. TRADEMARKS

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
WIPO Q1 wo 23	Design Only  RN: 1441507	International Registered Last Status Received: Registered April 15, 2019 Registered: November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[1]
WIPO Q1 wo 24	Design Only	International Registered Last Status Received: Registered March 26, 2019	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries:

[1] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 RN: 1442826	Registered: November 20, 2018 Expiration Date: November 20, 2028		Madrid Protocol: China[2]
WIPO Q1 wo 25	ZEMDRI and Design  RN: 1442745	International Registered Last Status Received: Registered November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[3]
WIPO Q1 wo 26	ZEMDRI and Design  RN: 1443260	International Registered Last Status Received: Registered April 2, 2019 Registered: November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[4]
China Q1 cn 55	XEMDRO  RN: 22301161 AN: 22301161	China Registered Last Status Received: Registered Filed: December 19, 2016 Registered: January 28, 2018 Expiration Date: January 27, 2028	(Translation) (Int'l Class: 05) antibiotics	爱超根有限公司 加利福尼亚州 94080 南旧金山 7000 沿海大楼 371 室, United States of America ACHAOGEN, INC. 7000 SHORELINE COURT, SUITE 371, SOUTH SAN FRANCISCO, CALIFORNIA

[2] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.
[3] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.
[4] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
				94080, UNITED STATES OF AMERICA, United States of America
China Q1 cn 56	ZEMDRI  RN: 22301162 AN: 22301162	China Registered Last Status Received: Registered Filed: December 19, 2016 Registered: January 28, 2018 Expiration Date: January 27, 2028	(Translation) (Int'l Class: 05) antibiotics	愛超根有限公司 加利福尼亚州 94080 南旧金山 7000 沿海大楼 371 室, United States of America ACHAOGEN, INC. 7000 SHORELINE COURT, SUITE 371, SOUTH SAN FRANCISCO, CALIFORNIA 94080, UNITED STATES OF AMERICA, United States of America
Hong Kong Q1 hk 58	ZEMDRI and Design  AN: 304338135	Hong Kong Published Last Status Received: Published December 8, 2017 Filed: November 16, 2017	(Int'l Class: 05) Antibiotics	Achaogen, Inc. 1 Tower Place, Suite 300, South San Francisco, California 94080, United States of America
Taiwan Q1 tw 68	Logo design (in black-and-white)  AN: 107075189	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 69	Logo design (in color)	Taiwan Other Last Status Received: Unknown	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 AN: 107075187	Filed: November 21, 2018		爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 70	ZEMDRI  AN: 106072193	Taiwan Other Filed: November 16, 2017	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 1 Tower Place, Suite 300, South San Francisco, California 94080 U.S.A, United States of America
Taiwan Q1 tw 71	ZEMDRI  AN: 107075184	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 72	ZEMDRI	Taiwan Other Last Status Received: Unknown	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 AN: 107075186	Filed: November 21, 2018		United States of America 爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 73	ZEMDRI  RN: 01919327 AN: 106072193	Taiwan Registered Last Status Received: Registered Filed: November 16, 2017 Registered: June 16, 2018 Expiration Date: June 15, 2028	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America

III. COPYRIGHTS

No registered copyrights.

IV. REGISTERED DOMAINS

Domain Name

enrezovi.tw
zemdri.tw
enrezovi.cn
xemdro.cn
xemdro.tw
zemdri.cn

Exhibit D

Support Agreement

LICENSE AND MUTUAL SUPPORT AGREEMENT

This License and Mutual Support Agreement (the "Agreement"), effective as of the 29th day of December, 2019 (the "Effective Date"), is made between Cipla USA, Inc., a Delaware corporation ("Cipla"), and Xuanzhu (HK) Biopharmaceutical Limited, a Hong Kong private limited company ("Xuanzhu").

WHEREAS, in connection with that certain Chapter 11 bankruptcy case filed in the United States Bankruptcy Court for the District of Delaware ("Court"), captioned *In re Achaogen, Inc.* and bearing Case No. 19-10844 (BLS), Achaogen, Inc. ("Achaogen") has filed a motion for approval of that certain Stipulation and Agreed Order Amending the Cipla Sale Documents (the "Cipla Stipulation") dated December 29, 2019 (capitalized terms used but not defined in this Agreement shall have the meanings ascribed to such terms in the Cipla Stipulation) pursuant to which (i) the China Purchased Assets Rescission will be effectuated, and (ii) Xuanzhu will acquire the China Purchased Assets pursuant to the Xuanzhu APA, in each case subject to the Conditions;

WHEREAS, prior to the effectiveness of the China Purchased Assets Rescission and Xuanzhu's acquisition of the China Purchased Assets, Cipla acquired the Global Rights pursuant to the Cipla APA;

WHEREAS, as a result of the China Purchased Assets Rescission, the Global Rights do not include the China Purchased Assets; and

WHEREAS, in order to provide for coordinated action relating to certain aspects of the manufacture, regulation, marketing and sale of the aminoglycoside antibiotic plazomicin sulfate ("Plazomicin"), Cipla and Xuanzhu have agreed to enter into this Agreement.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, Cipla and Xuanzhu hereby agree as follows:

1. Mutual Support.

1.1 Description of Support. Xuanzhu hereby agrees to provide to Cipla, and Cipla hereby specifically commissions Xuanzhu to provide to Cipla, the support more specifically described in Exhibit A attached hereto and incorporated herein by reference (the "Xuanzhu Support"). Cipla hereby agrees to provide to Xuanzhu, and Xuanzhu hereby specifically commissions Cipla to provide to Xuanzhu, the support more specifically described in Exhibit B attached hereto and incorporated herein by reference (the "Cipla Support" and together with the Xuanzhu Support, the "Support").

1.2 Not An Agent. Neither party is appointed as the other party's agent for any purpose whatsoever hereunder. Neither party will hold itself out as the agent of the other or otherwise purport to bind the other party to any third-party obligations. This Agreement shall not create a partnership or joint venture between the parties hereto.

1.3 Confidentiality. (A) For purposes of this Agreement, "Confidential Information" means any technical data, marketing, organization, business or financial or other information provided by the Discloser in the course of providing Support hereunder, (ii) the party disclosing Confidential Information shall be referred to as the "Discloser," (iii) the party to whom Confidential Information is disclosed shall be referred to as the "Recipient," and (iv) Achaogen shall also be considered a "Discloser" with respect to any Confidential Information that it has disclosed or discloses in the future to Xuanzhu, for which Xuanzhu shall be subject to the obligations hereunder as a "Recipient" thereof. Except as expressly set forth below, Recipient shall hold in confidence, and shall not use for any purpose except as expressly set forth in this Agreement, any and all Confidential Information disclosed to Recipient under this Agreement. Confidential Information shall not include information which:

(a) can be shown, by competent written evidence, that at the time of disclosure is in the public domain or thereafter becomes part of the public domain by publication or otherwise, other than by breach of this Agreement by Recipient;

(b) can be shown, by competent written evidence, to have been in Recipient's possession at the time of disclosure by Discloser and was not acquired, directly or indirectly, from Discloser; or

(c) can be shown, by competent written evidence, to have been developed by Recipient independently of the information provided by Discloser.

In addition, Confidential Information shall not include information received from a third party other than Achaogen, provided such third party had a lawful right to disclose such information to Recipient without restriction.

Notwithstanding Recipient's obligations hereunder, Recipient shall also be free to (i) disclose Confidential Information as required by regulatory authorities in any jurisdiction where Recipient has applied for or obtained marketing approval for Plazomicin, provided always that (a) Recipient has determined that such disclosure is necessary or appropriate in furtherance of Recipient's efforts to Commercialize Plazomicin in such jurisdiction, and (b) reasonable prior written notice is provided to Discloser and Recipient in good faith considers any recommendations Discloser may make in respect of the scope of such disclosure, and (ii) disclose Confidential Information that is required to be disclosed to a third party pursuant to any applicable law or regulation or the order of any court or tribunal of competent jurisdiction, so long as (a) reasonable prior written notice is provided to Discloser and Recipient in good faith cooperates with Discloser, at Discloser's sole cost and expense, in respect of Discloser's efforts to obtain a protective order governing, or otherwise limit the scope of the required disclosure of, the Confidential Information, and (b) such disclosure is limited to Confidential Information required to be disclosed in order to comply with such law, regulation or order, after taking into account the results of the Discloser's efforts to obtain a protective order or other limitation on the scope of the required disclosure.

(B) Recipient shall use the Confidential Information solely in furtherance of its Commercialization (as that term is defined below) of Plazomicin and shall not use the Confidential Information for any other purpose. Recipient's right to use the Confidential Information shall end on the date this Agreement is terminated or expires in accordance with its terms, whereupon Recipient shall (i) return to Discloser or, at Discloser's discretion, verifiably destroy all tangible materials incorporating the Confidential Information disclosed to Recipient pursuant hereto, and (ii) verifiably erase any electronic files incorporating the Confidential Information disclosed to Recipient pursuant hereto; provided, however, that Recipient may retain one copy of all Confidential Information in its legal archives for the sole purpose of ensuring its continuing compliance with this Agreement and defending against any claims that Recipient has breached this Agreement; provided, further, that the requirement under this sentence shall not apply to Confidential Information disclosed by Achaogen.

