FORM 10-K

AGENUS INC - AGEN

Filed: March 18, 2013 (period: December 31, 2012)

Annual report with a comprehensive overview of the company

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form 10-K

☑ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2012

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from to

Commission File Number: 000-29089

Agenus Inc.

(exact name of registrant as specified in its charter)

Delaware	**06-1562417**
(State or other jurisdiction of incorporation or organization)	***(I.R.S. Employer Identification No.)***

3 Forbes Road, Lexington, Massachusetts 02421
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code:
(781) 674-4400

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, $.01 Par Value	**The NASDAQ Capital Market**
(Title of each class)	***(Name of each exchange on which registered)***

Securities registered pursuant to Section 12(g) of the Act:
None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☑

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☑

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☑ No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulations S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). ☑

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405 of this chapter) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☑

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer," and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐ Accelerated filer ☑ Non-accelerated filer ☐ Smaller reporting company ☐

(Do not check if a smaller reporting company)

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☑

The aggregate market value of voting stock held by non-affiliates of the registrant as of June 30, 2012 was: $115.8 million. There were 25,299,770 shares of the registrant's Common Stock outstanding as of February 22, 2013.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement for the registrant's 2013 Annual Meeting of Stockholders, which definitive proxy statement will be filed with the Securities and Exchange Commission not later than 120 days after the registrant's fiscal year end of December 31, 2012, are incorporated by reference into Part III of this Annual Report on Form 10-K.

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Note Regarding Forward-Looking Statements

This Annual Report on Form 10-K and other written and oral statements the Company makes from time to time contain certain “forward-looking” statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You can identify these forward-looking statements by the fact they use words such as “could,” “expect,” “anticipate,” “estimate,” “target,” “may,” “project,” “guidance,” “intend,” “plan,” “believe,” “will,” “potential,” “opportunity,” “future” and other words and terms of similar meaning and expression in connection with any discussion of future operating or financial performance. You can also identify forward-looking statements by the fact that they do not relate strictly to historical or current facts. Such forward-looking statements are based on the Company's current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes to differ materially from current expectations. These statements are likely to relate to, among other things, our business strategy, our research and development, our product development efforts, our ability to commercialize our product candidates, the activities of our licensees, our prospects for initiating partnerships or collaborations, the timing of the introduction of products, the effect of new accounting pronouncements, uncertainty regarding our future operating results and our profitability, anticipated sources of funds as well as our plans, objectives, expectations, and intentions.

Although we believe we have been prudent in our plans and assumptions, no assurance can be given that any goal or plan set forth in forward-looking statements can be achieved and readers are cautioned not to place undue reliance on such statements, which speak only as of the date made. We undertake no obligation to release publicly any revisions to forward-looking statements as a result of new information, future events or otherwise.

We believe that the risks identified in this Annual Report on Form 10-K, including, without limitation, the risks set forth in Part I-item 1A. "Risk Factors," could cause actual results to differ materially from any forward-looking statement contained in this Annual Report on Form 10-K. We encourage you to read those descriptions carefully. We caution investors not to place significant reliance on forward-looking statements contained in this document; such statements need to be evaluated in light of all the information contained in this document. Furthermore, the statements speak only as of the date of this document, and we undertake no obligation to update or revise these statements.

Reverse Stock Split Except as otherwise indicated, information in this Annual Report on Form 10-K reflects the one-for-six reverse stock split of our common stock effected on October 3, 2011.

PART I

Item 1. *Business*

Our Business

Overview

Agenus Inc. (including its subsidiaries, also referred to as "Agenus," the "Company," "we," "us," and "our") is a biotechnology company developing and commercializing technologies to treat cancers and infectious diseases, primarily based on immunological approaches. Our technology portfolio consists of our Saponin Platform (based on our saponin adjuvant based technologies) and our Heat Shock Protein ("HSP") Platform (based on our HSP based technologies). Within our Saponin Platform is QS-21 Stimulon® adjuvant, or QS-21 Stimulon, which is used by our licensees in numerous vaccines under development in clinical trials, some as advanced as Phase 3, for a variety of diseases, including cancer, shingles, malaria, Alzheimer's disease, human immunodeficiency virus, and tuberculosis. Within our HSP Platform we are developing our Recombinant Series and our Prophage Series vaccines. HerpV, a therapeutic vaccine candidate from the Recombinant Series which contains QS-21 Stimulon, has been tested in a Phase 1 clinical trial for the treatment of genital herpes and is now in a Phase 2 clinical trial. In our Prophage Series we have tested product candidates in Phase 3 clinical trials for the treatment of renal cell carcinoma ("RCC"), the most common type of kidney cancer, and for metastatic melanoma, as well as in Phase 1 and Phase 2 clinical trials in a range of indications. Prophage Series vaccine R-100, also known as Oncophage® vaccine, is registered for use in Russia for the treatment of RCC in patients at intermediate risk of recurrence. In addition, Phase 2 trials are fully enrolled in the United States testing the Prophage Series vaccine candidates G-100 and G-200 in newly diagnosed and recurrent glioma, respectively. Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, market development, and support of our collaborations. Our product candidates require clinical trials and approvals from regulatory agencies, as well as acceptance in the marketplace. Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing arrangements with academic and corporate collaborators and licensees and by entering into new collaborations.

Our common stock is currently listed on The Nasdaq Capital Market ("Nasdaq") under the symbol "AGEN".

Our Products and Technologies Under Development

Research and development expenses for the years ended December 31, 2012, 2011, and 2010, were $10.6 million, $11.0 million, and $12.9 million, respectively. Set forth below are the details of our research and development programs.

QS-21 Stimulon

QS-21 Stimulon, from our Saponin Platform, is an adjuvant, or a substance added to a vaccine or other immunotherapy that is intended to enhance immune response. The key licensees of QS-21 Stimulon are GlaxoSmithKline ('GSK") and JANSSEN Alzheimer Immunotherapy ("JANSSEN AI"). There are approximately 17 vaccines containing QS-21 Stimulon in clinical development by our licensees, including a total of four in Phase 3 testing for malaria, melanoma, non-small cell lung cancer and shingles. Assuming regulatory approval, the first products containing QS-21 Stimulon are anticipated to be launched in 2014. The pipeline of product candidates containing QS-21 Stimulon is very diverse, encompassing prophylactic as well as therapeutic vaccines for infectious diseases, multiple cancer types, and Alzheimer's disease. We do not incur clinical development costs for the product candidates of our licensees. In addition to the programs of our licensees, our internally-developed vaccine candidate HerpV, which is in a Phase 2 study for the treatment of genital herpes in Herpes Simplex Virus 2 (HSV-2) positive subjects, contains QS-21 Stimulon. See "Heat Shock Protein Technology - HerpV" below.

QS-21 Stimulon has the ability to stimulate antibody, or humoral, immune response, and has also been shown to activate cellular immunity. A natural product, QS-21 Stimulon is a triterpene glycoside, or saponin, purified from the bark of a South American tree called Quillaja saponaria. It is sufficiently characterized with a known molecular structure, thus distinguishing it from other adjuvant candidates, which are typically emulsions, polymers, or biologicals. QS-21 Stimulon has been tested in approximately 185 clinical trials involving, in the aggregate, over 40,000 subjects in a variety of cancer indications, infectious diseases, and other disorders. These studies have been carried out by academic institutions and pharmaceutical companies in the United States and internationally. A number of these studies have shown QS-21 Stimulon to be significantly more effective in stimulating antibody responses than aluminum hydroxide or aluminum phosphate, the adjuvants most commonly used in approved vaccines in the United States today.

Partnered QS-21 Stimulon Programs

A number of pharmaceutical and biotechnology companies have licensed QS-21 Stimulon from us for use in vaccines to treat a wide variety of human diseases. Companies with QS-21 Stimulon programs include GSK, and JANSSEN AI. In return for rights to use QS-21 Stimulon, these companies have generally agreed to pay us license fees, manufacturing payments, milestone payments, and royalties on product sales for at least 10 years after commercial launch, with some exceptions. In addition to our corporate licensing arrangements, we have developed a number of academic collaborations to test new vaccine concepts and products containing QS-21 Stimulon.

GSK. In July 2006, we entered into a license agreement and a supply agreement with GSK for the use of QS-21 Stimulon (the "GSK License Agreement" and the "GSK Supply Agreement", respectively). In January 2009, we entered into an Amended and Restated Manufacturing Technology Transfer and Supply Agreement (the "Amended GSK Supply Agreement") under which GSK has the right to manufacture all of its requirements of commercial grade QS-21 Stimulon. GSK is obligated to supply us (or our affiliates, licensees, or customers) certain quantities of commercial grade QS-21 Stimulon for a stated period of time. In March 2012 we entered into a First Right to Negotiate and Amendment Agreement amending the GSK License Agreement and the Amended GSK Supply Agreement to clarify and include additional rights for the use of QS-21 Stimulon (the "GSK First Right to Negotiate Agreement"). In addition, we granted GSK the first right to negotiate for the purchase of the Company or certain of our assets. The first right to negotiate will expire after five years. As consideration for entering into the GSK First Right to Negotiate Agreement, GSK paid us an upfront, non-refundable payment of $9.0 million, $2.5 million of which is creditable toward future royalty payments. We refer to the GSK License Agreement, the Amended GSK Supply Agreement and the GSK First Right to Negotiate Agreement, from time to time as the "GSK Agreements". As of December 31, 2012, we have received $21.3 million of a potential $24.3 million in upfront and milestone payments related to the GSK Agreements. We are generally entitled to receive low single-digit royalties on net sales for a period of 7-10 years after the first commercial sale of a resulting GSK product with some exceptions. The GSK License and Amended GSK Supply Agreements may be terminated by either party upon a material breach if the breach is not cured within the time specified in the respective agreement. The termination or expiration of the GSK License Agreement does not relieve either party from any obligation which accrued prior to the termination or expiration. Among other provisions, the milestone payment obligations survive termination or expiration of the GSK Agreements for any reason, and the license rights granted to GSK survive expiration of the GSK License Agreement. The license rights and payment obligations of GSK under the Amended GSK Supply Agreement survive termination or expiration, except that GSK's license rights and future royalty obligations do not survive if we terminate due to GSK's material breach unless we elect otherwise.

We believe QS-21 Stimulon is a key component included in several of GSK's proprietary adjuvant systems and a number of GSK's vaccine candidates currently in development are formulated using adjuvant systems containing QS-21 Stimulon. GSK has ongoing Phase 3 studies evaluating its investigational MAGE-A3 Antigen-Specific Cancer Immunotherapeutic containing QS-21 Stimulon in melanoma and non-small cell lung cancer. We anticipate data from Phase 3 trials in melanoma, non-small cell lung cancer, malaria and shingles to be reported within the next year. In October 2011 , *The New England Journal of Medicine* published results of a Phase 3 trial of GSK Biologicals' RTS,S malaria vaccine candidate containing QS-21 Stimulon. Results of the study, the largest malaria vaccine efficacy and safety trial ever conducted, demonstrate that RTS,S provided young African children with significant protection against clinical and severe malaria-reducing risk by 56 percent and 47 percent, respectively, for the 12-month period following vaccination. In November 2012, *The New England Journal of Medicine* published results of a second Phase 3 trial for RTS,S. In this study, infants (aged 6-12 weeks at first vaccination) receiving the RTS,S vaccine candidate experienced one-third fewer episodes of both clinical and severe malaria and experienced similar reactions to the injection when compared to those who received the control meningococcal C conjugate vaccine. Both co-primary endpoints in the large ongoing efficacy trial were met.

Elan/JANSSEN Alzheimer's Immunotherapy. Elan Pharmaceuticals, Inc. and/or its affiliates ("Elan") had a commercial license for the use of QS-21 Stimulon in the research and commercialization of Elan's Alzheimer's disease vaccine candidate that contains QS-21 Stimulon ("JANSSEN Product"). Effective September 14, 2009, we entered into an Amended and Restated License Agreement with Elan, which was assigned by Elan to JANSSEN AI on September 17, 2009 (the "JANSSEN AI License Agreement"). Under the terms of the JANSSEN AI License Agreement, JANSSEN AI has the right to develop, make, have made, use, sell, offer for sale, import, and have sold, the JANSSEN Product. In addition, pursuant to the terms of the JANSSEN AI License Agreement, JANSSEN AI has the right to manufacture all of its requirements of QS-21 Stimulon for use in the JANSSEN Product. We have no further supply obligations to JANSSEN AI. If all benchmarks are met under the JANSSEN AI License Agreement, we could receive up to $11.5 million in future milestone payments; $1.5 million has been received as of December 31, 2012. Furthermore, under the terms of the JANSSEN AI License Agreement, we are entitled to receive mid single-digit royalties on net sales of the JANSSEN Product for a period of at least 10 years after the first commercial sale of such product, if any. Expiration or termination of the JANSSEN AI License Agreement is without prejudice to any rights that accrued to the benefit of the parties prior to the date of such expiration or termination. Upon expiration of the JANSSEN AI License Agreement, JANSSEN AI will have a royalty-free license. JANSSEN may terminate the JANSSEN AI

License Agreement by giving us written notice. If a material breach is not cured within the time specified in the JANSSEN AI License Agreement, either party may terminate. Upon early termination of the JANSSEN AI License Agreement, JANSSEN AI's license rights terminate and future payment obligations do not accrue. The termination or expiration of the JANSSEN AI License Agreement will not relieve either party from any obligation which accrued prior to the termination or expiration. However, in the event that JANSSEN elects an early termination of the JANSSEN AI License Agreement, all rights to know-how, manufacturing technology and patents covered under the JANSSEN AI License Agreement will revert back to us.

Manufacturing

Except in the case of GSK and JANSSEN AI, we have retained worldwide manufacturing rights for QS-21 Stimulon. We have the right to subcontract manufacturing for QS-21 Stimulon and we have a supply agreement with a contract manufacturer for the production of QS-21 Stimulon through September 2014. In addition, under the terms of our agreement with GSK, GSK is committed to supply certain quantities of commercial grade QS-21 Stimulon to us and our licensees for a fixed period of time.

Heat Shock Protein Technology

Heat shock proteins, also known as HSPs, are also called stress proteins, as their expression is increased when cells experience various stresses like extremes of temperature (hot or cold) and oxygen deprivation. HSPs are present in all cells in all life forms from bacteria to mammals, and their structure and function are similar across these diverse life forms. Under normal conditions, HSPs play a major role in protein folding and transport of protein fragments called peptides within a cell, and are thus also known as “chaperones.” Antigenic peptides, those portions of a protein that stimulate immune responses when recognized by the immune cells, are also transported by these chaperones. Because HSPs interact with and bind many cellular proteins and peptides, they chaperone a broad array of antigenic peptides to facilitate their recognition by the immune system. Thus, HSPs play an integral role in capturing and presenting the antigenic “fingerprint” of a cell to a host's immune system.

Although HSPs are normally found inside cells, they also provide important danger signals when found outside of cells. Detection of HSPs outside of cells is indicative that cell death has occurred. This may have been caused by disease, mutation, or injury, whereby a cell's contents are spilled into body tissue. These HSPs send powerful “danger signals” to the immune system that initiate a cascade of events capable of generating a targeted immune response against the infection or disease-related cell death.

Combined, these functions of HSPs form the basis of our technology. The “chaperoning” nature of HSPs allows us to produce vaccines containing the antigenic fingerprint of a given disease. In the case of cancer, the vaccines are patient-specific, consisting of heat shock protein-peptide complexes, also known as HSPPCs, purified from a patient's tumor cells. These HSPPCs, when injected into the skin, are expected to stimulate a powerful cellular immune response potentially capable of targeting and killing the cancer cells from which these complexes were derived. Because cancer is a highly variable disease from one patient to another, due to rapid mutation of cancer cells, we believe that a patient-specific vaccination approach is required to generate a more robust and targeted immune response against the disease.

For certain diseases, such as genital herpes, we do not believe that a personalized vaccination approach is required, since the pathogen does not vary as greatly from patient to patient as do cancer cells. For example, in our HerpV product candidate for the treatment of genital herpes, we complex, or bind, several defined antigenic herpes peptides to an HSP (Hsc70) that we genetically engineer, creating an HSPPC. This HSPPC, when injected into the skin, is designed to elicit a cellular immune response to the synthetic peptides carried by the HSP.

HerpV

HerpV, formerly known as AG-707 plus QS-21 Stimulon, is an investigational therapeutic vaccine candidate directed at the virus that causes genital herpes (herpes simplex virus-2, or HSV-2) and is the first potential recombinant (off-the-shelf) application of our HSP technology. HerpV includes our proprietary QS-21 Stimulon adjuvant. HerpV is a multivalent vaccine containing multiple synthetic HSV-2 peptides, which means that it may be applicable to a broader patient population and may have potential in managing outbreaks and disease transmission. We consider HerpV to be part of a platform technology, since with the integration of heat shock proteins with antigenic peptides, we could potentially create therapeutic vaccines for various infectious diseases.

Genital herpes is one of the most common ulcerating diseases of the genital mucosa. The World Health Organization currently estimates that in the U.S., from 40 to 60 million people are HSV-2-infected, with an incidence of 1-2 million infections and 600,000 to 800,000 clinical cases per year. Prevalence in the 30-40 year-old population is about 30%. This disease often results in recurrent painful sores in the genital area. Current therapies involve taking a daily medication that only partly suppresses the virus.

Based on the results of completed toxicology studies and other preclinical activities, we submitted to the U.S. Food and Drug Administration ("FDA") an investigational new drug application ("IND") for HerpV during the second quarter of 2005. In October 2005, we initiated a multicenter Phase 1 clinical trial of HerpV. In this four-arm, Phase 1 study, 35 HSV-2 seropositive patients received HerpV(designated in the study as AG-707 plus QS-21 Stimulon), AG-707 alone, QS-21 Stimulon alone, or placebo. The vaccine was well tolerated, with injection site pain as the most common reported adverse event. All patients who were evaluable for immune response and received HerpV showed a statistically significant CD4+ T cell response (100%; 7/7) to HSV-2 antigens as detected by IFNy Elispot, and the majority of those patients demonstrated a CD8+ T cell response (75%; 6/8). This study is the first to demonstrate that HSPs complexed to viral antigens induce an antigen-specific T cell response in humans. The results from this study were published in the peer-reviewed journal *Vaccine* in September 2011. We believe this finding is the first of its kind finding in genital herpes treatment.

We advanced HerpV into a Phase 2 randomized, double-blind, multicenter study during the fourth quarter of 2012. This trial has been closed for screening and will measure the effect of vaccination on viral shedding in individuals infected with HSV-2. Experts in HSV-2 clinical research believe that a reduction in viral shedding could translate into clinical benefit.

The Prophage Series Vaccines

The Prophage Series vaccines describe our portfolio of patient-specific HSP-based therapeutic cancer vaccines, including the R-Series candidates in RCC, M-Series candidates in melanoma, and G-Series candidates in glioma. The first product derived from the R-Series (R-100, registered in Russia as Oncophage), represents the only approved treatment for adjuvant or non-metastatic kidney cancer patients at intermediate risk for disease recurrence. Below is a brief summary of our R-Series and G-Series candidates. There are no current on-going activities with our M-Series candidates.

Each Prophage Series vaccine candidate is made from a patient's tumor tissue. After a surgeon removes a patient's tumor, the majority of that tumor tissue is frozen and shipped to our manufacturing facility. Using a proprietary manufacturing process we isolate the HSPPCs from the tumor tissue. Through this isolation process, the HSPPCs are extracted, purified, and sterile-filtered from the tumor tissue, then formulated in solution and packaged in standard single-injection vials. After the performance of quality control testing, including sterility testing, we ship the frozen vaccine back to the hospital or clinic for administration. Medical professionals administer the vaccine by injecting the product into the skin.

Although we believe that our technology is applicable to all cancer types, our initial focus with the Prophage Series vaccines is on cancers that have limited or no available treatment options and in cancers that typically yield sufficient quantities of tumor tissue from the surgical procedure to allow for manufacture.

Since the first patient was enrolled in a clinical trial studying a Prophage Series vaccine in 1997, nearly 900 cancer patients have been treated with our vaccine in clinical trials. Collectively, results across all trials provided evidence of manufacturing and logistical feasibility as well as an initial demonstration of safety and signals of efficacy, which included patients who had complete disappearance (a complete response), substantial shrinkage (partial response), minor shrinkage (minor response), or no change in the size (disease stabilization) of tumor lesions. Median overall survival results exceeded historical controls that were relevant at the time when the studies were performed. Additionally, tumor-specific T-cell responses were noted in studies where they were measured, namely melanoma and colorectal cancer.

Because our Prophage Series vaccines are derived from the patient's own tumor, they are unlike the majority of approved therapies and as such, they are experiencing a long development process and incurring high development costs, either of which could delay or prevent our commercialization efforts. For additional information regarding regulatory risks and uncertainties, please read the risks identified in Part 1-Item 1A. "Risk Factors" of this Annual Report on Form 10-K.

Phase 3 Renal Cell Carcinoma Program (R-Series, Oncophage)

Renal cell carcinoma is the most common type of kidney cancer. The American Cancer Society estimates that there will be 65,150 new cases of kidney cancer and 13,680 people will die from the disease in the United States in 2013.

We initiated a Phase 3, multicenter, international trial for non-metastatic RCC into which the first patient was randomized in February 2001. As announced on March 24, 2006, the trial did not reach statistical significance in its primary endpoint of recurrence-free survival in the total patient population, though a positive trend was observed. During the protocol design process in 1999 and 2000, key opinion leaders were consulted, and the non-metastatic RCC patient population designated for enrollment in the trial was thought to be a relatively uniform group. In 2006, the Eastern Cooperative Oncology Group ("ECOG") initiated a trial in adjuvant RCC with sorafenib and sunitinib that stratified their patient population into intermediate-risk, high-risk, and very high-risk recurrence categories. Using these ECOG defined criteria, analysis of the intermediate risk patients (362 of the 604 eligible patients in the trial) in the trial showed a statistically significant difference in recurrence-free survival in favor of the Oncophage arm. In part because the intermediate-risk category was not prospectively

delineated prior to the trial's initiation, the FDA has indicated that, by itself, part I of our Phase 3 clinical trial in RCC is not sufficient to support a biologics license application ("BLA") filing.

In April 2008, the Russian Ministry of Public Health issued a registration certificate for the use of Oncophage for the treatment of kidney cancer patients at intermediate risk for disease recurrence. Because, among other things, we have limited resources and minimal sales and marketing experience, commercialization of Oncophage has been slow, and only modest sales of Oncophage in Russia have occurred. The Russian registration was our first product approval from a regulatory authority, and the first approval of a patient-specific therapeutic cancer vaccine in a major market. In December 2011, we out-licensed this program to NewVac LLC (a subsidiary of ChemRar Ventures LLC, "NewVac"), a company focused on the development of innovative technology for cancer immunotherapy.

Through the December 2011 license, development and manufacturing technology transfer agreement with NewVac ("NewVac Agreement") for Oncophage, we granted NewVac an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. The NewVac Agreement may be terminated by either party upon a material breach if the breach is not cured within the time specified in the agreement. The NewVac Agreement may also be terminated by us if certain milestones are not achieved and by NewVac without cause. The NewVac Agreement has an initial term of three years and may be extended under certain terms for a period ending the later of December 2021, or the expiration of the last valid claim of the licensed patent rights, as defined in the NewVac Agreement. During the term of the NewVac Agreement we are entitled to receive modest milestone payments in addition to payments for supply of Oncophage and/or royalties in the low double-digits on net sales of Oncophage. We anticipate first commercial sale through NewVac to occur in 2013. Upon termination of the NewVac Agreement, all activity under the agreement immediately ceases.

In 2008, we announced the submission of a marketing authorization application ("MAA") to the European Medicines Agency ("EMA") requesting conditional authorization of Oncophage in earlier-stage, localized kidney cancer. On November 20, 2009, we announced that the Committee for Medicinal Products for Human Use ("CHMP") of the EMA formally adopted a negative opinion on our MAA. Subsequently we withdrew our application and we are no longer actively pursuing activities in the European market. Although we are no longer in active discussions with a potential partner for the European market, we continue to actively seek partnership discussions for multiple products generated from our portfolio of Prophage Series vaccines.

Glioma (G-Series)

Glioma is a cancer affecting the central nervous system that begins in glial cells (connective tissue cells that surround and support nerve cells). Malignant glioma is currently a fatal disease. The American Cancer Society estimates that 23,130 new cases of the brain and other nervous system cancers will be diagnosed during 2013 in the U.S., and that 14,080 people will die from these tumors during 2013 in the U.S.

A Phase 2 trial testing the Prophage Series vaccine candidate G-100 in combination with Temodar ® (temozolomide) in newly diagnosed glioma has been fully enrolled and patient follow up is underway. A Phase 2 clinical trial with Prophage Series vaccine G-200 in recurrent, high-grade glioma has been completed and final data are in the process of being prepared for publication in a peer reviewed medical journal. These studies have been led by the Brain Tumor Research Center at the University of California, San Francisco ("UCSF"), with grants from the American Brain Tumor Association and the National Cancer Institute Special Programs of Research Excellence. The G-100 and G-200 studies are solely based in the United States.

On June 6, 2011, results from the ongoing Phase 2 clinical trial were presented at the 47 th Annual Meeting of the American Society of Clinical Oncology (ASCO) in Chicago, Illinois. Results from this trial showed that 93 percent of the patients were alive at $\geq$ 26 weeks after surgery and a median overall survival of 11 months (47.6 weeks). Results from pre-defined exploratory analyses of disease progression showed a median progression free survival (PFS) of approximately 5 months (20 weeks). Importantly, measures of immune response post vaccination with Prophage Series G-200 demonstrated a significant tumor-specific CD8+ T-cell response as well as innate immune responses as marked by a significant increase in levels of circulating NK cells.

In 2012, the Cancer Therapy Evaluation Program (CTEP) of the National Cancer Institute (NCI) approved a study of the Prophage Series G-200 vaccine in a large, randomized Phase 2 trial in combination with Avastin® (bevacizumab) in patients with surgically resectable recurrent glioma. The study, sponsored by the Alliance for Clinical Trials in Oncology, an NCI cooperative group, is designed to investigate the combination of G-200 and Avastin in a three-arm randomized study of approximately 220 patients with surgically resectable recurrent glioma. The study is designed to compare efficacy of G-200 given with Avastin either concomitantly or at progression, versus Avastin alone, in the therapy of surgically resectable recurrent glioma. This study is anticipated to begin enrolling patients during the first half of 2013.

Manufacturing

Commercial and clinical supplies of Oncophage and other vaccine candidates deriving from the Prophage Series are manufactured in our Lexington, Massachusetts facility. We estimate that this facility could support the production of up to 4,000 batches per year. On average, it takes eight to 10 hours of direct processing time to manufacture a patient batch of vaccine. Our licensee NewVac is also establishing commercial manufacturing capabilities in Russia to meet its future supply needs.

After manufacturing, Prophage Series vaccines are tested and released by our quality systems staff. The quality control organization performs a series of release assays designed to ensure that the product meets all applicable specifications. Our quality assurance staff also reviews manufacturing and quality control records prior to batch release in an effort to assure conformance with current Good Manufacturing Practices, also known as cGMP, as mandated by the FDA and foreign regulatory agencies.

Our manufacturing staff is rigorously trained and routinely evaluated for conformance to manufacturing procedures and quality standards. This oversight is intended to ensure compliance with FDA and foreign regulations and to provide consistent vaccine output. Our quality control and quality assurance staff is similarly trained and evaluated as part of our effort to ensure consistency in the testing and release of the product, as well as consistency in materials, equipment, and facilities.

Intellectual Property Portfolio

We seek to protect our technologies through a combination of patents, trade secrets and know-how and currently have exclusive rights, through outright ownership or through exclusive licenses, to 74 issued United States patents and 105 issued foreign patents. We also have exclusive rights to five pending United States patent applications and 17 pending foreign patent applications. While we have patent coverage in Russia for Oncophage, we may not have rights in other territories where we may pursue regulatory approval for Prophage Series vaccine candidates.

Our issued patents include those that cover our core technologies including HSPs for the treatment of cancers and infectious disease, and saponin adjuvants.

The issued patents that cover the Prophage Series vaccines expire at various dates between 2015 and 2024. The issued patents to HerpV expire at various dates between 2014 and 2017. Our patent to purified QS-21 Stimulon expired in most territories in 2008. Additional protection for QS-21 Stimulon in combination with other agents is provided by our other issued patents which expire between 2016 and 2022. We continue to explore means of extending the life cycle of our patent portfolio.

Various patents and patent applications have been exclusively licensed to us by the following entities:

Mount Sinai School of Medicine

In November 1994, we entered into a patent license agreement with the Mount Sinai School of Medicine (the “Mount Sinai Agreement”). Through the Mount Sinai Agreement, we obtained an exclusive, worldwide license to patent rights relating to the heat shock protein technology that resulted from the research and development performed by Dr. Pramod Srivastava, our founding scientist and a former member of our Board of Directors. We agreed to pay Mount Sinai a royalty on the net sales of products covered by the licensed patent rights and also provided Mount Sinai with a 0.45% equity interest in the Company (approximately 10,300 shares) valued at approximately $90,000 at the time of issuance. The term of the Mount Sinai Agreement ends when the last of the licensed patents expires (2018) or becomes no longer valid. If we fail to pay royalties that are due under the agreement, Mount Sinai may issue written notice to us. If we continue to fail to pay royalties after 60 days from receipt of the written notice, Mount Sinai can terminate the agreement. The Mount Sinai Agreement requires us to use due diligence to make the products covered by the licensed patent rights commercially available, including a requirement for us to use best efforts to reach a number of developmental milestones, which have been achieved. If we fail to comply with the due diligence provisions of the agreement, Mount Sinai could take actions to convert our exclusive license to a non-exclusive license after six months written notice. The Mount Sinai Agreement does not contain any milestone payment provisions.

Fordham University

During 1995, Dr. Srivastava moved his research to Fordham University (“Fordham”). We entered into a sponsored research and technology license agreement with Fordham in March 1995 (the “Fordham Agreement”) relating to the continued development of the heat shock protein technology and agreed to make payments to Fordham to sponsor Dr. Srivastava's research. Through the Fordham Agreement, we obtained an exclusive, perpetual, worldwide license to all of the intellectual property, including all the patent rights, which resulted from the research and development performed by Dr. Srivastava at Fordham. We also agreed to pay Fordham a royalty on the net sales of products covered by the Fordham Agreement through the last expiration date on the patents under the agreement (2018) or when the patents become no longer valid. The agreement does not contain any milestone payment provisions or any diligence provisions. Dr. Srivastava moved his research to the University

of Connecticut Health Center ("UConn") during 1997 and, accordingly, the parts of the agreement related to payments for sponsored research at Fordham terminated in mid-1997. During the term of this agreement, we paid Fordham approximately $2.4 million.

University of Connecticut

In May 2001, we entered into a license agreement with UConn which was amended in March 2003 and June 2009. Through the license agreement, we obtained an exclusive worldwide license to patent rights resulting from inventions discovered under a research agreement that was effective from February 1998 until December 2006. The term of the license agreement ends when the last of the licensed patents expires (2022) or becomes no longer valid. UConn may terminate the agreement: (1) if, after 30 days written notice for breach, we continue to fail to make any payments due under the license agreement, or (2) we cease to carry on our business related to the patent rights or if we initiate or conduct actions in order to declare bankruptcy. We may terminate the agreement upon 90 days written notice. We are required to make royalty payments on any obligations created prior to the effective date of termination of the license agreement. Upon expiration or termination of the license agreement due to breach, we have the right to continue to manufacture and sell products covered under the license agreement which are considered to be works in progress for a period of 6 months. The license agreement contains aggregate milestone payments of approximately $1.2 million for each product we develop covered by the licensed patent rights. These milestone payments are contingent upon regulatory filings, regulatory approvals, and commercial sales of products. We have also agreed to pay UConn a royalty on the net sales of products covered by the license agreement as well as annual license maintenance fees beginning in May 2006. Royalties otherwise due on the net sales of products covered by the license agreement may be credited against the annual license maintenance fee obligations. Under the March 2003 amendment, we agreed to pay UConn an upfront payment and to make future payments for each patent or patent application with respect to which we exercised our option under the research agreement. As of December 31, 2012, we have paid approximately $430,000 to UConn under the license agreement. The license agreement gives us complete discretion over the commercialization of products covered by the licensed patent rights but also requires us to use commercially reasonable diligent efforts to introduce commercial products within and outside the United States. If we fail to meet these diligence requirements, UConn may be able to terminate the license agreement.

Regulatory Compliance

Governmental authorities in the United States and other countries extensively regulate the preclinical and clinical testing, manufacturing, labeling, storage, record keeping, advertising, promotion, export, marketing and distribution, among other things, of our investigational product candidates. In the United States, the FDA under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act and other federal statutes and regulations, subject pharmaceutical products to rigorous review.

In order to obtain approval of a new product from the FDA, we must, among other requirements, submit proof of safety and efficacy as well as detailed information on the manufacture and composition of the product. In most cases, this proof entails extensive preclinical, clinical, and laboratory tests. Before approving a new drug or marketing application, the FDA may also conduct pre-licensing inspections of the company, its contract research organizations and/or its clinical trial sites to ensure that clinical, safety, quality control, and other regulated activities are compliant with Good Clinical Practices, or GCP, or Good Laboratory Practices, or GLP, for specific non-clinical toxicology studies. The FDA may also require confirmatory trials, post-marketing testing, and extra surveillance to monitor the effects of approved products, or place conditions on any approvals that could restrict the commercial applications of these products. Once approved, the labeling, advertising, promotion, marketing, and distribution of a drug or biologic product must be in compliance with FDA regulatory requirements.

In Phase 1 clinical trials, the sponsor tests the product in a small number of patients or healthy volunteers, primarily for safety at one or more doses. Phase 1 trials in cancer are often conducted with patients who have end-stage or metastatic cancer. In Phase 2, in addition to safety, the sponsor evaluates the efficacy of the product in a patient population somewhat larger than Phase 1 trials. Phase 3 trials typically involve additional testing for safety and clinical efficacy in an expanded population at geographically dispersed test sites. The FDA may order the temporary or permanent discontinuation of a clinical trial at any time.

The sponsor must submit to the FDA the results of preclinical and clinical testing, together with, among other things, detailed information on the manufacture and composition of the product, in the form of a new drug application or, in the case of biologics, like the Prophage Series vaccines, a BLA. In a process that can take a year or more, the FDA reviews this application and, when and if it decides that adequate data is available to show that the new compound is both safe and effective for a particular indication and that other applicable requirements have been met, approves the drug or biologic for marketing.

Whether or not we have obtained FDA approval, we must generally obtain approval of a product by comparable regulatory authorities of international jurisdictions prior to the commencement of marketing the product in those jurisdictions.

We are also subject to cGMP, GCP, and GLP compliance obligations, and are subject to inspection by international regulatory authorities. International requirements may in some circumstances be more rigorous than U.S. requirements and may require additional investment in manufacturing process development, non-clinical studies, clinical studies, and record keeping that are not required for U.S. regulatory compliance or approval. The time required to obtain this approval may be longer or shorter than that required for FDA approval and can also require significant resources in time, money, and labor.

Under the laws of the United States, the countries of the European Union, and other nations, we and the institutions where we sponsor research are subject to obligations to ensure the protection of personal information of human subjects participating in our clinical trials. We have instituted procedures that we believe will enable us to comply with these requirements and the contractual requirements of our data sources. The laws and regulations in this area are evolving, and further regulation, if adopted, could affect the timing and the cost of future clinical development activities.

We are also subject to regulation under the Occupational Safety and Health Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, and other current and potential future federal, state, or local regulations. Our research and development activities involve the controlled use of hazardous materials, chemicals, biological materials, various radioactive compounds, and for some experiments we use recombinant DNA. We believe that our procedures comply with the standards prescribed by local, state, and federal regulations; however, the risk of injury or accidental contamination cannot be completely eliminated. We conduct our activities in compliance with the National Institutes of Health Guidelines for Recombinant DNA Research.

Additionally, the U.S. Foreign Corrupt Practices Act (“FCPA”) prohibits U.S. corporations and their representatives from offering, promising, authorizing or making payments to any foreign government official, government staff member, political party or political candidate in an attempt to obtain or retain business abroad. The scope of the FCPA includes interactions with certain healthcare professionals in many countries. Other countries have enacted similar anti-corruption laws and/or regulations.

Competition

Competition in the pharmaceutical and biotechnology industries is intense. Many pharmaceutical or biotechnology companies have products on the market and are actively engaged in the research and development of products for the treatment of cancer and infectious diseases. In addition, many competitors focus on immunotherapy as a treatment for cancer and infectious diseases. In particular, some of these companies are developing cancer vaccines produced from a patient's own cells or tissue. Others are focusing on developing heat shock protein products. Prior to regulatory approval, we may compete for access to patients with other products in clinical development, with products approved for use in the indications we are studying, or with off-label use of products in the indications we are studying. In addition, we compete for funding, access to licenses, personnel, and third-party collaborations. Many competitors have substantially greater financial, manufacturing, marketing, sales, distribution, and technical resources, and more experience in research and development, clinical trials, and regulatory matters, than we do. Competing companies developing or acquiring rights to more efficacious therapeutic products for the same diseases we are targeting, or which offer significantly lower costs of treatment, could render our products noncompetitive or obsolete. See Part I-Item 1A. “Risk Factors- Our competitors in the biotechnology and pharmaceutical industries may have superior products, manufacturing capability, selling and marketing expertise and/or financial and other resources.”

Academic institutions, governmental agencies, and other public and private research institutions conduct significant amounts of research in biotechnology, medicinal chemistry, and pharmacology. These entities have become increasingly active in seeking patent protection and licensing revenues for their research results. They also compete with us in recruiting and retaining skilled scientific talent.

We are aware of compounds that claim to be identical to QS-21 Stimulon that are being used in clinical trials. Several other vaccine adjuvants are in development and could compete with QS-21 Stimulon for inclusion in vaccines in development. These adjuvants include, but are not limited to, oligonucleotides, under development by Pfizer, Idera, Colby, and Dynavax, MF59 under development by Novartis, IC31, under development by Intercell, and MPL, under development by GSK. In the past, the Company has provided QS-21 Stimulon to other entities under materials transfer arrangements. In at least one instance, it is possible that this material was used unlawfully to develop synthetic formulations and/or derivatives of QS-21. In addition, companies such as Adjuvance Technologies, Inc. and CSL Limited, as well as academic institutions and manufacturers of saponin extracts, are developing saponin adjuvants, including derivatives and synthetic formulations. These sources may be competitive for our ability to execute future partnering and licensing deals with QS-21 Stimulon. The existence of products developed by these and other competitors, or other products of which we are not aware or which other companies may develop in the future, may adversely affect the marketability of products we develop.

We are aware of certain programs and products under development by other companies that may compete with our programs and products. Several of these companies have products that utilize similar technologies and/or patient-specific medicine techniques. Genentech markets Avastin, and Eisai and Arbor Pharmaceuticals market Gliadel, for treatment of recurrent glioma. In addition, TVAX Biomedical and Stemline Therapeutics are developing immunotherapy candidates (TVI-Brain-1 and SL-701) for recurrent glioma. Schering Corporation, a subsidiary of Merck, markets Temodar for treatment of patients with newly diagnosed glioma. Other companies are developing vaccine candidates for the treatment of patients with newly diagnosed glioma, such as Innocell Corp (Immuncell-LC), ImmunoCellular Therapeutics (ICT-107), Northwest Biotherapeutics (DC-Vax), Immatics (IMA-950), Activartis Biotech (GBM-Vax) and Celldex (CDX-110). Celldex is also currently developing a vaccine candidate for recurrent glioma. Other companies may begin development programs as well. Oncophage may compete with therapies currently in development for non-metastatic RCC, such as sorafenib, sunitinib, temsirolimus, bevacizumab and pazopanib. As vaccines from our Prophage Series are potentially developed in other indications, they could face additional competition in those indications. In addition, and prior to regulatory approval, our Prophage Series vaccines and all of our other product candidates may compete for access to patients with other products in clinical development, with products approved for use in the indications we are studying, or with off-label use of products in the indications we are studying.

Valtrex (GSK) and Famvir (Novartis) are small molecule drugs marketed for treatment of genital herpes. Other companies are engaged in research for vaccines for treatment of genital herpes including Genocea and Vical. AiCuris Gmbh is engaged in clinical research of a small molecule drug for treatment of genital herpes and has completed a Phase 2 trial.

We anticipate that we will face increased competition in the future as new companies enter markets we seek to address and scientific developments surrounding immunotherapy and other traditional cancer and infectious disease therapies continue to accelerate.

Employees

As of February 22, 2013, we had approximately 53 employees, of whom 9 were Ph.D.s and 2 were MDs. None of our employees are subject to a collective bargaining agreement. We believe that we have good relations with our employees.

Corporate History

Antigenics L.L.C. was formed as a Delaware limited liability company in 1994 and was converted to Antigenics Inc., a Delaware corporation, in February 2000 in conjunction with our initial public offering of common stock. As of January 6, 2011, we changed our name from Antigenics Inc. to Agenus Inc.

Availability of Periodic SEC Reports

Our Internet website address is *www.agenusbio.com*. We make available free of charge through our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of the Securities Exchange Act of 1934 ("Securities Exchange Act") as soon as reasonably practicable after we electronically file such material with, or furnish such material to, the Securities and Exchange Commission (the "SEC"). The contents of our website are not part of, or incorporated into, this document. In addition, we regularly use our website to post information regarding our business, product development programs and governance, and we encourage investors to use our website, particularly the information in the sections entitled "Investors" and "Media," as sources of information about us.

Item 1A. *Risk Factors*

Our future operating results could differ materially from the results described in this Annual Report on Form 10-K due to the risks and uncertainties described below. You should consider carefully the following information about risks below in evaluating our business. If any of the following risks actually occurs, our business, financial conditions, results of operations and future growth prospects would likely be materially and adversely affected. In these circumstances, the market price of our common stock would likely decline.

We cannot assure investors that our assumptions and expectations will prove to be correct. Important factors could cause our actual results to differ materially from those indicated or implied by forward-looking statements. See "Note Regarding Forward-Looking Statements" in this Annual Report on Form 10-K. Factors that could cause or contribute to such differences include those factors discussed below.

Risks Related to our Business

If we incur operating losses for longer than we expect, or we are not able to raise additional capital, we may be unable to continue our operations, or we may become insolvent.

Our net losses for the years ended December 31, 2012, 2011, and 2010, were $11.3 million, $23.3 million, and $21.9 million, respectively. During the year ended December 31, 2012 we generated a significantly smaller net loss due primarily to revenue generated from amendments of certain license agreements during the first quarter. Therefore, our smaller net loss for the year ended December 31, 2012 is not indicative of future results. We expect to incur additional losses over the next several years as we continue research and clinical development of our technologies, apply for regulatory approvals, and pursue partnering opportunities, commercialization, and related activities. Furthermore, our ability to generate cash from operations is dependent on the success of our licensees and collaborative partners, as well as the likelihood and timing of new strategic licensing and partnering relationships and/or successful development and commercialization of vaccines containing QS-21 Stimulon, our Prophage Series vaccines and our other product candidates. If we incur operating losses for longer than we expect and/or we are unable to raise additional capital, we may become insolvent and be unable to continue our operations. From our inception through December 31, 2012, we have incurred net losses totaling $619.0 million.

On December 31, 2012, we had $21.5 million in cash and cash equivalents. We believe that, based on our current plans and activities, our working capital resources at December 31, 2012 along with the estimated proceeds from our license, and collaborative agreements, will be sufficient to satisfy our liquidity requirements through 2013 based on our estimated annual use of cash of $18-21 million during 2013. We expect to attempt to raise additional funds in advance of depleting our funds although additional funding may not be available on favorable terms, or at all. For the year ended December 31, 2012, our average monthly cash provided by operating activities was approximately $85,000. This average monthly cash provided by operating activities primarily resulted from one-time payments received under amended license agreements and therefore our net cash provided by operations for the year ended December 31, 2012 is not indicative of future results. We do not anticipate significant capital expenditures during 2013.

We have financed our operations primarily through the sale of equity and convertible notes. In order to finance future operations, we will be required to raise additional funds in the capital markets, through arrangements with collaborative partners, or from other sources. Additional financing may not be available on favorable terms, or at all. If we are unable to raise additional funds when we need them we may not be able to continue some or all of our operations, or we may become insolvent. We also may be forced to license or sell technologies to others under agreements that allocate to third parties substantial portions of the potential value of these technologies.