(C) Recipient shall only disclose Confidential Information to those of its affiliates, collaborators, joint venturers, manufacturers and distributors, and its and their officers, directors, employees and legal advisors who have a need to know such Confidential Information in order to properly perform their job duties, who are bound by obligations of confidentiality that are not less restrictive than those set forth in this Agreement. In addition, Recipient shall use the same degree of care, but in no event less than a reasonable degree of care, to safeguard the confidentiality of the Confidential Information as it uses to safeguard the confidentiality of its own valuable trade secrets, shall keep all tangible copies of Confidential Information disclosed to it pursuant to this Agreement in a safe and secure place that is at least as safe and secure as the place where Recipient keeps its own valuable trade secrets, and shall use the most current security means to secure and otherwise protect from unauthorized access or use any computer networks and hardware controlled by Recipient and affording access to copies of any Confidential Information stored on machine readable media. Recipient acknowledges that nothing herein constitutes a license or other transfer of rights in respect of any Confidential Information.

(D) Recipient acknowledges and agrees that unauthorized disclosure of Confidential Information in violation of the terms of this Agreement may cause Discloser irreparable harm and that Discloser shall be entitled to injunctive relief and such other equitable relief as a court of competent jurisdiction may order in connection with a breach, or threatened breach, by Recipient of its non-disclosure obligations set forth in this Agreement and that Recipient shall not oppose any such request, nor shall Recipient seek to compel Discloser to post a bond or other security in connection with such request.

(E) Recipient's obligations under this Section shall survive termination or expiration of this Agreement until the later of (i) the tenth (10th) anniversary of the date of this Agreement first set forth above, and (ii) the seventh (7th) anniversary of the date of termination or expiration of this Agreement.

1.4 Mutual Right of Reference. (A) Cipla hereby grants to Xuanzhu a Right of Reference (as that term is defined in 21 C.F.R. § 314.3(b) (and any foreign counterpart to

such regulation), to Cipla's regulatory filings (including communications from a regulatory authority) relating to NDA No. 210303, as the NDA existed on the date acquired from Achaogen (the "As Approved NDA"), to the extent necessary or useful in connection with the Commercialization of Plazomicin in the China Territory, and to the extent such filings were either (a) acquired by Cipla from Achaogen under the Cipla APA, (b) solely relate to intellectual property acquired by Cipla from Achaogen under the Cipla APA, or (c) solely relate to changes in formulation, composition, process of manufacture or other elements of Plazomicin made after the date the NDA was acquired from Achaogen for purposes of drug safety (any such change a "Drug Safety Change") and does not include, in any material respects, any intellectual property that was independently developed by Cipla after the closing of the Cipla APA except to the extent such independently developed intellectual property covers or embodies any Drug Safety Change. Without limiting the foregoing, Xuanzhu and Cipla acknowledge and agree that Xuanzhu's Right of Reference shall include regulatory filings relating to the As Approved NDA and filed with or communicated by a regulatory authority after the date the As Approved NDA was acquired by Cipla, but only to the extent such filings are in furtherance of maintenance of the As Approved NDA, and not for, without limitation, any improvements or enhancements of the product that is the subject of the As Approved NDA. Xuanzhu hereby grants to Cipla a Right of Reference to Xuanzhu's regulatory filings (including communications from a regulatory authority) referencing the As Approved NDA to the extent necessary or useful in connection with the Commercialization of plazomicin outside the China Territory, and (x) acquired by Xuanzhu from Achaogen under the Xuanzhu APA, (y) solely relate to intellectual property acquired by Xuanzhu from Achaogen under the Xuanzhu APA or (z) solely relates to a Drug Safety Change and does not include, in any material respects, any intellectual property that was independently developed by Xuanzhu after the closing of the Xuanzhu APA. Without limiting the foregoing, Xuanzhu and Cipla acknowledge and agree that Cipla's Right of Reference shall include regulatory filings relating to the As Approved NDA and filed with or communicated by a regulatory authority after the date the As Approved NDA was acquired by Cipla, except to the extent such filing applies to a voluntarily-filed request, by Xuanzhu, for approval of an improvement to the formulation of Plazomicin. Each party's Right of Reference set forth above is subject to the terms and conditions of this Agreement. Each party shall, if reasonably requested by the other party, provide a signed statement to this effect in accordance with 21 C.F.R. § 314.50(g)(3) or any foreign counterpart to such regulation, for the limited purpose of such party exercising its Right of Reference as set forth above. Notwithstanding the foregoing, no party shall be required to expend any funds or assume additional liabilities or affirmative obligations on account of any Right of Reference under this Section 1.4.

(B) Xuanzhu covenants and agrees that it shall not grant a Right of Reference to regulatory filings relating to Plazomicin to any third party seeking regulatory approval for any drug outside the China Territory without Cipla's express prior written consent, which consent may be given or withheld at Cipla's sole, absolute and unfettered discretion.

(C) Cipla covenants and agrees that it shall not grant a Right of Reference to regulatory filings relating to Plazomicin to any third party seeking regulatory approval for

any drug in the China Territory without Xuanzhu's express prior written consent, which consent may be given or withheld at Xuanzhu's sole, absolute and unfettered discretion.

2. License, Enforcement and Defense and Co-existence.

2.1 License. (A) Cipla hereby grants to Xuanzhu (i) a royalty-free, fully-paid, irrevocable, perpetual, and exclusive (even as to Cipla) license, under Cipla's trade secret, copyright and other intellectual property rights covering or embodied by the Proprietary Data and China Relevant Excluded IP (as those terms are defined below), to copy, display, distribute, perform, translate, modify and otherwise use and practice the Proprietary Data and China Relevant Excluded IP in the China Territory for any lawful purpose relating to the Commercialization of Plazomicin in the China Territory, and (ii) a royalty-free, fully-paid, irrevocable, perpetual, non-exclusive license, under Cipla's trade secret, copyright and other intellectual property rights covering or embodied by the Proprietary Data and China Relevant Excluded IP, to copy, display, distribute, perform, translate, modify and otherwise use and practice the Proprietary Data and China Relevant Excluded IP outside the China Territory, solely in connection with or in furtherance of the formulation, clinical testing and regulatory approval of, and regulatory compliance in connection with the Commercialization of, Plazomicin in the China Territory. The license under this Section 2.1 shall be transferrable and sublicensable; provided, however, that to the extent sublicensed, Xuanzhu shall be liable to Cipla for damages resulting from a breach of this Agreement, by the applicable sublicensee. With respect to any licenses granted by Cipla to Xuanzhu under this Agreement or the Cipla Stipulation, including licenses to Proprietary Data and Intellectual Property (as defined in the Xuanzhu APA), Xuanzhu shall be responsible for any obligations of Cipla that are directly related to the sale of Plazomicin in the China Territory, including any payments due to third parties under any applicable license agreements. For clarity, and notwithstanding anything to the contrary in this Agreement or elsewhere, license agreements in the preceding sentence shall include the License Agreement between Achaogen and Isis Pharmaceuticals, Inc. (n/k/a Ionis), dated January 25, 2006, and any obligations thereunder assumed by Cipla. Xuanzhu shall pay any payments due under the preceding two sentences directly to the third party.

2.2 Certain Definitions. For purposes of this Agreement, (A) the term "Proprietary Data" means, solely to the extent necessary for Commercialization of Plazomicin in the China Territory, all data, compilations of data, specifications, formulae, software source code, lab notes, graphs, charts, spread sheets, financial analyses, software libraries, techniques, know-how and other information of whatever form, howsoever communicated and whether or not confidential, that was sold or otherwise transferred to Cipla pursuant to the Cipla APA and which is in the possession or control of Cipla or its affiliates at any time after the Effective Date, (B) the term "China Relevant Excluded IP" means Excluded IP, as that term is defined in the Xuanzhu APA, that is useful in the China Territory, but only to the extent recognized under, and otherwise valid and enforceable in, the China Territory, and (C) the term "Commercialization" means the clinical development, non-clinical development, registration, regulatory approval, manufacture, importation, exportation, use, sale, offer for sale, transport, distribution,

promotion, marketing or other exploitation for commercial benefit of a product or service. Without limiting the foregoing, Proprietary Data includes data, compilations of data, specifications, formulae, software source code, lab notes, graphs, charts, spread sheets, financial analyses, software libraries, techniques, know-how and other information of whatever form licensed to Cipla pursuant to any Assumed Contracts, as that term is defined in the Cipla APA. For clarity, but without limiting Xuanzhu's Right of Reference set forth in Section 1.4 above, Proprietary Data does not include any data developed or acquired through a license, including the specific types of data listed in this section, by Cipla after the Effective Date of the Cipla APA. For further clarity, Proprietary Data does not include any data, including the specific types of data listed in this section, that was not acquired by Cipla or licensed to Cipla pursuant to the Cipla APA.