There are a number of factors that will influence our future capital requirements, including, without limitation, the following:

- the number and characteristics of the product candidates we pursue;
- the scope, progress, results and costs of researching and developing our future product candidates, and conducting preclinical and clinical trials;
- the timing of, and the costs involved in, obtaining regulatory approvals for our product candidates;
- the cost of manufacturing;
- our ability to establish and maintain strategic partnerships, licensing or other arrangements and the financial terms of such agreements;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, including litigation costs and the outcome of such litigation; and
- the timing, receipt and amount of sales of, or royalties on, our future products, if any .

The weakness of the United States economy and the global economy may have a material adverse effect on our liquidity and financial condition, particularly if our ability to raise additional funds is impaired. The ability of potential patients and/or health care payers to pay for our products could also be adversely impacted, thereby limiting our potential revenue. In addition, any negative impacts from any further deterioration in the credit markets and related financial crisis on our collaborative partners could limit potential revenue from our product candidates.

We have significant debt, and we may not be able to make interest or principal payments when due.

As of December 31, 2012, we had debt outstanding of $39.2 million in principal, including $39.0 million in principal of our 8% senior secured convertible notes due August 2014 (the “2006 Notes”).

Our ability to satisfy our obligations will depend upon our future performance, which is subject to many factors, including the factors identified in this "Risk Factors" section and other factors beyond our control. If we are not able to generate sufficient cash flow from operations in the future to service our indebtedness, we may be required, among other things, to:

- seek additional financing in the debt or equity markets;
- refinance or restructure all or a portion of our indebtedness;
- sell, out-license, or otherwise dispose of assets; and/or
- reduce or delay planned expenditures on research and development and/or commercialization activities.

Such measures might not be sufficient to enable us to make principal and interest payments. In addition, any such financing, refinancing, or sale of assets might not be available on economically favorable terms, if at all.

Other than for the year ended December 31, 2012, we have had negative cash flows from operations. The net cash provided by operations of $ 1.0 million for the year ended December 31, 2012, primarily resulted from one-time payments received under amended license agreements and therefore our net cash provided by operations for the year ended December 31, 2012 is not indicative of future results. For the years ended December 31, 2011, and 2010, net cash used in operating activities was $16.2 million, and $14.8 million, respectively.

Our 2006 Notes contain restrictive covenants and are convertible into an equity interest in one of our subsidiaries that holds important rights to our QS-21 Stimulon® adjuvant and HerpV technologies.

Our 2006 Notes, due August 2014, are secured by the equity of our wholly-owned subsidiary that holds the QS-21 Stimulon and HerpV technologies. At the option of the holders, our 2006 Notes can be converted in whole or in part into an equity interest in this subsidiary, subject to our ability to preempt the conversion by redeeming the 2006 Notes to be so converted at a price equal to the conversion amount of such notes plus an amount that, when taken together with any cash interest payments previously made with respect to such 2006 Notes, would generate a 30% annual internal rate of return to the holders. If converted into an equity interest of this subsidiary, the ownership interest in the subsidiary will be determined by multiplying (x) the quotient of the conversion amount divided by $25.0 million, by (y) 30%. In addition, our 2006 Notes grant holders a right of first refusal in any future equity issuance in this subsidiary so that holders of our 2006 Notes may purchase up to 50% of any newly issued equity in this subsidiary. Our 2006 Notes contain a number of restrictions and covenants, including, but not limited to, restrictions and covenants that limit our ability, and the ability of our subsidiary mentioned above, to:

- incur certain additional indebtedness;
- make certain investments;
- enter into certain affiliated party transactions;
- create certain liens;
- consolidate, merge, sell or otherwise dispose of our assets; and/or
- change our line of business.

If the holders elect not to convert into the subsidiary, then at the maturity of the 2006 Notes, we may elect to repay the then outstanding balance in cash or in common stock, subject to certain limitations. If we elect to repay the notes in common stock, we are limited to the number of shares we can issue, whereby the note holders cannot beneficially own in excess of 9.99% of our outstanding common stock at any given time. See "Risk Factors - We have significant debt, and we may not be able to make interest or principal payments when due." At December 31, 2012, the outstanding principal balance of the 2006 Notes was $39.0 million.

We may not receive anticipated QS-21 Stimulon revenues from our licensees.

With the exception of our HerpV program we currently rely upon and expect to continue to rely upon third party licensees, particularly GSK and JANSSEN AI, to develop, test, market and manufacture vaccines that utilize our QS-21 Stimulon adjuvant. We expect that we will rely on similar relationships if we develop new adjuvants in our Saponin Platform.

In return for rights to use QS-21 Stimulon, our licensees have generally agreed to pay us license fees, supply payments, milestone payments and royalties on product sales for a minimum of 10 years after commercial launch, with some exceptions. As each licensee controls its own product development process, we cannot predict our licensees' requirements for QS-21 Stimulon in the future or to what extent, if any, they will develop vaccines that use QS-21 Stimulon as an adjuvant. Our

licensees may initiate or cease programs containing QS-21 Stimulon at any time. In the event that our licensees develop vaccines using QS-21 Stimulon, there is no guarantee that these products will obtain regulatory approval or, if so approved, will generate significant royalties, if any, or that we will be able to collect royalties in the future.

In addition, where we had previously supplied GSK and JANSSEN AI with all their requirements of QS-21 Stimulon, we have amended our agreements so that they are permitted to manufacture their own QS-21 Stimulon. We are unable to predict what amount of QS-21 Stimulon, if any, will be purchased from us by other licensees or collaborators in the future. Any such inability to receive anticipated QS-21 Stimulon revenues would have a material adverse effect on our business, financial condition and results of operations.

Our patent on QS-21 Stimulon composition of matter has already expired in virtually all territories and we rely on unpatented technology and know-how to protect our rights to QS-21 Stimulon.

Our patent on QS-21 Stimulon composition of matter has already expired in virtually all territories, and our patent rights are limited to protecting certain combinations of QS-21 Stimulon with other adjuvants or formulations of QS-21 Stimulon with other agents. Although our licenses also rely on unpatented technology, know-how, and confidential information, these intellectual property rights may not be enforceable in certain jurisdictions and, therefore, we may not be able to collect anticipated revenue from our licensees. Any such inability would have a material adverse effect on our business, financial condition and results of operations.

Our HerpV therapeutic vaccine candidate is in early stage development and we may not be able to successfully develop this candidate.

Based on the results of our Phase 1 clinical trial of HerpV administered in combination with QS-21 Stimulon, we have advanced this product candidate into a Phase 2 trial that will measure the effect of vaccination on viral shedding in individuals infected with HSV-2 (genital herpes). This trial and further trials, and our HerpV development program in general, may not be successful or yield a partnering opportunity for us. While our Phase I clinical trial yielded positive immunological findings, it was limited in size and scope and the results may not translate into a clinical measurable effect on the frequency or duration of viral shedding in future trials with HerpV. In addition, even if our product candidate is successful in reducing viral shedding, it is possible that this could not translate into a clinical benefit. The success of the Phase 2 trial is also dependent on, upon other things, maintaining sufficient supply of the required investigational materials, enrolling sufficient patients and the adherence of these patients to the study protocol. Even if the trial is deemed successful, we may not have the resources required to advance the vaccine further and it is possible that research and discoveries by others will render our product candidate obsolete or noncompetitive.

Our licensee may not be able to successfully commercialize Oncophage in Russia and/or we may not receive any revenue from Oncophage sales or related efforts in Russia or certain other CIS countries.

In April 2008, the Russian Ministry of Public Health issued a registration certificate for the use of Prophage Series vaccine R-100 (Oncophage) for the treatment of kidney cancer patients at intermediate-risk for disease recurrence. The Russian registration was our first product approval from a regulatory authority.

Since approval, minimal sales have occurred in Russia. In December 2011, we secured a partner for Oncophage when we granted NewVac LLC (a subsidiary of ChemRar Ventures LLC, “NewVac”) an exclusive license to manufacture, market, and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. There is no guarantee that NewVac's efforts will be successful, or that we will receive any financial or other benefits from this arrangement. In addition, NewVac has the right to terminate its agreement with us at any time without cause.

NewVac is in the process of establishing manufacturing capabilities in Russia with completion anticipated within the next year. During this period we have agreed to continue Oncophage manufacturing supply in our Lexington, MA, facility. As long as we manufacture Oncophage in the United States for importation into Russia, complexities unique to the logistics of this product may delay shipments and limit our ability to move commercial product in an efficient manner without incident. See “Risk Factors-Manufacturing problems may cause delays, unanticipated costs, or loss of revenue streams.”

In addition, to date we have not been able to secure government reimbursement and there is no guarantee that NewVac will be able to do so. There appears to be a limited private-pay market in Russia, and many patients will not be capable of paying for Oncophage without third party reimbursement. The reimbursement system in Russia is uncertain and has experienced serious funding and administrative problems in its national and regional reimbursement programs. See “Risk Factors- If we, or our licensees, fail to obtain adequate levels of reimbursement for our product candidates there may be no commercially viable market for these products, or the commercial potential of these products may be significantly limited.”

We may not be able to make vaccines from the Prophage Series available in countries other than Russia or in indications other than adjuvant renal cell carcinoma.

Oncophage is currently only approved for marketing in Russia for the adjuvant treatment of kidney cancer patients at intermediate-risk for disease recurrence and is the only product from our Prophage Series vaccines that is approved for marketing anywhere. The probability and timing of submissions and/or approval of Prophage Series vaccines in any other jurisdiction or indication is uncertain. A Phase 2 trial testing the Prophage Series vaccine candidate in newly diagnosed glioma has been fully enrolled and patient follow up is underway. Separately, a Phase 2 trial with G-200 in recurrent glioma has been completed and final data are in the process of being prepared for publication in a peer reviewed medical journal. These trials are not intended to provide the necessary evidence of efficacy and/or safety to support biologics license application ("BLA") filings.

In 2008, we submitted a marketing authorization application ("MAA"), to the European Medicines Agency ("EMA"), requesting conditional authorization of Oncophage in earlier-stage, localized kidney cancer. After its review, the Committee for Medicinal Products for Human Use ("CHMP") of the EMA adopted a negative opinion on our MAA. Subsequently, we withdrew our application and we are no longer actively pursuing opportunities in this territory.

The FDA has indicated that our Phase 3 clinical trials of Oncophage and Prophage Series vaccine M-200 cannot, by themselves, support BLA filings in the studies' indications (RCC and metastatic melanoma). Furthermore, our existing data may not support registration or approval in other territories outside of Russia as this Phase 3 trial did not reach statistical significance in its primary endpoint of recurrence-free survival in the total patient population.

Due to our lack of resources, our ability to perform additional studies may be limited. In addition, studies may take years to complete and may fail to support regulatory filings for many reasons. Our Prophage Series vaccines are a novel class of patient-specific (derived from the patient's own tumor) oncology therapies, and the FDA and foreign regulatory agencies, including the EMA, which is responsible for product approvals in Europe, and Health Canada, which is responsible for product approvals in Canada, have limited experience in reviewing these types of therapies. Therefore, product candidates derived from the Prophage Series vaccines may experience high development costs and a long regulatory review process, either of which could delay or prevent commercialization efforts.

If we or our licensee are unable to purify heat shock proteins we may have difficulty successfully initiating or completing clinical trials or supporting commercial sales of Oncophage in Russia. Even if we or our licensees do successfully complete ongoing or future clinical trials or are successful manufacturing Oncophage commercially, we may have difficulty generating a sizable market or commercial sales.

Depending on the type and stage of cancer and the patient population, our ability to successfully develop and commercialize the Prophage Series vaccines for a particular cancer depends in part on our, and following successful technology transfer to our licensee, their ability to purify heat shock proteins from that type of cancer. If we or our licensee experience difficulties in purifying heat shock proteins for a sufficiently large number of patients in our clinical trials, we may face delays in enrolling sufficient patients and subsequently utilize more internal resources to satisfy enrollment requirements. Manufacturing failures may also lower the probability of a successful analysis of the data from clinical trials and, ultimately, the ability to obtain regulatory approvals. We have successfully manufactured product across many different cancer types, however, the success rate per indication has varied. We have evolved our manufacturing processes to better accommodate a wider range of tumor types. Our current manufacturing technologies have been successful in manufacturing product from approximately 92% of the RCC tumors received and approximately 85% of the tumors received from patients in our Phase 2 clinical trials in glioma. We expect to continue to devote resources to allow for a better evaluation of tumor characteristics and screening methods in an attempt to increase manufacturing success rates.

In December 2011, we granted NewVac an exclusive license to manufacture, market, and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. To be successful, NewVac will have to build and equip a manufacturing facility, hire, train and retain staff, and validate the facility systems and process. There is no guarantee that NewVac will be able to accomplish these tasks and if they are unable or delayed in becoming operational, the commercial and developmental efforts may be delayed or limited. We may encounter problems with other types of cancer or patients as we expand our research. If we cannot overcome these problems, the number of patients or cancer types that our heat shock protein product candidates could treat would be limited. In addition, if we commercialize our heat shock protein product candidates, we may not be able to replicate past manufacturing success rates and we may face claims from patients for whom we are unable to produce a vaccine.

Manufacturing problems may cause delays, unanticipated costs, or loss of revenue streams.

If the future commercial demand for Oncophage or clinical demand for other product candidates is substantially greater than we anticipate, our capacity may not be able to meet product demand. In addition, higher manufacturing loads may result in higher manufacturing failure rates as the operation becomes more complex. We currently manufacture our Prophage Series vaccines in our Lexington, MA facility. While we believe we will be able to cover demand in the near term, there is no guarantee that we will be able to meet all future or unanticipated increases in demand, and a failure to do so could adversely affect our business. Such demand may also limit our ability to manufacture product in support of clinical trials, and this could cause a delay or failure in our Prophage Series vaccine development programs. Manufacturing of Prophage Series vaccines is complex, and various factors could cause delays or an inability to supply vaccine. Deviations in the processes controlling manufacture could result in production failures. Furthermore, we have limited manufacturing resources and there is no assurance that we will be able to obtain the necessary resources, timely or at all, to meet any increased demand.

Regulatory bodies may require us to make our manufacturing facility a single product facility. In such an instance, we would no longer have the ability to manufacture products other than Prophage Series vaccines in our current facility.

Except in the case of GSK and JANSSEN AI, we have retained worldwide manufacturing rights for QS-21 Stimulon. We have the right to subcontract manufacturing for QS-21 Stimulon for our other existing and future QS-21 Stimulon manufacturing and supply needs, and we have a supply agreement with a contract manufacturer for the production of QS-21 Stimulon through September 2014. If we are not able to renew this agreement we may not be able to supply QS-21 Stimulon to meet future supply obligations on favorable terms or at all. For example, although GSK is a source of QS-21 Stimulon supply for us, their obligation to supply is for a limited duration, and various factors could impact our decision to exercise this right. In addition, we or our currently contracted suppliers may not have the ability to manufacture commercial grade QS-21 Stimulon.

We currently rely upon and expect to continue to rely upon third parties, potentially including our collaborators or licensees, to produce materials required to support our product candidates, preclinical studies, clinical trials, and commercial efforts. A number of factors could cause production interruptions at our manufacturing facility or at our contract manufacturers or suppliers, including equipment malfunctions, labor or employment retention problems, natural disasters, power outages, terrorist activities, or disruptions in the operations of our suppliers. Alternatively, there is the possibility we may have excess manufacturing capacity if product candidates do not progress as planned.

There are a limited number of contract manufacturers or suppliers that are capable of manufacturing our product candidates or the materials used in their manufacture. If we are unable to do so ourselves or to arrange for third-party manufacturing or supply of these product candidates or materials, or to do so on commercially reasonable terms, we may not be able to complete development of these product candidates or commercialize them ourselves or through our collaborative partners or licensees. Reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured products ourselves, including reliance on the third party for regulatory compliance, the possibility of breach of the manufacturing agreement by the third party because of factors beyond our control, and the possibility of termination or non-renewal of the agreement by the third party, based on its own business priorities, at a time that is costly or inconvenient for us.

Biopharmaceutical manufacturing is also subject to extensive government regulation. Components of a finished therapeutic product approved for commercial sale or used in late-stage clinical trials must be manufactured in accordance with cGMP. These regulations govern manufacturing processes and procedures (including record keeping) and the implementation and operation of quality systems to control and assure the quality of investigational products and products approved for sale. Our facilities and quality systems and the facilities and quality systems of some or all of our third party contractors must pass a pre-approval inspection for compliance with the applicable regulations as a condition of regulatory approval of product candidates. In addition, facilities are subject to ongoing inspections, and minor changes in manufacturing processes may require additional regulatory approvals, either of which could cause us to incur significant additional costs and lose revenue.

Risks associated with doing business internationally could negatively affect our business.

Oncophage is currently only approved for sale in Russia. Russia is an evolving market and regulatory, legal, and commercial structures are less predictable than in more mature markets. This unpredictability, as well as potential geopolitical instability in the Russian region, could negatively impact the regulatory and/or commercial environment there, which in turn could have an adverse effect on our business.

In addition, various other risks associated with foreign operations may impact our success. Possible risks include fluctuations in the value of foreign and domestic currencies, disruptions in the import, export, and transportation of patient tumors and our product, the product and service needs of foreign customers, difficulties in building and managing foreign relationships, the performance of our licensees or collaborators, and unexpected regulatory, economic, or political changes in

foreign markets. See “Risk Factors- Even if we receive marketing approval for our product candidates, such product approvals could be subject to restrictions or withdrawals. Regulatory requirements are subject to change.”

If we, or our licensees, fail to obtain adequate levels of reimbursement for our product candidates there may be no commercially viable market for these products, or the commercial potential of these products may be significantly limited.

Public and private insurance programs may determine that they will not cover our product candidates or the product candidates of our licensees. Government-sponsored health care systems typically pay a substantial share of health care costs, and they may regulate reimbursement levels of products to control costs. If we or our licensees are unsuccessful in obtaining substantial reimbursement for our product candidates from national or regional funds, we will have to rely on private-pay, which may delay or prevent our launch efforts, because the ability and willingness of patients to pay for our products is unclear.

We, or our licensees, may not be able to obtain health insurance coverage of our product candidates, and if coverage is obtained, it may be substantially delayed, or there may be significant restrictions on the circumstances in which the products would be reimbursed. We are unable to predict what impact any future regulation or third-party payer initiatives relating to reimbursement will have on our sales.

Our competitors in the biotechnology and pharmaceutical industries may have superior products, manufacturing capability, selling and marketing expertise and/or financial and other resources.

Our product candidates and the product candidates in development by our collaborative partners may fail because of competition from major pharmaceutical companies and specialized biotechnology companies that market products, or that are engaged in the development of product candidates, directed at cancer, infectious diseases and degenerative disorders.

Genentech markets Avastin and Eisai and Arbor Pharmaceuticals market Gliadel, both for treatment of recurrent glioma. In addition, TVAX Biomedical and Stemline Therapeutics are developing immunotherapy candidates (TVI-Brain-1 and SL-701, respectively) for recurrent glioma. Schering Corporation, a subsidiary of Merck, markets Temodar for treatment of patients with newly diagnosed glioma. Other companies are developing vaccine candidates for the treatment of patients with newly diagnosed glioma, such as Innocell Corp (Immuncell-LC), ImmunoCellular Therapeutics (ICT-107), Northwest Biotherapeutics (DC-Vax), Immatics (IMA-950), Activartis Biotech (GBM-Vax) and Celldex (CDX-110). Celldex is also currently developing a vaccine candidate for recurrent glioma. Other companies may begin such development as well.

There is no guarantee that our products or product candidates will be able to compete with potential future products being developed by our competitors. For example, Oncophage may compete with therapies currently in development for non-metastatic RCC, such as sorafenib, sunitinib, temsirolimus, bevacizumab and pazopanib. As vaccines from our Prophage Series are potentially developed in other indications, they could face additional competition in those indications. In addition, and prior to regulatory approval, our Prophage Series vaccines and all of our other product candidates may compete for access to patients with other products in clinical development, with products approved for use in the indications we are studying, or with off-label use of products in the indications we are studying. We anticipate that we will face increased competition in the future as new companies enter markets we seek to address and scientific developments surrounding immunotherapy and other traditional cancer therapies continue to accelerate.

Valtrex (GSK) and Famvir (Novartis) are small molecule drugs marketed for treatment of genital herpes. Other companies are engaged in research for vaccines for treatment of genital herpes including Genocea and Vical. AiCuris Gmbh is engaged in clinical research of a small molecule drug for treatment of genital herpes and has completed a Phase 2 trial.

Our patent to purified QS-21 Stimulon expired in most territories in 2008. Additional protection for our QS-21 Stimulon proprietary adjuvant in combination with other agents is provided by our other patents. Our license and manufacturing agreements for QS-21 Stimulon generally provide royalties independent of patent expiry for at least 10 years after commercial launch, with some exception. However, there is no guarantee that we will be able to collect royalties in the future.

We are aware of compounds that claim to be identical to QS-21 Stimulon that are being used in clinical trials. Several other vaccine adjuvants are in development and could compete with QS-21 Stimulon for inclusion in vaccines in development. These adjuvants include, but are not limited to, oligonucleotides, under development by Pfizer, Idera, Colby, and Dynavax, MF59 under development by Novartis, IC31, under development by Intercell, and MPL, under development by GSK. In the past, the Company has provided QS-21 Stimulon to other entities under materials transfer arrangements. In at least one instance, it is possible that this material was used unlawfully to develop synthetic formulations and/or derivatives of QS-21. In addition, companies such as Adjuvance Technologies, Inc. and CSL Limited, as well as academic institutions and manufacturers of saponin extracts, are developing saponin adjuvants, including derivatives and synthetic formulations. These sources may be competitive with our ability to do future partnering and licensing deals with QS-21 Stimulon.

Many of our competitors, including large pharmaceutical companies, have greater financial and human resources and more experience than we do. Our competitors may:

- commercialize their product candidates sooner than we commercialize our own;
- develop safer or more effective therapeutic drugs or preventive vaccines and other therapeutic products;
- implement more effective approaches to sales and marketing and capture some of our potential market share;
- establish superior intellectual property positions;
- discover technologies that may result in medical insights or breakthroughs, which render our drugs or vaccines obsolete, possibly before they generate any revenue; or
- adversely affect our ability to recruit patients for our clinical trials.

Our future growth depends on our ability to successfully identify, develop, acquire or in-license products and product candidates; otherwise, we may have limited growth opportunities.

An important part of our business strategy is to continue to develop a pipeline of product candidates by developing, acquiring or in-licensing products, businesses or technologies that we believe are a strategic fit with our existing business. However, these business activities may entail numerous operational and financial risks, including:

- difficulty or inability to secure financing to fund development activities for such development, acquisition or in-licensed products or technologies;
- incurrence of substantial debt or dilutive issuances of securities to pay for development, acquisition or in-licensing of new products;
- disruption of our business and diversion of our management's time and attention;
- higher than expected development, acquisition or in-license and integration costs;
- exposure to unknown liabilities;
- difficulty and cost in combining the operations and personnel of any acquired businesses with our operations and personnel;
- inability to retain key employees of any acquired businesses;
- difficulty in managing multiple product development programs; and
- inability to successfully develop new products or clinical failure.

We have limited resources to identify and execute the development, acquisition or in-licensing of products, businesses and technologies and integrate them into our current infrastructure. We may compete with larger pharmaceutical companies and other competitors in our efforts to establish new collaborations and in-licensing opportunities. These competitors likely will have access to greater financial resources than us and may have greater expertise in identifying and evaluating new opportunities. Moreover, we may devote resources to potential development, acquisitions or in-licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts.

Failure to enter into significant licensing, distribution and/or collaboration agreements may hinder our efforts to develop and commercialize our product candidates and will increase our need to rely on other financing mechanisms, such as sales of debt or equity securities, to fund our operations.

We have been engaged in efforts to enter into licensing, distribution and/or collaborative agreements with one or more pharmaceutical or biotechnology companies to assist us with development and/or commercialization of our product candidates. If we are successful in entering into such agreements, we may not be able to negotiate agreements with economic terms similar to those negotiated by other companies. We may not, for example, obtain significant upfront payments, substantial royalty rates or milestones. If we fail to enter into any such agreements, our efforts to develop and/or commercialize our products or product candidates may be undermined. In addition, if we do not raise funds through any such agreements, we will need to rely on other

financing mechanisms, such as sales of debt or equity securities, to fund our operations. Such financing mechanisms, if available, may not be sufficient or timely enough to advance our programs forward in a meaningful way in the short-term.

While we have been pursuing these business development efforts for several years, we have not entered into a substantial agreement relating to the potential development or commercialization of Oncophage or any of the other Prophage Series vaccines other than the agreement with NewVac giving them an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. Due to the announcements in March 2006 that part I of our Phase 3 trial in RCC did not achieve its primary endpoint in the intent to treat population, and in November 2009, that the CHMP adopted a negative opinion on our MAA, and because companies may be skeptical regarding the potential success of a patient-specific product candidate, many other companies have been and may continue to be unwilling to commit to an agreement prior to receipt of additional clinical data, if at all.

In addition, we would consider license and/or co-development opportunities to advance HerpV. This product is at an early stage and collaborative partners or licensees may defer discussions until results from our Phase 2 clinical trial become available, or they may not engage in such discussions at all.

Because we rely on collaborators and licensees for the development and commercialization of most of our product candidate programs, these programs may not prove successful, and/or we may not receive significant payments from such parties.

Part of our strategy is to develop and commercialize a majority of our product candidates by continuing or entering into arrangements with academic, government, or corporate collaborators and licensees. Our success depends on our ability to negotiate such agreements and on the success of the other parties in performing research, preclinical and clinical testing, completing regulatory applications, and commercializing product candidates. For example, the development of candidates from the Prophage G Series is currently dependent in large part on the efforts of our institutional collaborators, such as the Brain Tumor Research Center at the University of California, San Francisco, which is conducting Phase 2 clinical trials of Prophage Series vaccines G-100 and G-200 for the treatment of glioma and the Alliance for Clinical Trials in Oncology, a national Cancer Institute cooperative group, which is sponsoring a Phase 2 clinical trial of G-200 in patients with surgically resectable glioma. In addition, substantially all product candidates containing QS-21 Stimulon, other than HerpV, depend on the success of our collaborative partners or licensees, and the Company's relationships with these third parties. Such product candidates depend on our collaborators and licensees successfully enrolling patients and completing clinical trials, being committed to dedicating the resources to advance these product candidates, obtaining regulatory approvals, and successfully commercializing product candidates. In addition, when our licensees or third party collaborators sponsor clinical trials using our product candidates, we cannot control the timing or quality of such trials or related activities.

Development activities may fail to produce marketable products due to unsuccessful results or abandonment of these programs, failure to enter into future collaborations or license agreements, or the inability to manufacture product supply requirements for our collaborators and licensees. Several of our agreements also require us to transfer important rights and regulatory compliance responsibilities to our collaborators and licensees. As a result of these collaborative agreements, we will not control the nature, timing, or cost of bringing these product candidates to market. Our collaborators and licensees could choose not to devote resources to these arrangements or, under certain circumstances, may terminate these arrangements early. They may cease pursuing product candidates or elect to collaborate with different companies. In addition, these collaborators and licensees, outside of their arrangements with us, may develop technologies or products that are competitive with those that we are developing. From time to time, we may also become involved in disputes with our collaborators or licensees. Such disputes could result in the incurrence of significant expense, or the termination of collaborations. We may be unable to fulfill all of our obligations to our collaborators, which may result in the termination of collaborations. As a result of these factors, our strategic collaborations may not yield revenue. Furthermore, we may be unable to enter into new collaborations or enter into new collaborations on favorable terms. Failure to generate significant revenue from collaborations would increase our need to fund our operations through sales of debt or equity securities and would negatively affect our business prospects.

We have limited internal resources and if we fail to recruit and/or retain the services of key employees and external consultants as needed, we may not be able to achieve our strategic and operational objectives.

Garo H. Armen, Ph.D., the Chairman of our Board of Directors and our Chief Executive Officer, co-founded the Company in 1994, and has been, and continues to be, integral to building our company and developing our technology. If Dr. Armen severed his relationship with Agenus, our business may be adversely impacted.

Effective December 1, 2005, we entered into an employment agreement with Dr. Armen. Subject to the earlier termination as provided in the agreement, the agreement had an original term of one year and is automatically extended thereafter for successive terms of one year each, unless either party provides notice to the other at least ninety days prior to the

expiration of the original or any extension term. Dr. Armen plays an important role in our day-to-day activities. We do not carry key employee insurance policies for Dr. Armen or any other employee.

We also rely on a small staff of highly trained and experienced senior management and scientific, administrative and operations personnel and consultants to conduct our business. Reductions in our staffing levels have eliminated redundancies in key capabilities and skill sets among our full time staff and required us to rely more heavily on outside consultants and third parties. In addition, if in the future we need to perform sales, marketing and distribution functions for commercial and/or international operations, we will need to recruit experienced personnel and/or engage external consultants incurring significant expenditures.

Reduction in expenses and resulting changes to our compensation and benefit programs have reduced the competitiveness of these programs and thereby increased employee retention risk. The competition for qualified personnel in the biotechnology field is intense, and if we are not able to continue to attract and retain qualified personnel and/or maintain positive relationships with our outside consultants, we may not be able to achieve our strategic and operational objectives.

Risks Related to Regulation of the Biopharmaceutical Industry

The drug development and approval process is uncertain, time-consuming, and expensive.

Clinical development, including preclinical testing and the process of obtaining and maintaining regulatory approvals for new therapeutic products, is lengthy, expensive, and uncertain. As of December 31, 2012, we have spent approximately 18 years and $297.6 million on our research and development program in heat shock proteins for cancer. It also can vary substantially based on the type, complexity, and novelty of the product. We must provide regulatory authorities with manufacturing, product characterization, and preclinical and clinical data demonstrating that our product candidates are safe and effective before they can be approved for commercial sale. It may take us many years to complete our testing, and failure can occur at any stage of testing. Interim results of preclinical studies or clinical trials do not necessarily predict their final results, and acceptable results in early studies might not be seen in later studies. Any preclinical or clinical test may fail to produce results satisfactory to regulatory authorities for many reasons, including but not limited to insufficient product characterization, poor study structure conduct or statistical analysis planning, failure to enroll a sufficient number of patients or failure to prospectively identify the most appropriate patient eligibility criteria, and collectability of data. Preclinical and clinical data can be interpreted in different ways, which could delay, limit, or prevent regulatory approval. Negative or inconclusive results from a preclinical study or clinical trial, adverse medical events during a clinical trial, or safety issues resulting from products of the same class of drug could require a preclinical study or clinical trial to be repeated or cause a program to be terminated, even if other studies or trials relating to the program are successful. We or the FDA, other regulatory agencies, or an institutional review board may suspend or terminate human clinical trials at any time on various grounds.

The timing and success of a clinical trial is dependent on obtaining and maintaining sufficient cash resources, successful production of clinical trial material, enrolling sufficient patients in a timely manner, avoiding serious or significant adverse patient reactions, and demonstrating efficacy of the product candidate in order to support a favorable risk versus benefit profile, among other considerations. The timing and success of our clinical trials, in particular, are also dependent on clinical sites and regulatory authorities accepting each trial's protocol, statistical analysis plan, product characterization tests, and clinical data. In addition, regulatory authorities may request additional information or data that is not readily available. Delays in our ability to respond to such requests would delay, and failure to adequately address concerns would prevent, our commercialization efforts. We have encountered in the past, and may encounter in the future, delays in initiating trial sites and enrolling patients into our clinical trials. Future enrollment delays will postpone the dates by which we expect to complete the impacted trials and the potential receipt of regulatory approval. There is no guarantee we will successfully initiate and/or complete our clinical trials.

Delays or difficulties in obtaining regulatory approvals or clearances for our product candidates may:

- adversely affect the marketing of any products we or our licensees or collaborators develop;
- impose significant additional costs on us or our licensees or collaborators;
- diminish any competitive advantages that we or our licensees or collaborators may attain;
- limit our ability to receive royalties and generate revenue and profits; and
- adversely affect our business prospects and ability to obtain financing.

Delays or failures in our receiving regulatory approval for our product candidates in a timely manner may result in us having to incur additional development expense and subject us to having to secure additional financing. As a result, we may not be able to commercialize them in the time frame anticipated, and our business will suffer.

Even if we receive marketing approval for our product candidates, such product approvals could be subject to restrictions or withdrawals. Regulatory requirements are subject to change.

Regulatory authorities generally approve products for particular indications. If an approval is for a limited indication, this limitation reduces the size of the potential market for that product. Product approvals, once granted, are subject to continual review and periodic inspections by regulatory authorities. Our operations and practices are subject to regulation and scrutiny by the United States government, as well as governments of any other countries in which we do business or conduct activities. Later discovery of previously unknown problems or safety issues, and/or failure to comply with domestic or foreign laws, knowingly or unknowingly, can result in various adverse consequences, including, among other things, possible delay in approval or refusal to approve a product, warning letters, fines, injunctions, civil penalties, recalls or seizures of products, total or partial suspension of production, refusal of the government to renew marketing applications, complete withdrawal of a marketing application, and/or criminal prosecution, withdrawal of an approved product from the market, and/or exclusion from government health care programs. Such regulatory enforcement could have a direct and negative impact on the product for which approval is granted, but also could have a negative impact on the approval of any pending applications for marketing approval of new drugs or supplements to approved applications.

Because we are a company operating in a highly regulated industry, regulatory authorities could take enforcement action against us in connection with our, or our licensees or collaborators, business and marketing activities for various reasons. For example, the FCPA prohibits U.S. companies and their representatives from offering, promising, authorizing, or making payments to foreign officials for the purpose of obtaining or retaining business abroad.

From time to time, new legislation is passed into law that could significantly change the statutory provisions governing the approval, manufacturing, and marketing of products regulated by the FDA and other foreign health authorities. Additionally, regulations and guidance are often revised or reinterpreted by health agencies in ways that may significantly affect our business and our products. It is impossible to predict whether further legislative changes will be enacted, or whether regulations, guidance, or interpretations will change, and what the impact of such changes, if any, may be. For example, the Patient Protection and Affordable Care Act and the Health Care and Education Affordability Reconciliation Act of 2010 (collectively, the "ACA"), enacted in March 2010, substantially changed the way healthcare is financed by both governmental and private insurers, and significantly impacted the pharmaceutical industry. With regard to pharmaceutical products, among other things, ACA is expected to expand and increase industry rebates for drugs covered under Medicaid programs and make changes to the coverage requirements under the Medicare D program. We expect both government and private health plans to continue to require healthcare providers, including healthcare providers that may one day purchase our products, to contain costs and demonstrate the value of the therapies they provide.

New data from our research and development activities, and/or resource considerations could modify our strategy and result in the need to adjust our projections of timelines and costs of programs.

Because we are focused on novel technologies, our research and development activities, including our nonclinical studies and clinical trials, involve the ongoing discovery of new facts and the generation of new data, based on which we determine next steps for a relevant program. These developments can occur with varying frequency and constitute the basis on which our business is conducted. We need to make determinations on an ongoing basis as to which of these facts or data will influence timelines and costs of programs. We may not always be able to make such judgments accurately, which may increase the costs we incur attempting to commercialize our product candidates. We monitor the likelihood of success of our initiatives and we may need to discontinue funding of such activities if they do not prove to be commercially feasible, due to our limited resources.

We may need to successfully address a number of technological challenges in order to complete development of our product candidates. Moreover, these product candidates may not be effective in treating any disease or may prove to have undesirable or unintended side effects, toxicities, or other characteristics that may preclude our obtaining regulatory approvals or prevent or limit commercial use.

Risks Related to Intellectual Property Rights

If we fail to sustain and further build our intellectual property rights, competitors may be able to take advantage of our research and development efforts to develop competing products.

If we are not able to protect our proprietary technology, trade secrets, and know-how, our competitors may use our past developments and technologies to develop competing products. As of March 2013 we have exclusive rights to 74 issued United

States patents and 105 issued foreign patents. We also have exclusive rights to five pending United States patent applications and 17 pending foreign patent applications. However, our patents may not protect us against our competitors. Our patent positions, and those of other pharmaceutical and biotechnology companies, are generally uncertain and involve complex legal, scientific, and factual questions. The standards which the United States Patent and Trademark Office uses to grant patents, and the standards which courts use to interpret patents, are not always applied predictably or uniformly and can change, particularly as new technologies develop. Consequently, the level of protection, if any, that will be provided by our patents if we attempt to enforce them, and they are challenged, is uncertain. In addition, the type and extent of patent claims that will be issued to us in the future is uncertain. Any patents that are issued may not contain claims that permit us to stop competitors from using similar technology.

Furthermore, the product development timeline for biotechnology products is lengthy and it is possible that our issued patents covering our product candidates in the United States and other jurisdictions may expire prior to commercial launch. In addition, because our patent on QS-21 Stimulon composition of matter has already expired in virtually all territories, our patent rights are limited to protecting certain combinations of QS-21 Stimulon with other adjuvants or formulations of QS-21 Stimulon with other agents, e.g., excipients that improve performance of the compound. However, there is no guarantee that a third party would necessarily choose to use QS-21 Stimulon in combination with such adjuvants or formulate it with the excipients covered by our patents. We are aware of at least one other party that makes a synthetic version of QS-21, claimed by such party to be equivalent in activity to our natural QS-21 Stimulon, and has also developed derivatives of QS-21, which have shown biological activity.

Furthermore, for patent applications in which all claims are entitled to a priority date before March 16, 2013, an interference proceeding can be provoked by a third-party or instituted by the U.S. PTO, to determine who was the first to invent any of the subject matter covered by the patent claims of our applications. For applications containing a claim not entitled to priority before March 16, 2013, there is greater level of uncertainty in the patent law with the passage of the America Invents Act (2012) which brings into effect significant changes to the U.S. patent laws that are yet untried and untested, and which introduces new procedures for challenging pending patent applications and issued patents. A primary change under this reform is creating a “first to file” system in the U.S. This will require us to be cognizant after March 16, 2013 of the time from invention to filing of a patent application. Additionally, for applications containing a claim not entitled to priority before March 16, 2013, there is a risk that a third party will initiate a post grant review following the issuance of a patent.

In addition to our patented technology, we also rely on unpatented technology, trade secrets, and confidential information. We may not be able to effectively protect our rights to this technology or information. Other parties may independently develop substantially equivalent information and techniques or otherwise gain access to or disclose our technology. We generally require each of our employees, consultants, collaborators, and certain contractors to execute a confidentiality agreement at the commencement of an employment, consulting, collaborative, or contractual relationship with us. However, these agreements may not provide effective protection of our technology or information, or in the event of unauthorized use or disclosure, they may not provide adequate remedies.

We may incur substantial costs as a result of litigation or other proceedings relating to patent and other intellectual property rights, and we may be unable to protect our rights in, or to use, our technology.

There has been substantial litigation and other proceedings regarding patent and other intellectual property rights in the pharmaceutical and biotechnology industries. We may become a party to patent litigation or other proceedings regarding intellectual property rights.

If we choose to go to court to stop someone else from using the inventions claimed in our patents, that individual or company has the right to ask a court to rule that our patents are invalid and should not be enforced against that third party. These lawsuits are expensive and would consume time and other resources even if we were successful in stopping the infringement of our patents. In addition, there is a risk that the court will decide that our patents are not valid and that we do not have the right to stop the other party from using the claimed inventions. There is also the risk that, even if the validity of our patents is upheld, the court will refuse to stop the other party on the grounds that such other party's activities do not infringe our patents.

We may not have rights under some patents or patent applications related to some of our existing and proposed products or processes. Third parties may own or control these patents and patent applications in the United States and abroad. Therefore, in some cases, such as those described below, in order to develop, use, manufacture, sell, or import some of our existing or proposed products, or develop or use some of our existing or proposed processes, we or our collaborators may choose to seek, or be required to seek, licenses under third-party patents issued in the United States and abroad, or those that might issue from United States and foreign patent applications. In such an event, we likely would be required to pay license fees or royalties or both to the licensor. If licenses are not available to us on acceptable terms, we or our collaborators may not be able to exploit these products or processes.

Furthermore, a third party may claim that we are using inventions covered by such third-party's patents or other intellectual property rights and may go to court to stop us from engaging in our normal operations and activities. These lawsuits are expensive. Some of our competitors may be able to sustain the cost of such litigation or proceedings more effectively than we can because of their substantially greater financial resources. There is a risk that a court would decide that we are infringing the third-party's patents and would order us to stop the activities covered by the patents. In addition, there is a risk that a court will order us to pay the other party substantial damages for having violated the other party's patents. The biotechnology industry has produced a proliferation of patents, and it is not always clear to industry participants, including us, which patents cover various types of products. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform. Moreover, patent holders sometimes send communications to a number of companies in related fields suggesting possible infringement, and we, like a number of biotechnology companies, have received such communications in the past and may receive others in the future. If we are sued for patent infringement, we would need to demonstrate that our products either do not infringe the patent claims of the relevant patent and/or that the patent claims are invalid, which we may not be able to do. Proving invalidity, in particular, is difficult, since it requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents.

If patent litigation or other proceeding is resolved against us, we or our licensees or collaborators may be enjoined from using, manufacturing, selling, or importing our products or processes without a license from the other party, and we may be held liable for significant damages. We may not be able to obtain any required licenses on commercially acceptable terms or at all.

During the course of any patent litigation, there could be public announcements of the results of hearings, rulings on motions, and other interim proceedings in the litigation. If securities analysts or investors regard these announcements as negative, the perceived value of our products, programs, or intellectual property could be diminished. Accordingly, the market price of our common stock may decline. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to enter into collaborations with other entities, obtain financing, or compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time and other resources.

If we fail to comply with our obligations in our intellectual property licenses with third parties, we could lose license rights that are important to our business.

We are a party to various license agreements under which we receive the right to practice and use important third-party patent rights and we may enter into additional licenses in the future. Our existing licenses impose, and we expect future licenses will impose, various diligence, milestone payment, royalty, insurance, and other obligations on us. If we fail to comply with these obligations, the licensor may have the right to terminate the license, in which event we might not be able to market any product that is covered by the licensed patents.

Risks Related to Litigation

We may face litigation that could result in substantial damages and may divert management's time and attention from our business.

We may currently be a party, or may become a party, to legal proceedings, claims and investigations that arise in the ordinary course of business such as, but not limited to, patent, employment, commercial and environmental matters. While we currently believe that the ultimate outcome of any of these proceedings will not have a material adverse effect on our financial position, results of operations, or liquidity, litigation is subject to inherent uncertainty. Furthermore, litigation consumes both cash and management attention.

We maintain property and general commercial insurance coverage as well as errors and omissions and directors and officers insurance policies. This insurance coverage may not be sufficient to cover us for future claims.

We are also exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional failures to comply with FDA regulations, to provide accurate information to the FDA, to comply with manufacturing standards we have established, to comply with federal and state health-care fraud and abuse laws and regulations, to report financial information or data accurately or to disclose unauthorized activities to us. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, customer incentive programs and other business arrangements.

Employee misconduct could also involve the improper use of information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. In addition, during the course of our operations, our directors, executives and employees may have access to material, nonpublic information regarding our business, our results of operations or potential transactions we are considering. We may not be able to prevent a director, executive or employee from trading in our common stock on the basis of, or while having access to, material, nonpublic information. If a director, executive or employee was to be investigated, or an action was to be brought against a director, executive or employee for insider trading, it could have a negative impact on our reputation and our stock price. Such a claim, with or without merit, could also result in substantial expenditures of time and money, and divert attention of our management team.

Product liability and other claims against us may reduce demand for our products and/or result in substantial damages.

We face an inherent risk of product liability exposure related to testing our product candidates in human clinical trials and commercial sales of Oncophage in Russia, and may face even greater risks if we sell Oncophage in other territories and/or sell our other product candidates commercially. An individual may bring a product liability claim against us if Oncophage or one of our product candidates causes, or merely appears to have caused, an injury. Product liability claims may result in:

- decreased demand for Oncophage or our product candidates;
- regulatory investigations;
- injury to our reputation;
- withdrawal of clinical trial volunteers;
- costs of related litigation; and
- substantial monetary awards to plaintiffs.

We manufacture the Prophage Series vaccines from a patient's cancer cells, and medical professionals must inject the vaccines into the same patient from which they were manufactured. A patient may sue us if a hospital, a shipping company, or we fail to receive the removed cancer tissue or deliver that patient's vaccine. We anticipate that the logistics of shipping will become more complex if the number of patients we treat increases and that shipments of tumor and/or vaccines may be lost, delayed, or damaged. Additionally, complexities unique to the logistics of commercial products may delay shipments and limit our ability to move commercial product in an efficient manner without incident. To date, we have obtained transportation insurance coverage for commercial Oncophage being shipped to Russia. We do not have any other insurance that covers loss of or damage to the Prophage Series vaccines or tumor material, and we do not know whether such insurance will be available to us at a reasonable price or at all. We have limited product liability coverage for use of our product candidates. Our product liability policy provides $10.0 million aggregate coverage and $10.0 million per occurrence coverage. This limited insurance coverage may be insufficient to fully cover us for future claims.

We are also subject to laws generally applicable to businesses, including but not limited to, federal, state and local wage and hour, employee classification, mandatory healthcare benefits, unlawful workplace discrimination and whistle-blowing. Any actual or alleged failure to comply with any regulation applicable to our business or any whistle-blowing claim, even if without merit, could result in costly litigation, regulatory action or otherwise harm our business, results of operations, financial condition, cash flow and future prospects.

If we do not comply with environmental laws and regulations, we may incur significant costs and potential disruption to our business.

We use or may use hazardous, infectious, and radioactive materials, and recombinant DNA in our operations, which have the potential of being harmful to human health and safety or the environment. We store these hazardous (flammable, corrosive, toxic), infectious, and radioactive materials, and various wastes resulting from their use, at our facilities pending use and ultimate disposal. We are subject to a variety of federal, state, and local laws and regulations governing use, generation, storage, handling, and disposal of these materials. We may incur significant costs complying with both current and future environmental health and safety laws and regulations. In particular, we are subject to regulation by the Occupational Safety and Health Administration, the Environmental Protection Agency, the Drug Enforcement Agency, the Department of Transportation, the Centers for Disease Control and Prevention, the National Institutes of Health, the International Air Transportation Association, and various state and local agencies. At any time, one or more of the aforementioned agencies could adopt regulations that may affect our operations. We are also subject to regulation under the Toxic Substances Control Act and the Resource Conservation Development programs.

Although we believe that our current procedures and programs for handling, storage, and disposal of these materials comply with federal, state, and local laws and regulations, we cannot eliminate the risk of accidents involving contamination from these materials. Although we have a workers' compensation liability policy, we could be held liable for resulting damages

in the event of an accident or accidental release, and such damages could be substantially in excess of any available insurance coverage and could substantially disrupt our business.

Risks Related to our Common Stock

Unaffiliated holders of certain convertible securities may convert such securities into a substantial percentage of our outstanding common stock.

According to publicly filed documents, Mr. Brad M. Kelley beneficially owns approximately 1,591,000 shares of our outstanding common stock and 31,620 shares of our series A-1 convertible preferred stock. The shares of preferred stock are currently convertible at any time into approximately 333,000 shares of common stock at an initial conversion price of $94.86, are non-voting, and carry a 0.6325% annual dividend yield. If Mr. Kelley converted all of the shares of preferred stock on February 4, 2013, he would have held approximately 8% of our outstanding common stock. We currently have a right of first refusal agreement with Mr. Kelley that provides us with limited rights to purchase certain of Mr. Kelley's shares if he proposes to sell them to a third party.

Ingalls & Snyder LLC holds $31.2 million aggregate principal amount of our 2006 Notes. Upon maturity in 2014, we may elect to repay the outstanding balance of our 2006 Notes in cash or in common stock, subject to certain limitations. If we elect to satisfy the outstanding balance with common stock at maturity (August 2014), the number of shares issued will be determined by dividing the cash obligation by 90 percent of the weighted average price of the common shares for the 20 trading days preceding the maturity date of the 2006 Notes. This right is subject to our market capitalization exceeding $300 million at such time. In no event will the note holder be obligated to accept equity that would result in them owning in excess of 9.99% of the Company's outstanding common stock at any given time in connection with any conversion, redemption, or repayment of the 2006 Notes.

Collectively, Mr. Kelley and Dr. Armen, our Chief Executive Officer, control approximately 13% of our outstanding common stock as of February 4, 2013, providing the ability, if they vote in the same manner, to determine the outcome of matters submitted to a stockholder vote. If Mr. Kelley were to convert all of his preferred stock into common stock, the combined total would increase to 14%. Additional purchases of our common stock by Mr. Kelley also would increase both his percentage of outstanding voting rights and the percentage combined with our Chief Executive Officer. While Mr. Kelley's shares of preferred stock do not carry voting rights, the shares of common stock issuable upon conversion carry the same voting rights as other shares of common stock.

Our stock may be delisted from The Nasdaq Capital Market, which could affect its market price and liquidity.

Our common stock is currently listed on The Nasdaq Capital Market (“Nasdaq”) under the symbol “AGEN.” In the event that we fail to maintain compliance with the applicable listing requirements, our common stock could become subject to delisting from Nasdaq. Although we are currently in compliance with all of the listing standards for listing on Nasdaq, we cannot provide any assurance that we will continue to be in compliance in the future. We have been non-compliant with the minimum bid price requirement set forth in Nasdaq Marketplace Rule 5550(a)(2) three times since our move to The Nasdaq Capital Market in April 2009.

Provisions in our organizational documents could prevent or frustrate attempts by stockholders to replace our current management.

Our certificate of incorporation and bylaws contain provisions that could make it more difficult for a third party to acquire us without the consent of our Board of Directors. Our certificate of incorporation provides for a staggered board and removal of directors only for cause. Accordingly, stockholders may elect only a minority of our Board at any annual meeting, which may have the effect of delaying or preventing changes in management. In addition, under our certificate of incorporation, our Board of Directors may issue additional shares of preferred stock and determine the terms of those shares of stock without any further action by our stockholders. Our issuance of additional preferred stock could make it more difficult for a third party to acquire a majority of our outstanding voting stock and thereby effect a change in the composition of our Board of Directors. Our certificate of incorporation also provides that our stockholders may not take action by written consent. Our bylaws require advance notice of stockholder proposals and director nominations and permit only our president or a majority of the Board of Directors to call a special stockholder meeting. These provisions may have the effect of preventing or hindering attempts by our stockholders to replace our current management. In addition, Delaware law prohibits a corporation from engaging in a business combination with any holder of 15% or more of its capital stock until the holder has held the stock for three years unless, among other possibilities, the board of directors approves the transaction. Our Board of Directors may use this provision to prevent changes in our management. Also, under applicable Delaware law, our Board of Directors may adopt additional anti-takeover measures in the future.

The first right to negotiate provision contained in our agreement with one of our licensees could hinder or delay a change of control of the Company or the sale of certain of our assets

We have entered into a First Right to Negotiate and Amendment Agreement with GSK that affords GSK, one of our licensees, a first right to negotiate with us in the event we determine to initiate a process to effect a change of control of our company with, or to sell certain of our assets to, an unaffiliated third party or in the event that a third party commences an unsolicited tender offer seeking a change of control of our company. In such event, we must provide GSK a period of time to determine whether it wishes to negotiate the terms of such a transaction with us. If GSK affirmatively so elects, we are required to negotiate with GSK in good faith towards effecting a transaction of that nature for a specified period. During the negotiation period, we are obligated not to enter into a definitive agreement with a third party that would preclude us from negotiating and/or executing a definitive agreement with GSK. If GSK determines not to negotiate with us or we are unable to come to an agreement with GSK during this period, we may enter into the specified change of control or sale transaction within the ensuing 12 months, provided that such a transaction is not on terms in the aggregate that are materially less favorable to us and our stockholders (as determined by our Board of Directors, in its reasonable discretion) than terms last offered to us by GSK in a binding written proposal during the negotiation period. The first right to negotiate terminates on March 2, 2017. Although GSK's first right to negotiate does not compel us to enter into a transaction with GSK nor prevent us from negotiating with or entering into a transaction with a third party, the first right to negotiate could inhibit a third party from engaging in discussions with us concerning such a transaction or delay our ability to effect such a transaction with a third party.

Our stock has historically had low trading volume, and its public trading price has been volatile.

Between our initial public offering on February 4, 2000 and December 31, 2012, and for the year ended December 31, 2012, the closing price of our common stock has fluctuated between $1.80 and $315.78 per share and $2.10 and $7.04 per share, respectively. The average daily trading volume for the year ended December 31, 2012 was approximately 176,000 shares. The market may experience significant price and volume fluctuations that are often unrelated to the operating performance of individual companies. In addition to general market volatility, many factors may have a significant adverse effect on the market price of our stock, including:

- continuing operating losses, which we expect over the next several years as we continue our development activities;
- announcements of decisions made by public officials;
- results of our preclinical studies and clinical trials;
- announcements of new collaboration agreements with strategic partners or developments by our existing collaborative partners;
- announcements of technological innovations, new commercial products, failures of products, or progress toward commercialization by our competitors or peers;
- developments concerning proprietary rights, including patent and litigation matters;
- publicity regarding actual or potential results with respect to product candidates under development; and
- quarterly fluctuations in our financial results;
- variations in the level of expenses related to any of our product candidates or clinical development programs;
- additions or departures of key scientific or management personnel;
- conditions or trends in the biotechnology and biopharmaceutical industries;
- other events or factors, including those resulting from war, incidents of terrorism, natural disasters or responses to these events;
- changes in accounting principles;
- general economic and market conditions and other factors that may be unrelated to our operating performance or the operating performance of our competitors, including changes in market valuations of similar companies; and
- sales of common stock by us or our stockholders in the future, as well as the overall trading volume of our common stock.

In the past, securities class action litigation has often been brought against a company following a significant decline in the market price of its securities. This risk is especially relevant for us because biotechnology and pharmaceutical companies generally experience significant stock price volatility.

The trading market for our common stock will depend in part on the research and reports that securities or industry analysts publish about us or our business. If one or more of the analysts who covers us downgrades our stock, or publishes inaccurate or unfavorable research about our business, our stock price would likely decline. If one or more of these analysts ceases coverage of us or fails to publish reports on us regularly, demand for our stock could decrease, which could cause our stock price and trading volume to decline.

The sale of a significant number of shares could cause the market price of our stock to decline.

The sale by us or the resale by stockholders of a significant number of shares of our common stock could cause the market price of our common stock to decline. As of December 31, 2012, we had approximately 24,602,000 shares of common stock outstanding. All of these shares are eligible for sale on Nasdaq, although certain of the shares are subject to sales volume and other limitations. We have filed registration statements to permit the sale of approximately 6,200,000 shares of common stock under our equity incentive plans. We have also filed registration statements to permit the sale of approximately 167,000 shares of common stock under our employee stock purchase plan, to permit the sale of 225,000 shares of common stock under our Directors' Deferred Compensation Plan (DDCP), to permit the sale of approximately 8,274,000 shares of common stock pursuant to various private placement agreements and to permit the sale of approximately 10,000,000 shares of our common stock pursuant to our At Market Issuance Sales Agreement. As of December 31, 2012, an aggregate of 16.4 million of these shares remain available for sale. The market price of our common stock may decrease based on the expectation of such sales.

As of December 31, 2012, options to purchase 2,748,883 shares of our common stock with a weighted average exercise price per share of $7.07 were outstanding. These options are subject to vesting that occurs over a period of up to four years following the date of grant. As of December 31, 2012, we have 249,968 nonvested shares outstanding.

We may issue additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock. Furthermore, substantially all shares of common stock for which our outstanding stock options or warrants are exercisable are, once they have been purchased, eligible for immediate sale in the public market. The issuance of additional common stock, preferred stock, restricted stock units, or securities convertible into or exchangeable for our common stock or the exercise of stock options or warrants would dilute existing investors and could adversely affect the price of our securities. In addition, such securities may have rights senior to the rights of securities held by existing investors.

Failure to maintain effective internal controls in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 and to comply with changing regulation of corporate governance and public disclosure could have a material adverse effect on our operating results and the price of our common stock.

The Sarbanes-Oxley Act of 2002 and rules adopted by the Securities and Exchange Commission and Nasdaq have resulted in significant costs to us. In particular, our efforts to comply with Section 404 of the Sarbanes-Oxley Act of 2002 and related regulations regarding the required assessment of our internal control over financial reporting, and our independent registered public accounting firm's audit of internal control over financial reporting, have required commitments of significant management time. We expect these commitments to continue.

Our internal control over financial reporting (as defined in Rules 13a-15 of the Exchange Act) is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of our consolidated financial statements for external purposes in accordance with U.S. GAAP. Because of its inherent limitations, internal control over financial reporting may not prevent or detect all deficiencies or weaknesses in our financial reporting. While our management has concluded that there were no material weaknesses in our internal control over financial reporting as of December 31, 2012, our procedures are subject to the risk that our controls may become inadequate because of changes in conditions or as a result of a deterioration in compliance with such procedures. No assurance is given that our procedures and processes for detecting weaknesses in our internal control over financial reporting will be effective.

Changing laws, regulations and standards relating to corporate governance and public disclosure, are creating uncertainty for companies. Laws, regulations and standards are subject to varying interpretations in some cases due to their lack of specificity, and as a result, their application in practice may evolve over time as new guidance is provided, which could result in continuing uncertainty regarding compliance matters and higher costs caused by ongoing revisions to disclosure and governance practices. If we fail to comply with these laws, regulations and standards, our reputation may be harmed and we might be subject to sanctions or investigation by regulatory authorities, such as the Securities Exchange Commission. Any such action could adversely affect our operating results and the market price of our common stock.

Item 1B. *Unresolved Staff Comments*

None

Item 2. ***Properties***

We maintain our manufacturing, research and development, and corporate offices in Lexington, Massachusetts. During April 2011, we executed a Fifth Amendment of Lease reducing our occupied space in this facility from approximately 162,000 square feet to approximately 82,000 square feet. This lease agreement terminates in August 2023 with an option to renew for one additional ten-year period. We have sublet a portion of this facility under a lease that expires in August 2013.

We also lease approximately 5,400 square feet in an office building in New York, New York under a lease that terminates in April 2013. During December 2012 we entered into a commercial lease for approximately 5,600 square feet of office space in New York, New York for use as corporate offices that terminates in May 2020.

We believe substantially all of our property and equipment is in good condition and that we have sufficient capacity to meet our current operational needs. We do not anticipate experiencing significant difficulty in retaining occupancy of any of our manufacturing or office facilities and will do so through lease renewals prior to expiration or through replacing them with equivalent facilities.

Item 3. ***Legal Proceedings***

We are not party to any material legal proceedings.

Item 4. ***Mine Safety Disclosures***

Not applicable

Executive Officers of the Registrant

Set forth below is certain information regarding our current executive officers, including their age, as of March 1, 2013:

Name	Age	Title
Garo H. Armen, Ph.D.	60	Chairman of the Board and Chief Executive Officer
Christine M. Klaskin	47	Vice President, Finance, Principal Accounting Officer, and Principal Financial Officer
Karen H. Valentine	41	Vice President and General Counsel
Kerry A. Wentworth	40	Vice President, Clinical, Regulatory & Quality

Garo H. Armen, PhD—Dr. Armen has been Chairman and CEO since the Company's founding with Pramod Srivastava in 1994. From mid-2002 through 2004, he was Chairman of the Board of Directors for the biopharmaceutical company Elan Corporation, plc. Dr. Armen is also the founder and President of the Children of Armenia Fund, a charitable organization established in 2000 that is dedicated to the positive development of the children and youth of Armenia.

Christine M. Klaskin—Christine M. Klaskin has been Vice President, Finance, Principal Accounting Officer since October 2006 and Principal Financial Officer since May 2012. Since joining Agenus Inc. in 1996 as finance manager, Ms. Klaskin has held various positions within the finance department and has been involved in all equity and debt offerings of the Company including its IPO. Ms. Klaskin is currently a member of the board of directors of American DG Energy Inc. Prior to joining Agenus, Ms. Klaskin was employed by Arthur Andersen as an audit manager. Ms. Klaskin received her Bachelor of Accountancy from The George Washington University.

Karen H. Valentine—Karen Higgins Valentine has been Vice President and General Counsel since January 2008 and also has served as Secretary since 2007 and Chief Compliance Officer of the Company since 2008. Prior to joining Agenus Inc. in 2004, Ms. Valentine was an associate in the biotechnology practice of Palmer & Dodge LLP (now Edwards Wildman). While at the law firm, she provided corporate law services to a broad range of both public and private corporations, and developed an expertise in the areas of licensing and strategic collaborations. Ms. Valentine graduated cum laude with a bachelor's degree in neuroscience from Colgate University, and received her law degree, magna cum laude, from Boston University School of Law.

Kerry A. Wentworth—Kerry Wentworth has been Vice President, Clinical, Regulatory & Quality since June 2006. Before joining Agenus Inc. in 2005, Ms. Wentworth served as senior director of regulatory affairs at Genelabs Technologies, where she was responsible for the business' regulatory and quality functions. There she focused on the late-stage clinical development and subsequent US and European commercial application filings for the company's lead product Prestara. Prior to Genelabs, Ms. Wentworth held various positions in regulatory affairs at Shaman Pharmaceuticals and at Genzyme Corporation. Ms. Wentworth received a BS in pre-veterinary medicine from the University of New Hampshire.

PART II

Item 5. *Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities*

Our common stock is currently listed on The Nasdaq Capital Market under the symbol "AGEN."

The following table sets forth, for the periods indicated, the high and low sale prices per share of our common stock.

	High	Low
2011		
First Quarter	$ 6.96	$ 5.16
Second Quarter	6.72	4.62
Third Quarter	5.10	2.76
Fourth Quarter	4.43	1.92
2012		
First Quarter	6.85	2.00
Second Quarter	7.41	4.76
Third Quarter	5.47	4.30
Fourth Quarter	4.95	3.37

As of February 14, 2013, there were approximately 1,700 holders of record and approximately 18,800 beneficial holders of our common stock.

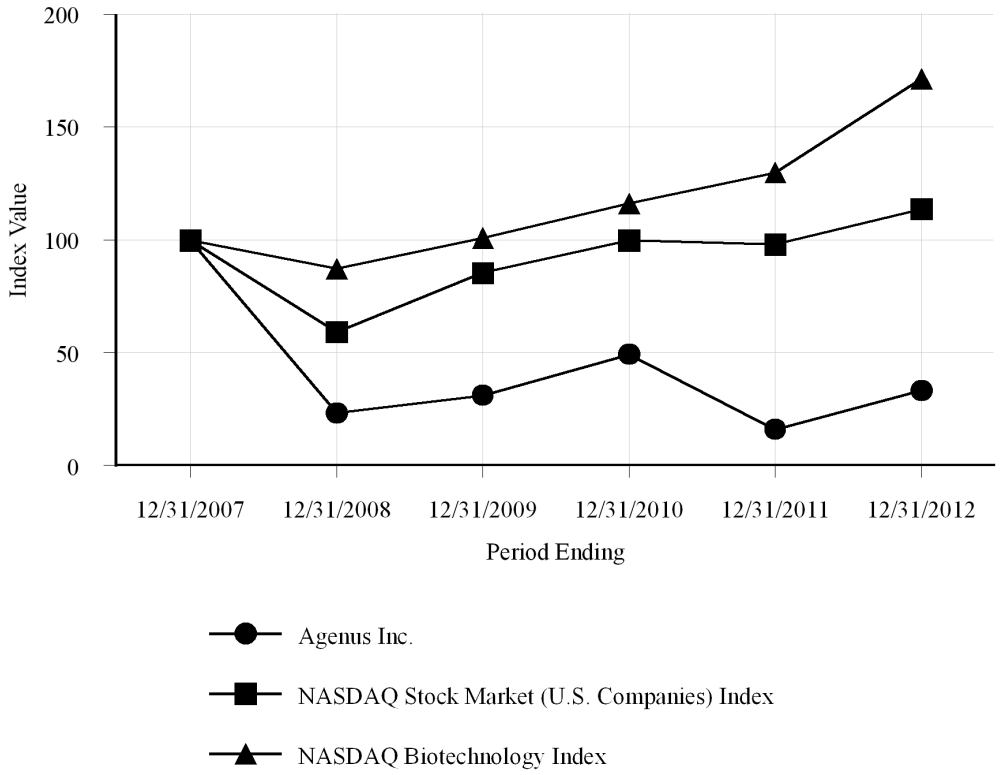
We have never paid cash dividends on our common stock, and we do not anticipate paying any cash dividends in the foreseeable future. We currently intend to retain future earnings, if any, for the future operation and expansion of our business. Any future payment of dividends on our common stock will be at the discretion of our Board of Directors and will depend upon, among other things, our earnings, financial condition, capital requirements, level of indebtedness, and other factors that our Board of Directors deems relevant.

Stock Performance

The following graph shows the cumulative total stockholder return on our common stock over the period from December 31, 2007 to December 31, 2012, as compared with that of the Nasdaq Stock Market (U.S. Companies) Index and the Nasdaq Biotechnology Index, based on an initial investment of $100 in each on December 31, 2007. Total stockholder return is measured by dividing share price change plus dividends, if any, for each period by the share price at the beginning of the respective period, and assumes reinvestment of dividends.

This stock performance graph shall not be deemed "filed" with the SEC or subject to Section 18 of the Securities Exchange Act, nor shall it be deemed incorporated by reference in any of our filings under the Securities Act of 1933, as amended (the "Securities Act").

**COMPARISON OF CUMULATIVE TOTAL RETURN OF AGENUS INC.,
NASDAQ STOCK MARKET (U.S. COMPANIES) INDEX
AND NASDAQ BIOTECHNOLOGY INDEX**



	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/2011	12/31/2012
Agenus Inc.	100.00	23.53	31.37	49.51	16.34	33.50
NASDAQ Stock Market (U.S. Companies) Index	100.00	59.46	85.55	100.02	98.22	113.85
NASDAQ Biotechnology Index	100.00	87.37	101.03	116.19	129.91	171.36

Recent Sales of Unregistered Securities—None

Information concerning our equity compensation plans is set forth in our Definitive Proxy Statement with respect to our 2013 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of the fiscal year under the heading "Equity Plans," which is incorporated herein by reference.

Item 6. ***Selected Financial Data***

We have derived the consolidated balance sheet data set forth below as of December 31, 2012 and 2011, and the consolidated statement of operations data for each of the years in the three-year period ended December 31, 2012, from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

You should read the selected consolidated financial data in conjunction with "Management's Discussion and Analysis of Financial Condition and Results of Operations," our consolidated financial statements, and the notes to our consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

Changes in cash, cash equivalents, and short-term investments, total current assets, total assets, and stockholders' deficit in the periods presented below include the effects of the receipt of net proceeds from our debt offerings, equity offerings, the exercise of stock options and warrants, and employee stock purchases that totaled approximately $10.5 million, $8.1 million, $11.6 million, $18.7 million, and $46.9 million in the years ended December 31, 2012, 2011, 2010, 2009, and 2008, respectively.

	For the Year Ended December 31,				
	2012	2011	2010	2009	2008
	(In thousands, except per share data)				
Consolidated Statement of Operations Data:					
Revenue	$ 15,961	$ 2,756	$ 3,360	$ 3,334	$ 2,651
Operating expenses:					
Cost of goods sold	(672)	—	(123)	—	
Research and development	(10,564)	(11,023)	(12,878)	(16,903)	(20,663)
General and administrative	(11,465)	(10,820)	(12,112)	(14,110)	(19,832)
Loss from operations	(6,740)	(19,087)	(21,753)	(27,679)	(37,844)
Non-operating income	110	2	4,680	2,568	12,356
Interest expense, net	(4,695)	(4,191)	(4,834)	(5,207)	(5,313)
Net loss (1)	(11,325)	(23,276)	(21,907)	(30,318)	(30,801)
Dividends on series A convertible preferred stock	(792)	(790)	(790)	(790)	(790)
Net loss attributable to common stockholders	(12,117)	$ (24,066)	$ (22,697)	$ (31,108)	$ (31,591)
Net loss attributable to common stockholders per common share, basic and diluted	$ (0.51)	$ (1.21)	$ (1.41)	$ (2.36)	$ (3.00)
Weighted average number of shares outstanding, basic and diluted	23,629	19,899	16,108	13,170	10,542

	December 31,				
	2012	2011	2010	2009	2008
	(In thousands)				
Consolidated Balance Sheet Data:					
Cash, cash equivalents, and short-term investments	$ 21,468	$ 10,748	$ 19,782	$ 30,065	$ 34,463
Total current assets	22,615	12,004	20,854	31,533	35,486
Total assets	29,093	19,808	30,907	45,874	56,822
Total current liabilities	4,813	4,754	5,416	5,355	6,997
Long-term debt, less current portion	35,714	32,726	34,050	49,494	64,126
Stockholders' deficit	(17,600)	(20,831)	(14,707)	(16,975)	(20,330)

(1) Given our history of incurring operating losses, no income tax benefit has been recognized in our consolidated statements of operations because of the loss before income taxes, and the need to recognize a valuation allowance on the portion of our deferred tax assets which will not be offset by the reversal of deferred tax liabilities.

Item 7. *Management's Discussion and Analysis of Financial Condition and Results of Operations*

Overview

Our current research and development activities are focused on developing technologies and product candidates to treat cancers and infectious diseases. Our core technology portfolio consists of our Saponin Platform (based on our saponin adjuvant based technologies) and our Heat Shock Protein ("HSP") Platform (based on our HSP based technologies). Some of our key candidates from these technology platforms are QS-21 Stimulon ® adjuvant ("QS-21 Stimulon"), HerpV, and the Prophage Series vaccines.

QS-21 Stimulon is an adjuvant, or a substance added to a vaccine or other immunotherapy that is intended to enhance immune response. The key licensees of QS-21 Stimulon are GlaxoSmithKline ("GSK") and JANSSEN Alzheimer Immunotherapy ("JANSSEN AI"). There are approximately 17 vaccines containing QS-21 Stimulon in clinical development by our licensees, including a total of four in Phase 3 testing for malaria, melanoma, non-small cell lung cancer and shingles. The first products containing QS-21 Stimulon are anticipated to be launched in 2014, and we are generally entitled to royalties for at least 10 years after commercial launch, with some exceptions.

HerpV is derived from our HSP Platform technologies, and is a recombinant, synthetic, non-patient specific therapeutic vaccine candidate administered with QS-21 Stimulon for the treatment of genital herpes. It has completed Phase 1 testing, where it was shown to elicit both CD4 and CD8 positive T cell responses-a first of its kind finding in genital herpes treatment. Because the product contains multiple antigens derived from the herpes simplex 2 virus (HSV-2), it may be applicable to a broader patient population and may have potential in managing outbreaks and disease transmission. We consider this to be a platform technology, since we could potentially create therapeutic vaccines for various infectious diseases with the integration of heat shock proteins with antigenic peptides. We initiated a Phase 2 randomized, double blind, multicenter trial in October 2012.

The Prophage Series vaccines are a patient specific application of our HSP Platform. The Prophage Series vaccine R-100 is referred to as Oncophage ® vaccine and is approved in Russia for the treatment of renal cell carcinoma ("RCC", or kidney cancer) in patients at intermediate risk of recurrence. In December 2011, we granted NewVac LLC (a subsidiary of ChemRar Ventures LLC) an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. A Phase 2 trial testing the Prophage Series vaccine candidate G-100 in newly diagnosed glioma has been fully enrolled and patient follow up is underway. Separately, a Phase 2 trial with G-200 in recurrent glioma has been completed and final data are in the process of being prepared for publication in a peer reviewed medical journal. The G-100 and G-200 studies are solely based in the United States. The Cancer Therapy Evaluation Program of the National Cancer Institute (NCI) approved a study of the Prophage Series G-200 vaccine in a randomized Phase 2 trial in combination with Avastin® (bevacizumab) in patients with surgically resectable recurrent glioma. The study will be sponsored by the Alliance for Clinical Trials in Oncology, an NCI cooperative group. This study is anticipated to begin enrolling patients during the first half of 2013.

In addition to our internal development efforts, we continue to pursue partnering opportunities. We are seeking partners for select products in our portfolio, which include the Prophage G-Series vaccines, G-100 and G-200, QS-21 Stimulon, and HerpV. We are also exploring in-licensing, acquisitions and sponsored research opportunities. Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development, market development, business development, and support of our collaborations. Research and development expenses for the the years ended December 31, 2012, 2011, and 2010, were $10.6 million, $11.0 million, and $12.9 million, respectively. We have incurred significant losses since our inception. As of December 31, 2012, we had an accumulated deficit of $619.0 million.

We have financed our operations primarily through the sale of equity and convertible notes. We believe that, based on our current plans and activities, our working capital resources at December 31, 2012, along with the estimated proceeds from our license, and collaborative agreements, will be sufficient to satisfy our liquidity requirements through 2013 based on our expected annual use of cash of $18-21 million during 2013. We expect to attempt to raise additional funds in advance of depleting our funds. We may attempt to raise additional funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities, including, without limitation, in at the market offerings. Satisfying long-term liquidity needs may require the successful commercialization and/or one or more partnering arrangements for (1) vaccines containing QS-21 Stimulon under

development by our licensees, (2) HerpV, Oncophage and/or our other Prophage Series vaccines, and/or (3) potentially other product candidates, each of which will require additional capital.

Our common stock is currently listed on The Nasdaq Capital Market under the symbol "AGEN".

Historical Results of Operations

Year Ended December 31, 2012 Compared to the Year Ended December 31, 2011

Revenue: We generated revenue of $16.0 million and $2.8 million during the years ended December 31, 2012 and 2011, respectively. Revenue includes license fees and royalties earned, and in 2012, service revenue. For the year ended December 31, 2012, we recognized revenue of $6.5 million through an expanded license agreement with GSK, which provided GSK with additional license rights in an undisclosed indication, and $6.25 million through a license of non-core technologies with an existing licensee that resulted in a buy-out of the current royalty stream related to the license. During the years ended December 31, 2012 and 2011, we recorded revenue of $1.5 million and $1.6 million, respectively, from the amortization of deferred revenue. Our revenue for the year ended December 31, 2012 primarily resulted from one-time payments received under amended license agreements and therefore is not indicative of future results.

Research and Development: Research and development expenses include the costs associated with our internal research and development activities, including compensation and benefits, occupancy costs, clinical manufacturing costs, costs of consultants, and administrative costs. Research and development expense decreased 4.2% to $10.6 million for the year ended December 31, 2012 from $11.0 million for the year ended December 31, 2011. Decreased expenses related to our general cost-containment efforts and the status of our products under development were partially offset by increased expenses related to our HerpV program and non-cash share-based compensation expense.

General and Administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses increased 6.0% to $11.5 million for the year ended December 31, 2012 from $10.8 million for the year ended December 31, 2011. Our non-cash share-based compensation expense increased $1.3 million for the year ended December 31, 2012 over the same period in 2011. This increase was partially offset by decreased expenses related to our general cost-containment efforts.

Interest Expense: Interest expense increased to $4.7 million for the year ended December 31, 2012 from $4.2 million for the year ended December 31, 2011. This increase is related to an increase in the amount of debt discount amortized related to our 2006 Notes in addition to the increase in the principal amount of debt outstanding. Interest on our 2006 Notes is payable semi-annually on December 30 and June 30 in cash or, at our option, in additional notes or a combination thereof. During the years ended December 31, 2012 and 2011, interest expense included $1.5 million and $2.8 million, respectively, paid in the form of additional 2006 Notes.

Year Ended December 31, 2011 Compared to the Year Ended December 31, 2010

Revenue: We generated revenue of $2.8 million and $3.4 million during the years ended December 31, 2011 and 2010, respectively. Revenue includes license fees and royalties earned, and in 2010, revenue earned on shipments of QS-21 Stimulon to our QS-21 Stimulon licensees, grants earned and Oncophage sales. In the years ended December 31, 2011 and 2010, we recorded revenue of $1.6 million and $1.5 million, respectively, from the amortization of deferred revenue related to our QS-21 Stimulon partnered programs.

Research and Development: Research and development expenses include the costs associated with our internal research and development activities, including compensation and benefits, occupancy costs, clinical manufacturing costs, costs of consultants, and administrative costs. Research and development expense decreased 15% to $11.0 million for the year ended December 31, 2011 from $12.9 million for the year ended December 31, 2010. The decrease is primarily due to the overall status of our development programs and includes $1.3 million for amortization and depreciation expense, $495,000 related to our noncash share-based compensation expense, and $230,000 related to the reduced production of clinical product to our licensees due to the transfer of manufacturing rights.

General and Administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses decreased 11% to $10.8 million for the year ended December 31, 2011 from $12.1 million for the year ended December 31, 2010. This decrease is largely due to the status of our development programs and our cost containment efforts and includes $600,000 related to our employee and director noncash share-based compensation expense, $400,000 for amortization and depreciation expense, and $200,000 for personnel related expenses.

Non-operating Income: Non-operating income of $4.7 million for the year ended December 31, 2010 consists of a net gain of $2.8 million on the extinguishment of a portion of our 2005 Notes and the change in the fair value of our derivative liability since December 31, 2009 of $1.9 million.

Interest Expense: Interest expense decreased to $4.2 million for the year ended December 31, 2011 from $4.9 million for the year ended December 31, 2010. This decrease is related to the repurchase of substantially all of our 2005 Notes during the year ended December 31, 2010. Interest on our 2006 Notes is payable semi-annually on December 30 and June 30 in cash or, at our option, in additional notes or a combination thereof. During the years ended December 31, 2011 and 2010, interest expense included $2.8 million and $2.6 million, respectively, paid in the form of additional 2006 Notes.

Inflation

We believe that inflation has not had a material adverse effect on our business, results of operations, or financial condition to date.

Research and Development Programs

Prior to 2002, we did not track costs on a per project basis, and therefore have estimated the allocation of our total research and development costs to our largest research and development programs for that time period. During 2012, these research and development programs consisted largely of our Prophage Series vaccines and HerpV, as indicated in the following table (in thousands).

Research and Development Program	Product	Year Ended December 31, 2012	2011	2010	Prior to 2010	Total
Heat shock proteins for cancer	Prophage Series Vaccines	$ 5,613	$ 10,182	$ 10,960	$ 270,891	$ 297,646
Heat shock proteins for infectious diseases	HerpV	4,862	734	644	17,710	23,950
Vaccine adjuvant *	QS-21 Stimulon	85	94	1,185	11,219	12,583
Other research and development programs		4	13	89	33,438	33,544
Total research and development expenses		$ 10,564	$ 11,023	$ 12,878	$ 333,258	$ 367,723

* Prior to 2000, costs were incurred by Aquila Biopharmaceuticals, Inc., a company we acquired in November 2000.

Research and development program costs include compensation and other direct costs plus an allocation of indirect costs, based on certain assumptions and our review of the status of each program. Our product candidates are in various stages of development and significant additional expenditures will be required if we start new trials, encounter delays in our programs, apply for regulatory approvals, continue development of our technologies, expand our operations, and/or bring our product candidates to market. The eventual total cost of each clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, and number of patients. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because HerpV is now in a Phase 2 trial and the further development of our Prophage Series vaccines is subject to evaluation and uncertainty, we are unable to reliably estimate the cost of completing our research and development programs, the timing of bringing such programs to various markets, and, therefore, when, if ever, material cash inflows are likely to commence. Programs involving QS-21 Stimulon, other than our HerpV program, depend on our collaborative partners or licensees successfully completing clinical trials, successfully manufacturing QS-21 Stimulon to meet demand, obtaining regulatory approvals and successfully commercializing product candidates containing QS-21 Stimulon.

Product Development Portfolio

QS-21 Stimulon

QS-21 Stimulon® adjuvant, from our Saponin Platform, is an adjuvant, or a substance added to a vaccine or other immunotherapy, that is intended to enhance immune response. The key licensees of QS-21 Stimulon are GSK and JANSSEN AI. There are 17 vaccines containing QS-21 Stimulon in clinical development, including a total of four in Phase 3 testing for malaria, melanoma, non-small cell lung cancer and shingles. The first products containing QS-21 Stimulon are anticipated to be launched in 2014, and we are generally entitled to royalties for at least 10 years after commercial launch, with some exceptions.

However, there is no guarantee that we will be able to collect royalties in the future. The pipeline of product candidates containing QS-21 Stimulon is extraordinarily diverse, encompassing prophylactic as well as therapeutic vaccines for infectious diseases, multiple cancer types, and Alzheimer's disease. We do not incur clinical development costs for these products of our licensees. For additional information regarding QS-21 Stimulon, please read Part I-Item 1. "Business" of this Annual Report on Form 10-K.

HerpV

In October 2005, we initiated a multicenter Phase 1 clinical trial of HerpV (designated in the study as AG-707 plus QS-21 Stimulon) in HSV-2 (genital herpes). In this four-arm, phase 1 study, 35 HSV-2 seropositive patients received HerpV, AG-707 alone, QS-21 Stimulon alone, or placebo. The vaccine was well tolerated, with injection site pain as the most common reported adverse event. This study is the first to demonstrate that HSPs complexed to viral antigens induce an antigen-specific T cell response in humans. The results from this study were published in the peer-reviewed journal *Vaccine* in September 2011. We have advanced HerpV into a Phase 2 study during the fourth quarter of 2012 that will measure the effect of vaccination on viral shedding in individuals infected with HSV-2. Experts in HSV-2 clinical research believe that a reduction in viral shedding could translate into clinical benefit. For additional information regarding HerpV, please read Part I-Item 1. "Business" of this Annual Report on Form 10-K.

Prophage Series Vaccines

We started enrolling patients in our first clinical trial studying a Prophage Series vaccine at Memorial Sloan-Kettering Cancer Center in New York, New York in November 1997. To date, nearly 900 cancer patients have been treated with our vaccine in clinical trials. Because Prophage Series vaccines are novel therapeutic vaccines that are patient-specific, meaning derived from the patient's own tumor, they are experiencing a long development process and high development costs, either of which could delay or prevent our commercialization efforts. For additional information regarding regulatory risks and uncertainties, please read the risks identified under Part I-Item 1A. "Risk Factors" of this Annual Report on Form 10-K.

We believe that the collective results from our clinical trials to date with product candidates from the Prophage Series indicate a favorable safety profile and signals of efficacy in multiple cancer types. We also believe that available results from clinical trials suggest that treatment with the Prophage Series vaccines can generate immunological and anti-tumor responses. The Prophage Series vaccine R-100 is referred to as Oncophage ® vaccine and is approved in Russia for the treatment of RCC in patients at intermediate risk of recurrence. A Phase 2 trial testing the Prophage Series vaccine candidate G-100 in newly diagnosed glioma has been fully enrolled and patient follow up is underway. Separately, a Phase 2 trial with G-200 in recurrent glioma has been completed and final data are in the process of being prepared for publication in a peer reviewed medical journal. The G-100 and G-200 studies are solely based in the United States. For additional information regarding our Prophage Series vaccines, please read Part I-Item 1. "Business" of this Annual Report on Form 10-K.

Liquidity and Capital Resources

We have incurred annual operating losses since inception, and we had an accumulated deficit of $ 619.0 million as of December 31, 2012. We expect to incur significant losses over the next several years as we continue clinical trials, apply for regulatory approvals, prepare for commercialization, and continue development of our technologies. We have financed our operations primarily through the sale of equity and convertible notes, and interest income earned on cash, cash equivalents, and short-term investment balances. From our inception through December 31, 2012, we have raised aggregate net proceeds of $524.9 million through the sale of common and preferred stock, the exercise of stock options and warrants, proceeds from our employee stock purchase plan, and the issuance of convertible notes. During the quarter ended March 31, 2012, we received $9.0 million from GSK for a First Right to Negotiate and an expanded license agreement and $6.25 million through a license of non-core technologies with an existing licensee. We granted GSK the first right to negotiate for the purchase of the Company or certain of our assets which will expire in five years. The expanded license agreement provides GSK with an additional license to an undisclosed indication and also provides for additional royalty payments for this indication upon commercialization of a vaccine product. The license of non-core technologies converted a license grant from non-exclusive to exclusive and enabled the licensee to buy-out the current royalty stream structure. We also maintain an effective registration statement to sell an aggregate of up to 10,000,000 shares of our common stock from time to time pursuant to an At the Market Issuance Sales Agreement with MLV & Co. LLC, as sales agent. As of December 31, 2012, we had debt outstanding of $39.2 million in principal, including $39.0 million in principal of our 2006 Notes maturing August 31, 2014.

Our cash and cash equivalents at December 31, 2012 were $21.5 million, an increase of $10.7 million from December 31, 2011. This increase primarily resulted from one-time payments received under amended license agreements of $15.3 million as well as net proceeds of $10.5 million received from at the market offerings and therefore is not indicative of our future financial condition. However, we believe that, based on our current plans and activities, our cash balance, along with the estimated

additional proceeds from our license, supply, and collaborative agreements, will be sufficient to satisfy our liquidity requirements through 2013 based on our estimated annual use of cash of $18-21 million during 2013. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations.

We expect to attempt to raise additional funds in advance of depleting our current funds. In order to fund our operations through 2013 and beyond, we will need to contain costs and raise additional funds. We may attempt to raise additional funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities, including, without limitation, in at the market offerings. Our ability to successfully enter into any such arrangements is uncertain, and if funds are not available, or not available on terms acceptable to us, we may be required to revise our planned clinical trials, other development activities, capital expenditures, and/or the scale of our operations. While we expect to attempt to raise additional funds in advance of depleting our current funds, we may not be able to raise funds or raise amounts sufficient to meet the long-term needs of the business. Satisfying long-term liquidity needs may require the successful commercialization and/or one or more partnering arrangements for (1) HerpV and the Prophage Series vaccines, (2) vaccines containing QS-21 Stimulon under development by our licensees, and/or (3) potentially other product candidates, each of which will require additional capital. We anticipate earning royalties from our QS-21 Stimulon product in 2014. Please see “Note Regarding Forward-Looking Statements” on page 2 of this Annual Report on Form 10-K and the risks highlighted under Part I-Item 1A. “Risk Factors” of this Annual Report on Form 10-K.

Our future cash requirements include, but are not limited to, supporting clinical trial and regulatory efforts and continuing our other research and development programs. Since inception, we have entered into various agreements with institutions and clinical research organizations to conduct and monitor our clinical studies. Under these agreements, subject to the enrollment of patients and performance by the applicable institution of certain services, we have estimated our payments to be $51.1 million over the term of the studies. Through December 31, 2012, we have expensed $47.8 million as research and development expenses and $47.4 million has been paid related to these clinical studies. The timing of expense recognition and future payments related to these agreements is subject to the enrollment of patients and performance by the applicable institution of certain services.

We have also entered into sponsored research agreements related to our product candidates that required payments of $6.5 million, all of which has been paid as of December 31, 2012. We plan to enter into additional sponsored research agreements, and we anticipate significant additional expenditures will be required to advance our clinical trials, apply for regulatory approvals, continue development of our technologies, and bring our product candidates to market. Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing collaborative arrangements with academic and collaborative partners and licensees and by entering into new collaborations. As a result of our collaborative agreements, we will not completely control the efforts to attempt to bring those product candidates to market. We have various agreements, for example, with collaborative partners and/or licensees, which allow the use of our QS-21 Stimulon adjuvant in numerous vaccines. These agreements grant exclusive worldwide rights in some fields of use and co-exclusive or non-exclusive rights in others. These agreements generally provide us with rights to manufacture and supply QS-21 Stimulon to the collaborative partner or licensee and also call for royalties to be paid to us on future sales of licensed vaccines that include QS-21 Stimulon, which may or may not be achieved. Significant investment in manufacturing capacity could be required if we were to retain our manufacturing and supply rights.

Net cash provided by operating activities for the year ended December 31, 2012 was $1.0 million while cash used in operating activities for the year ended December 31, 2011 was $16.2 million. This increase in cash provided by operating activities for the year ended December 31, 2012 primarily resulted from one-time payments received under amended license agreements and therefore is not indicative of future results. During the year ended December 31, 2012, we recognized revenue of $12.8 million related to expanded license agreements. We continue to support and develop our QS-21 Stimulon partnering collaborations, and anticipate earning royalties from products containing QS-21 Stimulon in 2014. Our future ability to generate cash from operations will depend on achieving regulatory approval of our product candidates, and market acceptance of Oncophage and our product candidates, achieving benchmarks as defined in existing collaborative agreements, and our ability to enter into new collaborations. Please see “Note Regarding Forward-Looking Statements” on page 2 of this Annual Report on Form 10-K and the risks highlighted under Part I-Item 1A. “Risk Factors” of this Annual Report on Form 10-K.

The table below summarizes our contractual obligations as of December 31, 2012 (in thousands).