2.3 Disclosure and Transfer. To the extent not already in the data room provided by Achaogen and upon Xuanzhu's request, and during the term of this Agreement, Cipla shall provide Xuanzhu with access to, and at Xuanzhu's sole cost and expense copies of, all Proprietary Data and any other China Relevant Excluded IP available in documented or otherwise tangible form, in the same form and format as was furnished by Achaogen to Cipla. Cipla makes no warranty as to the Proprietary Data or China Relevant Excluded IP for any purpose.

2.4 Acknowledgement. Xuanzhu acknowledges and agrees that the Proprietary Data and any other China Relevant Excluded IP available in documented or otherwise tangible form that has not been published or otherwise made available to third parties on a non-confidential basis also constitutes Confidential Information in respect of which Cipla is the Discloser. Nothing in Section 2.1 above shall limit or otherwise alter Xuanzhu's obligations under Section 1.3 above.

2.5 Enforcement and Defense. Cipla shall, at Cipla's sole cost and expense, be solely responsible for enforcing and defending trade secret and other intellectual property rights covering or embodied by the Proprietary Data and China Relevant Excluded IP outside the China Territory. Xuanzhu shall, at Xuanzhu's sole cost and expense, be solely responsible for enforcing and defending trade secret and other intellectual property rights covering or embodied by the Proprietary Data and China Relevant Excluded IP within the China Territory. Cipla and Xuanzhu shall not challenge each other's plazomicin Intellectual Property rights (as defined in the Cipla APA) in their respective territories, i.e., neither shall take part in any enforcement, defense, challenges, or otherwise actions that may affect the ownership, validity or enforceability of the other's plazomicin Intellectual Property rights (as defined in the Cipla APA) in the other's respective territory. Each party shall have the right, at their sole cost and expense, to prosecute patents relating to the Proprietary Data and China Relevant Excluded IP in their respective territories, and to retain rights thereto including Commercialization.

2.6 Prosecution and Maintenance of Owned Intellectual Property. (A) Xuanzhu shall be solely responsible for the prosecution and maintenance of Company Owned China Intellectual Property (as defined in the Xuanzhu APA), at its sole cost. Upon Cipla's

written request, Xuanzhu shall provide Cipla with copies of any or all sent or received correspondence between Xuanzhu (or on its behalf) and any government entity concerning the Company China IP Registrations constituting Patents, including applications, office actions, responses, affidavits or declarations, within 15 days of sending or receiving such request.

(B) Cipla shall be solely responsible for the prosecution and maintenance of Company Owned Intellectual Property (as defined in the Cipla APA), at its sole cost. Upon Xuanzhu's written request, Cipla shall provide Xuanzhu with copies of any or all sent or received correspondence between Cipla (or on its behalf) and any government entity concerning the Company IP Registrations constituting Patents, including applications, office actions, responses, affidavits or declarations, within 15 days of sending or receiving such request.

2.7 Prohibition on Patent Prosecution. (A) Neither Xuanzhu nor any of its affiliates shall prosecute any patents relating to plazomicin or derived from the Proprietary Data in any territory outside the China Territory.

(B) Neither Cipla nor any of its affiliates shall prosecute any Patents relating to Plazomicin or derived from the Proprietary Data in the China Territory.

2.8 No Adverse Impact. (A) Xuanzhu represents and warrants that Xuanzhu and its affiliates shall not take any action in the China Territory that could adversely affect Cipla's plazomicin business globally, including any actions that adversely affect Cipla's Intellectual Property rights (as defined in the Cipla APA) globally. Xuanzhu covenants and agrees that neither it nor any of its affiliates shall challenge or assist any third party in challenging (except to the extent such assistance is required by applicable court order) any Cipla-owned Intellectual Property (as defined in the Cipla APA) relating to plazomicin in any territory outside the China Territory.

(B) Cipla represents and warrants that Cipla and its affiliates shall not take any action outside the China Territory that could adversely affect Xuanzhu's Plazomicin business in the China Territory, including any actions that adversely affect Xuanzhu's Intellectual Property rights (as defined in the Cipla APA) in the China Territory. Cipla covenants and agrees that neither it nor any of its affiliates shall challenge or assist any third party in challenging (except to the extent such assistance is required by applicable court order) any Xuanzhu-owned Intellectual Property (as defined in the Cipla APA) relating to Plazomicin in the China Territory.

(C) Xuanzhu shall not, directly or indirectly, pursue Commercialization of, commercialize, or otherwise exploit any Plazomicin product outside the China Territory.

(D) Cipla shall not, directly or indirectly, pursue Commercialization of, commercialize, or otherwise exploit any Plazomicin product in the China Territory.

2.9 Trademark Covenants. (A) Xuanzhu covenants and agrees, on behalf of itself and its affiliates, that (i) it shall not use for any purpose, file for or otherwise seek to register any trademark for or containing the word "ZEMDRI" or similar marks in the China Territory (such trademarks, the "Zemdri China Trademarks"); provided however, nothing herein shall limit Xuanzhu's right to register or use a trademark in the China Territory consisting of or including the design attached hereto as Exhibit C, which the parties understand to be owned by Cipla and licensed to Xuanzhu (under Section 1(e) of the Stipulation and Agreed Order Amending the Cipla Sale Documents); (ii) it shall not use, file for or otherwise seek to register or use trademarks covering any product or service relating to plazomicin outside the China Territory, and (iii) it shall not oppose the registration or use, by Cipla or any Cipla affiliate, of any trademarks outside the China Territory covering any product or service relating to plazomicin. Xuanzhu shall—to the extent permitted by law—maintain the Zemdri China Trademarks but shall not use the Zemdri China Trademarks for any purpose (including, without limitation, in connection with any plazomicin product or other product), except to maintain the registration and preclude any third party from using or acquiring them. If Xuanzhu elects to abandon any Zemdri China Trademarks, such trademarks shall be transferred to Cipla for no consideration.

(B) Cipla covenants and agrees, on behalf of itself and its affiliates, that (i) it shall not use for any purpose, file for or otherwise seek to register any trademark for or containing the word "XEMDRO" or similar marks outside the China Territory; provided however, nothing herein shall limit Cipla's right to register or use a trademark outside the China Territory consisting of or including the design attached hereto as Exhibit C, which the parties understand to be owned by Cipla and licensed to Xuanzhu (under Section 1(e) of the Stipulation and Agreed Order Amending the Cipla Sale Documents); (ii) it shall not use, file for or otherwise seek to register or use trademarks covering any product or service relating to plazomicin within the China Territory, and (iii) it shall not oppose the registration or use, by Xuanzhu or any Xuanzhu affiliate, of any trademarks within the China Territory covering any product or service relating to plazomicin.

(C) The obligations of this section 2.9 shall extend, with regard to each respective trademark, for the duration of the use of that trademark in the respective territory.

2.10 With respect to any domain names transferred to Xuanzhu by Achaogen pursuant to the Xuanzhu APA for the China Territory that include the word Zemdri ("Zemdri China Domains"), Xuanzhu shall—to the extent permitted by law—maintain such Zemdri China Domains but shall not use the Zemdri China Domains for any purpose (including, without limitation, creating and using a website with such domain name), except to maintain the registration and preclude any third party from using or acquiring them. If Xuanzhu elects to abandon any Zemdri China Domains, such domains shall be transferred to Cipla for no consideration.

2.11 No Other Obligation. Other than as expressly outlined in this Agreement, neither party shall have any obligation to the other party under this Agreement, implied or otherwise.

3. Consideration and Reimbursement.

3.1 No Monetary Consideration. Each of Cipla and Xuanzhu acknowledge and agree that it shall not receive monetary consideration for the Support; rather, (A) in consideration of the Cipla Support provided by Cipla, Xuanzhu shall provide the Xuanzhu Support to Cipla; and (B) in consideration of the Xuanzhu Support provided by Xuanzhu, Cipla shall provide the Cipla Support to Xuanzhu.

3.2 Reimbursement. Neither party shall be obligated to travel or incur any expense in the course of providing Support hereunder except to the extent the other party has agreed to reimburse such expenses. Cipla and Xuanzhu shall each reimburse the other for all pre-approved travel and other costs and expenses required to be incurred in providing the Support. Invoices for reimbursement shall be accompanied by receipts and other supporting documentation reasonably acceptable to the party providing reimbursement, and shall be submitted not more frequently than once a month.

4. Term

4.1 Term. Except as otherwise set forth in this Agreement and subject to Section 4.2 below, the term of this Agreement shall commence on the Effective Date and will expire on the first (1st) anniversary of the Effective Date. The rights, duties and obligations of the parties arising pursuant to Sections 1.2, 2.1, 2.5, 2.7, 2.8, 2.9, 2.10, 2.11, 3.2, 5.1, 5.2, 5.3 and 5.4 of this Agreement, as well as the Support obligations under paragraph I.(a) and I.(c) of Exhibit A and I.(a) I.(b) and I.(d) of Exhibit B shall survive termination, and Section 1.4 and part II of Exhibit B shall survive until the earlier of (i) the date on which Plazomicin is the subject of a marketing approval in the People's Republic of China, and (ii) the fifth (5^{th}) anniversary of the Effective Date.