	Payments Due by Period				
	Total	Less than 1 Year	1 – 3 Years	3 – 5 Years	More than 5 Years
Long-term debt (1)	$ 44,753	$ 263	$ 44,490	$ —	$ —
Operating leases (2)	15,762	1,336	2,855	3,038	8,533
Total	$ 60,515	$ 1,599	$ 47,345	$ 3,038	$ 8,533

(1) Assumes the 2006 Notes are not converted and are paid at maturity on August 31, 2014. In certain circumstances, the 2006 Notes could be converted before then. Also includes fixed interest payments, some of which may be paid in kind

(2) Effective March 2012, we sublet part of our Lexington facility to Hydra Biosciences Inc. whose lease expires in August 2013. Our Lexington facility and New York office leases expire August 2023 and May 2020, respectively.

Off-Balance Sheet Arrangements

At December 31, 2012, we had no off-balance sheet arrangements.

Critical Accounting Policies and Estimates

The SEC defines "critical accounting policies" as those that require the application of management's most difficult, subjective, or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain and may change in subsequent periods.

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. We base those estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Actual results could differ from those estimates.

The following listing is not intended to be a comprehensive list of all of our accounting policies. Our significant accounting policies are described in Note 2 of the notes to our consolidated financial statements. In many cases, the accounting treatment of a particular transaction is dictated by U.S. generally accepted accounting principles, with no need for our judgment in its application. There are also areas in which our judgment in selecting an available alternative would not produce a materially different result. We have identified the following as our critical accounting policies.

Share-Based Compensation

In accordance with the fair value recognition provisions of ASC 718, *Compensation—Stock Compensation,* we recognize share-based compensation expense net of an estimated forfeiture rate and only recognize compensation expense for those share-based awards expected to vest. Compensation expense is recognized on a straight-line basis over the requisite service period of the award.

Stock options granted to certain non-employees have been accounted for based on the fair value method of accounting in accordance with ASC 505-50, *Equity- Equity-Based Payments to Non-Employees.* As a result, the noncash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period, until the non-employee options vest, by changes in the fair value of our common stock. Under the provisions of ASC 505-50, the change in fair value of vested options issued to non-employees is reflected in the statement of operations each reporting period, until the options are exercised or expire.

Determining the appropriate fair value model and calculating the fair value of share-based awards requires the use of highly subjective assumptions, including the expected life of the share-based awards and stock price volatility. The assumptions used in calculating the fair value of share-based awards represent management's best estimates, but these estimates involve inherent uncertainties and the application of management judgment. As a result, if factors change and we use different assumptions, our share-based compensation expense could be materially different in the future. In addition, if our actual forfeiture rate is materially different from our estimate, the share-based compensation expense could be significantly different from what we have recorded in the current period. See Note 9 of the notes to our consolidated financial statements for a further discussion on share-based compensation.

Revenue Recognition

Revenue for services under research and development contracts are recognized as the services are performed, or as clinical trial materials are provided. Non-refundable milestone payments that represent the completion of a separate earnings process are recognized as revenue when earned. License fees and royalties are recognized as they are earned. Revenue recognized from collaborative agreements is based upon the provisions of Accounting Standards Codification ("ASC") 605-25, *Revenue Recognition—Multiple Element Arrangements* , as amended by Accounting Standards Update 2009-13.

Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board ("FASB") issued Accounting Standard Update No. 2011-05, Comprehensive Income ("ASU 2011-05") which increases the prominence of other comprehensive income in financial statements. Under this standard, the components of net income and other comprehensive income must be presented in either one or two consecutive financial statements. The standard eliminates the option to present other comprehensive income in the statement of changes in equity. ASU 2011-05 was effective for fiscal years beginning after December 15, 2011 and interim and annual periods thereafter. Adoption of this standard did not have a material effect on our consolidated financial statements.

In February 2013, the FASB issued Accounting Standard Update No. 2013-02, Reporting of Amounts Reclassified out of Accumulated other Comprehensive Income, ("ASU 2013-02"). ASU 2013-02 requires entities to disclose items reclassified out of accumulated Other Comprehensive Income ("AOCI") and into net income in their entirety, the effect of the reclassification on each affected net income line item, and, for AOCI reclassification items that are not reclassified in their entirety into net income, a cross reference to other required U.S. GAAP disclosures. This consolidated standard is effective for annual periods beginning after December 31, 2012 and interim periods within those years. The application of this standard will not have a material impact on our consolidated financial statements.

In September 2011, the FASB issued Accounting Standard Update No. 2011-08, Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment (the revised standard) ("ASU 2011-08"). ASU 2011-08 simplifies how entities test goodwill for impairment. This amended guidance permits companies to first assess assess qualitative factors to determine whether it is necessary to perform the two-step goodwill impairment test. If an entity believes, as a result of its qualitative assessment, that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount, the quantitative impairment test is required. Otherwise, no further testing is required. The revised standard was effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Adoption of this provisions of this guidance did not have a material impact on our consolidated results of operations, cash flows, and financial position.

In July 2012, the FASB issued Accounting Standard Update No. 2012-02, "Intangibles-Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment" ("ASU 2012-02"). ASU 2012-02 simplifies the guidance for testing the impairment of indefinite-lived intangible assets other than goodwill. The guidance allows an entity the option to first assess qualitative factors to determine whether it is necessary to perform the quantitative impairment test. An entity electing to perform a qualitative assessment is no longer required to calculate the fair value of an indefinite-lived intangible asset unless the entity determines, based on a qualitative assessment, that it is "more likely than not" that the asset is impaired. This guidance is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012, with early adoption permitted. We adopted this standard in the fourth quarter of 2012. The adoption of ASU 2012-02 did not have a material effect on our consolidated financial statements.

Item 7A. ***Quantitative and Qualitative Disclosures About Market Risk***

In the normal course of business, we are exposed to fluctuations in interest rates as we seek debt financing and invest excess cash. We are also exposed to foreign currency exchange rate fluctuation risk related to our transactions denominated in foreign currencies. We do not currently employ specific strategies, such as the use of derivative instruments or hedging, to manage these exposures. Our currency exposures vary, but are primarily concentrated in the Euro. During the year ended December 31, 2012, there has been no material change with respect to our interest rate and foreign currency exposures or our approach toward those exposures. However, commercialization of Oncophage outside of the U.S. could result in increased foreign currency exposure.

The information below summarizes our market risks associated with debt obligations as of December 31, 2012. Fair value included herein has been estimated taking into consideration the nature and terms of each instrument and the prevailing economic and market conditions at December 31, 2012. The table presents principal payments by year of maturity based on the terms of the debt (in thousands).

	Estimated Fair Value (2)	Outstanding Principal Amount December 31, 2011	Year of Maturity		
			2013	2014	2015
Long-term debt (1)	$32,163	$39,238	$204	$39,034	$—

(1) Fixed interest rates are 8% and 11.75%. The above table is based on the assumptions that future interest on the 2006 Notes is paid in cash and that these notes are not converted at maturity August 31, 2014. In certain circumstances, the 2006 Notes could be converted before then.

(2) The estimated fair value of our long-term debt was derived by evaluating the nature and terms of each note and considering the prevailing economic and market conditions at the balance sheet date.

We had cash and cash equivalents at December 31, 2012 of $21.5 million, which are exposed to the impact of interest and foreign currency exchange rate changes, and our interest income fluctuates as interest rates change. Due to the short-term nature of our investments in money market funds, our carrying value approximates the fair value of these investments at December 31, 2012 , however, we are subject to investment risk.

We invest our cash and cash equivalents in accordance with our Investment Policy. The primary objectives of our Investment Policy are to preserve principal, maintain proper liquidity to meet operating needs, and maximize yields. We review our Investment Policy annually and amend it as deemed necessary. Currently, the Investment Policy prohibits investing in any structured investment vehicles and asset-backed commercial paper. Although our investments are subject to credit risk, our Investment Policy specifies credit quality standards for our investments and limits the amount of credit exposure from any single issue, issuer, or type of investment. We do not invest in derivative financial instruments. Accordingly, we do not believe that there is currently any material market risk exposure with respect to derivative or other financial instruments that would require disclosure under this item.

Item 8. ***Financial Statements and Supplementary Data***

INDEX TO FINANCIAL STATEMENTS

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Agenus Inc.:

We have audited the accompanying consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Agenus Inc. and subsidiaries as of December 31, 2012 and 2011, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2012, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Agenus Inc. and subsidiaries' internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 18, 2013 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

/s/ KPMG LLP

Boston, Massachusetts
March 18, 2013

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	December 31, 2012	December 31, 2011
ASSETS		
Cash and cash equivalents	$ 21,468,269	$ 10,747,951
Inventories	16,022	20,072
Accounts receivable	552,334	—
Prepaid expenses	545,907	536,270
Other current assets	32,156	699,786
Total current assets	22,614,688	12,004,079
Plant and equipment, net of accumulated amortization and depreciation of $27,404,751 and $26,081,778 at December 31, 2012 and 2011, respectively	2,606,428	4,136,699
Goodwill	2,572,203	2,572,203
Other long-term assets	1,299,304	1,094,549
Total assets	$ 29,092,623	$ 19,807,530
LIABILITIES AND STOCKHOLDERS' DEFICIT		
Current portion, long-term debt	$ 204,088	$ 197,684
Current portion, deferred revenue	1,527,883	1,542,395
Accounts payable	634,752	807,928
Accrued liabilities	2,168,338	1,730,290
Other current liabilities	277,927	475,342
Total current liabilities	4,812,988	4,753,639
Convertible notes	35,679,232	32,637,757
Other long-term debt	34,427	88,247
Deferred revenue	4,800,776	2,078,651
Other long-term liabilities	1,365,357	1,080,201
Commitments and contingencies (Notes 12 and 15)		
STOCKHOLDERS' DEFICIT		
Preferred stock, par value $0.01 per share; 5,000,000 and 25,000,000 shares authorized at December 31, 2012 and 2011, respectively:		
Series A convertible preferred stock; 31,620 shares designated, issued, and outstanding at December 31, 2012 and 2011; liquidation value of $32,016,485 at December 31, 2012	316	316
Series B2 convertible preferred stock; 3,105 shares designated, issued, and outstanding at December 31, 2012 and 2011	31	31
Common stock, par value $0.01 per share; 70,000,000 and 250,000,000 shares authorized December 31, 2012 and 2011, respectively; 24,645,112 and 21,535,037 shares issued at December 31, 2012 and 2011, respectively	246,451	215,350
Additional paid-in capital	595,917,080	581,392,602
Treasury stock, at cost; 43,490 shares of common stock at December 31, 2012 and 2011	(324,792)	(324,792)
Accumulated deficit	(619,019,367)	(607,694,596)
Noncontrolling interest	5,580,124	5,580,124
Total stockholders' deficit	(17,600,157)	(20,830,965)
Total liabilities and stockholders' deficit	$ 29,092,623	$ 19,807,530

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS
For the Years Ended December 31, 2012, 2011, and 2010

	2012	2011	2010
Revenue:			
Product revenue	$ —	$ —	$ 52,500
Grant revenue	—	—	424,720
Service revenue	1,489,821	—	—
Research and development revenue	14,470,895	2,755,772	2,882,391
Total revenues	15,960,716	2,755,772	3,359,611
Operating expenses:			
Cost of revenues	(671,972)	—	(122,946)
Research and development	(10,564,195)	(11,022,391)	(12,877,695)
General and administrative	(11,465,092)	(10,820,187)	(12,111,507)
Operating loss	(6,740,543)	(19,086,806)	(21,752,537)
Other income (expense):			
Non-operating income	110,473	1,941	4,680,120
Interest expense	(4,718,037)	(4,210,097)	(4,871,446)
Interest income	23,336	18,787	37,560
Net loss	(11,324,771)	(23,276,175)	(21,906,303)
Dividends on series A convertible preferred stock	(791,735)	(790,500)	(790,500)
Net loss attributable to common stockholders	$ (12,116,506)	$ (24,066,675)	$ (22,696,803)
Per common share data, basic and diluted:			
Net loss attributable to common stockholders	$ (0.51)	$ (1.21)	$ (1.41)
Weighted average number of common shares outstanding, basic and diluted	23,628,903	19,898,632	16,108,353

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
For the Years Ended December 31, 2012, 2011, and 2010

	Series A Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Deficit	Noncontrolling Interest	Total
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value		Number of Shares	Amount			
Balance at December 31, 2009	31,620	$ 316	3,105	$ 31	15,002,573	$ 150,026	$ 545,711,570	43,490	$ (324,792)	$ (562,512,118)	$ —	$ (16,974,967)
Net loss	—	—	—	—	—	—	—	—	—	(21,906,303)	—	(21,906,303)
Share-based compensation	—	—	—	—	—	—	2,813,304	—	—	—	—	2,813,304
Shares issued in private placements	—	—	—	—	533,241	5,332	2,874,174	—	—	—	—	2,879,506
Shares sold at the market	—	—	—	—	1,136,678	11,367	8,634,363	—	—	—	—	8,645,730
Shares issued to repurchase convertible senior notes	—	—	—	—	1,642,544	16,425	10,345,495	—	—	—	—	10,361,920
Exercise of stock options	—	—	—	—	159	2	717	—	—	—	—	719
Employee share purchases	—	—	—	—	14,954	149	48,454	—	—	—	—	48,603
Shares issued to consultants for services	—	—	—	—	27,676	277	149,723	—	—	—	—	150,000
Shares issued to CEO in lieu of cash compensation	—	—	—	—	25,484	255	131,745	—	—	—	—	132,000
Reclassification of liability classified option grants	—	—	—	—	—	—	(67,224)	—	—	—	—	(67,224)
Vesting of nonvested shares	—	—	—	—	264,317	2,643	(2,643)	—	—	—	—	—
Dividends on series A convertible preferred stock ($25 per share)	—	—	—	—	—	—	(790,500)	—	—	—	—	(790,500)
Balance at December 31, 2010	31,620	$ 316	3,105	$ 31	18,647,626	$ 186,476	$ 569,849,178	43,490	$ (324,792)	$ (584,418,421)	$ —	$ (14,707,212)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(Continued)
For the Years Ended December 31, 2012, 2011, and 2010

	Series A Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Deficit	Noncontrolling Interest	Total
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value		Number of Shares	Amount			
Net loss	—	—	—	—	—	—	—	—	—	(23,276,175)	—	(23,276,175)
2006 Note Amendment - conversion option valuation	—	—	—	—	—	—	755,000	—	—	—	5,580,124	6,335,124
Shares sold at the market	—	—	—	—	2,552,492	25,525	7,477,850	—	—	—	—	7,503,375
Shares issued in private placement	—	—	—	—	88,333	883	476,117	—	—	—	—	477,000
Share-based compensation	—	—	—	—	—	—	3,335,066	—	—	—	—	3,335,066
Reclassification of liability classified option grants	—	—	—	—	—	—	(78,079)	—	—	—	—	(78,079)
Vesting of nonvested shares	—	—	—	—	165,586	1,656	(1,656)	—	—	—	—	—
Shares issued to CEO in lieu of cash compensation	—	—	—	—	36,577	366	155,834	—	—	—	—	156,200
Shares issued to consultants for services	—	—	—	—	16,192	162	94,538	—	—	—	—	94,700
Exercise of options	—	—	—	—	319	3	1,435	—	—	—	—	1,438
Employee share purchases	—	—	—	—	20,524	205	80,893	—	—	—	—	81,098
Shares issued to director for services	—	—	—	—	7,388	74	36,926					37,000
Dividends on series A convertible preferred stock ($25 per share)	—	—	—	—	—	—	(790,500)	—	—	—	—	(790,500)
Balance at December 31, 2011	31,620	$ 316	3,105	$ 31	21,535,037	$215,350	$ 581,392,602	43,490	$(324,792)	$ (607,694,596)	$ 5,580,124	$ (20,830,965)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(Continued)
For the Years Ended December 31, 2012, 2011, and 2010

	Series A Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Deficit	Noncontrolling Interest	Total
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value		Number of Shares	Amount			
Net loss	—	—	—	—	—	—	—	—	—	(11,324,771)	—	(11,324,771)
Shares sold at the market	—	—	—	—	2,469,870	24,699	10,439,504	—	—	—	—	10,464,203
Share-based compensation	—	—	—	—	—	—	4,074,814	—	—	—	—	4,074,814
Reclassification of liability classified option grants	—	—	—	—	—	—	(31,945)	—	—	—	—	(31,945)
Vesting of nonvested shares	—	—	—	—	523,210	5,232	(5,232)	—	—	—	—	—
Shares issued to CEO in lieu of cash compensation	—	—	—	—	39,231	392	158,008	—	—	—	—	158,400
Shares issued to consultants for services	—	—	—	—	5,000	50	22,400	—	—	—	—	22,450
Exercise of stock options	—	—	—	—	6,825	68	26,313	—	—	—	—	26,381
Employee share purchases	—	—	—	—	28,859	289	51,904	—	—	—	—	52,193
Shares issued to director for services	—	—	—	—	3,601	36	9,214	—	—	—	—	9,250
Issuance of director deferred shares	—	—	—	—	33,479	335	174,748	—	—	—	—	175,083
Dividends on series A convertible preferred stock ($12.50 per share)	—	—	—	—	—	—	(395,250)	—	—	—	—	(395,250)
Balance at December 31, 2012	31,620	$ 316	3,105	$ 31	24,645,112	$246,451	$ 595,917,080	43,490	$(324,792)	$ (619,019,367)	$ 5,580,124	$ (17,600,157)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
For the Years Ended December 31, 2012, 2011, and 2010

	2012	2011	2010
Cash flows from operating activities:			
Net loss	$ (11,324,771)	$ (23,276,175)	$ (21,906,303)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:			
Depreciation and amortization	1,622,736	2,252,412	3,437,767
Share-based compensation	4,303,961	2,646,767	3,151,537
Noncash interest expense	3,141,475	4,167,849	4,053,272
Gain on extinguishment of debt	—	—	(2,761,426)
Asset impairment	—	—	629,382
Change in fair value of derivative liability	—	—	(1,910,156)
Loss on disposal of assets	11,026	37,447	161,188
Changes in operating assets and liabilities:			
Accounts receivable	(552,334)	35,000	(35,000)
Inventories	4,050	6,360	297,603
Prepaid expenses	(9,637)	168,474	47,216
Accounts payable	(181,848)	105,667	(198,116)
Deferred revenue	2,707,613	(1,531,495)	674,101
Accrued liabilities and other current liabilities	542,349	(269,713)	(246,879)
Other operating assets and liabilities	747,982	(591,504)	(152,221)
Net cash provided by (used in) operating activities	1,012,602	(16,248,911)	(14,758,035)
Cash flows from investing activities:			
Proceeds from maturities of available-for-sale securities	—	5,000,000	40,000,000
Purchases of available-for-sale securities	—	(4,998,799)	(29,989,763)
Proceeds from sale of equipment	—	23,884	50,299
Purchases of plant and equipment	(103,442)	(54,547)	(130,437)
Net cash (used in) provided by investing activities	(103,442)	(29,462)	9,930,099
Cash flows from financing activities:			
Net proceeds from sales of equity	10,464,203	7,980,375	11,525,236
Proceeds from exercise of stock options	26,381	1,438	719
Proceeds from employee stock purchases	52,193	81,098	48,603
Financing of property and equipment	(38,744)	(28,063)	—
Payments of series A convertible preferred stock dividends	(592,875)	(790,500)	(790,500)
Payments of long-term debt	(100,000)	—	(6,240,963)
Net cash provided by financing activities	9,811,158	7,244,348	4,543,095
Net increase (decrease) in cash and cash equivalents	10,720,318	(9,034,025)	(284,841)
Cash and cash equivalents, beginning of year	10,747,951	19,781,976	20,066,817
Cash and cash equivalents, end of year	$ 21,468,269	$ 10,747,951	$ 19,781,976
Supplemental cash flow information:			
Cash paid for interest	$ 1,573,554	$ 12,458	$ 1,122,473
Non-cash investing and financing activities:			
Issuance of senior secured convertible notes as payment in-kind for interest	$ 1,499,981	$ 2,829,105	$ 2,615,667
Convertible Note adjustment to equity for conversion option	—	5,580,124	—
Reclassification of derivative liability into equity	—	755,000	—
Long-term debt—equipment financing	—	171,640	—
Issuance of common stock, $0.01 par value, as payment of long-term debt including accrued and unpaid interest	—	—	10,361,920

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Description of Business

Agenus Inc. (including its subsidiaries, also referred to as "Agenus," the "Company," "we," "us," and "our") is a biotechnology company developing and commercializing technologies to treat cancers and infectious diseases, primarily based on immunological approaches. Our technology portfolio consists of our Saponin Platform (based on our saponin adjuvant based technologies) and our Heat Shock Protein ("HSP") Platform (based on our HSP based technologies). Within our Saponin Platform is QS-21 Stimulon® adjuvant, or QS-21 Stimulon, which is used by our licensees in numerous vaccines under development in trials, some as advanced as Phase 3, for a variety of diseases, including cancer, shingles, malaria, Alzheimer's disease, human immunodeficiency virus, and tuberculosis. Within our HSP Platform we are developing our Recombinant Series and our Prophage Series vaccines. HerpV, a therapeutic vaccine candidate from the Recombinant Series which contains QS-21 Stimulon, has been tested in a Phase 1 clinical trial for the treatment of genital herpes and is now in a Phase 2 trial. In our Prophage Series we have tested product candidates in Phase 3 clinical trials for the treatment of renal cell carcinoma ("RCC"), the most common type of kidney cancer, and for metastatic melanoma, as well as in Phase 1 and Phase 2 clinical trials in a range of indications. Prophage Series vaccine R-100 is registered for use in Russia for the treatment of RCC in patients at intermediate risk of recurrence as Oncophage® vaccine. In addition, Phase 2 trials are fully enrolled in the United States testing the Prophage Series vaccine candidates G-100 and G-200 in newly diagnosed and recurrent glioma, respectively. Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, market development, and support of our collaborations. Our product candidates require clinical trials and approvals from regulatory agencies, as well as acceptance in the marketplace. Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing arrangements with academic and corporate collaborators and licensees and by entering into new collaborations.

We have incurred significant losses since our inception. As of December 31, 2012, we had an accumulated deficit of $619.0 million. Since our inception, we have financed our operations primarily through the sale of equity and convertible notes, and interest income earned on cash, cash equivalents, and short-term investment balances. We believe that, based on our current plans and activities, our cash balance of $ 21.5 million as of December 31, 2012, along with the estimated additional proceeds from our license, supply, and collaborative agreements will be sufficient to satisfy our liquidity requirements through 2013 based on our estimated annual use of cash of $18-21 million during 2013. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations.

Research and development program costs include compensation and other direct costs plus an allocation of indirect costs, based on certain assumptions, and our review of the status of each program. Our product candidates are in various stages of development and significant additional expenditures will be required if we start new trials, encounter delays in our programs, apply for regulatory approvals, continue development of our technologies, expand our operations, and/or bring our product candidates to market. The eventual total cost of each clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, and number of patients. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because HerpV is in a Phase 2 trial and the development of our Prophage Series vaccines is subject to further evaluation and uncertainty, we are unable to reliably estimate the cost of completing research and development programs, the timing of bringing such programs to various markets, and, therefore, are unable to determine when, if ever, material cash inflows from operating activities are likely to commence. We will continue to adjust other spending as needed in order to preserve liquidity.

As of December 31, 2012, we had debt outstanding of $39.2 million in principal, including $39.0 million in principal of our 8% senior secured convertible notes due August 2014 (the "2006 Notes"). We expect to attempt to raise additional funds in advance of depleting our current funds. We may attempt to raise funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing, and/or (5) selling equity securities. Satisfying long-term liquidity needs may require the successful commercialization and/or one or more partnering arrangements for (1) HerpV, and the Prophage Series vaccines, (2) vaccines containing QS-21 Stimulon under development by our licensees and/or (3) potentially other product candidates, each of which will require additional capital. If we incur operating losses for longer than we expect and/or we are unable to raise additional capital, we may become insolvent and be unable to continue our operations.

Effective October 3, 2011, our certificate of incorporation was amended to effect a reverse stock split of our common stock on the basis of one post-split share for every six pre-split shares to, in part, regain compliance with Nasdaq Marketplace Rule 550(a)(2) ("the Bid Price Requirement"). All references in these consolidated financial statements and notes thereto to shares, share price, and earnings per share, have been retroactively restated to reflect the reverse stock split.

(2) Summary of Significant Accounting Policies

(a) Basis of Presentation and Principles of Consolidation

The consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles and include the accounts of Agenus and our wholly-owned subsidiaries. All significant intercompany transactions and accounts have been eliminated in consolidation. Certain prior period amounts have been retrospectively adjusted in order to conform to the current period's presentation.

(b) Segment Information

We are managed and operated as one business. The entire business is managed by a single executive operating committee that reports to the chief executive officer. We do not operate separate lines of business with respect to any of our product candidates. Accordingly, we do not prepare discrete financial information with respect to separate product areas or by location and do not have separately reportable segments as defined by ASC 280, *Segment Reporting.*

(c) Use of Estimates

The preparation of consolidated financial statements in conformity with U.S. generally accepted accounting principles requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. We base those estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Actual results could differ from those estimates.

(d) Cash and Cash Equivalents

We consider all highly liquid investments purchased with maturities at acquisition of three months or less to be cash equivalents. Cash equivalents consist primarily of money market funds.

(e) Investments

We classify investments in marketable securities at the time of purchase.

(f) Concentrations of Credit Risk

Financial instruments that potentially subject us to concentrations of credit risk are primarily cash equivalents, investments, and accounts receivable. We invest our cash and cash equivalents in accordance with our Investment Policy, which specifies high credit quality standards and limits the amount of credit exposure from any single issue, issuer, or type of investment. We carry balances in excess of federally insured levels, however, we have not experienced any losses to date from this practice. Credit risk on accounts receivable is minimized by the financial position of the entities with which we do business. Credit losses from our customers have been immaterial.

(g) Inventories

Inventories are stated at the lower of cost or market. Cost has been determined using standard costs that approximate the first-in, first-out method. Inventory as of December 31, 2012 and 2011 consisted solely of finished goods.

(h) Plant and Equipment

Plant and equipment, including software developed for internal use, are carried at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is computed over the shorter of the lease term or estimated useful life of the asset. Additions and improvements are capitalized, while repairs and maintenance are charged to expense as incurred. Amortization and depreciation of plant and equipment was $1.6 million, $2.2 million, and $2.6 million, for the years ended December 31, 2012, 2011, and 2010, respectively.

(i) Fair Value of Financial Instruments

The estimated fair values of all of our financial instruments, excluding debt, approximate their carrying amounts in the consolidated balance sheets. The fair value of our 2006 Notes exclusive of the conversion option is based on a present value methodology. The outstanding principal amount of our 2006 Notes, including the current portion, is $39.0 million and $37.5 million at December 31, 2012 and 2011, respectively.

(j) Revenue Recognition

Revenue for services under research and development contracts are recognized as the services are performed, or as clinical trial materials are provided. Non-refundable milestone payments that represent the completion of a separate earnings process are recognized as revenue when earned. License fees and royalties are recognized as they are earned. Revenue

recognized from collaborative agreements is based upon the provisions of ASC 605-25, *Revenue Recognition – Multiple-Element Arrangements*, as amended by Accounting Standards Update 2009-13. Product revenue is recognized as product is shipped. For the years ended December 31, 2012, 2011, and 2010, 49%, 48%, and 39%, respectively, of our revenue was earned from one research partner. In addition, 40%, 43%, and 31%, of our revenue for the years ended December 31, 2012, 2011, and 2010, respectively, was earned from one of our licensees. The revenues from this licensee will not continue past 2012.

(k) Foreign Currency Transactions

Gains and losses from our euro based currency accounts and foreign currency transactions, such as those resulting from the translation and settlement of receivables and payables denominated in foreign currencies, are included in the consolidated statements of operations. We do not currently use derivative financial instruments to manage the risks associated with foreign currency fluctuations. We recorded foreign currency losses of $ 11,000, $9,000, and $45,000, for the years ended December 31, 2012, 2011, and 2010, respectively. Such losses are included as a component of operating expenses.

(l) Research and Development

Research and development expenses include the costs associated with our internal research and development activities, including salaries and benefits, share-based compensation, occupancy costs, clinical manufacturing costs, related administrative costs, and research and development conducted for us by outside advisors, such as sponsored university-based research partners and clinical study partners. We account for our clinical study costs by estimating the total cost to treat a patient in each clinical trial and recognizing this cost based on estimates of when the patient receives treatment, beginning when the patient enrolls in the trial. Research and development expenses also include the cost of clinical trial materials shipped to our research partners. Research and development costs are expensed as incurred.

(m) Share-Based Compensation

We account for share-based compensation in accordance with the provisions of ASC 718, *Compensation—Stock Compensation* and ASC 505-50, *Equity-Based Payments to Non-Employees.* Share-based compensation expense is recognized based on the estimated grant date fair value, and is recognized net of an estimated forfeiture rate such that we recognize compensation cost for those shares expected to vest. Compensation cost is recognized on a straight-line basis over the requisite service period of the award. See Note 9 for a further discussion on share-based compensation.

(n) Income Taxes

Income taxes are accounted for under the asset and liability method with deferred tax assets and liabilities recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis and net operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which such items are expected to be reversed or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in the consolidated statement of operations in the period that includes the enactment date. Deferred tax assets are recorded when they more likely than not are expected to be realized.

(o) Net Loss Per Share

Basic income and loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding (including common shares issuable under our Directors' Deferred Compensation Plan). Diluted income per common share is calculated by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding (including common shares issuable under our Directors' Deferred Compensation Plan) plus the dilutive effect of outstanding instruments such as warrants, stock options, nonvested shares, convertible preferred stock, and convertible notes. Because we reported a net loss attributable to common stockholders for all periods presented, diluted loss per common share is the same as basic loss per common share, as the effect of utilizing the fully diluted share count would have reduced the net loss per common share. Therefore, the following potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding as of December 31, 2012, 2011, and 2010, as they would be anti-dilutive:

	At December 31,		
	2012	2011	2010
Warrants	3,309,378	3,309,378	3,309,378
Stock options	2,748,883	1,814,161	1,212,095
Nonvested shares	249,968	135,791	85,564
Convertible preferred stock	333,333	333,333	333,333
Convertible notes	—	—	1,926,134

(p) Goodwill

Goodwill represents the excess of cost over the fair value of net assets of businesses acquired. Goodwill is not amortized, but instead tested for impairment at least annually. Annually we assess whether there is an indication that goodwill is impaired, or more frequently if events and circumstances indicate that the asset might be impaired during the year. We perform our annual impairment test as of October 31 of each year.

(q) Accounting for Asset Retirement Obligations

We record the fair value of an asset retirement obligation as a liability in the period in which we incur a legal obligation associated with the retirement of tangible long-lived assets that result from the acquisition, construction, development, and/or normal use of the assets. A legal obligation is a liability that a party is required to settle as a result of an existing or enacted law, statute, ordinance, or contract. We are also required to record a corresponding asset that is depreciated over the life of the asset. Subsequent to the initial measurement of the asset retirement obligation, the obligation will be adjusted at the end of each period to reflect the passage of time (accretion) and changes in the estimated future cash flows underlying the obligation. Changes in the liability due to accretion are charged to the consolidated statement of operations, whereas changes due to the timing or amount of cash flows are an adjustment to the carrying amount of the related asset. Our asset retirement obligations primarily relate to the expiration of our facility lease and anticipated costs to be incurred based on our lease terms.

(r) Long-lived Assets

Recoverability of assets to be held and used, other than goodwill and intangible assets not being amortized, is measured by a comparison of the carrying amount of an asset to the undiscounted future net cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future undiscounted cash flows, an impairment charge is recognized for the amount by which the carrying amount of the asset exceeds the fair value of the asset. Authoritative guidance requires companies to separately report discontinued operations and extends that reporting to a component of an entity that either has been disposed of (by sale, abandonment, or in a distribution to owners) or is classified as held for sale. Assets to be disposed of are reported at the lower of the carrying amount or fair value less costs to sell.

(s) Recent Accounting Pronouncements

In June 2011, the Financial Accounting Standards Board (“FASB”) issued Accounting Standard Update No. 2011-05, Comprehensive Income (“ASU 2011-05”) which increases the prominence of other comprehensive income in financial statements. Under this standard, the components of net income and other comprehensive income must be presented in either one or two consecutive financial statements. The standard eliminates the option to present other comprehensive income in the statement of changes in equity. ASU 2011-05 was effective for fiscal years beginning after December 15, 2011 and interim and annual periods thereafter. Adoption of this standard did not have a material effect on our consolidated financial statements.

In February 2013, the FASB issued Accounting Standard Update No. 2013-02, Reporting of Amounts Reclassified out of Accumulated other Comprehensive Income, ("ASU 2013-02"). ASU 2013-02 requires entities to disclose items reclassified out of accumulated Other Comprehensive Income ("AOCI") and into net income in their entirety, the effect of the reclassification on each affected net income line item, and, for AOCI reclassification items that are not reclassified in their entirety into net income, a cross reference to other required U.S. GAAP disclosures. This consolidated standard is effective for annual periods beginning after December 31, 2012 and interim periods within those years. The application of this standard will not have a material impact on our consolidated financial statements.

In September 2011, the FASB issued Accounting Standard Update No. 2011-08, Intangibles—Goodwill and Other (Topic 350): Testing Goodwill for Impairment (the revised standard) ("ASU 2011-08"). ASU 2011-08 simplifies how entities test goodwill for impairment. This amended guidance permits companies to first assess assess qualitative factors to determine whether it is necessary to perform the two-step goodwill impairment test. If an entity believes, as a result of its qualitative assessment, that it is more-likely-than-not that the fair value of a reporting unit is less than its carrying amount, the quantitative impairment test is required. Otherwise, no further testing is required. The revised standard was effective for annual and interim

goodwill impairment tests performed for fiscal years beginning after December 15, 2011. Adoption of this provisions of this guidance did not have a material impact on our consolidated results of operations, cash flows, and financial position.

In July 2012, the FASB issued Accounting Standard Update No. 2012-02, "Intangibles-Goodwill and Other (Topic 350): Testing Indefinite-Lived Intangible Assets for Impairment" ("ASU 2012-02"). ASU 2012-02 simplifies the guidance for testing the impairment of indefinite-lived intangible assets other than goodwill. The guidance allows an entity the option to first assess qualitative factors to determine whether it is necessary to perform the quantitative impairment test. An entity electing to perform a qualitative assessment is no longer required to calculate the fair value of an indefinite-lived intangible asset unless the entity determines, based on a qualitative assessment, that it is "more likely than not" that the asset is impaired. This guidance is effective for annual and interim impairment tests performed for fiscal years beginning after September 15, 2012, with early adoption permitted. We adopted this standard in the fourth quarter of 2012. The adoption of ASU 2012-02 did not have a material effect on our consolidated financial statements.

(3) Investments

Cash Equivalents and Short-term Investments

Cash equivalents and short-term investments consisted solely of institutional money market funds with cost approximating the estimated fair value as of December 31, 2012 and 2011.

Proceeds from maturities of available-for-sale securities amounted to $ 5.0 million, and $40.0 million, for the years ended December 31, 2011, and 2010, respectively. No available-for-sale securities were sold before their maturity in 2011 or 2010. Gross realized gains and gross realized losses included in net loss as a result of those maturities were immaterial for each of the years in the two-year period ended December 31, 2011. As a result of the short-term nature of our investments, there were no unrealized holding gains or losses as of December 31, 2012, 2011, and 2010.

(4) Plant and Equipment

Plant and equipment as of December 31, 2012 and 2011 consists of the following (in thousands).

	2012	2011	Estimated Depreciable Lives
Furniture, fixtures, and other	$ 1,662	$ 1,643	3 to 10 years
Laboratory and manufacturing equipment	4,545	4,547	4 to 10 years
Leasehold improvements	18,026	18,254	2 to 12 years
Software and computer equipment	5,778	5,774	3 years
	30,011	30,218	
Less accumulated depreciation and amortization	(27,405)	(26,081)	
	$ 2,606	$ 4,137	

During the years ended December 31, 2012 and 2011, plant and equipment with a net book value of approximately $11,000 and $37,000, respectively, was retired from service and disposed. During the year ended December 31, 2012, we extended the lease of our facility in Lexington, MA as allowed in our lease agreement and accordingly extended the amortization period related to the existing leasehold improvements.

(5) Other Intangible Assets

Our intangible assets were being amortized over their estimated useful lives of 10 years, with no estimated residual values. Amortization expense related to core and developed technology was $ 690,000 in 2010. As further development of Aroplatin, a liposomal chemotherapeutic tested in a Phase 1 clinical trial for the treatment of solid malignancies and B-cell lymphomas, was discontinued, we determined that an impairment had occurred and accordingly recorded a loss of $629,382 during the year ended December 31, 2010, representing the net carrying value of the intangible asset related to liposomal technology at the time development was discontinued. This impairment charge is included in research and development expenses.

(6) Income Taxes

We are subject to taxation in the U.S. and various state, local, and foreign jurisdictions. We remain subject to examination by U.S. Federal, state, local, and foreign tax authorities for tax years 2009 through 2012. With a few exceptions, we are no longer subject to U.S. Federal, state, local, and foreign examinations by tax authorities for the tax year 2008 and prior. However, net operating losses from the tax year 2008 and prior would be subject to examination if and when used in a future tax return to offset taxable income. Our policy is to recognize income tax related penalties and interest, if any, in our provision

for income taxes and, to the extent applicable, in the corresponding income tax assets and liabilities, including any amounts for uncertain tax positions.

As of December 31, 2012, we have available net operating loss carryforwards of $510.6 million and $100.3 million for Federal and state income tax purposes, respectively, which are available to offset future Federal and state taxable income, if any, and expire between 2013 and 2032. Our ability to use these net operating losses is limited by change of control provisions under Internal Revenue Code Section 382 and may expire unused. In addition, we have $8.2 million and $6.9 million of Federal and state research and development credits, respectively, available to offset future taxable income. These Federal and state research and development credits expire between 2013 and 2032 and 2017 and 2027, respectively. The potential impacts of such provisions are among the items considered and reflected in management's assessment of our valuation allowance requirements.

The tax effect of temporary differences and net operating loss and tax credit carryforwards that give rise to significant portions of the deferred tax assets and deferred tax liabilities as of December 31, 2012 and 2011 are presented below (in thousands).

	2012	2011
Deferred tax assets:		
Net operating loss carryforwards	$ 178,966	$ 175,965
Research and development tax credits	12,747	12,546
Other	12,606	13,510
Total deferred tax assets	204,319	202,021
Less: valuation allowance	(203,016)	(200,072)
Net deferred tax assets	1,303	1,949
Deferred tax liabilities	(1,303)	(1,949)
Net deferred tax	$ —	$ —

In assessing the realizablility of deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which the net operating loss and tax credit carryforwards can be utilized or the temporary differences become deductible. We consider projected future taxable income and tax planning strategies in making this assessment. In order to fully realize the deferred tax asset, we will need to generate future taxable income sufficient to utilize net operating losses prior to their expiration. Based upon our history of not generating taxable income due to our business activities focused on product development, we believe that it is more likely than not that deferred tax assets will not be realized through future earnings. Accordingly, a valuation allowance has been established for deferred tax assets which will not be offset by the reversal of deferred tax liabilities. The valuation allowance on the deferred tax assets increased by $2.9 million and $5.0 million during the years ended December 31, 2012 and 2011, respectively. The net operating loss includes amounts pertaining to tax deductions relating to stock exercises for which any subsequently recognized tax benefit will be recorded as an increase to additional paid-in capital.

Income tax benefit was nil for each of the years ended December 31, 2012, 2011, and 2010, and differed from the amounts computed by applying the U.S. Federal income tax rate of 34% to loss before income taxes as a result of the following (in thousands).

	2012	2011	2010
Computed “expected” Federal tax benefit	$ (3,850)	$ (7,912)	$ (7,451)
(Increase) reduction in income taxes benefit resulting from:			
Change in valuation allowance	2,944	5,033	2,760
Increase due to uncertain tax positions	26	59	67
State and local income benefit, net of Federal income tax benefit	(581)	(1,182)	(534)
Net operating loss expirations	821	1,979	4,363
Increase due to debt discount adjustment	—	2,192	—
Other, net	640	(169)	795
	$ —	$ —	$ —

A reconciliation of the beginning and ending amount of gross unrecognized tax benefits is as follows (in thousands):

Balance, December 31, 2011	$ 5,488
Increase related to current year positions	35
Increase related to previously recognized positions	10
Balance, December 31, 2012	$ 5,533

These unrecognized tax benefits would all impact the effective tax rate if recognized. There are no positions which we anticipate could change within the next twelve months.

(7) Accrued and Other Current Liabilities

Accrued liabilities consist of the following as of December 31, 2012 and 2011 (in thousands)

	2012	2011
Professional fees	$ 919	$ 892
Payroll	592	184
Clinical trials	291	52
Other	366	602
	$ 2,168	$ 1,730

Other current liabilities consist of the following as of December 31, 2012 and 2011 (in thousands)

	2012	2011
Deferred rent expense	$ —	$ 405
Value of liability classified option grants	141	70
Other	137	—
	$ 278	$ 475

(8) Equity

Effective June 15, 2012, our certificate of incorporation was amended to decrease our authorized capital stock from 250,000,000 shares to 70,000,000 shares of common stock, $0.01 par value per share, and from 25,000,000 shares to 5,000,000 shares of preferred stock, $0.01 par value per share. Our Board of Directors is authorized to issue the preferred stock and to set the voting, conversion, and other rights.

In a private placement in September 2003, we sold 31,620 shares of our series A convertible preferred stock, par value $ 0.01 per share, ("Series A Preferred Stock") for net proceeds of $31.6 million. Under the terms and conditions of the Certificate of Designation creating the Series A Preferred Stock, this stock is convertible by the holder at any time into our common stock, is non-voting, carries a 2.5% annual dividend yield, has an initial conversion price of $94.86 per common share, subject to adjustment, and is redeemable by us at its face amount ($ 31.6 million), plus any accrued and unpaid dividends,

on or after September 24, 2013. The Certificate of Designation does not contemplate a sinking fund. The Series A Preferred Stock ranks senior to our common stock. In a liquidation, dissolution, or winding up of the Company, the Series A Preferred Stock's liquidation preference must be fully satisfied before any distribution could be made to the holders of the common stock. Other than in such a liquidation, no terms of the Series A Preferred Stock affect our ability to declare or pay dividends on our common stock as long as the Series A Preferred Stock's dividends are accruing. The liquidation value of this Series A Preferred stock is equal to $1,000 per share outstanding plus any accrued unpaid dividends. Accrued and unpaid dividends of the Series A Preferred Stock aggregated $396,485 or $12.54 per share, at December 31, 2012. Subsequent to December 31, 2012, all of the outstanding shares of the Series A Preferred Stock were exchanged for an equivalent number of shares of Series A-1 Convertible Preferred Stock, par value $0.01 per share ("Series A-1 Preferred Stock"), see Note 18 for a further discussion on the exchange.

In September 2007, we issued 270,562 shares of our common stock at a price of $18.48 per share to a single institutional investor. In conjunction with this transaction, we also issued to the investor 10,000 shares of our new series B1 convertible preferred stock and 5,250 shares of our new series B2 convertible preferred stock. All shares of the series B1 convertible preferred stock have been converted. Shares of the series B2 convertible preferred stock permit the investor to purchase common shares for consideration of up to 35 percent of the total dollar amount previously invested pursuant to the agreement with the investor, including conversions of the series B1 convertible preferred stock, at a purchase price equal to the lesser of $24.96 per common share or a price calculated based on the then-prevailing price of our common stock, and such right expires seven years from the date of issuance. In April 2009, we issued 988,202 shares of our common stock upon conversion of 2,145 shares of our series B2 convertible preferred stock via cashless conversions. Upon completion of the conversions, 3,105 shares of our series B2 convertible preferred stock are still outstanding although no further shares can be converted into shares of common stock (other than in the event of a change of control) as the maximum number of shares (as defined in the agreement) have been issued. The total number of shares of common stock issued or issuable to the holder of the class B convertible preferred stock cannot exceed 19.9% of our outstanding common stock. No dividends are paid on the class B convertible preferred stock and there are no liquidation preferences.

In January 2008, we entered into a private placement agreement (the "January 2008 private placement") pursuant to which we sold 1,451,450 shares of common stock for $18.00 for each share sold. Investors also received (i) 10-year warrants to purchase, at an exercise price of $18.00 per share, up to 1,451,450 shares of common stock and (ii) unit warrants to purchase, at an exercise price of $18.00 per unit, contingent upon a triggering event as defined in the January 2008 private placement documents, (a) up to 1,451,450 shares of common stock and (b) additional 10-year warrants to purchase, at an exercise price of $18.00 per share, up to 1,451,450 additional shares of common stock. In accordance with the terms of the January 2008 private placement, the 10-year warrants became exercisable for a period of 9.5 years as of July 9, 2008. Our private placement in April 2008 qualified as a triggering event, and therefore the unit warrants became exercisable for a period of eighteen months as of July 9, 2008. The unit warrants expired unexercised in January 2010. In February 2008, we filed a registration statement covering the resale of the 1,451,450 shares of common stock issued and the 1,451,450 shares issuable upon the exercise of the 10-year warrants issued in the January 2008 private placement. The Securities and Exchange Commission (the "SEC") declared the resale registration statement effective on February 14, 2008.

In April 2008, we entered into a private placement agreement (the "April 2008 private placement") under which we sold (i) 1,166,666 shares of common stock and (ii) five-year warrants to acquire up to 1,166,666 shares of common stock at an exercise price of $22.50 per share, for $18.00 for each share and warrant sold. The warrants became exercisable for a period of 4.5 years as of October 10, 2008. In April 2008, we filed a registration statement covering the resale of the 1,166,666 shares of common stock issued and the 1,166,666 shares issuable upon the exercise of the related warrants issued in the April 2008 private placement. The SEC declared the resale registration statement effective on May 7, 2008.

In July 2009, we entered into a private placement agreement under which we issued and sold (i) 833,333 shares of our common stock, (ii) six-month warrants to purchase up to 416,666 additional shares of common stock at an exercise price of $12.00 per share, and (iii) four-year warrants to purchase up to 362,316 additional shares of common stock at an exercise price of $13.80 per share, for $12.00 for each share sold generating gross proceeds of $10.0 million. The six-month warrants expired unexercised in January 2010. Subsequently, we filed, and the SEC declared effective, a registration statement covering the resale of the 833,333 shares of common stock issued and the 778,982 shares issuable upon the exercise of the related warrants issued in this private placement.

In August 2009, we entered into a private placement agreement under which we issued and sold (i) 730,994 shares of our common stock, (ii) six-month warrants to purchase up to 365,495 additional shares of common stock at an exercise price of $13.86 per share, and (iii) four-year warrants to purchase up to 328,946 additional shares of common stock at an exercise price of $15.00 per share, for $13.68 for each share sold generating gross proceeds of $10.0 million. The warrants were not exercisable for the first six months following the closing, which occurred on August 4, 2009. The six-month warrants expired unexercised in July 2010. Subsequently, we filed, and the SEC declared effective, a registration statement covering the resale of

the 730,994 shares of our common stock issued and the 694,441 shares issuable upon the exercise of the related warrants issued in this private placement.

As part of all private placement agreements, we agreed to register the shares of common stock and the shares of common stock underlying the warrants (with the exception of the unit warrants from the January 2008 private placement) issued to the investors with the SEC within contractually specified time periods. As noted above, we filed registration statements covering all required shares.

In December 2010, we entered into subscription agreements under which we issued and sold 533,241 shares of our common stock for the aggregate purchase price of $2.9 million. Additionally, within 90 calendar days of the date of the subscription agreements, the investors had the right and option to purchase up to an additional 106,648 shares of our common stock for the aggregate purchase price of up to $575,901. In March 2011, we issued and sold 88,333 shares based on the exercise of a purchase option and received net proceeds of $477,000. The offering and sale of these common shares were made under an effective shelf registration statement.

During August 2011, we issued and sold 2,287,581 shares of our common stock in an underwritten offering. Net proceeds after deducting offering expenses were approximately $6.3 million. These shares were issued pursuant to a shelf registration statement on Form S-3 filed with the SEC on January 22, 2010.

During the years ended December 31, 2011 and 2010, we issued approximately 265,000 and 1.1 million shares of our common stock, respectively, under an At the Market Sales Agreement through our sales agents, McNicoll, Lewis & Vlak LLC and Wm Smith & Co. (the “Sales Agent”) and raised net proceeds of approximately $1.2 million and $8.6 million respectively, after deducting offering costs of approximately $363,000. These offerings were made under effective shelf registration statements and proceeds from the offering were used for general corporate purposes.

During the quarter ended March 31, 2012, we terminated our existing At Market Issuance Sales Agreement with the Sales Agent, (the “Old ATM Program”), and entered into a new At Market Issuance Sales Agreement with MLV & Co. LLC, ('MLV") as sales agent, under which we may sell from time to time up to 5 million shares of our common stock (the “New ATM Program”). In December 2012, we entered into an Amended and Restated At Market Sales Issuance Agreement with MLV to increase the number of shares of common stock available for offer and sale under the New ATM Program to an aggregate of ten million shares.

During the year ended December 31, 2012, we sold an aggregate of approximately 952,000 shares of our common stock in at the market offerings under the Old ATM Program and received net proceeds of approximately $2.8 million after deducting offering costs of approximately $87,000, and an aggregate of approximately 1.5 million shares of our common stock in at the market offerings under the New ATM Program and received net proceeds of approximately $7.7 million after deducting offering costs of approximately $244,000. These offerings were made under effective shelf registration statements and proceeds from the offerings will be used for general corporate purposes.

(9) Share-based Compensation Plans

Our 1999 Equity Incentive Plan, as amended (the "1999 EIP") authorized awards of incentive stock options within the meaning of Section 422 of the Internal Revenue Code (the “Code”), non-qualified stock options, nonvested (restricted) stock, and unrestricted stock for up to 2.0 million shares of common stock (subject to adjustment for stock splits and similar capital changes and exclusive of options exchanged at the consummation of mergers) to employees and, in the case of non-qualified stock options, nonvested (restricted) stock, and unrestricted stock, to consultants and directors as defined in the 1999 EIP. The plan terminated on November 15, 2009. On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, our 2009 Equity Incentive Plan (the “2009 EIP”). The 2009 EIP provides for the grant of incentive stock options intended to qualify under Section 422 of the Code, nonstatutory stock options, restricted stock, unrestricted stock and other equity-based awards, such as stock appreciation rights, phantom stock awards, and restricted stock units, which we refer to collectively as Awards, for up to 4.2 million shares of our common stock (subject to adjustment in the event of stock splits and other similar events). The Board of Directors appointed the Compensation Committee to administer the 1999 EIP and the 2009 EIP. No awards will be granted under the 2009 EIP after June 10, 2019.

On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, the 2009 Employee Stock Purchase Plan (the “2009 ESPP”) to provide eligible employees the opportunity to acquire our common stock in a program designed to comply with Section 423 of the Code. There are currently 166,666 shares of common stock reserved for issuance under the 2009 ESPP. Rights to purchase common stock under the 2009 ESPP are granted at the discretion of the Compensation Committee, which determines the frequency and duration of individual offerings under the plan and the dates when stock may be purchased. Eligible employees participate voluntarily and may withdraw from any offering at any time before the stock is purchased. Participation terminates automatically upon termination of employment. The purchase price per share of common stock in an offering is 85% of the lesser of its fair value at the beginning of the offering period or on the

applicable exercise date and may be paid through payroll deductions, periodic lump sum payments, the delivery of our common stock, or a combination thereof. Unless otherwise permitted by the Board of Directors, no participant may acquire more than 3,333 shares of stock in any offering period. No participant is allowed to purchase shares under the 2009 ESPP if such employee would own or would be deemed to own stock possessing 5% or more of the total combined voting power or value of the Company. No offerings will be made under the 2009 ESPP after June 10, 2019.

Our Director's Deferred Compensation Plan, as amended, permits each outside director to defer all, or a portion of, their cash compensation until their service as a director ends or until a specified date into a cash account or a stock account. There are 225,000 shares of our common stock reserved for issuance under this plan. As of December 31, 2012, 48,971 shares have been issued. Amounts deferred to a cash account will earn interest at the rate paid on one-year Treasury bills with interest added to the account annually. Amounts deferred to a stock account will be converted on a quarterly basis into a number of units representing shares of our common stock equal to the amount of compensation which the participant has elected to defer to the stock account divided by the applicable price for our common stock. The applicable price for our common stock has been defined as the average of the closing price of our common stock for all trading days during the calendar quarter preceding the conversion date as reported by The Nasdaq Capital Market. Pursuant to this plan, a total of 143,325 units, each representing a share of our common stock at a weighted average common stock price of $6.99, have been credited to participants' stock accounts as of December 31, 2012. The compensation charges for this plan were immaterial for all periods presented.

We use the Black-Scholes option pricing model to value options granted to employees and non-employees, as well as options granted to members of our Board of Directors. All stock option grants have 10-year terms and generally vest ratably over a 4-year period. The non-cash charge to operations for the non-employee options with vesting or other performance criteria is affected each reporting period, until the non-employee options vest, by changes in the fair value of our common stock.

The fair value of each option granted during the periods was estimated on the date of grant using the following weighted average assumptions:

	2012	2011	2010
Expected volatility	96%	103%	104%
Expected term in years	6	6	6
Risk-free interest rate	0.9%	1.6%	2.1%
Dividend yield	—%	—%	—%

Expected volatility is based exclusively on historical volatility data of our common stock. The expected term of stock options granted is based on historical data and other factors and represents the period of time that stock options are expected to be outstanding prior to exercise. The risk-free interest rate is based on U.S. Treasury strips with maturities that match the expected term on the date of grant.

A summary of option activity for 2012 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2011	1,814,161	$ 8.38		
Granted	1,011,750	5.33		
Exercised	(6,825)	3.87		
Forfeited	(10,007)	4.65		
Expired	(60,196)	18.02		
Outstanding at December 31, 2012	2,748,883	$ 7.07	7.7	$ 305,834
Vested or expected to vest at December 31, 2012	2,651,507	$ 7.14	7.7	$ 297,241
Exercisable at December 31, 2012	1,556,564	$ 8.54	6.6	$ 180,982

The weighted average grant-date fair values of options granted during the years ended December 31, 2012, 2011, and 2010, was $3.94, $3.61, and $3.66, respectively.

The aggregate intrinsic value in the table above represents the difference between our closing stock price on the last trading day of fiscal 2012 and the exercise price, multiplied by the number of in-the-money options that would have been received by the option holders had all option holders exercised their options on December 31, 2012 (the intrinsic value is considered to be zero if the exercise price is greater than the closing stock price). This amount changes based on the fair market value of our stock. The total intrinsic value of options exercised during the years ended December 31, 2012, 2011, and 2010, determined on the dates of exercise, was $12,000, $0, and $0, respectively.

During 2012, 2011, and 2010, all options were granted with exercise prices equal to the market value of the underlying shares of common stock on the grant date.

As of December 31, 2012, $4.0 million of total unrecognized compensation cost related to stock options granted to employees and directors is expected to be recognized over a weighted average period of 2.2 years.

As of December 31, 2012, unrecognized expense for options granted to outside advisors for which performance (vesting) has not yet been completed but the exercise price of the option is known is $30,000. Such amount is subject to change each reporting period based upon changes in the fair value of our common stock, expected volatility, and the risk-free interest rate, until the outside advisor completes his or her performance under the option agreement.

Certain employees and consultants have been granted nonvested stock. The fair value of nonvested stock is calculated based on the closing sale price of our common stock on the date of issuance.

A summary of nonvested stock activity for 2012 is presented below:

	Nonvested Shares	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2011	135,791	$ 5.85
Granted	644,557	4.42
Vested	(523,210)	4.31
Forfeited	(7,170)	6.23
Outstanding at December 31, 2012	249,968	5.38

As of December 31, 2012, there was $869,000 of unrecognized share-based compensation expense related to these nonvested shares, $686,000 of which pertains to performance awards for which performance has not yet been achieved. The remaining cost is expected to be recognized over a weighted average period of 2 years. The total intrinsic value of shares vested during the years ended December 31, 2012, 2011, and 2010, was $2.1 million, $330,000, and $1.6 million, respectively.

Cash received from option exercises and purchases under our 2009 ESPP for the years ended December 31, 2012, 2011, and 2010, was $79,000, $83,000, and $49,000, respectively. We issue new shares upon option exercises, purchases under our 2009 ESPP, vesting of nonvested stock, and under the Director's Deferred Compensation Plan. During the years ended December 31, 2012, 2011, and 2010, 28,859 shares, 20,524 shares, and 14,954 shares, were issued under the 2009 ESPP, respectively. During the years ended December 31, 2012, 2011, and 2010, 523,210 shares, 165,586 shares and 264,317 shares, respectively were issued as a result of the vesting of nonvested stock.

For the year ended December 31, 2012, 33,479 shares were issued under our Directors' Deferred Compensation Plan. No shares were issued during the years ended December 31, 2011 and 2010.

The impact on our results of operations from share-based compensation for the years ended December 31, 2012, 2011, and 2010, was as follows (in thousands).

	2012	2011	2010
Research and development	$ 1,138	$ 765	$ 1,058
General and administrative	3,166	1,882	2,094
Total share-based compensation expense	$ 4,304	$ 2,647	$ 3,152

(10) License, Research, and Other Agreements

In November 1994, we entered into a patent license agreement with the Mount Sinai School of Medicine, or Mount Sinai (the "Mount Sinai Agreement"). Through the Mount Sinai Agreement, we obtained an exclusive worldwide license to patent

rights relating to the heat shock protein technology that resulted from the research and development performed by Dr. Pramod Srivastava, our founding scientist and a former member of our Board of Directors. We agreed to pay Mount Sinai a royalty on the net sales of products covered by the licensed patent rights and also provided Mount Sinai with a 0.45% equity interest in the Company (approximately 10,000 shares valued at $90,000 at the time of issuance). The term of the Mount Sinai Agreement ends when the last of the licensed patents expires (2018) or becomes no longer valid. If we fail to pay royalties that are due under the agreement, Mount Sinai may issue written notice to us. If we continue to fail to pay royalties after 60 days from receipt of the written notice, Mount Sinai can terminate the agreement. The Mount Sinai Agreement requires us to use due diligence to make the products covered by the licensed patent rights commercially available, including a requirement for us to use best efforts to reach a number of developmental milestones which have been achieved. If we fail to comply with the due diligence provisions of the agreement, Mount Sinai could take actions to convert our exclusive license to a non-exclusive license after six months written notice. The Mount Sinai Agreement does not contain any milestone payment provisions.

During 1995, Dr. Srivastava moved his research to Fordham University ("Fordham"). We entered into a sponsored research and technology license agreement with Fordham (the "Fordham Agreement") in March 1995 relating to the continued development of the heat shock protein technology and agreed to make payments to Fordham to sponsor Dr. Srivastava's research. Through the Fordham Agreement, we obtained an exclusive, perpetual, worldwide license to all of the intellectual property, including all the patent rights which resulted from the research and development performed by Dr. Srivastava at Fordham. We also agreed to pay Fordham a royalty on the net sales of products covered by the Fordham Agreement through the last expiration date on the patents under the agreement (2018) or when the patents become no longer valid. The agreement does not contain any milestone payment provisions or any diligence provisions. Dr. Srivastava moved his research to the University of Connecticut Health Center ("UConn") during 1997 and, accordingly, the parts of the agreement related to payments for sponsored research at Fordham terminated in mid-1997. During the term of the agreement, we paid $2.4 million to Fordham.

In May 2001, we entered into a license agreement with UConn which was amended in March 2003 and June 2009. Through the license agreement, we obtained an exclusive license to patent rights resulting from inventions discovered under a research agreement that was effective from February 1998 until December 2006. The term of the license agreement ends when the last of the licensed patents expires (2022) or becomes no longer valid. UConn may terminate the agreement: (1) if, after 30 days written notice for breach, we continue to fail to make any payments due under the license agreement, or (2) we cease to carry on our business related to the patent rights or if we initiate or conduct actions in order to declare bankruptcy. We may terminate the agreement upon 90 days written notice. We are still required to make royalty payments on any obligations created prior to the effective date of termination of the license agreement. Upon expiration or termination of the license agreement due to breach, we have the right to continue to manufacture and sell products covered under the license agreement which are considered to be works in progress for a period of 6 months. The license agreement contains aggregate milestone payments of $1.2 million for each product we develop covered by the licensed patent rights. These milestone payments are contingent upon regulatory filings, regulatory approvals and commercial sales of products. We have also agreed to pay UConn a royalty on the net sales of products covered by the license agreement as well as annual license maintenance fees beginning in May 2006. Royalties otherwise due on the net sales of products covered by the license agreement may be credited against the annual license maintenance fee obligations. As of December 31, 2012, we have paid $430,000 to UConn under the license agreement. The license agreement gives us complete discretion over the commercialization of products covered by the licensed patent rights, but also requires us to use commercially reasonable diligent efforts to introduce commercial products within and outside the United States. If we fail to meet these diligence requirements, UConn may be able to terminate the license agreement.

In March 2003, we entered into an amendment agreement that amended certain provisions of the license agreement. The amendment agreement granted us a license to additional patent rights. In consideration for execution of the amendment agreement, we agreed to pay UConn an upfront payment and to make future payments for licensed patents or patent applications. Through December 31, 2012, we have paid approximately $100,000 to UConn under the license agreement, as amended.

In December 2011, we signed a license, development and manufacturing technology transfer agreement ("NewVac Agreement") for Oncophage with NewVac LLC (a subsidiary of ChemRar Ventures LLC, "NewVac"), a company focused on the development of innovative technology for cancer immunotherapy. Under the NewVac Agreement, we granted NewVac an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. The NewVac Agreement may be terminated by either party upon a material breach if the breach is not cured within the time specified in the agreement. The NewVac Agreement may also be terminated by us if certain milestones are not achieved and by NewVac without cause. The NewVac Agreement has an initial term of three years and may be extended under certain terms for a period ending the later of December 2021, or the expiration of the last valid claim of the licensed patent rights, as defined. During the term of the NewVac Agreement we are entitled to receive modest milestone payments in addition to payments for supply of Oncophage and/or royalties in the low double-digits on net sales of Oncophage. Upon termination of the NewVac Agreement, all activity under the agreement immediately ceases.

We have entered into various agreements with institutions and contract research organizations to conduct clinical studies. Under these agreements, subject to the enrollment of patients and performance by the institution of certain services, we have estimated our payments to be $51.1 million over the term of the studies. For the years ended December 31, 2012, 2011, and 2010, $654,000, $623,000, and $361,000, respectively, have been expensed in the accompanying consolidated statements of operations related to these clinical studies. Through December 31, 2012, $47.4 million of this estimate has been paid. The timing of our expense recognition and future payments related to these agreements is dependent on the enrollment of patients and documentation received from the institutions.

We have various comprehensive agreements with collaborative partners that allow for the use of QS-21 Stimulon, an investigational adjuvant used in numerous vaccines under development for a variety of diseases including, but not limited to, hepatitis, HIV, influenza, cancer, Alzheimer's disease, malaria, and tuberculosis. These agreements grant exclusive worldwide rights in some fields of use, and co-exclusive or non-exclusive rights in others. The agreements call for royalties to be paid to us by the collaborative partner on the future sales of licensed vaccines that include QS-21 Stimulon.

In July 2006, we entered into a license agreement and a supply agreement with GSK for the use of QS-21 Stimulon (the "GSK License Agreement" and the "GSK Supply Agreement", respectively). In January 2009, we entered into an Amended and Restated Manufacturing Technology Transfer and Supply Agreement (the "Amended GSK Supply Agreement") under which GSK has the right to manufacture all of its requirements of commercial grade QS-21 Stimulon. GSK is obligated to supply us (or our affiliates, licensees, or customers) certain quantities of commercial grade QS-21 Stimulon for a stated period of time. In March 2012 we entered into a First Right to Negotiate and Amendment Agreement amending the GSK License Agreement and the Amended GSK Supply Agreement to clarify and include additional rights for the use of QS-21 Stimulon (the "GSK First Right to Negotiate Agreement"). In addition, we granted GSK the first right to negotiate for the purchase of the Company or certain of our assets. The first right to negotiate will expire after five years. As consideration for entering into the GSK First Right to Negotiate Agreement, GSK paid us an upfront, non-refundable payment of $9.0 million, $2.5 million of which is creditable toward future royalty payments. We sometimes refer to the GSK License Agreement, the Amended GSK Supply Agreement and the GSK First Right to Negotiate Agreement, from time to time as the "GSK Agreements". As of December 31, 2012, we have received $21.3 million of a potential $24.3 million in upfront and milestone payments related to the GSK Agreements. We are generally entitled to receive low single-digit royalties on net sales for a period of 7-10 years after the first commercial sale of a resulting GSK product. The GSK License and Amended GSK Supply Agreements may be terminated by either party upon a material breach if the breach is not cured within the time specified in the respective agreement. The termination or expiration of the GSK License Agreement does not relieve either party from any obligation which accrued prior to the termination or expiration. Among other provisions, the milestone payment obligations survive termination or expiration of the GSK Agreements for any reason, and the license rights granted to GSK survive expiration of the GSK License Agreement. The license rights and payment obligations of GSK under the Amended GSK Supply Agreement survive termination or expiration, except that GSK's license rights and future royalty obligations do not survive if we terminate due to GSK's material breach unless we elect otherwise.

During each of the years ended December 31, 2012, 2011, and 2010, we recognized revenue of $1.3 million related to payments received under our GSK License and Amended GSK Supply Agreements. As we have no future service obligation under the GSK First Right to Negotiate Agreement, we recognized $6.5 million in revenue during the year ended December 31, 2012 and included $2.5 million in deferred revenue in our consolidated financial statements. Deferred revenue of $5.2 million related to the GSK Agreements is included in deferred revenue on our consolidated balance sheet as of December 31, 2012.

Elan Pharmaceuticals, Inc. and/or its affiliates ("Elan") had a commercial license for the use of QS-21 Stimulon in the research and commercialization of Elan's Alzheimer's disease vaccine candidate that contains QS-21 Stimulon ("JANSSEN Product"). Effective September 14, 2009, we entered into an Amended and Restated License Agreement with Elan, which was assigned by Elan to JANSSEN AI on September 17, 2009 (the "JANSSEN AI License Agreement"). Under the terms of the JANSSEN AI License Agreement, JANSSEN AI has the right to develop, make, have made, use, sell, offer for sale, import, and have sold, the JANSSEN Product. In addition, pursuant to the terms of the JANSSEN AI License Agreement, JANSSEN AI has the right to manufacture all of its requirements of QS-21 Stimulon for use in the JANSSEN Product. We have no further supply obligations to JANSSEN AI. If all benchmarks are met under the JANSSEN AI License Agreement, we could receive up to $11.5 million in future milestone payments; $1.5 million has been received as of December 31, 2012. Furthermore, under the terms of the JANSSEN AI License Agreement, we are entitled to receive mid single-digit royalties on net sales of the JANSSEN Product for a period of at least 10 years after the first commercial sale of such product, if any. Expiration or termination of the JANSSEN AI License Agreement is without prejudice to any rights that accrued to the benefit of the parties prior to the date of such expiration or termination. Upon expiration of the JANSSEN AI License Agreement, JANSSEN AI will have a royalty-free license. JANSSEN may terminate the JANSSEN AI License Agreement by giving us written notice. If a material breach is not cured within the time specified in the JANSSEN AI License Agreement, either party may terminate. Upon early termination of the JANSSEN AI License Agreement, JANSSEN AI's license rights terminate and future payment obligations do not accrue. The termination or expiration of the JANSSEN AI License Agreement will not relieve either party

from any obligation which accrued prior to the termination or expiration. However, in the event that JANSSEN elects an early termination of the JANSSEN AI License Agreement, all rights to know-how, manufacturing technology and patents covered under the JANSSEN AI License Agreement will revert back to us. Deferred revenue of $968,000 related to the JANSSEN AI License Agreement is included in deferred revenue on our consolidated balance sheet as of December 31, 2012.

During March 2012, we received $6.25 million through an amended license of non-core technologies with an existing licensee. This amendment converted the license grant from non-exclusive to exclusive and enabled the licensee to buy-out the current royalty stream structure. As we have no future service obligation under this agreement, we recognized the $6.25 million in revenue during the year ended December 31, 2012.

(11) Certain Related Party Transactions

On January 9, 2008, we entered into the January 2008 private placement that included (i) 1,451,450 shares of common stock, (ii) warrants to acquire up to 1,451,450 shares of common stock at $18.00 per share, and (iii) unit warrants, which, if exercisable due to a triggering event as that term is defined in the applicable warrant, permit a holder to acquire up to 1,451,450 shares of common stock at $18.00 per share and additional ten-year warrants to acquire up to an additional 1,451,450 shares of common stock at $18.00 per share. In conjunction with this private placement, we sold 90,341 shares of common stock to Garo H. Armen, Ph.D., our Chairman and Chief Executive Officer ("CEO"), and 194,444 shares of common stock to Armen Partners LP. Garo H. Armen is general partner of Armen Partners LP and owns a controlling interest therein. In addition to the common stock acquired by Garo H. Armen and Armen Partners LP, each acquired an equal number of both warrants and unit warrants. The unit warrants expired unexercised on January 9, 2010.

In April 2011, we entered into an arrangement with Timothy Wright, a member of our Board of Directors, pursuant to which he assisted the company in business development and partnering efforts. As compensation for these services, we awarded him options to purchase 20,501 common shares at an exercise price of $5.70 per share vesting in six equal monthly installments. The grant date fair value of this award was $100,000.

In August 2011, we issued and sold 2,287,581 shares of our common stock in an underwritten offering for net proceeds of approximately $6.3 million. 358,496 of these shares of common stock were issued and sold to our CEO.

(12) Leases

We lease manufacturing, research and development, and office facilities under various long-term lease arrangements. Rent expense (before sublease income) was $1.0 million, $1.7 million, and $2.6 million, for the years ended December 31, 2012, 2011, and 2010, respectively.

We lease a facility in Lexington, Massachusetts for our manufacturing, research and development, and corporate offices. During April 2011, we executed a Fifth Amendment of Lease reducing our occupied space in this facility from approximately 162,000 square feet to approximately 82,000 square feet. During December 2012 we entered into a commercial lease for approximately 5,600 square feet of office space in New York, New York for use as corporate offices.

The future minimum rental payments under our leases of our New York City facility, which expires in 2020, and our Lexington headquarters, which expires in 2023, are as follows (in thousands).

Year ending December 31,		
2013	$	1,336
2014		1,407
2015		1,448
2016		1,490
2017		1,548
Thereafter		8,533
Total	$	15,762

In connection with the Lexington facility, we maintain a fully collateralized letter of credit of $1.0 million. No amounts have been drawn on the letter of credit as of December 31, 2012. In addition, for the office space in New York City, we are required to deposit $204,000 with the landlord as an interest-bearing security deposit pursuant to our obligations under the lease.

We sublet a portion of our facilities and received rental payments of $399,000, $541,000, and $1.1 million for the years ended December 31, 2012, 2011, and 2010, respectively. We are contractually entitled to receive rental payments of $286,000 in 2013.

(13) Debt

As of December 31, 2012, we have $39.2 million in principal of debt outstanding: $39.0 million of convertible notes (2006 Notes), $146,000 of debentures and $92,000 of equipment financing.

Convertible Notes—2006 Notes

On October 30, 2006 (the "Issuance Date"), we issued $25.0 million of the 2006 Notes to a group of accredited investors ("Investors"). These 2006 Notes bear interest at 8% (an effective rate of 8.10%) payable semi-annually on December 30 and June 30 in cash or, at our option, in additional notes or a combination thereof and had an original maturity date of August 30, 2011. During the years ended December 31, 2012, 2011, and 2010, we issued additional 2006 Notes in the amount of $1.5 million, $2.8 million, and $2.6 million, respectively, as payment for interest due.

On February 23, 2011, we entered into a Ninth Amendment of Rights Agreement (the "Amendment") to the 2006 Notes. The Amendment extended the maturity date of the 2006 Notes to August 31, 2014, and waived the rights of the note holders to convert the 2006 Notes into our common stock. The Amendment also removed substantially all restrictions on us incurring indebtedness subordinate to the 2006 Notes and substantially all restrictions to issue our common stock. We have also agreed to waive our right to prepay these notes in the event that our shares trade at a weighted average price over $42.00 for a 30-day period.

Until February 23, 2011, the 2006 Notes were convertible into our common stock at a fixed conversion price of $18.00 per share at the option of the Investors. Effective with the Amendment this conversion provision was removed from the terms of the 2006 Notes. The 2006 Notes can be converted into an interest in one of our wholly-owned subsidiaries that holds the QS-21 Stimulon and HerpV technologies. If converted into an interest of this subsidiary, the ownership interest in the subsidiary is determined by multiplying the quotient of the conversion amount divided by $25.0 million, by 30%.

If the Investors elect at any time to convert the 2006 Notes into ownership of the subsidiary holding the QS-21 Stimulon and HerpV technologies, we have the right, within 60 days, to redeem the 2006 Notes, including accrued interest, at a redemption price providing a 30-percent internal rate of return to the Investors. The 2006 Notes are secured by our equity ownership in this subsidiary. Upon the maturity of the 2006 Notes, we may elect to repay the outstanding balance in cash or in common stock, subject to certain limitations. If we elect to satisfy the outstanding balance with common stock at maturity, the number of shares issued will be determined by dividing the cash obligation by 90 percent of the weighted average price of the common shares for the 20 trading days preceding the maturity date of the 2006 Notes. This right is subject to our market capitalization exceeding $300 million at such time.

In no event will any Investor be obligated to accept equity that would result in an Investor owning in excess of 9.99% of the Company's outstanding common stock at any given time in connection with any redemption or repayment of the 2006 Notes. The note agreements include a change of control provision whereby the holders of the 2006 Notes could require us to redeem all or a portion of the then outstanding 2006 Notes at a price equal to 101% of the conversion amount being redeemed and a right of first refusal provision for the holders of the 2006 Notes on any sales of equity of the subsidiary holding the QS-21 Stimulon and HerpV technologies, to purchase up to 50% of such sales of equity on the same terms as the third-party purchaser.

Convertible Notes—2005 Notes

On January 25, 2005, we issued $50.0 million of our 2005 Notes. Proceeds from the sale of the 2005 Notes were approximately $48.0 million net of issuance costs. Issuance costs were being amortized using the effective interest method over seven years, the expected life of the 2005 Notes based on the earliest date on which the holders can require redemption. During 2008, we repurchased $11.8 million in principal of these 2005 Notes for $2.9 million plus accrued interest of $178,000. During 2009, we repurchased $18.2 million in principal of our 2005 Notes for $255,000 and approximately 5,482,000 shares of our common stock. During 2010, we repurchased $19.9 million in principal of the 2005 Notes for $6.2 million and approximately 9,643,000 shares of our common stock. In connection with these 2010 repurchases we recorded a net gain of $2.8 million in non-operating income, which is comprised of inducement expense of $8.9 million and a gain on extinguishment of debt of $11.7 million. During 2012 we repurchased the final $100,000 of the outstanding 2005 Notes with cash. At December 31, 2012, the 2005 Notes are no longer outstanding.

Convertible Notes—Conversion Option

As a result of the adoption of revised guidance for evaluating when adjustment features within contracts are considered to be equity-indexed, as of January 1, 2009, the conversion feature embedded in our 2006 Notes was treated as a derivative liability and recorded at its fair value, with period to period changes in the fair value recorded as a gain or loss in our consolidated statement of operations. Accordingly, upon adoption we recorded a reduction to additional paid-in capital of $1.4 million, an increase to debt discount of $1.3 million, a derivative liability of $2.7 million, and a charge to opening accumulated deficit of $21,000. As of December 31, 2010, our debt discount balance was $720,000. During the year ended December 31, 2010, we recorded a gain of $1.9 million due to the change in the fair value of the derivative. As amended, the 2006 Notes no longer fall within this guidance since they are no longer convertible into our common stock, therefore, the conversion option is no longer valued as a derivative liability. Accordingly, during 2011, the value of the derivative was reduced to zero with a corresponding increase to additional paid-in capital of $755,000. Also, as the Amendment did not modify our ability to settle the 2006 Notes in cash, the 2006 Notes are now within the guidance of ASC 470-20, *Debt with Conversion and Other Options.* In accordance with this guidance, the debt and equity components of the 2006 Notes are bifurcated and accounted for separately based on the value and related interest rate of a non-convertible debt security with the same terms. The fair value of the 2006 Notes at February 23, 2011 (the date of the Amendment) was determined to be $28.5 million. The equity (conversion option) component of the notes has been classified as noncontrolling interest on our consolidated balance sheet and accordingly, the carrying value of the 2006 Notes was reduced by approximately $5.6 million, the calculated value of the conversion option. As of December 31, 2012 and 2011, our debt discount balance was $3.3 million and $5.0 million, respectively, and is being amortized until August 31, 2014, the maturity date of the 2006 Notes.

Other

At December 31, 2012, approximately $146,000 of debentures we assumed in our merger with Aquila Biopharmaceuticals are outstanding. These debentures carry interest at 7% and are callable by the holders. Accordingly they are classified as part of the current portion of long-term debt.

During 2011 we entered into an equipment purchase financing arrangement for approximately $154,000 payable in monthly installments over three years. At December 31, 2012, approximately $92,000 remains outstanding with approximately $57,000 classified in current liabilities on our consolidated balance sheet.

(14) Fair Value Measurements

We measure fair value based on a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. The fair value hierarchy is broken down into three levels based on the source of inputs as follows:

Level 1-Valuations based on unadjusted quoted prices in active markets for identical assets or liabilities that the Company has the ability to access;

Level 2-Valuations based on quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active and models for which all significant inputs are observable, either directly or indirectly; and

Level 3-Valuations based on inputs that are unobservable and significant to the overall fair value measurement.

The availability of observable inputs can vary among the various types of financial assets and liabilities. To the extent that the valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires more judgment. In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, for financial statement disclosure purposes, the level in the fair value hierarchy within which the fair value measurement is categorized is based on the lowest level input that is significant to the overall fair value measurement.

The estimated fair values of all of our financial instruments, excluding long-term debt, approximate their carrying amounts in the consolidated balance sheets. The fair value of our long-term debt was derived by evaluating the nature and terms of the note and considering the prevailing economic and market conditions at the balance sheet date.

As of December 31, 2012 and 2011, $39.0 million and $37.5 million in principal of the 2006 Notes are outstanding respectively. The fair value of the debt portion of the 2006 Notes exclusive of the conversion option at December 31, 2012, and 2011, is $32.1 million and $30.8 million, respectively, based on the level 2 valuation hierarchy of the fair value measurements standard using a present value methodology. The fair value of the embedded conversion option at December 31, 2012, is $1.7 million, based on the level 3 valuation hierarchy of the fair value measurements standard. The embedded conversion option is classified within Level 3 because it is valued using a modified Black-Scholes model. Certain inputs into this model were valued using a combination of income and market approaches which are unobservable in the market and are significant.

(15) Contingencies

We may currently be, or may become, a party to legal proceedings. While we currently believe that the ultimate outcome of any of these proceedings will not have a material adverse effect on our financial position, results of operations, or liquidity, litigation is subject to inherent uncertainty. Furthermore, litigation consumes both cash and management attention.

(16) 401(k) Plan

We sponsor a defined contribution 401(k) savings plan for all eligible employees, as defined. Participants may contribute up to 60% of their compensation, as defined in the savings plan, with a maximum contribution of $17,000 for individuals under 50 years old and $22,500 for individuals 50 years old and older in 2012. Each participant is fully vested in his or her contributions and related earnings and losses. In 2012 and 2010 we made discretionary contributions to the savings plan of approximately $48,000 and $42,000, respectively. For the years ended December 31, 2012, 2011, and 2010, we expensed $48,000, $0, and $42,000, respectively, related to these discretionary contributions.

(17) Quarterly Financial Data (Unaudited)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2012				
Revenue	$ 13,375	$ 627	$ 869	$ 1,090
Net income (loss)	6,768	(6,923)	(5,729)	(5,441)
Net income (loss) attributable to common stockholders	6,570	(7,121)	(5,927)	(5,639)
Per common share, basic and diluted:				
Basic net income (loss) attributable to common stockholders	$ 0.29	$ (0.31)	$ (0.24)	$ (0.23)
Diluted net income (loss) attributable to common stockholders	$ 0.29	$ (0.31)	$ (0.24)	$ (0.23)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2011				
Revenue	$ 672	$ 786	$ 654	$ 644
Net loss	(5,963)	(5,759)	(5,534)	(6,020)
Net loss attributable to common stockholders	(6,161)	(5,957)	(5,732)	(6,217)
Per common share, basic and diluted:				
Net loss attributable to common stockholders	$ (0.33)	$ (0.31)	$ (0.28)	$ (0.29)

Net loss attributable to common stockholders per share is calculated independently for each of the quarters presented. Therefore, the sum of the quarterly net loss per share amounts will not necessarily equal the total for the full fiscal year.

(18) Subsequent Events

Subsequent to December 31, 2012, we entered into a Securities Exchange Agreement (the "Exchange Agreement") with the holder of our Series A Preferred Stock pursuant to which the holder exchanged all 31,620 of the outstanding shares of our Series A Preferred Stock for an equivalent number of shares of our Series A-1 Preferred Stock to be issued by us. The terms of the Series A-1 Preferred Stock are materially identical to the Series A Preferred Stock, except that the Series A-1 Preferred Stock accrues a 0.6325% annual dividend, as compared to a 2.5% annual dividend for the Series A Preferred Stock. In exchange for this reduction in dividend obligations, we issued to the holder 666,666 shares of our common stock. After giving effect to the transactions contemplated by the Exchange Agreement, no shares of Series A Preferred Stock remain outstanding.

Item 9. ***Changes in and Disagreements With Accountants on Accounting and Financial Disclosure***

Not applicable.

Item 9A. ***Controls and Procedures***

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of our disclosure controls and procedures, as such term is defined under Rule 13a-15(e) promulgated under the Securities Exchange Act. Based on this evaluation, our Chief Executive Officer and our Principal Financial Officer concluded that our disclosure controls and procedures were functioning effectively as of the end of the period covered by this Annual Report on Form 10-K to provide reasonable assurance that the Company can meet its disclosure obligations.

Management's Annual Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Securities Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Principal Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2012.

KPMG LLP, our independent registered public accounting firm, has issued their report, included herein, on the effectiveness of our internal control over financial reporting.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the fourth quarter of 2012 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders
Agenus Inc.:

We have audited Agenus Inc. and subsidiaries' internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Agenus Inc.'s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, Agenus Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2012, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of operations, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012, and our report dated March 18, 2013 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Boston, Massachusetts
March 18, 2013

Item 9B. ***Other Information***

None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***

The response to this item is incorporated by reference from "Executive Officers of the Registrant" found in Part I of this Annual Report on Form 10-K, following Item 4 of this Annual Report on Form 10-K, and from sections entitled "Proposal 1 – Election of Directors," "Our Corporate Governance," and "Section 16(a) Beneficial Ownership Reporting Compliance" in our Proxy Statement relating to our 2013 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of our 2012 fiscal year (the "2013 Proxy Statement").

Item 11. ***Executive Compensation***

The response to this item is incorporated by reference into this Annual Report on Form 10-K from sections entitled "Our Corporate Governance," "Compensation Discussion and Analysis," "Compensation Committee Report," "Compensation of Executive Officers," and "Director Compensation" in our 2013 Proxy Statement.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***

The response to this item is incorporated by reference into this Annual Report on Form 10-K from sections entitled "Equity Plans" and "Ownership of Our Common Stock" in our 2013 Proxy Statement.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***

The response to this item is incorporated by reference into this Annual Report on Form 10-K from the sections entitled "Our Corporate Governance" and "Certain Relationships and Related Transactions" in our 2013 Proxy Statement.

Item 14. ***Principal Accounting Fees and Services***

The response to this item is incorporated by reference into this Annual Report on Form 10-K from the section entitled "Proposal 3—To Ratify the Appointment of KPMG LLP as our Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2013" in our 2013 Proxy Statement.

PART IV

Item 15. *Exhibits and Financial Statement Schedules*

(a) 1. *Consolidated Financial Statements*

The consolidated financial statements are listed under Item 8 of this Annual Report on Form 10-K.

2. *Financial Statement Schedules*

The financial statement schedules required under this Item and Item 8 are omitted because they are not applicable or the required information is shown in the consolidated financial statements or the footnotes thereto.

3. *Exhibits*

The exhibits are listed below under Part IV Item 15(b).

(b) Exhibits

Exhibit Index

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 10, 2002 and incorporated herein by reference.
3.1.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
3.1.2	Certificate of Ownership and Merger changing the name of the corporation to Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
3.1.3	Certificate of Second Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 30, 2011 and incorporated herein by reference.
3.1.4	Certificate of Third Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2012 and incorporated herein by reference.
3.2	Fifth Amended and Restated By-laws of Agenus Inc. Filed as Exhibit 3.2 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
3.3	Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock of Agenus Inc. filed with the Secretary of State of the State of Delaware on September 24, 2003. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 25, 2003 and incorporated herein by reference.
3.4	Certificate of Designations, Preferences and Rights of the Class B Convertible Preferred Stock of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
3.5	Certificate of Designations, Preferences and Rights of the Series A-1 Convertible Preferred Stock of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on February 5. 2013 and incorporated herein by reference.
4.1	Form of Common Stock Certificate. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
4.2	Form of Amended and Restated Note under the Securities Purchase Agreement dated as of October 30, 2006 (as amended), by and among Agenus Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.4 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.

4.3	Form of Amended and Restated PIK Note under the Securities Purchase Agreement dated as of October 30, 2006 (as amended), by and among Agenus Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.5 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
4.4	Pledge of Security Agreement dated as of October 30, 2006 by and among Agenus Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.3 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.5	Guaranty dated as of October 30, 2006 by and between Antigenics Inc., a Massachusetts corporation and Ingalls & Snyder LLC, as Collateral Agent for the Buyers. Filed as Exhibit 4.4 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.6	Guaranty dated as of October 30, 2006 by and between Aronex Pharmaceuticals, Inc. and Ingalls & Snyder LLC, as Collateral Agent for the Buyers. Filed as Exhibit 4.5 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.7	Securities Purchase Agreement dated as of October 30, 2006 by and among Agenus Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.6 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.8	Form of Warrant under the Securities Purchase Agreement dated January 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.9	Purchase Agreement dated August 31, 2007 by and between Agenus Inc. and Fletcher International. Filed as Exhibit 99.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
4.10	Securities Purchase Agreement dated April 8, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.11	Form of Warrant to purchase common stock dated April 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.12	Securities Purchase Agreement by and between Agenus Inc. and the investors identified on Schedule I attached to the agreement, dated January 9, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.13	Form of 4 Year Warrant under the Securities Purchase Agreement dated July 30, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.
4.14	Form of 4 Year Warrant under the Securities Purchase Agreement dated August 3, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.
4.15	Ninth Amendment of Rights with respect to Events of Default and Issuance of Other Securities by and between Agenus Inc. and Ingalls & Snyder Value Partners L.P. dated February 23, 2011. Filed as Exhibit 4.17 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
4.16	Securities Purchase Agreement dated as of July 30, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.
4.17	Securities Purchase Agreement dated as of August 3, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.

Employment Agreements and Compensation Plans

10.1*	1999 Equity Incentive Plan, as amended. Filed as Exhibit 10.1 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2008 and incorporated herein by reference.
10.1.2*	Form of Non-Statutory Stock Option. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 15, 2004 and incorporated herein by reference.
10.1.3*	Form of 2007 Restricted Stock Award Agreement. Filed as Exhibit 10.1.5 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2007 and incorporated herein by reference.
10.1.4*	Form of 2008 Restricted Stock Award Agreement. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on March 11, 2008 and incorporated herein by reference.
10.1.5*	Sixth Amendment to the Agenus Inc. 1999 Equity Incentive Plan. Filed as Appendix D to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.2*	Agenus Inc. 2009 Equity Incentive Plan, as amended to date. Filed herewith.
10.2.1*	Form of Restricted Stock Agreement for the Agenus Inc. Agenus Inc. 2009 Equity Incentive Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.
10.2.2*	Form of Stock Option Agreement for the Agenus Inc. 2009 Equity Incentive Plan. Filed as Exhibit 10.3 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.
10.3*	Agenus Inc. 2009 Employee Stock Purchase Plan. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.4	Agenus Inc. Directors' Deferred Compensation Plan, as amended to date. Filed herewith.
10.5*	Amended and Restated Executive Change-in-Control Plan applicable to Christine M. Klaskin. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on November 3, 2010 and incorporated herein by reference.
10.6	Modification of Rights in the Event of a Change of Control, dated as of June 14, 2012, by and between Agenus Inc. and Christine Klaskin. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended June 30, 2012 and incorporated herein by reference.
10.7	2004 Executive Incentive Plan, as amended. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 27, 2011 and incorporated herein by reference.
10.8	Form of Indemnification Agreement between Agenus Inc. and its directors and executive officers. These agreements are materially different only as to the signatories and the dates of execution. Filed as Exhibit 10.4 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.9	Current schedule identifying the directors and executive officers who are party to an Indemnification Agreement, the form of which was filed as Exhibit 10.4 to our registration statement on Form S-1 (File No. 333-91747). Filed herewith.
10.10*	Employment Agreement dated February 20, 2007 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on February 26, 2007 and incorporated herein by reference.
10.10.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.10.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.11.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.11*	Employment Agreement dated December 1, 2005 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 7, 2005 and incorporated herein by reference.