4.2 Effectiveness of Agreement. This Agreement shall become effective and binding on the parties only upon the entry of the Sale Order and, if a separate order is required, an order of the Bankruptcy Court approving the Cipla Stipulation.

5. Miscellaneous

5.1 Limitation on Damages and Warranties. (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, CONSEQUENTIAL OR OTHER SPECULATIVE DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, LOST PROFITS, EVEN IF A PARTY HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL NOT APPLY TO CLAIMS ARISING IN CONNECTION WITH A BREACH OF SECTIONS 1.3, 1.4, 2.1 OR 2.3 OF THIS AGREEMENT.

(B) XUANZHU WARRANTS AND REPRESENTS THAT (1) IT HAS THE RIGHT TO DISCLOSE TO CIPLA ANY CONFIDENTIAL INFORMATION IN RESPECT OF WHICH XUANZHU IS THE DISCLOSER, AND (2) IT HAS NO KNOWLEDGE OF ANY POTENTIAL CLAIMS AGAINST CIPLA AS OF THE DATE OF THIS AGREEMENT. CIPLA WARRANTS AND REPRESENTS TO XUANZHU THAT

(X) CIPLA HAS THE RIGHT TO DISCLOSE TO XUANZHU ANY PROPRIETARY DATA, AS WELL AS CONFIDENTIAL INFORMATION IN RESPECT OF WHICH CIPLA IS THE DISCLOSER, AND (Y) IT HAS NO KNOWLEDGE OF ANY POTENTIAL CLAIMS AGAINST XUANZHU AS OF THE DATE OF THIS AGREEMENT . EXCEPT AS SO WARRANTED, THE SUPPORT, PROPRIETARY DATA AND OTHER CONFIDENTIAL INFORMATION IS PROVIDED WITHOUT ANY WARRANTY WHATSOEVER. EACH OF XUANZHU AND CIPLA EXCLUDES ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IN RESPECT OF THE SUPPORT, OR OF NON-INFRINGEMENT, COMPLETENESS OR ACCURACY IN RESPECT OF ANY PROPRIETARY DATA OR OTHER CONFIDENTIAL INFORMATION FOR WHICH IT IS A DISCLOSER. EACH OF XUANZHU AND CIPLA, IN ITS CAPACITY AS A RECIPIENT HEREUNDER, ACKNOWLEDGES AND AGREES THAT IT ASSUMES ALL RISKS ASSOCIATED WITH ITS USE OF AND RELIANCE ON THE PROPRIETARY DATA OR ANY CONFIDENTIAL INFORMATION PROVIDED BY THE DISCLOSER.

5.2 Additional Provisions. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall be deemed to be one and the same instrument. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns. Neither party may assign this Agreement or delegate its duties and obligations hereunder without the prior written consent of the other, except in connection with the sale of all or substantially all of the assets of a party. Any assignment in violation of this provision shall be void *ab initio* and of no force or effect. This Agreement may be modified, amended, or supplemented only by means of a written instrument signed by both parties. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral and prior written agreements and understandings. In the event that any provision of this Agreement shall, for any reason, be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein.

5.3 Notices. All notices, requests, demands and other communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be deemed to have been duly given upon the date of receipt if delivered by recognized international overnight courier to the addresses set forth below, or via email transmission (with automated confirmation of receipt) to the email addresses set forth below, in each case to the attention of the person identified below:

If to Xuanzhu:

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

If to Cipla:

Cipla USA Inc.
10 Independence Blvd.,

Suite 300
Warren, NJ 07059
Attn: Deep Sagar, Associate Director, Legal
Email: deep.sagar@cipla.com

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

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

and

Kelley Drye & Warren LLP
101 Park Avenue, 27thFloor
New York, New York 10178
Attn: Deepak Nambiar, Esq.
Email: DNambiar@KelleyDrye.com

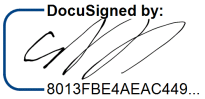
Either party may change its designated addresses by notice to the other party in the manner provided in this Section.

5.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York irrespective of any conflict of laws principles. The parties hereby agree that any action or proceeding arising from or in connection with this Agreement shall only be brought in a federal or state court located in New York County, State of New York and having jurisdiction with respect to such action or proceeding. Each of the parties hereto irrevocably consents and submits to the jurisdiction of such courts.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be executed as a binding agreement between the parties effective as of the date first written above.

CIPLA USA, INC.

By: 

Name: Elizabeth Garrett Ingram
Title: Chief Commercial Officer

IN WITNESS WHEREOF, each of the parties hereto have caused this Agreement to be executed as a binding agreement between the parties effective as of the date first written above.

XUANZHU (HK)
BIOPHARMACEUTICAL
LIMITED

By: _____
Name: T. Leslie Boyd, Jr., Ph.D.
Title: Chief Business Officer

EXHIBIT A

XUANZHU SUPPORT

Xuanzhu Support, to the extent required or reasonably requested by Cipla, consist of, but shall not exceed, the following:

I. Regulatory Approvals and Data Sharing.

(a) Xuanzhu shall notify Cipla promptly (but in no event later than forty-eight (48) hours) following its determination that any event, incident or circumstance has occurred that may result in the need for a recall, market suspension, or market withdrawal of Plazomicin in any jurisdiction in the China Territory and shall include in such notice the reasoning behind such determination and any supporting facts. Xuanzhu shall have the unilateral right to make a final determination whether to voluntarily implement any such recall, market suspension, or market withdrawal. If a recall, market suspension, or market withdrawal of Plazomicin in any jurisdiction in the China Territory is mandated by a regulatory authority, then Xuanzhu shall initiate such a recall, market suspension, or market withdrawal in compliance with applicable law. For all such recalls, market suspensions, or market withdrawals, Xuanzhu shall be solely responsible for the execution thereof, and shall be responsible for all costs of any such recall, market suspension, or market withdrawal.

(b) If Cipla believes that Xuanzhu or any of its affiliates or licensees is taking or intends to take any action (including any recall action) with respect to Plazomicin that could have a material adverse impact upon the regulatory status of plazomicin in any jurisdiction outside the China Territory, Cipla may bring the matter to the attention of Xuanzhu and the parties will discuss and endeavor to resolve such concern in good faith. Without limiting the foregoing, unless Xuanzhu otherwise agrees in writing, none of Cipla or its affiliates or its or their licensees will (i) communicate with any regulatory authority having jurisdiction in the China Territory unless so ordered by such regulatory authority, in which case Cipla will immediately notify Xuanzhu of such order, or (ii) submit any regulatory documentation or seek regulatory approvals for Plazomicin within the China Territory.

(c) Xuanzhu shall promptly notify Cipla of any suspected or actual infringement of intellectual property rights relating to plazomicin by any third party, or of any allegations that any intellectual property rights that it acquired pursuant to the Cipla APA infringes on the intellectual property rights of any third party, to the extent that any such actual or suspected infringement affects Cipla in any material respect.

(d) Information disclosed under provisions I(a)-(c) will be subject to the Confidentiality provisions of section 1.3 of this Agreement, including its survival provisions in 1.3(E).

EXHIBIT B

CIPLA SUPPORT

Cipla Support shall, to the extent required or reasonably requested by Xuanzhu, consist of, but shall not exceed, the following:

I. Regulatory Approvals and Data Sharing.

(a) To the extent required by regulatory authorities in the China Territory, Cipla shall itself file (if expressly required by regulatory authorities), or cooperate to enable Xuanzhu to file, with such regulatory authorities information and materials in Cipla's possession or control (in such form as the relevant regulatory authority may require) addressing the following for Plazomicin: annual reports (which may include but not be limited to global development and launch status); periodic updated safety reports; ongoing global and completed studies; newly generated safety results; significant chemistry manufacturing control updates and variations; overall safety evaluations; summaries of significant risk and risk-benefit assessments; overall research plans for the next year; documentation relating to any variations to drug product or active pharmaceutical ingredients; and such other information in Cipla's possession or control as regulatory authorities may expressly require. For clarity, but without limiting Xuanzhu's right of reference in Section 1.4, any obligations of Cipla under this section or this Agreement, except as expressly set forth herein, shall be limited to information acquired from Achaogen and existing at the time of execution of the Cipla APA.

(b) Cipla shall notify Xuanzhu promptly (but in no event later than forty-eight (48) hours) following its determination that any event, incident or circumstance has occurred that will result in the need for a recall, market suspension, or market withdrawal of Plazomicin in any jurisdiction outside the China Territory and shall include in such notice the reasoning behind such determination and any supporting facts. Cipla shall have the unilateral right to make a final determination whether to voluntarily implement any such recall, market suspension, or market withdrawal. If a recall, market suspension, or market withdrawal of Plazomicin in any jurisdiction outside the China Territory is mandated by a regulatory authority, then Cipla shall initiate such a recall, market suspension, or market withdrawal in compliance with applicable law. For all such recalls, market suspensions, or market withdrawals, Cipla shall be solely responsible for the execution thereof, and shall be responsible for all costs of any such recall, market suspension, or market withdrawal.