10.11.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference
10.11.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.12.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.12*	Employment Agreement dated September 16, 2008 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2008 and incorporated herein by reference.
10.12.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.12.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.20.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
	License and Collaboration Agreements
10.13(1)	Patent License Agreement between Agenus Inc. and Mount Sinai School of Medicine dated November 1, 1994, as amended on June 5, 1995. Filed as Exhibit 10.8 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.14(1)	Sponsored Research and Technology License Agreement between Agenus Inc. and Fordham University dated March 28, 1995, as amended on March 22, 1996. Filed as Exhibit 10.9 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.15(1)	License Agreement between the University of Connecticut Health Center and Agenus Inc. dated May 25, 2001, as amended on March 18, 2003. Filed as Exhibit 10.2 to the Amendment No. 1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2003 and incorporated herein by reference.
10.15.1(1)	Letter Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated May 11, 2009. Filed as Exhibit 10.5 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.15.2(1)	Amendment Number Two to License Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated June 5, 2009. Filed as Exhibit 10.6 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.16(1)	License Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated July 6, 2006. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2006 and incorporated herein by reference.
10.17(1)	Amended and Restated Manufacturing Technology Transfer and Supply Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated January 19, 2009. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2009 and incorporated herein by reference.
10.18(1)	First Right to Negotiate and Amendment Agreement between Agenus Inc., Antigenics Inc. and GlaxoSmithKline Biologicals SA, dated March 2, 2012. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2012.
10.19(1)	Amended and Restated License Agreement by and between Antigenics Inc., a Massachusetts corporation and wholly owned subsidiary of Agenus Inc., Elan Pharma International Limited, and Elan Pharmaceuticals, Inc. dated September 14, 2009. Filed as Exhibit 10.5 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.20	License Agreement by and between Agenus Inc. and NewVac LLC dated December 19, 2011. Filed as Exhibit 10.42 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2011 and incorporated herein by reference.

Real Estate Leases

10.21	Lease of Premises at 3 Forbes Road, Lexington, Massachusetts dated as of December 6, 2002 from BHX, LLC, as Trustee of 3 Forbes Realty Trust, to Agenus Inc. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 8, 2003 and incorporated herein by reference.
10.21.1	First Amendment of Lease dated as of August 15, 2003 from BHX, LLC, as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2004 and incorporated herein by reference.
10.21.2	Second Amendment of Lease dated as of March 7, 2007 from BHX, LLC as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2007 and incorporated herein by reference.
10.21.3	Third Amendment to Lease dated April 23, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2008 and incorporated herein by reference.
10.21.4	Fourth Amendment to Lease dated September 30, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2008 and incorporated herein by reference.
10.21.5	Fifth Amendment to Lease dated April 11, 2011 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2011 and incorporated herein by reference.
10.22	Standard Form of Office Lease effective December 13, 2012 between 149 Fifth Ave. Corp. and Agenus Inc. Filed herewith.

Sales Agreement

10.24	Amended and Restated At Market Issuance Sales Agreement, dated as of December 21, 2012, by and between Agenus Inc. and MLV & Co. LLC. Filed as Exhibit 10.1 to our Registration Statement on Form S-3 (File No. 333-185657) and incorporated herein by reference.
21	Subsidiaries of Agenus Inc. Filed as Exhibit 21 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
23	Consent of KPMG LLP, independent registered public accounting firm. Filed herewith.
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.
32.1(2)	Certification of Chief Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Submitted herewith.
101.INS	XBRL Instance Document(3)
101.SCH	XBRL Taxonomy Extension Schema Document(3)
101.CAL	XBRL Calculation Linkbase Document(3)
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document(3)
101.LAB	XBRL Label Linkbase Document(3)
101.PRE	XBRL Taxonomy Presentation Linkbase Document(3)

* Indicates a management contract or compensatory plan.

(1) Certain confidential material contained in the document has been omitted and filed separately with the Securities and Exchange Commission pursuant to Rule 406 of the Securities Act or Rule 24b-2 of the Securities Exchange Act.

(2) This certification accompanies the Annual Report on Form 10-K and is not filed as part of it.

(3) XBRL (Extensible Business Reporting Language) information is furnished and not filed or a part of a registration statement or prospectus for purposes of sections 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of section 18 of the Securities Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

AGENUS INC.

By: /s/ GARO H. ARMEN, PH.D.
Garo H. Armen, Ph.D.
Chief Executive Officer and
Chairman of the Board

Dated: March 18, 2013

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated.

Signature	Title	Date
/S/ GARO H. ARMEN, PH.D. **Garo H. Armen, Ph.D.**	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	March 18, 2013
/S/ CHRISTINE M. KLASKIN **Christine M. Klaskin**	Vice President, Finance (Principal Accounting and Financial Officer)	March 18, 2013
/S/ BRIAN CORVESE **Brian Corvese**	Director	March 18, 2013
/S/ TOM DECHAENE **Tom Dechaene**	Director	March 18, 2013
/S/ WADIH JORDAN **Wadih Jordan**	Director	March 18, 2013
/S/ SHALINI SHARP **Shalini Sharp**	Director	March 18, 2013
/S/ TIMOTHY R. WRIGHT **Timothy R. Wright**	Director	March 18, 2013

Exhibit 10.2

AGENUS INC.

2009 EQUITY INCENTIVE PLAN

(As amended through June 13, 2012)

1. Purpose and Eligibility

The purpose of this 2009 Equity Incentive Plan (the "Plan") of Agenus Inc., a Delaware corporation (the "Company"), is to provide stock options and other equity interests in the Company (each an "Award") to employees, officers, directors, consultants and advisors of the Company and its Subsidiaries, all of whom are eligible to receive Awards under the Plan, other than a person who has irrevocably elected not to be eligible. Any person to whom an Award has been granted under the Plan is called a "Participant." Additional definitions are contained in Section 8.

2. Administration

a. Administration by Board of Directors. The Plan will be administered by the Board of Directors of the Company (the "Board"). The Board, in its sole discretion, shall have the authority to grant and amend Awards, to adopt, amend and repeal rules relating to the Plan and to interpret and correct the provisions of the Plan and any Award. All decisions by the Board shall be final and binding on all interested persons. Neither the Company nor any member of the Board shall be liable for any action or determination relating to the Plan or any Award.

b. Appointment of Committees. To the extent permitted by applicable law, the Board may delegate any or all of its powers under the Plan to one or more committees or subcommittees of the Board (a "Committee"). All references in the Plan to the "Board" shall mean any such other Committee or the Board, as applicable. Discretionary Awards to non-employee directors will only be granted and administered by a Committee, each member of which is an "independent director" as defined in the applicable NASDAQ Marketplace Rules.

c. Delegation to Officers. To the extent permitted by applicable law, the Board may delegate to one or more officers of the Company the power to grant Awards to employees or officers of the Company or any of its present or future parent or subsidiary corporations and to exercise such other powers under the Plan as the Board may determine, provided that no officer shall be authorized to grant Awards to any "executive officer" of the Company (as defined by Rule 3b-7 under the Securities Exchange Act of 1934, as amended (the "Exchange Act") or to any "officer" of the Company (as defined by Rule 16a-1 under the Exchange Act).

3. Stock Available for Awards

a. Number of Shares. Subject to adjustment under Section 3(b), the aggregate number of shares of Common Stock of the Company (the "Common Stock") that may be issued pursuant to the Plan is 4,200,000 shares. If any Award expires, or is terminated, surrendered or forfeited, in whole or in part, the unissued Common Stock covered by such Award shall again be available for

the grant of Awards under the Plan. If shares of Common Stock issued pursuant to the Plan are repurchased by, or are surrendered or forfeited to, the Company at no more than the original purchase price thereof, such shares of Common Stock shall again be available for the grant of Awards under the Plan. The Board may adopt such share counting rules as it deems appropriate, provided that such rules are not inconsistent with the Plan.

b. Adjustment to Common Stock. In the event of any stock split, stock dividend, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, combination, exchange of shares, liquidation, spin-off, split-up, or other similar change in capitalization or event, (i) the number and class of securities available for Awards under the Plan, (ii) the number and class of securities, vesting schedule and exercise price per share subject to each outstanding Option, (iii) the repurchase price per security subject to repurchase, and (iv) the terms of each other outstanding Award shall be adjusted by the Board (or substituted Awards may be made) to avoid an unfair result. If Section 7(e)(i) applies for any event, this Section 3(b) shall not be applicable.

4. Stock Options

a. General. The Board may grant options to purchase Common Stock (each, an " Option") and determine the number of shares of Common Stock to be covered by each Option, the exercise price of each Option and the conditions and limitations applicable to the exercise of each Option and the Common Stock issued upon the exercise of each Option, including vesting provisions, repurchase provisions and restrictions relating to applicable federal or state securities laws, as it considers advisable.

b. Incentive Stock Options. An Option that the Board intends to be an "incentive stock option," as defined in Section 422 of the Code (an "Incentive Stock Option"), shall be granted only to employees of the Company and any other entity the employees of which are entitled to receive Incentive Stock Options under the Code. All Incentive Stock Options that are granted pursuant to the Plan shall be subject to, and shall be construed consistently with, the requirements of Section 422 of the Code. The Board and the Company shall have no liability if an Option or any part thereof that is intended to be an Incentive Stock Option does not qualify as such. An Option or any part thereof that does not qualify as an Incentive Stock Option is referred to herein as a " Nonstatutory Stock Option."

c. Exercise Price. The Board shall establish the exercise price (or determine the method by which the exercise price shall be determined) at the time each Option is granted and specify such exercise price in the applicable option agreement, provided, however, that the exercise price shall be not less than 100% of the fair market value of the shares subject thereto at the time of grant, as determined by the Board.

d. Duration of Options. Each Option shall be exercisable at such times and subject to such terms and conditions as the Board may specify in the applicable option agreement, provided, however, that no Option will be granted for a term in excess of 10 years.

e. Exercise of Option. Options may be exercised only by delivery to the Company of a written notice of exercise signed by the proper person, or any other form of notice approved by the Board, together with payment in full as specified in Section 4(f) for the number of shares for which the Option is exercised.

f. Payment Upon Exercise. No shares shall be delivered pursuant to any exercise of an Option until the Company receives payment in full of the option exercise price in the manner provided in the applicable option agreement. Methods of payment may include any of the following or any combination thereof or any other form of lawful consideration: (i) cash, check or wire transfer of funds; (ii) promissory note; (iii) shares of Common Stock owned by the Participant valued at fair market value (as determined by the Board or as determined pursuant to the applicable option agreement); (iv) so-called "cashless exercise" or "net issuance"; and (v) arrangements with a broker or other financial institution for the prompt payment of the exercise price to the Company.

g. Repricing. The Board may, without stockholder approval, amend any outstanding Option granted under the Plan to provide an exercise price per share that is lower than the then-current exercise price per share of such outstanding Option. The Board may also, without stockholder approval, cancel any outstanding Option and grant in substitution therefor new Options covering the same or a different number of shares of Common Stock and having an exercise price per share lower than the then-current exercise price per share of the cancelled Option.

h. No Reload Rights. No Option granted under the Plan shall contain any provision entitling the optionee to the automatic grant of additional Options in connection with any exercise of the original Option.

5. Stock Awards

a. Grants. The Board may grant Awards entitling recipients to acquire shares of Common Stock for any lawful consideration (a "Stock Award"). The Board may, but need not, provide that such Stock Award shall be subject to forfeiture to the Company in the event that conditions specified by the Board in the applicable Award are not satisfied prior to the end of the applicable restriction period or periods established by the Board for such Award (a "Restricted Stock Award").

b. Terms and Conditions. The Board shall determine the terms and conditions of any such Stock Award. In the case of a Restricted Stock Award, any stock certificates issued in respect thereof shall be registered in the name of the Participant and, unless otherwise determined by the Board, deposited by the Participant, together with a stock power endorsed in blank, with the Company (or its designee). After the expiration of the applicable restriction periods, the Company (or such designee) shall deliver the certificates no longer subject to such restrictions to the Participant or, if the Participant has died, to the beneficiary designated by a Participant, in a manner determined by the Board, to receive amounts due or exercise rights of the Participant in the event of the Participant's death (the "Designated Beneficiary"). In the absence of an effective designation by a Participant, Designated Beneficiary shall mean the Participant's estate.

6. Other Stock-Based Awards

The Board shall have the right to grant other Awards based upon or with reference to the Common Stock or the trading price thereof and having such terms and conditions as the Board may determine, including, without limitation, the grant or sale of shares of stock based upon certain conditions, the grant of securities convertible into Common Stock and the grant of stock appreciation rights, phantom stock awards or stock units, which may be settled in cash or stock.

7. General Provisions Applicable to Awards

a. Transferability of Awards. Except as the Board may otherwise determine or provide in an Award, Awards shall not be sold, assigned, transferred, pledged or otherwise encumbered by the person to whom they are granted, either voluntarily or by operation of law, except by will or the laws of descent and distribution, and, during the life of the Participant, shall be exercisable only by the Participant. References to a Participant, to the extent relevant in the context, shall include references to authorized transferees.

b. Documentation. Each Award shall be evidenced by an instrument in such form as the Board shall determine or as executed by an officer of the Company pursuant to authority delegated by the Board. Each Award may contain terms and conditions in addition to those set forth in the Plan, provided that such terms and conditions do not contravene the provisions of the Plan. If a person to whom an Award has been granted fails to execute and deliver to the Company within the time specified by the Company the form of Award instrument specified by the Company, such Award shall be voidable by the Company at its election, with or without notice to such person.

c. Board Discretion. The terms of each type of Award need not be identical, and the Board need not treat Participants uniformly.

d. Termination of Status. The Board shall determine the effect on an Award of the disability, death, retirement, authorized leave of absence or other change in the employment or other status of a Participant and the extent to which, and the period during which, the Participant, or the Participant's legal representative, conservator, guardian or Designated Beneficiary, may exercise rights under the Award.

e. Acquisition of the Company.

(i) Consequences of an Acquisition. In connection with an Acquisition (as defined below), the Board or the board of directors of the surviving or acquiring entity (as used in this Section 7(e)(i), also the " Board") shall as to outstanding Awards (on the same basis or on different bases as the Board shall specify) make appropriate provision for the continuation of such Awards by the Company or the assumption of, or substitution for, such Awards by the surviving or acquiring entity and by substituting on an equitable basis for the shares then subject to such Awards either (a) the consideration payable with respect to the outstanding shares of Common Stock in connection with the Acquisition, (b) shares of stock of the surviving or acquiring corporation or (c) such other securities or

other consideration as the Board deems appropriate, the fair market value of which (as determined by the Board in its sole discretion) shall not materially differ from the fair market value of the shares of Common Stock subject to such Awards immediately preceding the Acquisition. In addition to, in lieu of, or in combination with the foregoing, with respect to unexercised Options or other unexercised Awards, the Board may, on the same basis or on different bases as the Board shall specify, upon written notice to the affected Participants, provide that one or more such Options or Awards (or the vested portion thereof) must be exercised, in whole or in part, within a specified number of days of the date of such notice, at the end of which period such unexercised Options or unexercised Awards (or the vested portion thereof) shall terminate in their entirety, and/or provide that one or more unexercised Options or unexercised Awards (or the vested portion thereof), in whole or in part, shall be terminated in their entirety in exchange for a cash payment equal to the fair market value (as determined by the Board in its sole discretion) for the shares subject to such unexercised Options or unexercised Awards (or the vested portion thereof) minus the exercise price thereof, if applicable. Unless otherwise determined by the Board (on the same basis or on different bases as the Board shall specify), any repurchase rights, vesting provisions or other rights of the Company that relate to an Option or other Award shall continue to apply to consideration, including cash, that has been substituted, assumed or amended for an Option or other Award pursuant to this paragraph. The Company may hold in escrow all or any portion of any such consideration in order to effectuate any continuing restrictions.

(ii) Acquisition Defined. An "Acquisition" shall mean: (x) the sale of the Company by merger in which the stockholders of the Company in their capacity as such no longer own a majority of the outstanding equity securities of the Company (or its successor); or (y) any sale of all or substantially all of the assets or capital stock of the Company (other than in a spin-off or similar transaction) or (z) any other change of control or acquisition of the business of the Company, as determined by the Board.

(iii) Assumption of Options Upon Certain Events . In connection with a merger or consolidation of an entity with the Company or a Subsidiary or the acquisition by the Company of property or stock of an entity, the Board may grant Awards under the Plan in substitution for stock and stock-based awards issued by such entity or an affiliate thereof. The substitute Awards shall be granted on such terms and conditions as the Board considers appropriate in the circumstances. Substitute Options may be granted on such terms as the Board deems appropriate in the circumstances, notwithstanding any limitations on Options contained elsewhere herein. Substitute Options shall not count against the overall share limit set forth in Section 3(a), except as may be required by reason of Section 422 and related provisions of the Code.

f. Withholding. Each Participant shall pay to the Company, or make provisions satisfactory to the Company for payment of, any taxes required by law to be withheld in connection with Awards to such Participant no later than the date of the event creating the tax liability. The Board may allow Participants to satisfy such tax obligations in whole or in part by transferring shares of Common Stock, including shares retained from the Award creating the tax

obligation, valued at their fair market value (as determined by the Board or as determined pursuant to the applicable Award). The Company may, to the extent permitted by law, deduct any such tax obligations from any payment of any kind otherwise due to a Participant. The Board may impose such restrictions in connection therewith as may be necessary to avoid any transaction that might give rise to liability under Section 16(b) of the Exchange Act.

g. Amendment of Awards. The Board may amend, modify or terminate any outstanding Award under certain circumstances including, but not limited to, if the Board determines that the provisions of the Plan or any Award are in contravention of any law or regulation of any governmental entity or self-regulatory organization with jurisdiction over the Company, or would have material adverse effects on the taxation of the Company or the Participant. In connection therewith, the Board may substitute for any such Award another Award of the same or a different type, change the date of exercise or realization, convert an Incentive Stock Option to a Nonstatutory Stock Option or effect any other modification or amendment, provided that the Participant's consent to such action shall be required unless the Board determines that the action, taking into account any related action, would not materially and adversely affect the Participant.

h. Conditions on Delivery of Stock. The Company will not be obligated to deliver any shares of Common Stock pursuant to the Plan or to remove restrictions from shares previously delivered under the Plan until (i) all conditions of the Award have been met or removed to the satisfaction of the Company, (ii) in the opinion of the Company's counsel, all other legal matters in connection with the issuance and delivery of such shares have been satisfied, including any applicable securities laws and any applicable stock exchange or stock market rules and regulations, and (iii) the Participant has executed and delivered to the Company such representations or agreements as the Company may consider appropriate to satisfy the requirements of any applicable laws, rules or regulations.

i. Acceleration. The Board may at any time provide that any Options shall become immediately exercisable in full or in part, that any Restricted Stock Awards shall be free of some or all restrictions, or that any other stock-based Awards may become exercisable in full or in part or free of some or all restrictions or conditions, or otherwise realizable in full or in part, as the case may be, despite the fact that the foregoing actions may (i) cause the application of Sections 280G and 4999 of the Code if a change in ownership or control of the Company occurs, or (ii) disqualify all or part of the Option as an Incentive Stock Option. In the event of the acceleration of the exercisability of one or more outstanding Options, including pursuant to paragraph (e)(i), the Board may provide, as a condition of full exercisability of any or all such Options, that the Common Stock or other substituted consideration, including cash, as to which exercisability has been accelerated shall be restricted and subject to forfeiture back to the Company at the option of the Company at the cost thereof upon termination of employment or other relationship, with the timing and other terms of the vesting of such restricted stock or other consideration being equivalent to the timing and other terms of the superseded exercise schedule of the related Option.

j. Settlement. The Board shall determine whether Awards are settled in whole or in part in cash, Common Stock, other securities of the Company, Awards or other property.

k. Dividends and Cash Awards. In the discretion of the Board, any Award under the Plan may provide the Participant with (i) dividends or dividend equivalents payable currently or deferred with or without interest, and (ii) cash payments in lieu of or in addition to an Award.

l. Loans. The Board may authorize the making of loans or cash payments to Participants in connection with any Award under the Plan, which loans may be secured by any security, including Common Stock, underlying or related to such Award (provided that such Loan shall not exceed the fair market value of the security subject to such Award), and which may be forgiven upon such terms and conditions as the Board may establish at the time of such loan or at any time thereafter.

m. Use for Settlement or Compensation. Awards may be made available as a form of payment in the settlement of other Awards granted under the Plan or as payment in lieu of compensation to which a Participant is otherwise entitled.

8. Miscellaneous

a. Definitions.

(i) "Company," for purposes of eligibility under the Plan, shall include any present or future subsidiary corporations of Agenus Inc., as defined in Section 424(f) of the Code (a "Subsidiary"), and any future parent corporation of Agenus Inc., as defined in Section 424(e) of the Code. For purposes of Awards other than Incentive Stock Options, the term "Company" shall include any other business venture in which the Company has a direct or indirect significant interest, as determined by the Board in its sole discretion.

(ii) "Code" means the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder.

(iii) "employee," for purposes of eligibility under the Plan (but not for purposes of Section 4(b)), shall include a person to whom an offer of employment has been extended by the Company.

b. No Right to Employment, Service on the Board or Other Status. No person shall have any claim or right to be granted an Award, and the grant of an Award shall not be construed as giving a Participant the right to continued employment, service on the Board or any other relationship with the Company. The Company expressly reserves the right at any time to dismiss or otherwise terminate its relationship with a Participant free from any liability or claim under the Plan.

c. No Rights As Stockholder. Subject to the provisions of the applicable Award, no Participant or Designated Beneficiary shall have any rights as a stockholder with respect to any shares of Common Stock to be distributed with respect to an Award until becoming the record holder thereof.

d. Effect on Other Benefit Plans. Unless specifically provided otherwise in an applicable Award, the amount of any compensation deemed to be received by a Participant as a result of the receipt or exercise of an Award will not constitute "earnings" with respect to which any other benefits of such Participant are determined, including without limitation benefits under any pension, profit sharing, life insurance or salary continuation plan.

e. Authorization of Sub-Plans. The Board may from time to time establish one or more sub-plans under the Plan for purposes of satisfying applicable blue sky, securities or tax laws of various jurisdictions. The Board shall establish such sub-plans by adopting supplements to this Plan containing (i) such limitations on the Board's discretion under the Plan as the Board deems necessary or desirable or (ii) such additional terms and conditions not otherwise inconsistent with the Plan as the Board shall deem necessary or desirable. All supplements adopted by the Board shall be deemed to be part of the Plan, but each supplement shall apply only to Participants within the affected jurisdiction and the Company shall not be required to provide copies of any supplement to Participants in any jurisdiction which is not the subject of such supplement. Without limiting the generality of the foregoing, the Board may modify Awards granted to Participants who are foreign nationals or employed outside the United States or establish sub-plans or procedures under the Plan to recognize differences in laws, rules, regulations or customs of such foreign jurisdictions with respect to tax, securities, currency, employee benefit or other matters.

f. Effective Date and Term of Plan. The Plan shall become effective on the date on which it is approved by the Company's stockholders. No Awards shall be granted under the Plan after the completion of ten years from the date on which the Plan was approved by the Company's stockholders, but Awards previously granted may extend beyond that date.

g. Amendment of Plan. The Board may amend, suspend or terminate the Plan or any portion thereof at any time, subject to any required stockholder approval under any applicable legal, regulatory or listing requirement.

h. Governing Law. The provisions of the Plan and all Awards made hereunder shall be governed by and interpreted in accordance with the laws of Delaware, without regard to any applicable conflicts of law.

This Plan was originally approved by the Board of Directors on March 12, 2009.

This Plan was originally approved by the Stockholders on June 10, 2009.

Amendment No. 1 to this Plan was approved by the Board of Directors on March 15, 2012.

Amendment No. 1 to this Plan was approved by the Stockholders on June 13, 2012.

Exhibit 10.4

AGENUS INC.

DIRECTORS' DEFERRED COMPENSATION PLAN

(As amended through June 13, 2012)

ARTICLE I

GENERAL

1.1 Establishment of Plan. Agenus Inc. ("Agenus") hereby establishes the Agenus Directors' Deferred Compensation Plan (the "plan"), effective as of June 11, 2003, to allow each member of the Agenus Board of Directors who is not also an officer or employee of Agenus to defer receipt of all or a portion of the cash compensation payable to him or her as a director of Agenus until his or her termination of service as a director or, subject to requirements set forth in Section 3.1, such other date as may be specified by him or her.

1.2 No Right to Corporate Assets. This plan is unfunded and Agenus will not be required to set aside, segregate, or deposit any funds or assets of any kind to meet its obligations hereunder. Nothing in this plan will give a participant, a participant's beneficiary or any other person any equity or other interest in the assets of Agenus, or create a trust of any kind or a fiduciary relationship of any kind between Agenus and any such person. Any rights that a participant, beneficiary or other person may have under this plan will be solely those of a general unsecured creditor of Agenus.

1.3 Limitation on Rights Created by Plan. Nothing in this plan will give a participant any right to continue as a director of Agenus.

1.4 Nonalienation of Benefits. The rights and benefits of a participant in this plan are personal to the participant. No interest, right or claim under this plan and no distribution therefrom will be assignable, transferable or subject to sale, mortgage, pledge, hypothecation, anticipation, garnishment, attachment, execution or levy, except by designation of beneficiaries as provided in Section 3.6.

1.5 Binding Effect of Plan. This plan will be binding upon and inure to the benefit of participants and designated beneficiaries and their heirs, executors and administrators, and to the benefit of Agenus and its assigns and successors in interest.

1.6 Administration. This plan will be administered by the Chief Financial Officer of Agenus or other officer designated by the Board of Directors (the "Administrator") who will have sole responsibility for its interpretation.

1.7 Interpretation. This plan will be construed, enforced and administered according to the laws of the Commonwealth of Massachusetts.

ARTICLE II

DEFERRAL OF COMPENSATION

2.1 Deferral Agreement. Any member of the Board of Directors of Agenus who is not an officer or employee of Agenus or its subsidiaries (an "outside director") is eligible to participate in this plan. An outside director may participate in the plan by executing an agreement before September 30 of any year prior to the calendar year in which such agreement will take effect authorizing Agenus to defer all or a portion of his or her compensation as director (the "deferral agreement"). A deferral agreement will remain in effect for each succeeding calendar year unless the participant files a written revocation or superseding deferral agreement with the Administrator. A deferral agreement for any particular year is irrevocable after the last day of the immediately preceding calendar year.

2.2 Amount of Deferral. Each participant may elect in his or her deferral agreement to defer 25 percent, 50 percent, 75 percent or 100 percent of the total cash compensation paid to the participant as an outside director of Agenus.

2.3 Deferral Account. For bookkeeping purposes only, the Administrator will establish and maintain an account (the "deferral account") for each participant which documents the compensation deferred by the participant, earnings credited to the account and payments from the account. The deferral account will consist of a subaccount for amounts earning interest, which will be denominated on a dollar basis (the "cash account"), and a subaccount for amounts invested in hypothetical shares of Agenus common stock, $0.01 par value, which will be denominated on a share basis (the "stock account"). Each participant will indicate in his or her deferral agreement the percentage of future deferrals to be invested in the cash account and the stock account. Amounts may not be transferred between the cash account and the stock account.

2.4 Cash Account. As of the tenth business day after the end of each calendar quarter, the Administrator will credit to the participant's cash account an amount equal to the amount of compensation otherwise payable to the participant in the preceding calendar quarter and which the participant had elected to defer and invest in the cash account pursuant to Section 2.1. As of the last day of each calendar year, the Administrator will credit interest on the balance in the cash account on that date at the rate paid on one-year Treasury bills hypothetically purchased on the first day of such calendar year. For a participant receiving installment payments, interest will be credited on the balance from time to time remaining in the cash account until the account has been completely paid.

2.5 Stock Account. As of the tenth business day of each calendar quarter, the Administrator will credit to the participant's stock account a number of units representing shares of common stock equal to the amount of compensation otherwise payable to the participant and which the participant had elected to defer pursuant to Section 2.1 and invest in common stock divided by the applicable stock price for such common stock. The applicable stock price shall mean the

average of the closing price for such common stock for all trading days during the applicable calendar quarter as reported by Nasdaq National Market or, if not then traded on the Nasdaq National Market, as reported by a system or organization selected by the Administrator. As of the date of payment of any cash dividend on shares of common stock, the Administrator will credit to the stock account a number of units representing shares of common stock equal to (i) the cash dividend per share times the number of units representing shares credited to the stock account as of the dividend record date divided by (ii) the closing price for such shares of common stock on the date of payment of the dividend. As of the date of payment of any stock dividend on shares of common stock, the Administrator will credit to the stock account a number of units representing shares equal to the stock dividend declared times the number of units representing shares of common stock upon which such dividend was declared credited to the stock account as of the dividend record date. In the event of any stock dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off, exchange of shares or similar change affecting common stock, appropriate adjustment will be made in the number and/or kind of units representing shares credit to the stock account. The stock account is maintained for bookkeeping purposes only. Prior to distribution to a participant under Section 3.3 or 3.4, units representing shares credited to the stock account are not considered actual shares of common stock of Agenus for any purpose and a participant will have no right as a stockholder with respect to such shares. Units representing shares will include fractional units computed to three decimal places.

2.6 Shares Subject to the Plan. The aggregate number of shares of common stock which have been reserved for issuance under this plan is 225,000. In the event of any stock dividend, split-up, combination or reclassification of shares, recapitalization or similar capital change relating to the common stock, the maximum aggregate number and kind of shares or securities of Agenus that may be issued under the plan shall be appropriately adjusted by the Agenus Board of Directors (whose determination shall be conclusive).

ARTICLE III

PAYMENT OF DEFERRED COMPENSATION

3.1 Commencement of Payment. Each participant will elect in his or her deferral agreement to have payments commence in the calendar year following his or her termination of service as a director or such other calendar year as may be specified; provided, however, that if a participant elects to have payments commence in a calendar year other than the calendar year following his or her termination of service as a director, the earliest calendar year that a participant may elect to have payments commence shall be the second calendar year following the date of such election. For example, a deferral agreement executed in 2004 may not specify a payment commencement date earlier than 2006. Such election will be irrevocable. Notwithstanding the foregoing, for purposes of this Section 3.1, “termination of service as a director” shall mean the participant’s “separation from service” as that phrase is used for purposes of Section 409A of the Internal Revenue Code (the “Code”) and as set forth in Treasury Regulations promulgated pursuant to Code Section 409A.

3.2 Election of Form of Payment. Each participant will elect in his or her deferral agreement to have his or her deferral account paid in either a lump sum or in annual installments for a period specified by the participant, which period may not exceed five years.

3.3 Lump Sum Payments. A participant who elects to have his or her deferral account paid in a lump sum will receive the lump sum payment on or before March 1 of the year specified in the deferral agreement for commencement of payment. The lump sum payment will consist of (a) cash in the amount credited to his or her cash account, and (b) subject to Section 3.5, the number of shares of common stock equal to the number of units representing shares credited to his or her stock account; provided, however, that no fractional shares will be issued under the plan and the number of shares issued will be rounded down to the nearest full share.

3.4 Installment Payments. A participant who elects to have his or her deferral account paid in annual installments will receive an installment payment on or before March 1 of each year that installments are due commencing with the year specified in his or her deferral agreement. Each installment payment will consist of (a) cash in the amount credited to his or her cash account on the date of payment divided by the number of annual installments remaining to be paid, and (b) subject to Section 3.5, the number of shares of common stock equal to the number of units representing shares credited to his or her stock account divided by the number of annual installments remaining to be paid; provided, however, that no fractional shares will be issued under the plan and the number of units representing shares issued will be rounded down to the nearest full share.

3.5 Limitation on Stock Distributions. If a participant would receive any payment from his or her stock account in excess of the number of shares remaining under the plan, such participant shall receive cash in an amount equal to a number of units representing shares of common stock in his or her stock account times the closing price for such common stock as of the trading day preceding the date of distribution as is necessary to avoid exceeding such remaining number. If more than one participant is in that situation, the Administrator will determine allocations among participants.

3.6 Beneficiaries. A participant may designate in his or her deferral agreement a beneficiary or beneficiaries (which may be an entity other than a natural person) to receive any payments to be made upon his or her death. A participant may elect to have payments to beneficiaries paid in a lump sum or in annual installments for a period not to exceed five years. At any time, and from time to time, a participant may change or revoke his or her designation of beneficiary or form of payment without the consent of any beneficiary. Any such designation, change or revocation must be made in writing and filed with the Administrator. If the participant designates more than one beneficiary, any payments to beneficiaries will be made in equal percentages unless the participant designates otherwise. Any portion of a participant's deferral account that is not disposed of by designation of beneficiary upon the participant's death will be paid to his or her estate.

3.7 Payments on Death. If a participant dies before full payment of his or her deferral account, Agenus will make payments to the participant's designated beneficiary or beneficiaries, or to his or her estate, of the amount remaining in the deceased participant's deferral account. Such

payments will be in the form designated by the participant and will commence on the tenth business day of the calendar year following the death of the participant (or as soon thereafter as practicable) and, in the case of annual installments, will be paid on or before March 1 of each succeeding year. The Administrator may, in his or her discretion, accelerate payment of the cash account, but not the stock account, upon a participant's death.

3.8 Hardship Distributions from Accounts. The Administrator may, in his or her discretion, distribute a portion or all of a participant's cash account in case of an unanticipated emergency that is caused by an event beyond the control of the participant and that would result in severe financial hardship to the individual if early withdrawal were not permitted. The Administrator will determine the date of payment of the distribution. Hardship distributions are not permitted from a participant's stock account. Notwithstanding the foregoing, this Section 3.8 shall be interpreted consistent with Treasury Regulations promulgated pursuant to Code Section 409A, so that a distribution shall only be permitted under this Section 3.8 if the facts and circumstances that would otherwise permit a distribution under this Section 3.8 also qualify as an "unforeseeable emergency" as that term is defined in Treasury Regulation Section 1.409A-3(i)(3), and the distribution shall only be made to the extent permitted under Treasury Regulation Section 1.409A-3(i)(3).

ARTICLE IV

AMENDMENT AND TERMINATION

4.1 Amendment. Agenus may, without the consent of any participant, beneficiary or other person, amend the plan at any time and from time to time; provided, however, that no amendment will reduce the amount credited prior to such amendment to the deferral account of any participant. Notwithstanding the foregoing, no amendment to the plan shall be made that has the effect of modifying the time at or the manner in which any payment would otherwise be made under the terms of the plan, except to the extent that such modification of the time or manner of payment is expressly permitted under Treasury Regulations promulgated under Code Section 409A.

4.2 Termination. Agenus may terminate the plan at any time. Upon termination of the plan, no further deferrals shall be permitted, and distribution of amounts previously deferred shall be made under the terms of the plan as in effect without regard to the termination; provided, however, that Agenus may accelerate payment of benefits upon the termination of the plan consistent with the provisions of Treasury Regulation Section 1.409A-3(j)(4)(ix) (regarding plan terminations and liquidations).

Adopted by directors on March 28, 2003

Approved by shareholders on June 10, 2003

Amendment No. 1 effective January 1, 2005

Amendment No. 2 approved by directors on March 8, 2007

Amendment No. 2 approved by shareholders on June 6, 2007

Amendment No. 3 approved by directors on March 12, 2009

Amendment No. 3 approved by shareholders on June 10, 2009

Amendment No. 4 effective December 9, 2010

Amendment No. 5 approved by directors on March 10, 2011

Amendment No. 5 approved by shareholders on June 15, 2011

Amendment No. 6 approved by directors on March 15, 2012

Amendment No. 6 approved by shareholders on June 13, 2012

Exhibit 10.9

SCHEDULE TO INDEMNIFICATION AGREEMENT

The following is a list of the current and former directors and executive officers of Agenus who are party to an Indemnification Agreement, the form of which was filed as Exhibit 10.4 to our registration statement on Form S-1 (File No. 333-91747):

Noubar Afeyan, Ph.D.
Garo H. Armen, Ph.D.
Frank V. AtLee III
Brian Corvese
Gamil G. de Chadarevian
Tom Dechaene
Margaret Eisen
Renu Gupta
John Hatsopoulos
Wadih Jordan
Mark Kessel
Christine Klaskin
Bruce Leicher
Hyam Levitsky
Timothy Rothwell
Shalini Sharp
Pramod K. Srivastava, Ph.D.
Peter Thornton
Karen Valentine
Kerry Wentworth
Alastair Wood
Timothy Wright

Exhibit 10.22

8/99

STANDARD FORM OF OFFICE LEASE

The Real Estate Board of New York, Inc.

Agreement of Lease, made as of this 13th day of December in the year 2012, between

149 FIFTH AVE. CORP. c/o William Colavito, Inc., 352 Seventh Avenue, Suite 211, New York, NY 10001

party of the first part, hereinafter referred to as OWNER, and AGENUS, INC. with an office at 111 West 57th Street, New York, NY 10019

party of the second part, hereinafter referred to as TENANT,

Witnesseth: Owner hereby leases to Tenant and Tenant hereby hires from Owner

The easterly portion of the Fifth (5th) Floor (as more particularly described in Exhibit A annexed hereto and made a part hereof

in the building known as 149 Fifth Avenue, City of New York 10010 ("Building" or "building"), in the Borough of Manhattan for the term of seven (7) years and five (5) months

(or until such term shall sooner cease and expire as hereinafter provided) to commence on the
day of (SEE RIDER) in the year 2012 , and to end on the
day of (SEE RIDER) in the year 2020

both dates inclusive, at an annual rental rate of (SEE RIDER) . and

which Tenant agrees to pay in lawful money of the United States, which shall be legal tender in payment of all debts and dues, public and private. at the time of payment, in equal monthly installments in advance on the first day of each month during said term, at the office of Owner or such other place as Owner may designate, without any setoff or deduction whatsoever, except that Tenant shall pay the first monthly installment(s) on the execution hereof (unless this lease be a renewal).

The parties hereto, for themselves, their heirs, distributees, executors, administrators, legal representatives, successors and assigns, hereby covenant as follows:

Rent: **1**. Tenant shall pay the rent as above and as hereinafter provided.

Occupancy: **2.** Tenant shall use and occupy the demised premises for

General, administrative and executive offices, and such uses which are ancillary and related thereto,
and for no other purpose.

Tenant Alterations: **3.** Tenant shall make no changes in or to the premises of any nature without Owner's prior written consent. Subject to the prior written consent of Owner (which shall not be unreasonably withheld, conditioned or delayed), and to the provisions of this article, Tenant, at Tenant's expense, may make alterations, installations, additions or improvements which are non-structural and which do not adversely affect utility services or plumbing and electrical lines, in or to the interior of the demised premises by using contractors or mechanics first approved in each instance by Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Tenant shall, before making any alterations, additions, installations or improvements, at its expense, obtain all permits, approvals and certificates required by any governmental or quasi-governmental bodies and (upon completion) certificates of final approval thereof, and shall deliver promptly duplicates of all such permits, approvals and certificates to Owner, and Tenant agrees to carry, and will cause Tenant's contractors and sub-contractors to carry, such worker's compensation, general liability, personal and property damage Insurance as Owner may reasonably require. If any mechanic's lien is filed against the demised premises, or the building of which the same forma a part, for work claimed to have been done for, or materials furnished to, Tenant, whether or not done pursuant to this article, the same shall be discharged by Tenant within thirty days after notice to Tenant thereof, at Tenant's expense, by payment or filing a bond as permitted by law. All fixtures and all paneling, partitions. railings and like installations, installed in the demised premises at any time, either by Tenant or by Owner on Tenant's behalf, shall, upon installation, become the property of Owner and shall remain upon and be surrendered with the demised premises. Tenant shall have the option to remove any installations paid for by Tenant, and Tenant shall not be required to remove any of Landlord's Work or installations made at the demised premises, unless such installations are of a type not customarily installed by other tenants in the Building with spaces similar to the demised premises. Nothing in this article shall be construed to give Owner title to, or to, prevent Tenant's removal, of trade fixtures, moveable office furniture and equipment but upon removal of same from the demised premises or upon removal, of other installations as may be required by Owner, Tenant shall immediately, and at its expense, repair and restore those areas of the demised premises (which have been installed by the Tenant and specifically designated by the parties as specialty additions at the time the plans are submitted) to the condition existing prior to any such installations and repair any damage to the demised premises or the building due to such removal. All property permitted or required to be removed by Tenant at the end of the term remaining in the demised premises after Tenant's removal shall be deemed abandoned and may, at the election of Owner, either be retained as Owner's property or may be removed from the demised premises by Owner, at Tenant's expense.

Maintenance and Repairs **4.** Tenant shall, throughout the term of this lease, take good care of the demised premises and the fixtures and therein. Tenant shall be responsible for all damage or injury to the demised premises or any other part of the building and the systems and equipment thereof, whether requiring structural or nonstructural repairs caused by, or resulting from, the act, omission (where there is a duty to act) or negligence of Tenant, Tenant's subtenants, agents, employees, invitees or licensees, or which arises out of any work, labor, service or equipment done for, or supplied to, Tenant or any subtenant, or arising out of the installation, use or operation of the property or equipment of Tenant or any subtenant; Tenant shall also repair all damage to the building and the demised premises caused by the moving of Tenant's fixtures, furniture and equipment. Tenant shall promptly make, at Tenant's expense all repairs in and to the demised premises for which Tenant is responsible, using only the contractor for the trade or trades in question, selected from a list of at least two contractors per trade submitted by Owner.

Any other repairs in or to the building or the facilities and systems thereof, for which Tenant is responsible shall be performed by Owner at the Tenant's expense, Owner shall maintain in good working: order and repair the exterior and the structural portions of the building, including the structural portions of the demised premises, and the public portions of the building interior and the building plumbing, electrical, heating and ventilating systems (to the extent such systems presently exist) serving the demised premises. Tenant agrees to give prompt notice of any defective conditions in the demised premises for which Owner may be responsible hereunder. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or others making repairs, alterations, additions or improvements in or to any portion of the building or the demised premises or in and to the fixtures, appurtenances or equipment thereof. Owner shall perform any necessary repairs with due diligence and shall not unreasonably interfere with Tenant's use and occupancy of the demised premises. It is specifically agreed that Tenant shall not be entitled to any setoff or reduction of rent by reasons of any failure of Owner to comply with the covenants of this lease. Tenant agrees that Tenant's sole remedy at law in such instance will be by way of an action for breach of contract. The provisions of this Article 4 shall not apply in the case of fire or other casualty, which are dealt with in Article 9 hereof.

Window Cleaning: **5.** Tenant will not clean nor require, penult, suffer or allow any window in the demised premises to be cleaned from the outside in violation of Section 202 of the Labor Law or any other applicable law, or of the Rules of the Board of Standards and Appeals, or of any other Board or body having or asserting jurisdiction. Owner shall clean the exterior of the windows at least two times per year.