(c) If Xuanzhu believes that Cipla or any of its affiliates or licensees is taking or intends to take any action (including any recall action) with respect to Plazomicin that could have a material adverse impact upon the regulatory status of Plazomicin in any jurisdiction of the China Territory, Xuanzhu may bring the matter to the attention of Cipla and the parties will discuss and endeavor to resolve such concern in good faith. Without limiting the foregoing, unless Cipla otherwise agrees in writing, none of Xuanzhu or its affiliates or its or their licensees will (i) communicate with any regulatory

authority having jurisdiction outside the China Territory unless so ordered by such regulatory authority, in which case Xuanzhu will immediately notify Cipla of such order, or (ii) submit any regulatory documentation or seek regulatory approvals for plazomicin outside the China Territory.

(d) Cipla shall promptly notify Xuanzhu of any suspected or actual infringement of intellectual property rights relating to Plazomicin by any third party, or of any allegations that any intellectual property rights that it acquired pursuant to the Cipla APA infringes on the intellectual property rights of any third party, to the extent that any such actual or suspected infringement affects Xuanzhu or the China Territory in any material respect.

(e) Information disclosed under provisions I(a)-(d) will be subject to the Confidentiality provisions of section 1.3 of this Agreement, including its survival provisions in 1.3(E).

II. Supply for Regulatory Purposes.

(a) Subject to the terms of Part II of this Exhibit B, Cipla shall supply the below quantities (or such lesser amounts, or none, as Xuanzhu may specify, or such greater amounts not to exceed in the aggregate 7,452 vials as Xuanzhu may specify) of Plazomicin to Xuanzhu for the sole purpose of performance of preclinical and clinical studies and otherwise obtaining marketing approval in the China Territory of Plazomicin prior to marketing approval (the "Clinical Requirements") in any jurisdictions within the China Territory. Xuanzhu will not be entitled to resell the Plazomicin sold by Cipla hereunder.

Category	**Tentatively 4Q 2020**	**Tentatively 4Q 2021**
cUTI Clinical trial supply #	1,755 vials (Can be same or different batches)	1,755 vials (Can be same or different batches)
NDA registration testing sample #		2,700 vials, provided that Cipla shall supply such amount in three tranches of 900 vials each, with each tranche being from a different batch (so that in all three different batches will be utilized for such 2,700 vials)
Total Vials – 6210 vials		

The parties acknowledge that notwithstanding the table above, the delivery dates for Xuanzhu's purchases shall be determined by Xuanzhu in its sole discretion provided the notice requirement in (b) below is met.

(b) Xuanzhu will raise a non-cancelable purchase order on Cipla six (6) months in advance of any requirement of Clinical Requirements. Unless an order is given, there will be no obligation to provide or purchase Clinical Requirements. Unless otherwise expressly agreed by Cipla, orders shall be shipped EXW Cipla designated facility (Incoterms® 2019). Xuanzhu will be responsible for transportation, storage and customs clearance. Payment terms are Net 60 - payment due within 60 days of invoice.

(c) The price for all orders of Plazomicin for Xuanzhu's Clinical Requirements shall be US$250 per single dose (i.e., 10 milliliter) vial of Plazomicin net of all taxes and fees. Shelf-life will be 15 months at the point of delivery.

(d) At all times during which Xuanzhu is using Plazomicin supplied by Cipla pursuant to this Part II, Xuanzhu shall have and maintain commercial general liability insurance policies, including product liability insurance, in those jurisdictions of the China Territory where such use is taking place. The foregoing policies shall be customary in form for the relevant jurisdictions of the China Territory. Xuanzhu shall provide proof of such coverage to Cipla upon request.

(e) CIPLA WARRANTS THAT IT HAS TITLE TO, AND ALL NECESSARY RIGHT AND AUTHORITY TO SELL TO XUANZHU SOLELY FOR CLINICAL REQUIREMENTS, ALL PLAZOMICIN SOLD TO XUANZHU PURSUANT TO THIS PART II. EXCEPT AS SO WARRANTED, CIPLA EXCLUDES ALL EXPRESS AND IMPLIED WARRANTIES RELATING TO PLAZOMICIN SOLD TO XUANZHU PURSUANT TO THIS PART II, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

(f) CIPLA SHALL NOT BE LIABLE TO XUANZHU OR TO ANY THIRD PARTY FOR ANY CLAIMS, INCLUDING PRODUCT LIABILITY AND INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS, ARISING IN CONNECTION WITH XUANZHU'S USE OF PLAZOMICIN SOLD TO XUANZHU PURSUANT TO THIS PART II. XUANZHU SHALL INDEMNIFY CIPLA FOR ANY CLAIMS AGAINST CIPLA IN THE CHINA TERRITORY RELATING TO CIPLA'S SUPPLY OF PLAZOMICIN PURSUANT TO THIS AGREEMENT.

(g) In no event shall Cipla be obligated to supply in excess of the Clinical Requirements to Xuanzhu without having entered into a written agreement with Xuanzhu, expressly authorizing such additional supply.

EXHIBIT C

TRADEMARK COVENANTS

The following is the image referred to in Section 2.9(A)(i) and 2.9(B)(i), which may be in any color or combination thereof, or in black and white coloration:



Exhibit E

Form of Sale Order

[Intentionally Omitted]

SCHEDULE 2.1(C)

CHINA INTELLECTUAL PROPERTY

I. PATENTS

Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
China	200880117193.1 11/21/2008	101868472A	ZL 200880117193.1 05/29/2013	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
Hong Kong	11101563.2 11/21/2008	1147499	HK1147499 01/26/2018	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered (via EP)
Taiwan	097145246 11/21/2008	200927146	I425947 02/11/2014	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201310142186.X 11/21/2008	103360440A	ZL 201310142186.X 08/31/2016	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201080031078.X 05/14/2010	102481307A	ZL 201080031078.X 08/24/2016	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Hong Kong	12111406.1 05/14/2010	1170663	1170663 11/17/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Macau	J/002404(132) 05/14/2010		J/002404 01/24/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
China	201610573991.1 05/14/2010	106188175A		TREATMENT OF KLEBSIELLA PNEUMONIAE	Achaogen, Inc.	Pending

Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
				INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS		
Hong Kong	17105427.3 05/14/2010	1231886A		TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Pending
Taiwan	107136676 10/18/2018	201922233 6/16/2019		SYNTHESIS OF ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc	Pending
Taiwan	106126088 8/2/2017	201815826 5/1/2018		PLAZOMICIN ANTIBODIES AND METHODS OF USE		Filed

II. TRADEMARKS

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
WIPO Q1 wo 23	Design Only  RN: 1441507	International Registered Last Status Received: Registered April 15, 2019 Registered: November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[1]
WIPO Q1 wo 24	Design Only	International Registered Last Status Received: Registered March 26, 2019	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries:

[1] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 RN: 1442826	Registered: November 20, 2018 Expiration Date: November 20, 2028		Madrid Protocol: China[2]
WIPO Q1 wo 25	ZEMDRI and Design  RN: 1442745	International Registered Last Status Received: Registered November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[3]
WIPO Q1 wo 26	ZEMDRI and Design  RN: 1443260	International Registered Last Status Received: Registered April 2, 2019 Registered: November 20, 2018 Expiration Date: November 20, 2028	(Int'l Class: 05) Antibiotics.	Achaogen, Inc. 1 Tower Place, Suite 300 South San Francisco CA 94080, United States of America Claimed Countries: Madrid Protocol: China[4]
China Q1 cn 55	XEMDRO  RN: 22301161 AN: 22301161	China Registered Last Status Received: Registered Filed: December 19, 2016 Registered: January 28, 2018 Expiration Date: January 27, 2028	(Translation) (Int'l Class: 05) antibiotics	爱超根有限公司 加利福尼亚州 94080 南旧金山 7000 沿海大楼 371 室, United States of America ACHAOGEN, INC. 7000 SHORELINE COURT, SUITE 371, SOUTH SAN FRANCISCO, CALIFORNIA 94080, UNITED STATES OF AMERICA, United States of America

[2] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.
[3] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.
[4] For the avoidance of doubt, this transfer only includes the transfer of trademark rights in China, Hong Kong, Taiwan, or Macau, as applicable.