Requirements of Law, Fire Insurance, Floor Loads: 6. Prior to the commencement of the lease term, if Tenant is then in possession, and at all times thereafter, Tenant, at Tenant's sole cost and expense, shall promptly comply with all present and future laws, orders and regulations of all state, federal, municipal and local governments, departments, commissions and boards and any direction of any public officer pursuant to law, and all orders, roles and regulations of die New York Board of Fire Underwriters, Insurance Services Office, or any similar body which shall impose any violation, order or duty upon Owner or Tenant with respect to Tenant's specific manner of use of the demised premises, arising out of Tenant's specific use

or manner of use thereof, (excluding mere use for Tenant's permitted use) or, with respect to the building if arising out of Tenant's specific use or manner of use of the demised premises or the building (excluding mere use for the use permitted under the lease). Nothing herein shall require Tenant to make structural repairs or alterations unless Tenant has, by its manner of use of the demised premises or method of operation therein, violated any such laws, ordinances, orders, rules, regulations or requirements with respect thereto. Tenant may, after securing Owner to Owner's satisfaction against all damages, interest penalties and expenses, including, but not limited to, reasonable attorneys fees, by cash deposit or by surety bond in an amount and in a company satisfactory to Owner, contest and appeal any such laws, ordinances, orders, roles, regulations or requirements provided same is done with all reasonable promptness and provided such appeal shall not subject Owner to prosecution for a criminal offense, or constitute a default under any lease or mortgage under which Owner may be obligated, or cause the demised premises or any part thereof to be condemned or vacated.

Tenant shall not do or permit, any act or thing to be done in or to the demised premises which is contrary to law, or which will invalidate or be in conflict with public liability, fire or other policies of insurance at any time carried by or for the benefit of Owner with respect to the demised premises or the building of which the demised premises form a part, or which shall or might subject Owner to any liability or responsibility to any person, or for property damage, Tenant shall not keep anything. In the demised premises, except as now or hereafter permitted by the Fire Department, Board of Fire Underwriters, Fire Insurance Rating Organization or other authority having jurisdiction, and then only in such manner and such quantity so as not to increase the rate for fire insurance applicable to the building, nor use the demised premises in a manner which will increase the insurance rate for the building or any property located therein over that in effect prior to the commencement of Tenant's occupancy. Tenant shall pay all costs, expenses, fines, penalties, or damages, which may be imposed upon Owner by reason of Tenant's failure to comply with the provisions of this article, and if by reason of such failure the fire insurance rate shall, at the beginning of this lease, or at any time thereafter, be higher than it otherwise would be, then, Tenant shall reimburse Owner, as additional rent hereunder, for that portion of all fire insurance premiums thereafter paid by Owner which shall have been charged because of such failure by Tenant. In any action or proceeding wherein Owner and Tenant are parties, a schedule or "make-up" of rate for the building or the demised premises issued by the New York Fire Insurance Exchange, or other body making fire insurance rates applicable to said premises shall be conclusive evidence of the facts therein slated and of the several items and charges in the fire insurance rates then applicable to said premises. Tenant shall not pay any increase in the insurance rate for the Building resulting from Tenant's use of the Demised Premises in accordance with Article 2 hereof. Tenant shall not place a load upon any floor of the demised premises exceeding the floor load per square foot area which it was designed to carry and which is allowed by law. Owner reserves the right to prescribe the weight and position of all safes, business machines and mechanical equipment. Such installations shall be placed and maintained by Tenant, at Tenant's expense, in settings sufficient, in Owner's judgment, to absorb and prevent vibration, noise and annoyance.

Subordination: **7.** This lease is subject and subordinate to all ground or underlying leases and to all mortgages which may now or hereafter affect such leases or the real property of which the demised premises are a part, and to all renewals, modifications, consolidations, replacements and extensions of any such underlying leases and mortgages, This clause shall be self-operative and no further instrument of subordination shall be required by any ground or underlying lessor or by any mortgagee, affecting any lease of the real property of which the demised premises are a part. In confirmation of such subordination, Tenant shall from time to time execute promptly any certificate that Owner may reasonably request.

Property Loss, Damage Reimbursement Indemnity: **8.** Owner or its agents shall not be liable for any damage to property of Tenant or of others entrusted to employees of the building, nor for loss of or damage to any property of Tenant by theft or otherwise, nor for any injury or damage to persons or property resulting from any cause of whatsoever nature, unless caused by or due to, the negligence or willful misconduct of Owner, its agents, servants, contractors or employees. Owner or its agents will not be liable for any such damage caused by other tenants or persons in, upon or about said building, or caused by operations in construction of any private, public or quasi public works. If at any time any windows of the demised premises are temporarily closed, darkened or boarded up (or permanently closed, darkened or bricked up, if required by law) for any reason whatsoever including, but not limited to, Owner's own acts, Owner shall not be liable for any damage Tenant may sustain thereby, and Tenant shall not be entitled to any compensation therefor, nor abatement or diminution of rent, nor shall the same release Tenant from its obligations hereunder, nor constitute an eviction. Tenant shall indemnify and save harmless Owner against and from all liabilities, obligations, damages, penalties, claims, costs and expenses for which Owner shall not be reimbursed by insurance, including reasonable attorneys' fees, paid, suffered or incurred as a result of any breach by Tenant, Tenant's agents, contractors, employees, invitees, or licensees, of any covenant or condition of this lease, or the negligence or improper conduct of the Tenant Tenant's agents, contractors, employees, invitees or licensees. Tenant's liability under this lease extends to the acts and omissions of any subtenant, and any agent, contractor, employee, invitee or licenses of any subtenant. In case any action or proceeding is brought against Owner by reason of any such claim, Tenant, upon written notice from Owner, will, at Tenant's expense, resist or defend such action or proceeding by counsel approved by Owner in writing, such approval not to be unreasonably withheld.

Destruction, Fire and Other Casualty: **9.** (a) If the demised premises or any part thereof shall be damaged by lire or other casualty, Tenant shall give immediate notice thereof to Owner, and this lease shall continue in full force and effect except as hereinafter set forth. (b) If the demised premises or Tenant's access thereto are partially damaged or rendered partially unusable by fire or other casually, the damages thereto shall be repaired by, and at the expense of Owner, and the rent and other items of additional rent, until such repair shall be substantially completed, shall be apportioned from the day following the casually, according to the part of the demised premises which is usable. (c) If the demised premises or Tenant's access thereto are totally damaged or rendered wholly unusable by fire or other casualty then the rent and other items of additional rent, as hereinafter expressly provided, shall be proportionately paid up to the time of the casualty, and thenceforth shall cease until the date when the demised premises shall have been repaired and restored by Owner (or if sooner reoccupied in part by Tenant then rent shall be apportioned as provided in subsection (b) above), subject to Owner's right to elect not to restore the same as hereinafter provided. (d) If the demised premises are rendered wholly unusable or (whether or not the demised premises are damaged In whole or in part) if the building shall be so damaged that Owner shall decide to demolish it or to rebuild it, then, in any of such events, Owner may elect to terminate this lease by written notice to Tenant, given within one hundred eighty (180) days after such fire or casualty, or thirty (30) days after adjustment of the insurance claim for such fire or casualty, whichever is sooner, specifying a date for the expiration of the lease, which date shall not be more than sixty (60) days after the giving of such notice, and upon the date specified in such notice the term of this lease shall expire as fully and completely as if such date were the date set forth above for the termination of this lease, and Tenant shall forthwith quit, surrender and vacate the demised premises without prejudice however, to Landlord's rights and remedies against Tenant under the lease provisions in effect prior to such termination, and any rent owing shall be paid up to such date, and any payments of rent made by Tenant which were on account of any period subsequent to such date shall be returned to Tenant. Unless Owner shall serve a termination notice as provided for herein,, Owner shall make the repairs and restorations under the conditions of (b) and (c) hereof, with all reasonable expedition, subject to delays due to adjustment of insurance claims, labor troubles and causes beyond Owner's control. After any such casualty, Tenant shall cooperate with Owner's restoration by removing from the demised premises as promptly as reasonably possible, all of Tenant's salvageable inventory and moveable equipment, furniture, and other property . Tenant's liability for rent shall resume thirty (30)days after written notice from Owner that the demised premises are substantially ready for Tenant's occupancy or sooner if Tenant occupies the demised premises for the conduct of its business. (e) Nothing contained hereinabove shall relieve Tenant from liability that may exist as a result of damage from fire or other casualty. Notwithstanding the foregoing, including Owner's obligation to restore under subparagraph (b) above, each party shall look first to any insurance in its favor before making any claim against the other party for recovery for loss or damage resulting from fire or other casualty, and to the extent that such Insurance is in force and collectible, and to the extent permitted by law, Owner and Tenant each hereby releases and waives all right of recovery with respect to subparagraphs (b), (d), and (e) above, against the other or anyone claiming through or under each of them by way of subrogation or otherwise . The release and waiver herein referred to shall be deemed to include any loss or damage to the demised premises and/or to any personal property, equipment, trade fixtures, goods and merchandise located therein. The foregoing release and waiver shall be in force only if both releasors' insurance policies contain a clause providing that such & release or waiver shall not invalidate the insurance. If, and to the extent, that such waiver can be obtained only by the payment of additional premiums, then the party benefiting from the waiver shall pay such premium within ten days after written demand or shall be deemed to have agreed that the party obtaining insurance coverage shall be free of any further obligation under the provisions hereof with respect to waiver of subrogation. Tenant acknowledges that Owner will not carry insurance on Tenant's furniture and/or furnishings or fixtures or equipment, improvements appurtenances removable by Tenant, and agrees that Owner will not be obligated to repair any damage or replace the same. Tenant hereby waives the provisions of this article shall govern and control in lieu thereof.

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Eminent Domain: **10.** If the whole or any part of the demised premises shall be acquired or condemned by Eminent Domain for any public or quasi public use or purpose, then, and in that event, the term of this lease shall cease and terminate from the date of title vesting in such proceeding, and Tenant shall have no claim for the value of any unexpired term of said lease, and assigns to Owner, Tenant's entire interest in any such award. Tenant shall have the right to make an independent claim to the condemning authority for the value of Tenant's moving expenses and personal property, trade fixtures and equipment, provided Tenant is entitled pursuant to the terms of the lease to remove such property, trade fixture and equipment at the end of the term, and provided further such claim does not reduce Owner's award.

Assignment, Etc.: **11.** Tenant, for itself, its heirs, distributees, executors, administrators, legal representatives, successors and assigns, expressly covenants that it

Mortgage, shall not assign, mortgage or encumber this agreement, nor underlet, or suffer or permit the demised premises or any part thereof to be used by others, without the prior written consent of Owner in each instance. Provided the purpose of the transaction is to transfer this Lease, transfer of the majority of the stock of a corporate Tenant or the majority partnership interest of a partnership Tenant shall be deemed an assignment. If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than Tenant, Owner may, after default by Tenant beyond any applicable notice and/or grace period, collect rent from the assignee, undertenant or occupant, and apply the net amount collected to the rent herein reserved, but no such assignment, underletting, occupancy or collection shall be deemed a waiver of this covenant, or the acceptance of the assignment, undertenant or occupant as tenant, or a release of Tenant from the further performance by Tenant of covenants on the part of Tenant herein contained, The consent by Owner to an assignment or underletting shall not In any wise be construed to relieve Tenant from obtaining the express consent in writing of Owner to any further assignment or underletting.

Electric Current: **12.** Rates and conditions in respect to submetering or rent inclusion, as the case may be, to be added in RIDER attached hereto. Tenant covenants and agrees that at all times its use of electric current shall not exceed the capacity of existing feeders to the building or the risers or wiring installation, and Tenant may not use any, electrical equipment which, in Owner's opinion, reasonably exercised, will overload such installations or interfere with the use thereof by other tenants of the building. The change at any time of the character of electric service shall in no way make Owner liable or responsible to Tenant, for any loss, damages or expenses which Tenant may sustain,

Access to Premises: **13.** Owner or Owner's agents shall have the right (but shall not be obligated) to enter the demised premises in any emergency at any time, and, at other reasonable times upon reasonable advance notice, to examine the same and to make such repairs, replacements and improvements as Owner may deem reasonably necessary and reasonably desirable to the demised premises or to any other portion of the building or which Owner may elect to perform. Tenant shall permit Owner to use and maintain and replace pipes and conduits in and through. The demised premises and to erect new pipes and conduits therein, provided they are concealed within the walls, floor, or ceiling, Owner may, during the progress of any work in the demised premises, take all necessary materials and equipment into said premises without the same constituting an eviction, nor shall the Tenant be entitled to any abatement of rent while such work is in progress, nor to any damages by reason of loss or interruption of business or otherwise. Throughout the term hereof, Owner shall have the right to enter the demised premises at reasonable hours for the purpose of showing the same to prospective purchasers or mortgagees of the building, and during the last six months of the term, for the purpose of showing the same to prospective tenants. If Tenant is not present to open and permit an entry into the demised premises, Owner or Owner's agent may enter the same whenever, such entry may be necessary or permissible by master key or forcibly, and provided reasonable care is exercised to safeguard Tenant's property, such entry shall not render Owner or its agents liable therefor, nor in any event shall the obligations of Tenant hereunder be affected. If during the last month of the term Tenant shall have removed all or substantially all of Tenant's property therefrom, Owner may' immediately enter, alter, renovate or redecorate the demised premises without limitation or abatement of rent, or incurring liability to Tenant for any compensation, and such act shall have no effect on this lease or Tenant's obligations hereunder.

Rider to be added if necessary.

Vault, Vault Space, Area: **14.** No vaults, vault space or area, whether or not enclosed or covered, not within the property line of the building, is leased hereunder, anything contained in or indicated on any sketch, blue print or plan, or anything contained elsewhere in this lease to the contrary notwithstanding. Owner makes no representation as to the location of the property line of the building. All vaults and vault space and all such areas not within the property line of the building, which Tenant may be permitted to use and/or occupy, is to be used and/or occupied under a revocable license, and if any such license be revoked, or if the amount of such space or area be diminished or required by any federal, state or municipal authority or public utility, Owner may not be subject to any liability, nor shall Tenant be entitle to any compensation or diminution or abatement of rent, nor shall such revocation, diminution or requisition be deemed constructive or actual eviction. Any tax, fee or charge of municipal authorities for such vault or area shall be paid by Tenant.

Occupancy: **15.** Tenant will not at any time use or occupy the demised premises in violation of the certificate of occupancy issued for the building of which the demised premises are a part. Tenant has inspected the demised premises and accepts them as is, subject to the riders annexed hereto with respect to Owner's work, if any. In any event, except as specifically set forth herein, Owner makes no representation as to the condition of the demised premises, and Tenant agrees to accept the same subject to violations, whether or not of record. Owner represents that Tenant's use of the Demised Premises in accordance with Article 2 of this Lease is permitted by the certificate of occupancy for the Building.

Bankruptcy: **16.** (a) Anything elsewhere in this lease to the contrary notwithstanding, this lease may be cancelled by Owner by the sending of a written notice to Tenant within a reasonable time after the happening of anyone or more of the following events: (I) the commencement of a case in bankruptcy or under !be laws of any state naming Tenant as the debtor; or (2) the making by Tenant of an assignment or any other arrangement for the benefit of creditors under any state statute. Neither Tenant nor any person claiming through or under Tenant, or by reason of any statute or order of court, shall thereafter be entitled to possession of the premises demised but shall forthwith quit and surrender the demised premises. If this lease shall be assigned in accordance with its terms, the provisions of this Article 16 shall be applicable only to the party then owning Tenant's interest in this lease.

(b) it is stipulated and agreed that in the event of the termination of this lease pursuant to (a) hereof, Owner shall forthwith, notwithstanding any other provisions *of* this lease to the contrary, be entitled to recover from Tenant as and for liquidated damages, an amount equal to the difference between the rent reserved hereunder for the unexpired portion of the term demised and the fair and reasonable rental value of the demised premises for the same period. In the computation of such damages the difference between any installment of rent becoming due hereunder after tile date of termination, and the fair and reasonable rental value of the demised premises fur the period for which such installment was payable, shall be discounted to the date of termination at the rate of four percent (4%) per annum: If such demised premises or any part thereof be re-let by the Owner for the unexpired term of said lease, or any part thereof, before presentation of proof of such liquidated damages to any court, commissioner tribunal, the amount of rent reserved upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the demised premises so re-let during the term of the re-letting. Nothing herein contained shall limit or prejudice the right of the Owner to prove for and obtain as liquidated damages, by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than, the amount of the difference referred to above.

Default: **17.** (1) If Tenant defaults in fulfilling any of the covenants of this lease other than the covenants for the payment of rent or additional rent; or if the demised premises are abandoned; or if any execution or attachment shall be issued against Tenant or any of Tenant's property, whereupon the demised premises shall be taken or occupied by someone other than Tenant' or if this lease be rejected under *§365* of Title 11 or the U.S. Code (Bankruptcy Code); or if Tenant shall fail to move in or take possession of the demised premises within forty five(45) days after the commencement of the term of this lease then, in any one or more of such events, upon Owner serving a written twenty (20) days notice upon Tenant specifying the nature of said default, and upon the expiration of said fifteen (15) days, If Tenant shall have failed to comply with or remedy such default, or if the said default or omission complained of shall be of a nature that same cannot be completely cured or remedied within said twenty (20) day period, and if Tenant shall not have diligently commenced curing such default within such twenty (20)day period, and shall not thereafter with reasonable diligence and in good faith to proceed to remedy or cure such default, then Owner may serve a written seven (7) days notice of cancellation of this lease upon Tenant, and upon the expiration of said seven (7) days this lease and the term thereunder shall end and expire as fully and completely as If the expiration of such seven (7) day period were the day therein definitely fixed for the end and expiration of this lease and the term thereof, and Tenant shall then quit and surrender the demised premises to Owner, but Tenant shall remain liable as hereinafter provided.

. (2) If the notice provided for in (1) hereof shall have been given, and the term shall expire as aforesaid; or if Tenant shall make default in the payment of the rent reserved herein, or any item of additional rent herein mentioned, or any part of either, or in making any other payment herein required, which monetary default shall continue for a period of ten (10) days after notice to Tenant thereof; then, and in any of such events, Owner may without further notice, re-enter the demised premises either by summary proceedings or other legal means and the legal representative of Tenant or other occupant of the demised premises, and remove their effects and hold the demised premises as if this tease had not been made. and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end. If Tenant shall make default hereunder prior to the date fixed as the commencement of renewal or extension of this lease, Owner may cancel and terminate such renewal or extension agreement by written notice.

Remedies of Owner and Waiver of Redemption:

18. In case of any such default, re-entry, expiration and/or dispossess by summary proceedings or otherwise, (a) the rent shall become due (hereupon and be paid up to the time of such re-entry, dispossess and/or expiration, (b) Owner may re-let the demised premises or any part or parts thereof, either in the name of Owner or otherwise, for a term or terms which may at Owner's option be less than or exceed the period which would otherwise have constitute the balance of the term of this lease, and may grant concessions or free rent or charge a higher rental than that in this lease, and/or (c) Tenant or the legal representative of Tenant shall also pay to Owner as liquidated damages for the failure of Tenant to observe and perform said Tenant's covenants herein contained, any deficiency between the rent hereby reserved and/or covenanted to be paid and the net amount, if any, of the rents collected on account of the lease or leases of the demised premises for each month of the period which would otherwise have constituted the balance of the term of this lease. The failure of Owner to re-let the demised premises, or any part or parts thereof, shall not release or affect Tenant's liability for damages. In computing such liquidated damages there shall be added to the said deficiency such expenses as Owner may incur in connection with re-letting, such as legal expenses, reasonable attorneys' fees, brokerage, advertising and for keeping the demised premises in good order or for preparing the same for reletting. Any such liquidated damages shall be paid in monthly installments by Tenant on the rent day specified in this lease, and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Owner to collect the deficiency for any subsequent month by a similar proceeding. Owner, in putting the demised premises in good order or preparing the same for re-rental may, at Owner's option, make such alterations, repairs. replacements, and/or decorations in the demised premises as Owner, in Owner's sole judgment, considers advisable and necessary for the purpose of re-letting the demised premises, and the making of such alterations, repairs, replacements, and/or decorations shall not operate or be construed to release Tenant from liability hereunder as aforesaid. Owner shall in no event be liable in any way whatsoever for failure to re-let the demised premises, or in the event that the demised premises are re-let, for failure to collect the rent thereof under such re-letting, and in no event shall Tenant be entitled to receive any excess, if any, of such net rents collected over the sums payable by Tenant to Owner hereunder. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, Owner shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not herein provided for. Mention in this lease of any particular remedy, shall not preclude Owner from any other remedy, in law or in equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed fur any cause, or in the event of Owner obtaining possession of the demised premises, by reason of the violation by Tenant of any of the covenants and conditions of this lease, or otherwise.

Fees and Expenses: **19.** If Tenant shall default beyond the expiration of the applicable grace periods, if any in the observance or performance of any term or covenant on Tenant's part to be observed or performed under, or by virtue of, any of the terms or provisions in any article of this lease, after notice, if required, and upon expiration of any applicable grace period, if any, (except in an emergency) then, unless otherwise

provided elsewhere in this lease, Owner may immediately, in the event of an emergency, and at other times upon reasonable notice, perform the obligation of Tenant thereunder. If Owner, In connection with the foregoing, or in connection with any default by Tenant in the covenant to pay rent hereunder, makes any expenditures or incurs any obligations for the payment of money, including but not limited to reasonable attorneys' fees, in instituting, prosecuting or defending any action or proceeding, and prevails in any such action or proceeding, then Tenant will reimburse Owner for such sums so paid, or obligations incurred, with interest and costs. The foregoing expenses incurred by reason of Tenant's default shall be deemed

to be additional rent hereunder, and shall be paid by Tenant to Owner within ten (10) days of rendition of any bill or statement to Tenant therefor. If Tenant's lease term shall have expired at the time of making of such expenditures or Incurring of such obligations, such sums shall be recoverable by Owner, as damages.

Building Alterations and Management: 20. Owner shall have the right at any time without the same constituting an eviction and without incurring liability to Tenant therefor, to change the arrangement and/or location of public entrances, passage ways, doors, doorways, corridors, elevators, stairs, toilets or other public parts of the building (provided such change does not materially and adversely affect Tenant's use of or access to the demised premises), and to change the name, number or designation by which the building may be known. There shall be no allowance to Tenant for diminution of rental value and no liability on the part of Owner by reason of inconvenience, annoyance or injury to business arising from Owner or other Tenants making repairs in the building or any such alterations, additions and improvements. Furthermore, Tenant shall not have any claim against Owner by reason of Owner's imposition of such controls of the manner of access to the building by Tenant's social or business visitors as the Owner may reasonably deem necessary for the security of the building and its occupants.

so Repre- Sentations By Owner: 21. Neither Owner nor Owner's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or the demised premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the demised premises, except as herein expressly set forth, and no rights, easements or licenses are acquired by Tenant by Implication or otherwise, except as expressly set forth in the provisions of this lease, Tenant has inspected the the demised premises and is thoroughly acquainted with their condition and agrees to take the same "as-is", and acknowledges that the taking of possession of the demised premises by Tenant shall be conclusive evidence that the said demised premises were in good and satisfactory condition at the time such possession was so taken, except as to latent defects . All understandings and agreements heretofore made between the parties hereto are merged in this contract, which alone fully and completely expresses the agreement between Owner and Tenant, and any executory agreement hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part, unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

End of Term: 22. Upon the expiration or other termination of the term of this lease, Tenant shall quit and surrender to Owner the demised premises, "broom-clean", in good order and condition, ordinary wear and damages which Tenant is not required to repair as provided elsewhere in this lease excepted, and Tenant shall remove all its property. Tenant's obligation to observe or perform this covenant shall survive the expiration or other termination of this lease. If the last day of the term of this lease or and renewal thereof, falls on Sunday, this lease shall expire at noon on the preceding Saturday, unless It be a legal holiday, in which case it shall expire at noon on the preceding business day.

Quiet Enjoyment: 23. Owner covenants and agrees with Tenant that upon Tenant paying the rent and additional rent and observing and performing all the terms, covenants and conditions, on Tenant's part to be observed and performed, Tenant may peaceably and quietly enjoy the premises hereby demised, subject, nevertheless, to the terms and conditions of this lease including, but not limited to, Article 31 hereof, and to the ground leases, underlying leases and mortgages hereinbefore mentioned.

Failure to Give Possession: 24. If Owner is unable to give possession of the demised premises on the date of the commencement of the term hereof because of the holding-over or retention of possession of any tenant, undertenant or occupants, or if the demised premises are located in a building being constructed, because such building has not been sufficiently completed to make the demised premises ready for occupancy, or because of the fact that a certificate of occupancy has not been procured, or for any other reason, Owner shall not be subject to any liability for failure to give possession on said date and the validity of the lease shall not be impaired under such circumstances, nor shall the same be construed in any way to extend the term of this lease, but the rent payable hereunder shall be abated (provided Tenant is not responsible for Owner's inability to obtain possession or complete construction) until after Owner shall have given Tenant written notice that the Owner is able to deliver possession in condition required by this lease. If permission is given to Tenant to enter into possession of the demises premises, or to occupy premises other than the demised premises, prior to the date specified as the commencement of the term of this lease, Tenant covenants and agrees that such possession and/or occupancy shall be deemed to be under all the terms, covenants, conditions and provisions of this lease, except the obligation to pay the fixed annual rent set forth in the preamble to this lease. The provisions of this lease are intended to constitute an express provision to the contrary within the meaning of Section 223-a of the New York Real Property Law. Owner represents that the demised premises are currently vacant and are not subject to any other lease or occupancy agreement.

No Waiver: 25. The failure of Owner or Tenant to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this lease or of any of the Rules or Regulations, set forth or hereafter adopted by Owner, shall not prevent a subsequent act which would have originally constituted a violation from having all the force and effect of an original violation. The receipt by Owner of rent and/or additional rent with knowledge of the breach of any covenant of this lease shall not be deemed a waiver of such breach, and no provision of this lease shall be deemed to have been waived by Owner or Tenant unless such waiver be in writing signed by the other party. No payment by Tenant or receipt by Owner of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement of any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Owner may accept such check or payment without prejudice to Owner's right to recover the balance of such rent or pursue any other remedy in this lease provided. No act or thing done by Owner or Owner's agents during the term hereby demised shall be deemed an acceptance of a surrender of the demised premises, and no agreement to accept such surrender shall be valid unless in writing signed by Owner. No employee of Owner or Owner's agent shall have any power to accept the keys of said premises prior to the termination of the lease, and the delivery or keys to any such agent or employee shall not operate as. a termination of the lease or a surrender of the demised premises.

Waiver of Trial by Jury: 26. It is mutually agreed by and between Owner and Tenant that the respective parties hereto shall, and they hereby do, waive trial by jury in any action proceeding or counterclaim brought by either of the parties herein against the other (except for personal injury or property damage) on any matters whatsoever arising out of, or in any way connected with, this lease, !he relationship of Owner and Tenant, Tenant's use of, or occupancy of, the demised premises, and any emergency statutory or any other statutory remedy. It is further mutually agreed that in the event Owner commences any proceeding or action for possession, including a summary proceeding for possession of the demised premises, Tenant will not interpose any counterclaim of whatever nature or description in any such proceeding, including a counterclaim under Article 4, except for statutory mandatory counterclaims.

Inability to Perform: 27. This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no way be affected, impaired or excused because Owner is unable to fulfill any of its obligations under this lease, or to supply, or is delayed in supplying, any service expressly or impliedly to be supplied, or is unable to make, or is delayed in making, any repair, additions, alterations or decorations, or is unable to supply or is delayed in supplying, any equipment, fixtures, or other materials, if Owner is prevented or delayed from so doing by reason of strike or labor troubles or any cause beyond Owner's reasonable control, but not limited to, government preemption or restrictions. or by reason of any rule, order or regulation of any department or subdivision thereof of any government agency, or by reason of the conditions which have been or are affected, either directly or indirectly, by war or other emergency.

Bills and Notices: 28. Except as otherwise in this lease provided, a bill, statement, notice or communication which Owner may desire_ or be required to give to Tenant, shall be deemed sufficiently given or rendered if, in writing, sent by registered or certified mail addressed to Tenant at the building of which the demised premises form a part, or at the last known business address of Tenant _ addressed to Tenant, and the time of the rendition of such bill or statement and of the giving of such notice or communication shall be deemed to be the time when the same is received or refused .Prior to the commencement date of the term, any such notice shall be addressed to Tenant at the address first hereinabove given. Any notice by Tenant to Owner must be served by registered or certified mail addressed to Owner at the address first hereinabove given or at such other address as Owner shall designate by written notice (and shall be deemed given when received or refused, as the case maybe). .

Services **29.** As long as lease is in effect Owner shall provide: (a) elevator facilities on business days from 8 a.m. to 6 p.m. and have one elevator subject to call at all other times; (b) heat to the demised premises seven (7) days a week from 7 a.m. to 7 p.m. when and as appropriate based upon the temperature; (c) water for ordinary lavatory, drinking and cleaningpurposes, but if Tenant uses or consumes water for any other purpose or in unusual quantities (of which fact Owner shall be the sole judge), Owner may install a water meter at Tenant's expense, which Tenant shall thereafter maintain at Tenant's expense in good working order and repair, to register such water consumption , and Tenant shall pay for water consumed as shown on said meter as additional rent as and when bills are rendered; (d) cleaning service for the demised premises on business days at Owner's expense provided that the same are kept in order by Tenant. If, however, said premises are to be kept clean by Tenant, it shall be done at Tenant's sole expense, in a manner reasonably satisfactory to Owner, and no one other than persons reasonably approved by Owner shall be permitted to enter said premises or the building of which they are apart for such purpose. Tenant shall pay Owner the cost of removal of any of Tenant's refuse and rubbish from the building ; (e) If the demised premises are serviced by Owner's air conditioning/cooling and ventilating system, ;the conditioning/cooling will be furnished to Tenant from May 15th through September 30th on business days (Mondays through Fridays , holidays excepted) from 8:00 a.m. to 6:00 p.m., and ventilation will be furnished on business days during the aforesaid hours except when air conditioning/ cooling will be furnished as aforesaid. If Tenant requires air conditioning/cooling or ventilation for more extended hours or on Saturdays, Sundays or on holidays, as defined under Owner's contract with the International Union of Operating Engineers Local 94,94A. 94B, Owner will furnish the same at Tenant's expense.

RIDER to be added in respect to rates and conditions for

such additional service; (f) Owner reserves the right to stop services of the heating, elevators, plumbing, air-conditioning, electric, power systems or cleaning or other services, if any, when necessary by reason of accident, or for repairs, alterations, replacements or improvements necessary or desirable in the judgment of Owner, for as long as may be reasonably required by reason thereof. If the building of which the demised premises are a part supplies manually operated elevator service, Owner at any time may substitute automatic control elevator service and proceed diligently with alterations necessary therefor without in any way affecting this lease or the obligations of Tenant hereunder.

Captions: **30.** The Captions are inserted only as a matter of convenience and for reference, and In no way define, limit or describe the scope of this lease nor the intent of any provisions thereof.

Definitions: **31.** The term "office", or "offices", wherever used in this lease, shall not be construed to mean premises used as a store or stores, for the sale or display, at any lime, of goods, wares or merchandise, of any kind, or as a restaurant, shop, booth, bootblack or other stand, barber shop, or for other similar purposes, or for manufacturing. The term "Owner" means a landlord or lessor, and as used ill this lease means only the owner, or the mortgagee in possession for the time being, of the land and building (or the owner of a lease of the building or of the land and building of which the demised premises form a part, so that in the event of any sale or sales of said land and building, or of said lease, or in the event of a lease of said building, or of the land and building, the said Owner shall be and hereby is, entirely freed and relieved of all covenants and obligations or Owner hereunder, and it shall be deemed and construed without further agreement between the parties or their successors in interest, or between the parties and the purchaser, at any such sale, or the said lessee of the building, or of the land and building, that the purchaser or the lessee of the building has assumed and agreed to carry out any and all covenants and obligations of Owner, hereunder. the words "re-enter" and "reentry" as used in this lease are not restricted to their technical legal meaning. The term “business days” as used in this lease shall exclude Saturdays, Sundays and all days as observed by the State or Federal Government as legal holidays and those designated as holidays by the applicable building service union employees service contract, or by the applicable Operating Engineers contract with respect to HVAC service. Wherever It is expressly provide in this lease that consent shall not be unreasonably withheld, such consent shall not be unreasonably delayed.

Adjacent Excavation: **32.** If an excavation shall be made upon land adjacent to the demised premises, or shall be Shoring: authorized to be made, Tenant shall afford to the person causing or authorized to cause such excavation, a license to enter upon the demised premises for the purpose of doing such work as said person shall deem necessary to preserve the wall or the building, of which demised premises form a part, from injury or damage, and to support the same by proper foundations, without any claim for damages or indemnity against Owner, or diminution or abatement of rent.

Rules and Regulations: **33.** Tenant and Tenant's servants, employees, agents, visitors, and licensees shall observe faith fully, and comply strictly with, the Rules and Regulations attached hereto and such other and further reasonable Rules and Regulations as Owner or Owner's agents may from time to time adopt. Notice of any additional Rules or Regulations shall be given in such manner as Owner may elect. In case Tenant disputes the reasonableness of any additional Rules or Regulations hereafter made or adopted by Owner or Owner's agents, the parties hereto agree to submit the question of the reasonableness of such Rules or Regulations for decision to the New York office of the American Arbitration Association, whose determination shall be final and conclusive upon the parties hereto. The right to dispute the reasonableness of any additional Rules or Regulations upon Tenant's part shall be deemed waived unless the same shall be asserted by service of a notice, in writing, upon Owner, within fifteen (15) days after the giving of notice thereof. Nothing in this lease contained shall be construed to impose upon Owner any duty or obligation to enforce the Rules and Regulations or terms, covenants or conditions in any other lease as against any other tenant, and Owner shall not be liable to Tenant for violation of the same by any other tenant, its servants, employees, agents, visitors or licensees. The Rules and Regulations shall not be enforced against Tenant in a discriminatory manner.

Security: **34.** Tenant has deposited with Owner the sum of $ (SEE RIDER) as security for the faithful performance and observance by Tenant of the terms, provisions and conditions of this lease; it is agreed chat in the event Tenant defaults beyond any applicable notice and/or grace period in respect of any of the terms, provisions and conditions of this lease, including, but not limited to, the payment or rent and additional rent, Owner may use. apply or retain the whole or any part of the security so deposited to the extent required for the payment of any rent and additional rent, or any other sum as to which Tenant is so in default, or for any sum which Owner may expend or may be required to expend by reason of Tenant's default in respect of any of the terms, covenants and conditions of this lease, including but not limited to, any damage or deficiency in the re-letting of the demised premises, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Owner, In the event that Tenant shall comply with all of the terms, provisions, covenants and conditions or this lease, the security shall be returned to Tenant within 30 days after the dale fixed as the end of the lease and after delivery of entire possession of the demised premises to Owner. In the event of a sale of the land and building, or leasing of the building, of which the demised premises form a part, Owner shall transfer the security to the vendee or lessee, and Owner shall thereupon be released by Tenant from all liability for the return of such security; and Tenant

agrees to look to the new Owner solely for the return of said security, and it is agreed that the provision hereof shall apply to every transfer or assignment made of the Security to a new Owner. Tenant further covenants that it will not assign or encumber, or attempt to assign or encumber, the monies deposited herein as Security, and that neither Owner nor its successors or assigns shall be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

Estoppel Certificate: **35.** Either party, at any time, and from time to time, upon at least ten (10) days prior notice from the other, shall execute, acknowledge and deliver to the requesting party, and/or to any other person, firm, corporation specified by the requesting party. a statement certifying that this lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), stating the dates to which the rent and additional rent have been paid, and stating whether or not there exists any default by the requesting party under this lease, and, if so, specifying each such default.

Successors Assigns: **36.** The covenants, conditions and agreements contained in this lease shall bind and inure to the benefit of Owner and Tenant and their respective heirs, distributees, executors, administrators, successors, and except as otherwise provided in this lease, their assigns. Tenant shall look only to Owner's estate and interest in the land and building, for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) against. Owner in the event of any default by Owner hereunder, and no other property or assets of such Owner (or any partner, member, officer or director thereof, disclosed or undisclosed), shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under, or with respect to, this lease, the relationship of Owner and Tenant hereunder, or Tenant's use and occupancy of the demised premises.

ADDITIONAL ARTICLES ARE ADDED IN RIDER ATTACHED HERETO AND MADE A PART HEREOF.RULES AND REGULATIONS ARE ALSO ATTACHED HERETO AND MADE A PART HEREOF.

In Witness Whereof, Owner and Tenant have respectively signed-and sealed this lease as of the day and year first above written.

Witness for Owner: 149 FIFTH AVE. CORP.
/s/ Illegible By: William Colavito, Inc., its Managing Agent

By: /s/ Steven T. Colavito
Steven T. Colavito, President

Witness for Tenant: AGENUS INC.
/s/ Dimitra Dariotis-Diaz

By: /s/ Garo H. Armen
Garo H. Armen, PhD
Chairman & CEO

ACKNOWLEDGEMENT

Commonwealth of Massachusetts

Middlesex, ss December 6, 2012

On this 6th day of December, 2012, before me, the undersigned notary public, personally appeared **Garo H. Armen**, known personally to me to be the person signing on the page above, and acknowledged to me that he signed it voluntarily for its stated purpose as Chairman and Chief Executive Officer of Agenus Inc., a corporation.

/s/ Jennifer G Garon
Jennifer G. Garon
My Commission Expires: May 9, 2019

/s/ Richard T. Mathews
STATE OF NEW YORK) ss.:
COUNTY OF New York)

On the 13th day of December in the year 2012 before me, the undersigned, a Notary Public in and for said State; personally appeared Steven T Colavito personally known to me or proved to me on the basis of satisfactory evidence to be the individua1(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by. his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

SUPPLEMENTAL RIDER
TO
LEASE
DATED AS OF DECEMBER 13, 2012
BETWEEN
149 FIFTH AVE. CORP.,
AS LANDLORD
AND
AGENUS, INC.,
AS TENANT

37. DEFINED TERMS:

(a) **Conflict of Terms:** In the event any term, covenant, condition or agreement contained in this Rider shall conflict or be inconsistent with any term, covenant, condition or agreement contained in the printed portion of this Lease, the parties agree that the Rider provision shall prevail.

(b) **Definitions:** The following terms, wherever used in this Lease, shall have the meanings herein specified.

"Base Tax": Average of (a) Fiscal 2012/2013; and (b) Fiscal 2013/2014 (the "Base Tax Year").

"Commencement Date": The date that this Lease is executed and delivered by Landlord and Tenant, and Landlord delivers vacant and broom clean possession of the Demised Premises to Tenant; it being agreed that upon the occurrence of the Commencement Date, Landlord and Tenant shall execute and deliver a letter agreement (the "Letter Agreement") which will confirm the Commencement Date, as well as the Rent Commencement Date, Expiration Date (which, regardless of Lease Commencement Date, will be the end of the month in which the seventh anniversary of Rent Commencement occurs), change in Security Deposit, etc. (all as set forth below).

"Demised Premises" or "demised premises": The easterly portion of the fifth (5th) floor of the Building, as more particularly shown on Exhibit A attached hereto and made a part hereof.

"Expiration Date": Approximately seven (7) years and Five (5) months after Commencement Date (the last day of the month in which the seventh anniversary of Rent Commencement Date) , or such earlier date upon which the term of this Lease may expire or be cancelled or terminated pursuant to any of the provisions, conditions or covenants of this Lease or pursuant to law or such later date as may be set forth in the letter agreement described in the definition of Commencement Date.

"Fixed Rent" or "fixed rent": From the Rent Commencement Date through the day preceding the first (1st) anniversary of the Rent Commencement Date, Tenant shall pay Fixed Rent an annualized basis of $273,077.00 ($22,756.00 per month calculated at the rate of $49.00/square foot) or such later date as may be set forth in the letter agreement described in the definition of Commencement Date.

In lieu of an operating escalation, Fixed Rent shall (beginning the thirteenth (13th) month from the Rent Commencement Date) include a fixed two and one – half (2.5%) per cent per annum compounded increase. Tenant shall pay the Fixed Rent, as follows:

From the first (1st) year anniversary of the Rent Commencement Date through the day preceding the second (2nd) year anniversary of the Rent Commencement Date, $279,904.00 per annum ($23,325.00 per month);

From the second (2nd) year anniversary of the Rent Commencement Date through the day preceding the third (3rd) year anniversary of the Rent Commencement Date, $286,902.00 per annum ($23,909.00 per month);

From the third (3rd) year anniversary of the Rent Commencement Date through the day preceding the fourth (4th year anniversary of the Rent Commencement Date, $294,074.00 per annum ($24,506.00 per month);

From the fourth (4th) year anniversary of the Rent Commencement Date through the day preceding the fifth (5th) year anniversary of the Rent Commencement Date, $323,718.00 per annum ($26,977.00 per month);

From the fifth (5th) year anniversary of the Rent Commencement Date through the day preceding the sixth (6th) year anniversary of the Rent Commencement Date, $331,811.00 per annum ($27,651.00 per month); and From the sixth (6th) year anniversary of the Rent Commencement Date through the Expiration Date, $340,106.00 per annum ($28,342.00 per month).

"Landlord's Work": None.

"Permitted Use": As used herein, the "Permitted Use" of the Demised Premises shall mean use as Tenant's general, administrative and executive offices, and such uses as are ancillary and related thereto.
"Rent Commencement Date": Five (5) months from the Commencement Date (subject to the provisions of Article 42.06).

"Security Deposit": Initially, an amount equal to nine (9) months of Fixed Rent (i.e., $204,804.00) to be held in an interest bearing account in accordance with Article 40 hereof and to be reduced as set forth in said Article 40.

"Tenant": AGENUS, INC.

"Tenant's Proportionate Share": 3.35% (based upon an aggregate 166,125 rentable square feet in the Building).

"Tenant's Work": See Articles 42 and 45.

"Termination Date": Shall have the meaning set forth in section 47.03 (a).

"Rentable Square Feet": Approximately 5,573 rentable square feet.

38. EXECUTION OF LEASE:

Notwithstanding any provisions of this Lease to the contrary nor the execution hereof by Tenant, the parties agree that the terms and conditions of this Lease, and the effectiveness hereof, are subject to the approval of the Landlord, as shall be evidenced by the execution of this Lease by a representative of the Landlord. No representation, oral or written, nor Tenant's execution of this Lease, shall have the effect of binding the Landlord except as evidenced by Landlord's execution of this Lease.

39. SUBORDINATION:

(a) Supplementing Article 7, if Landlord has given Tenant notice of request to execute a certificate or certificates to confirm the subordination of this Lease and Tenant fails or refuses to do so and such failure continues for ten (10) business days, Tenant hereby constitutes and appoints Landlord as the Tenant's attorney-in-fact to execute any certificate or certificates for and on behalf of Tenant to confirm the subordination of the Lease

(b) Landlord represents that there presently is no ground lease or net lease for the Building or the land upon which the Building is situated. Landlord agrees to notify Tenant of any future ground lease or net lease. At the option of the Landlord or any successor landlord or the holder of any mortgage affecting the demised premises, Tenant agrees that neither the cancellation nor termination of any ground or underlying lease to which this Lease is now or may hereafter become subject or subordinate, nor any foreclosure of a mortgage affecting said premises, nor the institution of any suit, action, summary or other proceeding against the Landlord herein or any successor landlord, or any foreclosure proceeding brought by the holder of any mortgage to recover possession of the property, shall, by operation of law or otherwise, result in cancellation or termination of this Lease or the obligations of the Tenant hereunder, and upon the request of any landlord, successor landlord, or the holder of any mortgage, Tenant covenants and agrees to attorn to the Landlord or to any successor to the Landlord's interest in the demised premises, or to the holder of any mortgage or to the purchaser of the mortgaged premises in foreclosure.

(c) If, in connection with obtaining financing, a banking, insurance or other recognized institutional lender shall request reasonable modifications in this Lease as a condition to said financing, Tenant will not unreasonably withhold, delay or defer its consent thereto, provided that said modifications do not increase the obligations of Tenant hereunder or materially adversely affect the leasehold interest hereby created or Tenant's use and enjoyment of the demised premises.

40. SECURITY DEPOSIT:

40.01 At Tenant's execution of this Lease, Tenant shall deposit and maintain with Landlord the Security Deposit set forth in section 37 (b), to be deposited in a lending institution in an interest-bearing separate account as a deposit for the performance and observance of the covenants, agreements, terms, provisions and conditions to be performed by Tenant hereunder. If Tenant has provided Landlord with a federal identification number, interest shall be payable to Tenant annually, less one percent (1%) administrative fee. Landlord shall notify Tenant of the bank in which said Security Deposit is deposited and in the event of any subsequent change in bank information. In the event, and for as long as, interest (payable under the terms of said bank account) is less than one percent (1%), Landlord shall be entitled to the entire interest and Tenant shall have no liability for said interest.