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
China Q1 cn 56	ZEMDRI  RN: 22301162 AN: 22301162	China Registered Last Status Received: Registered Filed: December 19, 2016 Registered: January 28, 2018 Expiration Date: January 27, 2028	(Translation) (Int'l Class: 05) antibiotics	爱超根有限公司 加利福尼亚州 94080 南旧金山 7000 沿海大楼 371 室, United States of America ACHAOGEN, INC. 7000 SHORELINE COURT, SUITE 371, SOUTH SAN FRANCISCO, CALIFORNIA 94080, UNITED STATES OF AMERICA, United States of America
Hong Kong Q1 hk 58	ZEMDRI and Design ZEMDRI AN: 304338135	Hong Kong Published Last Status Received: Published December 8, 2017 Filed: November 16, 2017	(Int'l Class: 05) Antibiotics	Achaogen, Inc. 1 Tower Place, Suite 300, South San Francisco, California 94080, United States of America
Taiwan Q1 tw 68	Logo design (in black-and-white)  AN: 107075189	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 69	Logo design (in color)	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 AN: 107075187			
Taiwan Q1 tw 70	ZEMDRI  AN: 106072193	Taiwan Other Filed: November 16, 2017	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 1 Tower Place, Suite 300, South San Francisco, California 94080 U.S.A, United States of America
Taiwan Q1 tw 71	ZEMDRI  AN: 107075184	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America
Taiwan Q1 tw 72	ZEMDRI	Taiwan Other Last Status Received: Unknown Filed: November 21, 2018	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司

TM Record	TM/AN/RN/ Disclaimer	Status/Key Dates	Full Goods/Services	Owner/Designations
	 AN: 107075186			美國 United States of America
Taiwan Q1 tw 73	ZEMDRI  RN: 01919327 AN: 106072193	Taiwan Registered Last Status Received: Registered Filed: November 16, 2017 Registered: June 16, 2018 Expiration Date: June 15, 2028	(Translation) (Int'l Class: 05) antibiotics.	ACHAOGEN, INC. 美國 United States of America 爾察禎有限公司 美國 United States of America

III. COPYRIGHTS

No registered copyrights.

IV. REGISTERED DOMAINS

Domain Name
enrezovi.tw
zemdri.tw
enrezovi.cn
xemdro.cn

xemdro.tw
zemdri.cn

SCHEDULE 3.4

TITLE TO ASSETS, LIENS

None.

SCHEDULE 3.5

CLAIMS, LITIGATION AND DISPUTES

1. We note that in June 2018, the FDA issued a complete response letter for the bloodstream infection (BSI) indication the Seller sought for plazomicin. In December 2018, the Seller filed a Formal Dispute Resolution Request (FDRR) with the FDA regarding the BSI indication for plazomicin. The Seller believes that the data submitted in the New Drug Application for plazomicin provides substantial evidence of efficacy in treating BSI and that plazomicin should be approved for the proposed BSI indication. The FDA denied the Seller's first-round FDRR. The Seller does not know whether Cipla has taken any action with respect to the foregoing.

SCHEDULE 3.6

GOVERNMENTAL AUTHORIZATIONS

None.

SCHEDULE 3.9(A)

COMPANY OWNED CHINA INTELLECTUAL PROPERTY, COMPANY USED CHINA INTELLECTUAL PROPERTY AND CHINA IP AGREEMENTS

Company Owned China Intellectual Property

Please see Schedule 2.1(c), which information set forth therein is incorporated herein by reference.

Company Used China Intellectual Property

None.

China IP Agreements

None.

SCHEDULE 3.9(C)

INTELLECTUAL PROPERTY CLAIMS BROUGHT AGAINST THE SELLER

Seller's ownership rights to Intellectual Property it developed under U.S. federally-funded research grants and contracts in connection with certain neglected diseases initiatives may be subject to certain rights that the government may have under applicable statute or the underlying contracts that govern such research grants. Provisions in the Seller's U.S. government contracts, including its contracts with BARDA, may affect the Seller's intellectual property rights.

SCHEDULE 3.10

TAXES

1. The Seller's 2019 property taxes related to its fixed assets were due in July 2019. The Seller has appealed the amount it owes and is waiting for a resolution of such appeal before making the necessary payment.

2. The Seller's 2019 Delaware Franchise Taxes are due in estimated quarterly installments throughout 2019. The Seller is waiting for an updated invoice since filing for bankruptcy in order to make the appropriate payment.

SCHEDULE 5.2

OPERATION OF THE CHINA PLAZOMICIN BUSINESS

None.

EXHIBIT B

Stipulation

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
Achaogen, Inc.,	Case No. 19-10844 (BLS)
Debtor.[1]	

STIPULATION
AMENDING THE CIPLA SALE DOCUMENTS

The (i) debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), (ii) Cipla USA Inc. ("Cipla"), and (iii) Xuanzhu (HK) Biopharmaceutical Limited ("Xuanzhu" and together with the Debtor and Cipla, the "Parties"), by and through their undersigned counsel, hereby enter into this stipulation (this "Stipulation") and stipulate and agree as follows:

WHEREAS, on April 15, 2019 (the "Petition Date"), the Debtor filed a motion for court approval of certain bidding procedures (the "Bidding Procedures") designed to maximize the value of substantially all of the Debtor's assets through an expedited sale process [D.I. 30]. By order entered on May 1, 2019 [D.I. 123] (the "Bidding Procedures Order"), the Court approved the Bidding Procedures for the purpose of soliciting the highest and best offers to purchase all or substantially all of the Debtor's assets.

WHEREAS, the Debtor learned that certain parties were interested in purchasing the Debtor's rights to ZEMDRI (Plazomicin) in different territories.

WHEREAS, in order to allow for a competitive bidding process where multiple parties could bid on different aspects of ZEMDRI (Plazomicin), the Debtor provided potential bidders

[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 548 Market Street, #70987, San Francisco, California 94104-5401.

with the option to (i) acquire the Debtor's global rights to ZEMDRI (Plazomicin) or (ii) obtain an exclusive, perpetual, royalty-free license for the rights to ZEMDRI (Plazomicin) in specific territories.

WHEREAS, the Debtor commenced an auction (the "Auction") for substantially all of its assets on June 3, 2019. At the conclusion of the Auction, the Debtor designated (i) Cipla as the Successful Bidder[2] for the global rights to ZEMDRI (Plazomicin) and the Debtor's assets related thereto, subject to a license of the China Assets (as defined below) (the "Global Rights") and (ii) Qilu Antibiotics Pharmaceutical Co., Ltd. ("Qilu") as the Successful Bidder for a license of the rights to ZEMDRI (Plazomicin) in the China Territory (as defined in the Cipla APA) and certain of the Debtor's assets related thereto (the "China Assets"). Additionally, the Debtor designated Cipla as the Back-up Bidder for the China Assets.

WHEREAS, in order to effectuate the license of the China Assets to Qilu by the Debtor, the Cipla Sale Documents (as defined below) provided that the Debtor, as licensor, would enter into a license agreement with Qilu—or, if requested by the Debtor, another third party—for the China Assets (the "License Agreement"), and that upon the payment by Qilu of a one-time licensing fee to the Debtor and the effectiveness of the License Agreement, the Debtor would immediately assign to Cipla, and Cipla would immediately assume, the rights and only those obligations of the Debtor, as licensor, under the License Agreement.

WHEREAS, the Debtor entered into an asset purchase agreement with Cipla dated as of June 20, 2019 (as amended, the "Cipla APA"), for the Global Rights (including the China Purchased Assets (as defined below)), subject to the Debtor's right to license the China Assets.

[2] Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Bidding Procedures, Bidding Procedures Order or Cipla Sale Documents (each as defined below), as applicable.

WHEREAS, on July 23, 2019, the Court entered an order approving the Cipla APA (the "Cipla Sale Order" and together with the Cipla APA, the "Cipla Sale Documents") [D.I. 371].

WHEREAS, both the Successful Bidder for the China Assets and the Backup Bidder for the China Assets thereafter failed to close the transactions regarding the sale and license of the China Assets.

WHEREAS, as discussed above, the terms of the Cipla Sale Documents provide the Debtor with the right to license the China Assets to a third party if the transactions with the Successful Bidder for the China Assets or Back-up Bidder for the China Assets do not close.

WHEREAS, in or about August 2019, Xuanzhu was contacted by the Debtor and advised that the transaction for the China Assets had not closed and that the Debtor was seeking to identify a party that would be interested in acquiring the China Assets if the Cipla transaction could be reversed. Xuanzhu then presented a written proposal to the Debtor to purchase the China Assets (and not to take a license of those assets), which led to the parties' negotiation and execution of a Letter of Intent dated October 15, 2019 ("LOI"); the entry by the Bankruptcy Court of an order on October 31, 2019 [D.I. 516] (the "LOI Order"), which approved certain provisions in the LOI, and the negotiation and entry into an asset purchase agreement (the "Xuanzhu APA") with Xuanzhu dated as of December 29, 2019, for the sale of the China Assets.

WHEREAS, by further orders entered on November 26, 2019 [D.I. 531] and December 19, 2019 [D.I. 545], the Bankruptcy Court approved an amendment of the LOI to extend the duration of the provisions approved by LOI Order until January 10, 2020.

WHEREAS, the Debtor will seek the approval by this Court of the Xuanzhu APA simultaneously with the filing of this Stipulation.

WHEREAS, in order to effectuate a sale of the China Assets to Xuanzhu, rather than a license as contemplated under the Cipla Sale Documents, the Parties have stipulated and agreed to amend the Cipla Sale Documents and all other documents, instruments and agreements executed and/or delivered in connection with the foregoing (together with the Cipla Sale Documents, the "Cipla Transaction Documents"), to rescind the transfer of the China Purchased Assets (as defined below) in accordance with the terms and conditions set forth in this Stipulation, and subject to entry of an order of the Court approving this Stipulation.

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated into, and are material terms of, this Stipulation, and the covenants contained herein, the Parties stipulate as follows:

1. **Rescission of the Sale of the China Purchased Assets to Cipla, and Revesting of the China Purchased Assets in the Debtor**. Upon entry of an order approving the Xuanzhu APA (the "Sale Order") and the entry of an order (which may be the Sale Order) approving this Stipulation, and subject to the closing (the "Xuanzhu Closing") of the transactions under the Xuanzhu APA (all of the foregoing, the "Conditions"), then immediately prior to the Xuanzhu Closing the following shall be deemed automatically to have occurred as of that time:

   (a) The sale and transfer of the portion of the Purchased Assets (as defined in the Cipla APA) consisting of (i) the "China Intellectual Property" (including, without limitation, the "Company China IP Registrations", the "Company Owned China Intellectual Property" and the "Company Used China Intellectual Property") (as such terms are defined in the Xuanzhu APA)), and (ii) all other Purchased Assets relating only to the "China Plazomicin Business," other than the Excluded IP (each as defined in the Xuanzhu APA)

(all of the assets in the foregoing clauses (i) and (ii), collectively, the "China Purchased Assets") that occurred under the Cipla APA shall be rescinded in their entirety and shall have no further force or effect (the "China Purchased Assets Rescission").

(b) Notwithstanding anything to the contrary in this Stipulation or elsewhere, China Purchased Assets Rescission shall not include, and Cipla shall retain all rights, title and interest in, all Company Owned Intellectual Property (as defined in Cipla APA) and Company Used Intellectual Property (as defined in Cipla APA) that pertains to (i) only territories outside of the China Territory (as defined in the Xuanzhu APA); and/or (ii) more than one territory when at least one territory is outside the China Territory (as defined in the Xuanzhu APA) and at least one territory is inside the China Territory (as defined in the Xuanzhu APA).

(c) Notwithstanding anything to the contrary in this Stipulation or elsewhere, China Intellectual Property (as defined in the Xuanzhu APA) shall not include any right, title or interest in any Intellectual Property (as defined in Cipla APA) that pertains to (i) only territories outside of the China Territory (as defined in the Xuanzhu APA); and/or (ii) more than one territory when at least one territory is outside the China Territory (as defined in the Xuanzhu APA) and at least one territory is inside the China Territory (as defined in the Xuanzhu APA).

(d) Notwithstanding anything to the contrary in this Stipulation or elsewhere, China Intellectual Property (as defined in the Xuanzhu APA) shall

not include any right, title or interest in any Intellectual Property (as defined in the Cipla APA) that is required for Cipla to Exploit the Product (as such terms are defined in Cipla APA) outside of the China Territory (as defined in the Xuanzhu APA).

(e) To the extent that Cipla retains any Intellectual Property (as defined in the Cipla APA) rights as of the date hereof that are necessary for Xuanzhu to Exploit the Product (as such terms are defined in the Cipla APA) in connection with the China Plazomicin Business (as defined in the Xuanzhu APA) inside the China Territory, including under paragraphs 1(b), 1(c), and 1(d) hereunder, Cipla shall license those rights to Xuanzhu pursuant to the License and Mutual Support Agreement that will be executed by and between Cipla and Xuanzhu, and substantially in the form that was already agreed upon by such parties (the "Support Agreement"), which shall be a royalty-free, fully-paid, irrevocable, perpetual, and exclusive (even as to Cipla) license within the China Territory, subject to the provisions of the Support Agreement relating to transferability and sub-licensing as set forth therein.

(f) All legal and equitable right, title and interest in respect of the China Purchased Assets, and all proceeds and products thereof, shall vest in the Debtor free and clear of all Liens, Claims and Liabilities (as such terms are defined in the Cipla APA).

(g) Cipla shall have no further right, title or interest in or to the China Purchased Assets and the proceeds and products thereof.

2. **Effect of Stipulation**. Subject to the satisfaction of the Conditions, the Cipla Transaction Documents shall be deemed appropriately amended or otherwise modified to reflect the provisions and to effectuate the terms of this Stipulation, including, without limitation, the China Purchased Assets Rescission. Except as expressly provided in this Stipulation, the terms and provisions of the Cipla Transaction Documents shall remain in full force and effect. Except with respect to Sections 1(b)-1(e), in the event of any conflict between the terms of this Stipulation and the Support Agreement, the Support Agreement shall control.

3. **Stipulation Self-Executing**. Subject to the satisfaction of the Conditions, the provisions of this Stipulation authorizing the China Purchased Assets Rescission shall be self-executing, and the Debtor and Cipla are authorized but shall not 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 Stipulation.

4. **Representations and Covenants of Cipla**.

(a) Cipla represents and warrants that (i) the transactions under the Cipla APA relating to the "China Purchased Assets" (as defined above) did not close; (ii) other than as expressly set forth in and subject to the Cipla Sale Order, prior to and as of the date of this Stipulation, and prior to and as of the entry of an order of the Bankruptcy Court approving this Stipulation: (x) Cipla held no right, entitlement, power or authority of any nature to use, sell, assign, convey, or transfer such China Purchased Assets or any right, title or interest in the China Purchased Assets, or to cause or suffer to exist any Lien, Claim or Liability (as defined in the Xuanzhu APA) on or in respect of such China Purchased Assets, and (y) did not exercise any right, entitlement, power or

authority concerning the China Purchased Assets.. For clarity, the representations and warranties under Paragraph 4(a)(ii) do not include Cipla's ongoing maintenance of Intellectual Property (as defined in the Cipla APA), including prosecution of patents and trademarks, as such maintenance is necessary in the ordinary course of business.

(b) Cipla covenants and agrees that it shall not: (i) take or fail to take any action that would make any of the representations and warranties set forth in Article III of the Xuanzhu APA inaccurate with respect to the China Purchased Assets (as defined above), and (ii) purport to sell, assign, convey or transfer any right, title or interest in such China Purchased Assets or purport to cause or suffer to exist any Lien, Claim or Liability (as defined in the Xuanzhu APA) on or in respect of such China Purchased Assets.

(c) Other than the representation and warranties in sections 4(a) and 4(b) above, Cipla makes no other representations and warranties on any kind, including with respect to the China Purchased Assets.

5. **Further Assurances**. Upon the request of the Debtor or Xuanzhu, Cipla will execute such documents, instruments and agreements as the requesting party may reasonably require for carrying out the intent of this Stipulation and the transactions contemplated hereby. At the Xuanzhu Closing, Cipla will execute and deliver an assignment of intellectual property agreement in a form substantially similar to Exhibit A attached hereto.

6. **Reservation of Rights**. Notwithstanding anything in this Stipulation, each of the Debtor, Cipla and Xuanzhu expressly reserves all of the respective claims, rights at law and/or equity, entitlements, remedies, causes of action and/or defenses that it has or may have with

respect to the Auction, the Cipla Sale Documents, the License Agreement, and/or actions or inactions that any of the other Parties have taken, may take or will seek to take in the future with respect to the Debtor or its assets during the course of this chapter 11 case.

7. **Amendments**. This Stipulation may not be amended or modified other than by a signed writing executed by all of the Parties or by further order of the Court.

8. **Effectiveness**. This Stipulation is subject to entry of an order of the Court approving this Stipulation and shall be effective immediately upon entry of such an order.

9. **Governing Law**. This Stipulation shall be governed by, construed and enforced in accordance with the laws of the state of Delaware, without regard to conflicts of law principles thereof.

10. **Jurisdiction**. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the construction, performance, enforcement or implementation of the terms of this Stipulation.

11. **Counterparts**. The Stipulation may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A signature transmitted by facsimile or email pdf shall be deemed an original signature for purposes of this Stipulation.

[*remainder of page left intentionally blank****]***

IN WITNESS WHEREOF and in agreement herewith, subject to approval by the Court, the Parties, by and through their undersigned counsel, have executed and delivered this Stipulation as of the date first set forth below.

Dated: December 29, 2019

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

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

- and -

HOGAN LOVELLS US LLP
Richard L. Wynne
Erin N. Brady
Christopher R. Bryant
John D. Beck
1999 Avenue of the Stars, Suite 1400
Los Angeles, California 10017
Telephone: (310) 785-4600
Facsimile: (310) 785-4601
Email:richard.wynne@hoganlovells.com
erin.brady@hoganlovells.com
chris.bryant@hoganlovells.com
john.beck@hoganlovells.com

Counsel to the Debtor and Debtor in Possession

KELLEY DRYE & WARREN LLP

Benjamin D. Feder
James S. Carr
Benjamin D. Feder
101 Park Avenue
New York, NY 10178
Telephone: (212) 808-7800
Facsimile: (212) 808-7897
Email: JCarr@kelleydrye.com
bfeder@kelleydrye.com

Counsel to Cipla USA Inc.

PRYOR CASHMAN LLP

Richard Levy, Jr.
Richard Levy, Jr.
7 Times Square
New York, NY 10036
Telephone: (212) 421-4100
Facsimile: (212) 3126-0806
Email: rlevy@pryorcashman.com

Counsel to Xuanzhu (HK) Biopharmaceutical Limited

EXHIBIT A

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

THIS INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this "Assignment"), effective as of _____, 2020 (the "Effective Date"), is by and between Achaogen, Inc., a Delaware corporation ("Assignee") and Cipla USA Inc., a Delaware corporation ("Assignor" and with the Assignee, the "Parties").

W I T N E S S E T H:

WHEREAS, pursuant to the terms and subject to the conditions of the asset purchase agreement, dated June 20, 2019, as amended (the "Cipla APA"), between Assignee and Assignor, Assignee sold to Assignor the Purchased Assets (as defined in the Cipla APA), including the China Purchased Assets (as such term is defined in the Rescission Stipulation referred to below);

WHEREAS, the Parties and Xuanzhu (HK) Biopharmaceutical Limited ("Xuanzhu") entered into the *Stipulation and Agreed Order Amending the Cipla Sale Documents* (the "Rescission Stipulation") before the United States Bankruptcy Court for the District of Delaware which provides for the rescission of the sale of China Purchased Assets under the Cipla APA and related Sale Order, subject to the satisfaction of the Conditions (as defined in the Rescission Stipulation);

WHEREAS, in accordance of the terms of the Rescission Stipulation, Assignor agrees to assign, convey, deliver and transfer, free from all encumbrances except those encumbrances that already existed at the time Assignee sold to Assignor the Purchased Assets (as such term is defined in the Cipla APA), the entire right, title and interest in, to and under all of the China Intellectual Property (as defined in the Xuanzhu APA) included in the China Purchased Assets, including the China Intellectual Property set forth on Exhibit A hereto (the "China Assigned IP"), to Assignee and Assignee desires to acquire the entire right, title and interest in, to and under such China Assigned IP. For the avoidance of doubt, China Assigned IP includes the patent and trademark applications listed on Exhibit A as well as any application(s) for patent(s) or trademark(s) of the China Territory (as defined in the Rescission Stipulation) claiming priority to, and/or the benefit of, these applications, including any substitute application(s), division(s), continuation(s), continuation(s)-in-part, national or regional phase applications, and any patent(s) or trademark(s) of the China Territory that may be granted for or on any application for patent(s) or trademark(s), including any reissue(s), reexamination(s), revival(s), renewal(s) and extension(s) of said patent(s) or trademark(s), but only to the extent such applications relate only to the China Territory.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and subject to the terms and conditions therein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings ascribed to such terms in the Rescission Stipulation, as applicable.

2. Notwithstanding anything to the contrary in this Assignment, China Assigned IP shall not include any rights associated with the trademark to, copyright to, or symbol associated with the word "ZEMDRI" in any fashion outside the China Territory.

3. Assignor hereby irrevocably assigns, conveys, delivers and transfers to Assignee the entire right, title and interest in, to and under, free from all encumbrances except those encumbrances that already existed at the time Assignee sold to Assignor the Purchased Assets (as defined in the Cipla APA), (i) the China Assigned IP, together with all goodwill associated therewith, in each case to be held and enjoyed by Assignee for its own use and enjoyment as fully and entirely as the same would have been held and enjoyed by Assignor if this assignment had not been made, including the right to file applications for patent(s) or trademark(s) of the China Territory (ii) all rights to sue, claim and recover for past, present and future infringement, misappropriation, dilution or other violation of any China Assigned IP, and (iii) all income, royalties, damages and payments now or hereafter due or payable with respect to any of the foregoing.

4. Concurrent with the execution of this Assignment, Assignor shall transfer any and all domain names and social media accounts, as well as any trade dress, copyrights in artwork, labels, packaging, and patient information leaflets, included in the China Assigned IP from Assignor's account to Assignee's account (such that Assignee will be listed as the registrant and/or owner of such domain names and social media accounts in the applicable registrar) and shall deliver to Assignee all necessary Auth-Info codes and all other required passwords necessary to unlock and control such domain names and social media accounts.

5. Upon the reasonable request by Assignee, Assignor shall execute all documents and take all actions as may be necessary or desirable to enable Assignee (or its Affiliate(s), as applicable) to prosecute, perfect, enforce, defend, register and/or record its right, title and interest in, to and under the China Assigned IP, in each case, without further compensation but at the expense of Assignee.

6. Assignor hereby authorizes and requests the officials of any intellectual property registration office in the China Territory to record and register Assignee (or its Affiliate(s), as applicable) as assignee and owner of the entire right, title and interest in, to and under the China Assigned IP.

7. As soon as practicable after execution of this Assignment, Assignor shall, at the cost and expense of the Assignee, use diligent efforts to support transition of the assigned intellectual property from Assignor to Assignee. Assignor shall also use diligent efforts to instruct any inventors and other employees who are under control of the Assignor to cooperate with the Assignee in furtherance of the activities contemplated in this Assignment, including as appropriate any signatures, oaths, or declarations Assignee may request to file, prosecute, record, or transfer of the China Assigned IP and to cooperate with and assist the Assignee in any litigation or other legal proceedings involving the China Assigned IP.

8. This Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware without regard to the choice of law principles thereof. This Assignment is binding upon, and inures to the benefit of, the parties hereto and their respective

legal representatives, successors and assigns. No waiver, modification or change of any provision of this Assignment shall be valid unless in writing and signed by the party against whom such claimed waiver, modification or change is sought to be enforced.

9. This Assignment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Assignment delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Assignment.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have caused this Assignment to be duly executed and delivered as of the Effective Date.

AS ASSIGNEE:

ACHAOGEN, INC.

By: _____
Name:
Title:

STATE OF)
) ss
COUNTY OF)

On the ____ day of _____, ____, before me personally came _____, who is personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and did depose and say to me that he or she executed the same in his or her capacity as _____ of _____, the entity described in and which executed the foregoing instrument, and that he or she executed and delivered said instrument pursuant to authority given by the board of directors of such entity (or other applicable authority of such entity).

_____
Notary Public

(PLACE STAMP AND SEAL ABOVE)

IN WITNESS WHEREOF, the parties hereto, through their authorized representatives, have caused this Assignment to be duly executed and delivered as of the Effective Date.

AS ASSIGNOR:

CIPLA USA INC.

By:
_____
Name:
Title:

STATE OF)
) ss
COUNTY OF)

On the ____ day of _____, ____, before me personally came _____, who is personally known to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and did depose and say to me that he or she executed the same in his or her capacity as _____ of _____, the entity described in and which executed the foregoing instrument, and that he or she executed and delivered said instrument pursuant to authority given by the board of directors of such entity (or other applicable authority of such entity).

_____
Notary Public

(PLACE STAMP AND SEAL ABOVE)

EXHIBIT A

CHINA ASSIGNED IP

I. PATENTS

Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
China	200880117193.1 11/21/2008	101868472A	ZL 200880117193.1 05/29/2013	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
Hong Kong	11101563.2 11/21/2008	1147499	HK1147499 01/26/2018	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered (via EP)
Taiwan	097145246 11/21/2008	200927146	I425947 02/11/2014	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201310142186.X 11/21/2008	103360440A	ZL 201310142186.X 08/31/2016	ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Registered
China	201080031078.X 05/14/2010	102481307A	ZL 201080031078.X 08/24/2016	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Hong Kong	12111406.1 05/14/2010	1170663	1170663 11/17/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
Macau	J/002404(132) 05/14/2010		J/002404 01/24/2017	TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Registered
China	201610573991.1 05/14/2010	106188175A		TREATMENT OF KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS	Achaogen, Inc.	Pending
Hong Kong	17105427.3 05/14/2010	1231886A		TREATMENT OF	Achaogen, Inc.	Pending

Country	Application No./Filing Date	Publication No.	Registration No./Issue Date	Title/Mark	Assignee	Case Status
				KLEBSIELLA PNEUMONIAE INFECTIONS WITH ANTIBACTERIAL AMINOGLYCOSIDE COMPOUNDS		
Taiwan	107136676 10/18/2018	201922233 6/16/2019		SYNTHESIS OF ANTIBACTERIAL AMINOGLYCOSIDE ANALOGS	Achaogen, Inc.	Pending
Taiwan	106126088 8/2/2017	201815826 5/1/2018		PLAZOMICIN ANTIBODIES AND METHODS OF USE		Filed

II. TRADEMARKS

No trademarks.

III. COPYRIGHTS

No registered copyrights.

IV. REGISTERED DOMAINS

Domain Name
enrezovi.tw
zemdri.tw
enrezovi.cn
xemdro.cn
xemdro.tw
zemdri.cn