If Tenant shall comply with all of the terms, covenants and conditions of this Lease (including, but not limited to timely payment of base rent and any additional rent), then, upon Tenant's written request to Landlord, the Security Deposit shall be reduced to six (6) months on the 37th month following Rent Commencement Date (subject to adjustment as per Letter Agreement). If Tenant shall continue to comply with all of the terms, covenants and conditions of this Lease (including, but not limited to timely payment of base rent and any additional rent), then, upon Tenant's written request to Landlord, the Security Deposit shall be reduced to four (4) months on the 61st month following Rent Commencement Date (subject to adjustment as per Letter Agreement).

40.02 Tenant agrees that the Security Deposit is intended to insure the prompt, full and faithful performance and observance of the covenants, agreements, terms, provisions and conditions to be performed by Tenant hereunder. It is agreed that in the event Tenant defaults in respect of any of the covenants, agreements, terms, provisions and conditions of this Lease beyond any notice and cure periods including, but not limited to the payment of Fixed Rent or Additional Rent, Landlord may use, apply or retain such part or all of the Security Deposit as shall be equal to the payment of any such amounts. Any part of the Security Deposit so used, applied or retained shall be replenished by Tenant within ten (10) days of written demand by Landlord in an amount equal to the amount so used, applied or retained. If Tenant shall comply with all of the terms, covenants and conditions of this Lease, the Security Deposit (or so much thereof as remains) with interest shall be returned to Tenant within 30 days after the Expiration Date and after delivery of the Demised Premises to Landlord in the manner required by this Lease.

41. TERM AND RENTAL:

41.01 The term of this Lease shall commence on the Commencement Date and end on the Expiration Date, both dates inclusive.

41.02 Tenant covenants to pay to Landlord, at the address hereinabove set forth (or at such other address as Landlord shall designate) the following sums:

(a) the Fixed Rent set forth in Article 37 hereof, which shall be payable in equal monthly installments, in advance, without previous demand therefor and without any setoff or deduction whatsoever, on the first day of each and every calendar month throughout the term of this Lease commencing on the Rent Commencement Date, except that the first monthly installment of Fixed Rent shall be paid upon the execution and delivery of this Lease by Tenant; and

(b) "Additional Rent" consisting of all such other sums of money as shall become due from and payable by Tenant to Landlord (for default in payment of which Landlord shall have the same remedies as for a default in the payment of Fixed Rent).

41.03 Tenant shall pay the Fixed Rent and Additional Rent herein reserved promptly as and when the same shall become due and payable, without demand therefor and without any abatement, deduction or setoff whatsoever, except as expressly provided in this Lease.

41.04 If the Rent Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, the Fixed Rent for such calendar month shall be prorated based upon the number of days in said month that fall within the term of this Lease divided by thirty (30) and with respect to the first month, the balance of the first month's Fixed Rent theretofore paid shall be credited against the next monthly installment of Fixed Rent then due under this Lease.

42. LAYOUT AND FINISH:

42.01 Tenant acknowledges that it has made a full and complete inspection of the Demised Premises. Tenant acknowledges that neither Landlord, nor Landlord's agents, nor any broker, has made any representations or promises in regard to the Demised Premises for the term herein demised, except as set forth herein. The taking of possession of the Demised Premises by Tenant shall be conclusive evidence that the Demised Premises complied with the condition in which the Demised Premises were to be delivered to Tenant under this Agreement, except for latent defects.

42.02 All installations, materials or work which may be necessary or desirable to prepare, equip, decorate or furnish the Demised Premises for Tenant's occupancy (hereinafter referred to as "Alterations") shall be performed by Tenant, at its sole cost and expense (except as set forth in Article 63 of this Lease), in accordance with all the terms, covenants and conditions of this lease, including without limitation, Article 3 hereof.

42.03 Prior to making any alterations, including the alterations contemplated by Article 63 of this Lease, Tenant shall (i) submit to Landlord detailed plans and specifications (including layout, architectural and mechanical drawings) for each such Alteration and shall not commence any such Alteration without first obtaining Landlord's approval of such plans and specifications, (if a copy of plans and specifications are available, same shall be annexed hereto as Exhibit B and made a part hereof and shall be deemed to be approved by Landlord), which approval shall not be unreasonably withheld, conditioned or delayed (it being agreed that Landlord shall respond to any such request for consent within ten (10) days after Landlord's receipt of same), (ii) at Tenant's expense (but with Landlord's reasonable cooperation), obtain all permits, approvals and certificates required by any governmental authorities, it being agreed that all filings with governmental authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense, and (iii) furnish to Landlord duplicate original policies or certificates thereof of worker's compensation (covering all persons to be employed by Tenant, and Tenant's contractors and subcontractors in connection with such alteration) and comprehensive public liability (including property damage coverage) insurance in such form, with such companies, for such periods and in such amounts as Landlord may reasonably approve, naming Landlord and its agents, any ground lessor and any mortgagee, as additional insureds. Upon completion of such Alteration, Tenant, at Tenant's expense, shall obtain certificates of final approval of such Alteration required by any governmental authority and shall furnish Landlord with copies thereof, together with the "as-built" plans and specifications for such Alterations and lien waivers upon the completion thereof, it being agreed that all filings with governmental authorities to obtain such permits, approvals and certificates shall be made, at Tenant's expense (but with Landlord's reasonable cooperation).

42.04 Landlord reserves the right to reasonably disapprove any plans and specifications in part, to reserve approval of items shown thereon pending its review and approval of other plans and specifications, and to reasonably condition its approval upon Tenant's making revisions to the plans and specifications or supplying additional information. Any review or approval by Landlord of any plans and/or specifications or any preparation or design of any plans by Landlord's architect or engineer (or any architect or engineer designated by Landlord) with respect to any Alteration is solely for Landlord's benefit, and without any representation or warranty whatsoever to Tenant or any other person or entity with respect to the compliance thereof with any applicable governmental requirements, the adequacy, correctness or efficiency thereof or otherwise.

42.05 Upon the request of Tenant, Landlord, at Tenant's cost and expense, shall join in any applications for any permits, approvals or certificates required to be obtained by Tenant in connection with any permitted Alteration (provided that the provisions of the applicable governmental requirement shall require that Landlord join in such application) and shall otherwise cooperate with Tenant in connection therewith, provided that Landlord shall not be obligated to incur any cost or expense, including, without limitation, attorneys' fees and disbursements, or suffer any liability in connection therewith.

43. ESCALATION FOR INCREASE IN REAL ESTATE TAXES:

43.01 As used herein:

(a) "Taxes" shall mean all real estate taxes, assessments (including, without limitation, business improvement district assessments), governmental levies, municipal taxes, county taxes or any other governmental charge, general or special, ordinary or extraordinary, unforeseen as well as foreseen, of any kind or nature whatsoever, which are or may be assessed, levied or imposed upon all or any part of the land, the building and the sidewalks, plazas or streets in front of or adjacent thereto, including any tax, excise or fee measured by or payable with respect to any rent, and levied against Landlord and/or the land and building, under the laws of the United States, the State of New York, or any political subdivision thereof, or by the City of New York, or any political subdivision thereof (but only if such tax, excise or fee is levied against Landlord, and/or the land and building, in addition to, or in substitution in whole or in part for any tax which would constitute "Taxes", or in lieu of additional Taxes). If, due to a future change in the method of taxation or in the taxing authority, a new or additional real estate tax, or a franchise, income, transit, profit or other tax or governmental imposition, however

designated, shall be levied against Landlord, and/or the land and building, in addition to, or in substitution in whole or in part for any tax which would constitute "Taxes", or in lieu of additional Taxes, such tax or imposition shall be deemed for the purposes hereof to be included within the term "Taxes".

(b) "Tax Year" shall mean each period of twelve (12) months, commencing on the first day of July of each such period, in which occurs any part of the term of this Lease or such other period of twelve (12) months occurring during the term of this Lease as hereafter may be duly adopted as the fiscal year for real estate tax purposes of the City of New York.

43.02 If the Taxes for any Tax Year shall be greater than the Base Tax, Tenant shall pay as Additional Rent for such Tax Year a sum equal to Tenant's Proportionate Share of the amount by which the Taxes for such Tax Year are greater than the Base Tax (which amount is hereinafter called the "Tax Payment"). Should this Lease commence or terminate prior to the expiration of a Tax Year, such Tax Payment shall be prorated to, and shall be payable on, or as and when ascertained after, the Commencement Date or the Expiration Date as the case may be. Tenant's obligation to pay such Additional Rent and Landlord's obligation to refund pursuant to Section

43.03 below, as the case may be, shall survive the termination of this Lease. If the Taxes for any Tax Year subsequent to the Base Tax Year, or an installment thereof, shall be reduced before such Taxes, or such installment, shall be paid, the amount of Landlord's reasonable costs and expenses of obtaining such reduction (but not exceeding the amount of such reduction) shall be added to and be deemed part of the Taxes for such Tax Year.Payment of Additional Rent for any Tax Payment due from Tenant shall be made as and subject to the conditions hereinafter provided in this Article.

43.03 Only Landlord shall be eligible to institute proceedings to contest the Taxes or reduce the assessed valuation of the land and building. Landlord shall be under no obligation to contest the Taxes or the assessed valuation of the land and the building for any Tax Year or to refrain from contesting the same, and may settle any such contest on such terms as Landlord in its sole judgment considers proper. If Landlord shall receive a refund for any Tax Year for which a Tax Payment shall have been made by Tenant pursuant to Section 43.02 above, Landlord shall repay to Tenant, with reasonable promptness, Tenant's Proportionate Share of such refund after deducting from such refund the reasonable costs and expenses (including experts' and attorneys' fees) of obtaining such refund.

43.04 At any time during or prior to a Tax Year after the Taxes for such Tax Year become known, Landlord may, or else with reasonable promptness after the end of each Tax Year, Landlord shall render to Tenant a comparative statement showing the amount of the Base Tax, the amount of the Taxes for such Tax Year and the Tax Payment, if any, due from Tenant for such Tax Year, indicating thereon in reasonable detail the computation of such Tax Payment. Such comparative statement shall include photocopies of the relevant Tax bills for the periods included in the Base Tax and for the Tax Year covered by such statement. The Tax Payment shown on such comparative statement may, at Landlord's option, be payable in full or in such installments (not more frequent than monthly) as Landlord may reasonably determine. Tenant shall pay the amount of the Tax Payment shown on such comparative statement (or the balance of a proportionate installment thereof, if only an installment is involved) within thirty (30) days after the rendition of such statement.

43.05 Landlord's failure during the lease term to prepare and deliver any tax statements or bills, or Landlord's failure to make a demand under this Article or under any other provision of this Lease shall not in any way be deemed to be a waiver of, or cause Landlord to forfeit or surrender, its rights to collect any items of Additional Rent which may have become due pursuant to this Article during the term of this Lease, unless such failure continues for a period of more than 24 months after any Tax Year, in which case Landlord shall have waived its rights hereunder with respect to such Tax Year.Tenant's liability for the Additional Rent due under this Article shall survive the expiration or sooner termination of this Lease for a period of 24 months.

43.06 In no event shall any adjustment of Tax Payments hereunder result in a decrease in the fixed rent or Additional Rent payable pursuant to any other provision of this Lease, it being agreed that the payment of Additional Rent under this Article 43 is an obligation supplemental to Tenant's obligation to pay fixed rent.

44. ELECTRIC CURRENT:

44.01 Definitions: For purposes of this Article 44, the following terms shall have the following meanings:

(a) The term "Landlord's Cost", shall mean, the average cost per kilowatt hour and average cost per kilowatt demand, by time of day, if applicable, to Landlord of purchasing electricity for the building, including, without limitation, fuel adjustment charges (as determined for each month of the relevant period and not averaged) rate adjustment charges, sales tax, and/or any other factors, used by the public utility company (the "Utility") servicing the building in computing its charges to Landlord applied to the kilowatt hours of energy and kilowatts of demand purchased by Landlord during a given period; and

(b) The term "Landlord's Statement", shall mean an instrument containing a computation (or estimate thereof), of Landlord's Cost (hereinabove defined), or any other computation to be made by Landlord pursuant to the provisions of this Article 44. Landlord shall not be entitled to any additional charges, fees, "add-ons", etc. whatsover beyond the 108% described in paragraph (f) below..

44.02 Method of Furnishing Electric Current to the Demised Premises: Subject to the provisions of Section 44.03(d) hereof, Landlord shall furnish electricity to Tenant on a a "submetering" basis. On the Commencement Date, electricity will be furnished pursuant to Section 44.02(a).

(a) Submetering: If and so long as electric current is supplied by Landlord to the demised premises to service Tenant's office equipment and the machinery and mechanical equipment for the air conditioning units utilized by Tenant, if any, Tenant will pay Landlord or Landlord's designated agent, as Additional Rent for such service, the amounts, as determined by the Submeter, for the purpose of measuring Tenant's consumption and demand. The additional rent payable by Tenant pursuant to this Section 44.02(a), shall be computed in the same manner as that for computation of Landlord's Cost, as applied to the demised premises, plus a fee (the "Overhead Charge") equal to eight (8%) percent of such charge to Landlord, representing administrative/overhead costs to Landlord. The amounts computed from the Submeter together with the Overhead Charge, are herein collectively called the "Electricity Additional Rent", and such amounts computed from the Submeter shall be binding and conclusive on Tenant. If the Submeter should fail to properly register or operate at any time during the term of this lease for any reason whatsoever, Landlord may reasonably and in good faith estimate the Electricity Additional Rent (based on Tenant's prior usage), and when the Submeter is again properly operative, an appropriate reconciliation shall be made, by Tenant paying any deficiency to Landlord within ten (10) days after demand therefor, or by Landlord crediting Tenant with the amount of any overpayment, as the case may be. Landlord, at its option, may from time to time, increase the Electricity Additional Rent based upon, among other things, any increase in Landlord's Cost. The periods to be used for the aforesaid computation shall be as Landlord, in its sole discretion, may (from time to time) elect. Where more than one meter measures the electric service to Tenant (including such electric energy as is consumed in connection with the operation of the ventilation and air conditioning equipment servicing the demised premises), the electric service rendered through each meter shall be totalized and billed as if measured by a single meter. Bills for the Electricity Additional Rent (the "Bills") shall be rendered to Tenant at such time as Landlord may elect, but not more frequently than monthly.

If any tax is imposed upon Landlord's receipts from the sale or resale of electric current to Tenant by any Federal, state or municipal authority, Tenant agrees that, unless prohibited by law, Tenant's Proportionate Share (as said term is defined in Article 37 hereof) of such taxes shall be passed on to, and included in the bill of, and paid by Tenant to Landlord as Additional Rent.

44.03 General Conditions:

(a) Landlord shall not be liable to Tenant for any loss or damage or expense which Tenant may sustain or incur if either the quantity or character of electric service is changed or is no longer available or suitable for Tenant's requirements, except if same is due to the negligence or willful misconduct of Landlord, its agents, contractors or employees.

(b) Tenant covenants and agrees that at all times its use of electric current shall never exceed the Required Electrical Capacity (as such term is hereinafter defined). After Tenant commences business operations in the Demised Premises, Tenant agrees not to connect any additional electrical equipment to the building electric distribution system, other than lamps, typewriters, personal computers, fax machines, printers, servers, copiers, coffee machines, microwave ovens, small refrigerators (typically found in an office pantry) and other office machines and equipment which consume comparable amounts of electricity, without Landlord's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Any riser or risers to supply Tenant's electrical requirements in excess of the Required Electrical Capacity, upon written request of Tenant but subject to the prior written approval of Landlord in each instance, will be installed by Landlord, at Tenant's sole cost and expense, if the same are necessary and will not cause permanent damage or injury to the building or demised premises or cause or create a dangerous or hazardous condition or entail excessive or unreasonable alterations, repairs or expense or interfere with or disturb other tenants or occupants.

(c) The parties acknowledge that they understand that it is anticipated that electric rates, charges, etc. may be changed by virtue of time of day rates or other methods of billing, and that the references in the foregoing subdivisions to changes in methods of or rules on billing are intended to include any such changes.

(d) If required by applicable law, the Utility or for any other reason beyond Landlord's control, Landlord reserves the right at any time, and from time to time, during the term of this lease, upon thirty (30) days prior written notice to Tenant, to change the furnishing of electricity to Tenant from a submetering basis to a rent inclusion basis, or visa versa. In addition, if Landlord shall elect to terminate furnishing electricity to a majority of the tenants in the building then receiving electricity from Landlord, Landlord shall have the right to terminate the furnishing of electricity to the demised premises on a submetering, rent inclusion, or any other basis at any time, upon sixty (60)days written notice to the Tenant in which event Tenant may make application directly to the Utility for Tenant's entire separate supply of electric current to the demised premises and Landlord shall permit its wires and conduits, to the extent available and safely capable in Landlord's reasonable judgment, to be used for such purpose. Any meters, risers or other equipment or connections necessary to enable Tenant to obtain electric current directly from the Utility shall be installed at Tenant's sole cost and expense, subject to the provisions of this lease. Rigid conduit only will be allowed. Landlord, upon the expiration of the aforesaid sixty (60)days written notice to the Tenant may discontinue furnishing the electric current but this lease shall otherwise remain in full force and effect. Notwithstanding the foregoing, Landlord will permit Tenant to continue to receive electricity from Landlord on a redistribution basis for such period of time as is reasonably required by Tenant to arrange to obtain electricity service directly from the Utility. Commencing when Tenant receives such direct service and as long as Tenant shall continue to receive such service, the fixed rent payable under this lease shall be reduced where electricity rent inclusion is discontinued, by a sum equal to what the ERIF portion of the fixed rent was at the time of such discontinuance (the parties acknowledge that in the case of termination of redistribution by submetering, the fixed rent payable under this lease would not be affected thereby).

(e) In the event that pursuant to any of the provisions of this Article, any initial determinations, statements or estimates are made by or on behalf of Landlord (whether such initial determinations, statements or estimates are subject to dispute or not pursuant to the provisions of this Article), Tenant shall pay to Landlord the amount(s) set forth on such initial determinations, statements or estimates, as the case may be, until subsequent determinations.

(f) Notwithstanding any provisions of this Article 44 and regardless of the manner of service of electric current to the demised premises (whether by rent inclusion or sub-metering), in no event shall the cost to Tenant for electric energy to the demised premises be less than one hundred eight (108%) percent of Landlord's Cost.

(g) Landlord will deliver the Demised Premises with 200 amps of service (including the amperage necessary to operate the air conditioning system) (the "Required Electrical Capacity), which Required Electrical Capacity shall remain available to Tenant throughout the term hereof subject to events beyond Landlord's control, including but limited to outages, labor disputes, force majeure, etc.

45. LANDLORD'S REPRESENTATION

(a) Landlord, at its expense, shall provide Tenant with access to the Building's Class E fire system, which shall be in good working order.

(b) Landlord, at its expense, shall provide sufficient supply of water and water pressure for the sprinklers as required by Tenant for compliance with applicable code requirements given Tenant's construction needs.

(c) Landlord represents that the Demised Premises, are (or will be as of the Commencement Date) in substantial compliance with all applicable codes and regulations pursuant to any federal, state of local governmental laws or regulations, including (but not limited to) the provisions of the Americans with Disability Act of 1992, as well as any environmental laws.

46. ADDENDUM TO ARTICLE 6:

46.01 Without limiting the generality of the provisions of Article 6, Tenant shall comply in all respects with all "Environmental Laws" relating to Tenant's conduct of its business at the Demised Premises. For the purpose of this paragraph, the term "Environmental Laws" shall mean any federal, state or local laws, statutes, ordinances, rules, regulations or any judicial or administrative decisions now in effect or hereinafter enacted relating to hazardous materials, health and safety or pollution or protection of the environment insofar as the aforesaid relate to Tenant, Tenant's operations or Tenant's use of the Demised Premises. Landlord agrees that prior to the Commencement Date, Landlord shall provide Tenant with the appropriate ACP form from the New York City Building Department confirming that there is no asbestos in the Demised Premises. A copy of the ACP form is attached as Exhibit C. However, notwithstanding the foregoing, Landlord shall thereafter be responsible for removing, abating or otherwise treating any asbestos or other hazardous substances or materials existing in the Demised Premises on or prior to the needs to be Commencement Date. Same to be remedied within a reasonable time period after notice to Landlord.

46.02 Tenant will not use or suffer or permit any person to use the Demised Premises for any unlawful purpose and Tenant, at its sole cost and expense (but with Landlord's reasonable), will obtain and maintain all licenses and permits from any and all governmental authorities having jurisdiction over either the Demised Premises or the conduct of Tenant's business therein to the extent necessary for the conduct of Tenant's business in the Demised Premises, including without limitation, the Permitted Use.

46.03 Without limiting the generality of Article 6, Tenant, at its sole cost and expense, shall comply with all applicable laws, orders, rules, regulations, codes or recommendations of any governmental or quasi-governmental authority or insurance carrier or rating agency requiring the installation, upgrading and/or maintenance of any fire safety or protection system(s) in the Demised Premises and shall connect any and all said system(s) to any Building-wide system which may be now or hereafter installed by Landlord.

47. AMENDING ARTICLE 11:

Notwithstanding the provisions of Article 11, and in modification and amplification thereof:

47.01 Tenant may have its name listed on the Building directory (see Article 62).

47.02 If Tenant's interest in this Lease is assigned, whether or not in violation of the provisions of this Lease, Landlord may collect rent from the assignee; if the demised premises or any part thereof are sublet to, or occupied by, or used by, any person other than Tenant, whether or not in violation of this Lease, Landlord, after default by Tenant under this Lease and the giving of notice of such default and the expiration of Tenant's time, if any, to cure such default, may collect rent from the subtenant, user or occupant. In either case, Landlord shall apply the net amount collected to the rents reserved in this Lease, but neither any such assignment, subletting, occupancy, nor use, nor any such collection or application shall be deemed a waiver of any terms, covenants or conditions of this Lease or the acceptance by Landlord of such assignee, subtenant, occupant or user as a tenant. The consent by Landlord to any assignment, subletting, occupancy or use shall not relieve Tenant from its obligation to obtain the express prior written consent of Landlord to any further assignment, subletting, occupancy or use. The listing of any name other than Tenant's on any door of the demised premises, or on any directory, or on any elevator in the building, or otherwise, shall not operate to vest in the party so named, any right or interest in this Lease or in the demised premises, or be deemed to constitute, or serve as a substitute for, any prior written consent of Landlord required under this Article, and it is understood that any such listing shall constitute a privilege extended by Landlord which shall be revocable at Landlord's will by notice to Tenant. Tenant agrees to pay to Landlord any reasonable counsel fees incurred by Landlord in connection with any proposed assignment of Tenant's interest in this Lease or any proposed subletting of the demised premises or any part thereof. Neither any assignment of Tenant's interest in this Lease nor any subletting, occupancy or use of the demised premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in this Section 47.02, nor any application of any such rent as aforementioned as provided in this Section 47.02, shall in any circumstances relieve Tenant of Tenant's obligations fully to observe and perform the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

47.03 If Tenant shall desire to assign this Lease or to sublet the demised premises, Tenant shall submit to Landlord a written request for Landlord's consent to such assignment or subletting, which request shall contain or be accompanied by the following information: (i) the name and address of the proposed assignee or subtenant; (ii) a duplicate original or photocopy of the proposed assignment agreement or sublease or a term sheet or letter of intent setting forth all of the material terms of any such proposed assignment or agreement of sublease; (iii) the nature and character of the business of the proposed assignee or subtenant and its proposed use of the demised premises; (iv) Landlord's administrative agent fee in the sum of $1,000.00; and (v) banking, financial and other credit information with respect to the proposed assignee or subtenant reasonably sufficient to enable Landlord to determine the financial responsibility of the proposed assignee or subtenant. Landlord shall then have the following options, to be exercised by notice ("Exercise Notice") given to Tenant within thirty (30) days after receipt of Tenant's request for consent:

(a) Landlord may require Tenant to surrender the demised premises to Landlord and to accept a termination of this Lease as of a date (the "Termination Date") to be designated by Landlord in the Exercise Notice, which date shall not be less than thirty (30) days nor more than one hundred twenty (120) days following date of Landlord's Exercise Notice; or

(b) Landlord may require Tenant to surrender the Demised Premises to Landlord without merger of Landlord's estates effective as of the day preceding the proposed assignment or sublease.

(c) If Landlord shall elect to require Tenant to surrender the demised premises and accept a termination of this Lease, then this Lease shall expire on the Termination Date as if that date had been originally fixed as the Expiration Date.

Regardless of which option Landlord exercises under this Section 47.03, whether to terminate this Lease or to take an assignment thereof, Landlord shall be free to, and shall have no liability to Tenant if Landlord shall, lease the demised premises to Tenant's prospective assignee or subtenant.

47.04 If Landlord shall not exercise either of its options under Section 47.03 above within the time period therein provided, then Landlord shall not unreasonably withhold, condition or delay its consent to the proposed assignment or subletting of the demised premises (and shall respond to such request for consent within the same 30-day period described in Section 47.03 above), provided that Tenant is not then in default under this Lease beyond any applicable notice and/or grace period; and, further, provided that the following further conditions shall be fulfilled:

(a) The proposed subtenant or assignee shall not be a school of any kind, or an employment or placement agency or governmental or quasi governmental agency, or a medical office;

(b) The subletting or assignment shall be to a tenant whose occupancy will be in keeping with the dignity and character of the then use and occupancy of the building and whose occupancy will not be more objectionable or more hazardous than that of Tenant herein or impose any additional burden upon Landlord in the operation of the building;

(c) No space shall be advertised or openly promoted to the general public at a lower rental rate than that being charged by Landlord at the time for similar space in the Building;

(d) Provided Landlord has comparable space for a comparable term in the Building then available for leasing by Landlord, the proposed sublessee or assignee shall not be an occupant of any premises in the building (it being further agreed that, in the case of a proposed extension of an existing sublease, the sublessee shall not then be an occupant of any other premises in the building); or a party who dealt with Landlord or Landlord's agent (directly or through a broker) with respect to space in the building during the nine(9) months immediately preceding Tenant's request for Landlord's consent;

(e) Tenant shall reimburse Landlord, at the time of Landlord's request as provided in Section 47.04 above, Landlord's administrative agent's fee in the sum of $1,000.00 plus any reasonable costs that may be incurred in connection with any assignment or sublease, including, without limitation, the reasonable costs of making investigations as to the acceptability of the proposed assignee or subtenant, and reasonable legal costs incurred in connection with the granting of any requested consent; and

(f) In case of a subletting, it shall be expressly subject to all of the obligations of Tenant under this Lease and the further condition and restriction that the sublease shall not be assigned, encumbered or otherwise transferred or the subleased premises further sublet by the sublessee in whole or in part, or any part thereof suffered or permitted by the sublessee to be used or occupied by others, except in accordance with the provisions of this Article.

47.05 (a) Tenant may, without Landlord's prior written consent (but upon notice to Landlord as provided in this section) permit any corporations or other business entities which control, are controlled by, or are under common control with Tenant (herein referred to as a "related corporation") to sublet all or part of the Demised Premises for any of the Permitted Uses permitted to Tenant, subject however to compliance with Tenant's obligations under this Lease provided that (i) Tenant shall not be in default beyond any applicable notice and/or grace period in the performance of any of its obligations under this Lease, (ii) prior to such subletting Tenant furnishes Landlord with the name of any such related corporation, together with a certification of Tenant

that such subtenant is a related corporation of Tenant and continues to remain such during the term hereof, (iii) the proposed subtenant is of a character that is in keeping with the standards of the building and (iv) there shall be no rent payable to Tenant by any such related corporation and Tenant shall certify to this effect prior to such subletting. In connection with the information to be provided to Landlord pursuant to this Section 47.05(a), Landlord shall have the right, at any reasonable time and from time to time, to examine such books and records of Tenant as may be necessary to establish that such subtenant remains a related corporation of Tenant and that no rent is being paid to Tenant by such related corporation. Such subletting shall not be deemed to vest in any such related corporation any right or interest in this Lease nor shall it relieve, release, impair or discharge any of Tenant's obligations hereunder. For the purposes hereof, "control" shall be deemed to mean ownership of not less than fifty (50%) percent of all of the voting stock of such corporation or not less than fifty (50%) percent of all of the legal and equitable interest in any other business entities.

(b) Tenant may, without Landlord's consent but upon notice to Landlord (prior notice where possible and where permissible by applicable law), payment of Landlord's $1,000.00 administrative fee, and providing Landlord with copies of such documents and/or certificates required to be filed with applicable governmental agencies, assign or transfer its entire interest in this Lease and the leasehold estate hereby created to a successor corporation of Tenant (as hereinafter defined); provided, however, that (i) Tenant shall not be in default beyond any applicable notice and/or grace period in any of the terms of this Lease, (ii) the proposed occupancy shall not increase the office cleaning requirements (if any) or impose an extra burden upon the building equipment or building services and (iii) the proposed assignee shall not be entitled, directly or indirectly, to diplomatic or sovereign immunity and shall be subject to the service of process in, and the jurisdiction of the courts of New York State. A "successor corporation", as used in this Section shall mean (A) a corporation or other entity into which or with which Tenant, its corporate successors or assigns, is merged or consolidated, in accordance with applicable statutory provisions for the merger or consolidation of corporations, provided that by operation of law or by effective provisions contained in the instruments of merger or consolidation, the liabilities of the corporations participating in such merger or consolidation are assumed by the corporation surviving such merger or consolidation, or (B) a corporation or other entity acquiring this Lease and the term hereof and the estate hereby granted, the goodwill and all or substantially all of the other property and assets (other than capital stock of such acquiring corporation) of Tenant, its corporate successors or assigns, and assuming all or substantially all of the liabilities of Tenant, its corporate successors and assigns, or (C) any corporate successor to a successor corporation becoming such by either of the methods described in subdivisions (A) and (B) above; provided that (x) such merger or consolidation, or such acquisition and assumption, as the case may be, is for a good business purpose and not principally for the purpose of transferring the leasehold estate created hereby, and (y) immediately after giving effect to any such merger or consolidation, or such acquisition and assumption, as the case may be, the corporation or other entity surviving such merger or created by such consolidation or acquiring such assets and assuming such liabilities, as the case may be, shall have assets, capitalization and a net worth, as determined in accordance with generally accepted accounting principles, and certified to Landlord by an officer of Tenant at least equal to the assets, capitalization and net worth, similarly determined, of Tenant, its corporate successors or assigns, immediately prior to such merger or consolidation or such acquisition and assumption, as the case may be. The acquisition by Tenant, its corporate successors or assigns, of all or substantially all of the assets, together with the assumption of all or substantially all of the obligations and liabilities of any corporation, shall be deemed to be a merger for the purposes of this Article.

47.06 No permitted or consented to assignment or subletting shall be effective or valid for any purpose whatsoever unless and until a counterpart of the assignment or a counterpart or reproduced copy of the sublease shall have been first delivered to the Landlord, and, in the event of an assignment, the Tenant shall deliver to Landlord a written agreement executed and acknowledged by the Tenant and such assignee in recordable form wherein such assignee shall assume jointly and severally with Tenant the due performance of this Lease on Tenant's part to be performed to the full end of the term of this Lease notwithstanding any other or further assignment.

47.07 Provided the purpose of such transaction is to transfer this Lease, the transfer by operation of law or otherwise, of Tenant's interest in this Lease or of a fifty (50%) percent or greater interest in Tenant (whether stock, partnership interest or otherwise) shall be deemed an assignment of this Lease for purposes of this Article except that the transfer of the outstanding capital stock of any corporate tenant shall be deemed not to include the sale of such stock by persons or parties through the "over the counter market" or through any recognized stock exchange, other than those deemed "insiders" within the meaning of the Securities Exchange Act of 1934 as amended.

47.08 Neither any assignment of Tenant's interest in this Lease nor any subletting, occupancy or use of the demised premises or any part thereof by any person other than Tenant, nor any collection of rent by Landlord from any person other than Tenant as provided in Article 11 hereof, nor any application of any such rent as provided in said Article 11 shall, in any circumstances, relieve Tenant of its obligations fully to observe and perform the terms, covenants and conditions of this Lease on Tenant's part to be observed and performed.

47.09 Notwithstanding anything to the contrary contained herein, if Landlord shall consent to any assignment or subletting and Tenant shall either (i) receive any consideration in excess of the fixed rent and escalation additional rent then due (or the pro rata share thereof) from its assignee (other than a successor corporation) in connection with the assignment of this Lease, Tenant shall pay over to Landlord fifty (50%) percent of so much, if any, of such consideration (including, without limitation, sums designated by the assignee as paid for the purchase of Tenant's property in the demised premises, less the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns, or if Tenant does not file such returns, on the same basis as carried on Tenant's books) as shall exceed the brokerage commissions and attorneys' fees and disbursements reasonably incurred by Tenant for such assignment or (ii) sublet the demised premises or any portion thereof to anyone for rents, additional charges or other consideration (including, without limitation, sums designated by the subtenant as paid for the purchase of Tenant's property in the demised premises, less the then net unamortized or undepreciated cost thereof determined on the basis of Tenant's federal income tax returns or, if Tenant does not file such returns, on the same basis as carried on Tenant's books) which for any period shall exceed the rents payable for the subleased space under this Lease for the same period, Tenant shall pay Landlord, as Additional Rent, fifty (50%) percent of such excess less brokerage commissions, attorneys' fees, reasonable alteration costs marketing expenses, rent credits or abatements and any other disbursements reasonably incurred by Tenant for such subletting. All sums payable to Landlord pursuant to this Section 47.09 shall be paid when received by Tenant. .

Notwithstanding anything to the contrary contained herein, Tenant shall have the right, without requiring Landlord's consent, to rent desk space (provided persons or entities using same are using it for a similar use as Tenant"), in no event to exceed twenty-five (25%) percent of the Demised Premises in the aggregate. Although Landlord consent is not required for such an arrangement, Tenant shall notify Landlord of the names of the persons and/or entities utilizing any portion of the Demised Premises and update that list as necessary. Tenant hereby notifies that the following Tenants shall be part of the desk – sharing arrangement: (a) DiArmen Holdings LLC; and (b) Children of Armenia Fund (COAF). Tenant shall update said list shall be updated from time to time as necessary.

48. LANDMARK NOTIFICATION

48.01 Tenant acknowledges that the Building is located within the boundaries of the Ladies Mile Historic District, and therefore any alteration or work requiring a Building Department Permit, whether exterior or interior, must receive a Landmark Permit before the Building Department Permit can be issued. The Tenant herein agrees to obtain said permit at its sole cost and expense and Landlord agrees to cooperate with Tenant in connection therewith.

49. INDEMNITY-LIABILITY INSURANCE:

49.01 Supplementing and without limiting the provisions of Article 8 of this Lease, Tenant covenants and agrees to indemnify and save Landlord harmless from and against any and all claims for damages or injuries to goods, wares, merchandise and property and/or for any personal injury or loss of life in, upon or about the Demised Premises and, to the extent arising from the acts or negligence of Tenant or its agents, employees, contractors or invitees, the Building. The foregoing shall not apply to negligent or willful acts of Landlord or Landlord's agents and invitees.

49.02 Tenant covenants to provide on or before the Commencement Date of the term hereof and to keep in force during the term hereof for the benefit of Landlord and Tenant: (a) a policy of commercial general liability insurance protecting Landlord and Tenant against any liability whatsoever occasioned by accident on or about the Demised Premises or any appurtenances thereto, with limits of liability thereunder not less than the amount of Three Million and 00/100 ($3,000,000.00) Dollars of combined single limit comprehensive broad form coverage on a per occurrence basis; and (b) fire and extended coverage, vandalism, malicious mischief, water damage and special extended coverage insurance in an amount adequate to cover the cost of replacement of all fixtures, decorations and improvements in the Demised Premises. Such policies are to be written by good and solvent insurance companies reasonably satisfactory to Landlord with a Best's rating of not less than A,8 and shall name as additional insureds the Landlord, Landlord's managing agent and such other appropriate parties as to which Landlord shall notify Tenant in writing. Such insurance may be carried under a blanket policy covering the Demised Premises and other locations of Tenant, if any, provided such blanket policy contains a designated aggregate limit of liability coverage for the Demised Premises alone of not less than $3,000,000 and Tenant delivers to Landlord evidence thereof.

49.03 Prior to the time such insurance is first required to be carried by Tenant and thereafter, ~~at least thirty (30) days~~ prior to the expiration of any such policy, Tenant agrees to deliver to Landlord either a duplicate original of the aforesaid policies or a certificate evidencing such insurance, ~~provided said certificate or policies contain an endorsement that such insurance may not be canceled or modified except upon thirty (30) days notice to Landlord together with evidence of payment for the policy~~. Tenant's failure to provide and keep in force the aforementioned insurance which continues for a period of more than ten (10) days after notice to Tenant thereof shall be regarded as a material default hereunder, entitling Landlord to exercise any or all of the remedies as provided in this Lease in the event of Tenant's default.

50. BROKER:

Tenant covenants, represents and warrants that it neither consulted nor negotiated with any broker or finder with regard to the rental of the Demised Premises from Landlord other than Newmark Grubb Knight Frank, Inc. and Cushman & Wakefield, Inc. (collectively, the "Broker"). Landlord shall be responsible to pay the Broker for any fees or commissions due and payable to them pursuant to a separate agreement. Tenant shall indemnify and hold Landlord harmless from and against any and all claims for commission, fee or other compensation by any broker or finder, person or entity other than the Broker who shall claim to have dealt with Tenant in connection with this Lease and for any and all costs incurred by Landlord in connection with such claims including; without limitation, reasonable attorneys' fees and disbursements.

Landlord covenants, represents and warrants that it neither consulted nor negotiated with any broker or finder with regard to the rental of the Demised Premises from Landlord other than the Broker. Landlord shall indemnify and hold Tenant harmless from and against any and all claims for commission, fee or other compensation by any broker or finder, person or entity, including, without limitation, the Broker, who shall claim to have dealt with Landlord in connection with this Lease and for any and all costs incurred by Tenant in connection with such claims including; without limitation, reasonable attorneys' fees and disbursements.
The provisions of this Article 50 shall survive the Expiration Date or any other termination of this Lease.

51. EXCULPATORY CLAUSE:

Tenant shall look solely to the estate and property of Landlord in the Building (and to the proceeds thereof and the rents therefrom), for the satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default or breach by Landlord with respect to any of the terms, covenants and conditions of this Lease to be observed and/or performed by Landlord, and no other property or assets of Landlord or any partner, member, officer or director thereof, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this Lease, the relationship of Landlord and Tenant hereunder, or Tenant's use and occupancy of the Demised Premises. Without limiting the foregoing, it is further understood that under no event or circumstance shall Landlord be held responsible for the acts of any third parties, including without limitation, any other tenants or occupants of the Building or their guests, employees, agents, contractors or invitees, it being expressly understood and agreed that Landlord's liability for any default in the Landlord's obligations under this Lease are expressly limited to the acts and omissions of the Landlord and its agents and employees.

52. ADDENDUM TO ARTICLE 17 (DEFAULT):

If any payment required to be made by Tenant under this Lease is paid more than ten (10) days after the due date thereof, said payment shall be subject to a late charge of four (4%) percent of the amount so overdue, as consideration for the additional expense incurred by the Landlord in the handling thereof. Such late charges shall be due and payable with any such late payment.

53. MISCELLANEOUS:

53.01 **Governing Law**: This Lease shall be governed in all respects by the laws of the State of New York.

53.02 **Saving Provision:** If any provision of this Lease, or its application to any situation shall be invalid or unenforceable to any extent, the remainder of this Lease, or the application thereof to situations other than that as to which it is invalid or unenforceable, shall not be affected thereby, and every provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

53.03 **Lease Not Binding Unless Executed:** Submission by Landlord of the within lease for execution by Tenant shall confer no rights nor impose any obligations on either party unless and until both Landlord and Tenant shall have executed this Lease and duplicate originals thereof shall have been delivered to the respective parties.

53.04 **No Recording:** Neither this Lease, nor any memorandum hereof, shall be recorded without the Landlord's prior written consent. Any attempted recordation hereof by the Tenant shall be void and shall constitute a material default by Tenant hereunder.

53.05 **Entire Agreement, Successors and Assigns:** This Lease constitutes and incorporates the entire agreement between the parties hereto and no earlier statement or prior written or verbal matter shall have any force or effect, all of which are superseded in their entirety by this Lease. Tenant agrees that it is not relying on any representations or agreements other than those contained in this Lease. This agreement shall not be modified or canceled except by a written agreement signed by both parties. The covenants, conditions and agreements contained in this Lease shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, distributees, executors, administrators, successors and except as otherwise provided in this Lease, their assigns.

53.06 **Consents:** If in this Lease it is provided that Landlord's consent or approval as to any matter will not be unreasonably withheld, such consent shall also not be unreasonably delayed. If it is established by a court or body having final jurisdiction thereof that Landlord has been unreasonable, the only effect of such finding shall be that Landlord shall be deemed to have given its consent or approval; but Landlord shall not be liable to Tenant in any respect for money damages by reason of withholding its consent, unless it is determined that Landlord acted arbitrarily, maliciously or in bad faith.

53.07 **Consent to Jurisdiction:** Tenant hereby (a) irrevocably consents and submits to the jurisdiction of any Federal, state, county or municipal court sitting in the County of New York in respect to any action or proceeding brought therein by Landlord against Tenant concerning any matters arising out of or in any way relating to this Lease; (b) intentionally omitted and consents to service of process upon it in accordance with the provisions of New York law; (c) irrevocably waives all objections as to venue and any and all rights it may have to seek a change of venue with respect to any such action or proceedings; (d) agrees that the laws of the State of New York shall govern in any such action or proceeding and waives any defense to any action or proceeding granted by the laws of any other country or jurisdiction unless such defense is also allowed by the laws of the State of New York; and (e) agrees that any final judgment rendered against it in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law. Tenant further agrees that any action or proceeding by Tenant against Landlord in respect to any matters arising out of or in any way relating to this Lease shall be brought only in the State of New York, County of New York. In furtherance of the foregoing, Tenant hereby agrees that its address for notices given by Landlord and service of process under this Lease shall be the Demised Premises.

53.08 **Casualty/Tenant Termination Right:** Supplementing Article 9 hereof, subject to Landlord's right to cancel this Lease pursuant said Article 9, within ninety (90) days after the date of any such fire or other casualty which renders the demised premises untenantable for the purposes of Tenant's permitted use hereunder or which denies Tenant reasonable access to the premises, Landlord shall deliver to Tenant a statement from a reputable independent contractor (the "Contractor's Statement") setting forth such contractor's good faith estimate as to the time required to repair such damage. If the estimate of the time period exceeds twelve (12)) months from the date of such casualty, Tenant may elect to terminate this Lease by giving Landlord written notice thereof not later than thirty (30) days after the receipt of the Contractor's Statement. If such notice is given, the term of this Lease shall expire upon the fifteenth (15th) day after notice of such election is given, and Tenant shall vacate and surrender the demised premises in its present "as is" condition upon the expiration of such fifteen (15) day period. Notwithstanding anything to the contrary contained herein, if (i) either Tenant shall not have elected to terminate this Lease pursuant to the provisions hereof or Tenant shall not have had the right to terminate this Lease pursuant to the provisions hereof because the estimated time period set forth in the Contractor's Statement did not exceed twelve (12) months, and (ii) Landlord shall have failed to make such repairs on or before the date which is one (1) month after the estimated time period set forth in the Contractor's Statement, then Tenant may elect to terminate this Lease by notice given to Landlord within fifteen (15) days after the expiration of such one (1) month period. If Tenant makes such election, the term of this Lease shall expire on the fifteenth (15th) day after notice of such election is given by Tenant, and Tenant shall vacate the demised premises and surrender the same to Landlord in accordance with the provisions hereof.

53.09 **Freight Elevator:** There shall be no charge to Tenant for use of the freight elevator for normal business hours, which are 8:30 a.m. – 12:00 p.m. and 1:00 p.m. to 4:30 p.m. at any time during the term of the Lease. In addition, in connection with Tenant's initial move – in and Tenant's Initial Work, Landlord shall not charge for the first twelve (12) hours of overtime use of the freight elevator for a period of five (5) months from Lease Commencement subject to notice and scheduling. Additional overtime charge for use of the freight elevator is $50.00/hour which must be scheduled in four (4) hour increments.

53.10 **24/7 Access**. Landlord shall provide Tenant with access to the Demised Premises on a 24 hour a day, 7 day a week basis.

53.11 **Notices.** Supplementing and modifying the provisions of paragraph 28 of the printed form Lease, except as otherwise in this Lease provided, all notices hereunder shall be in writing and shall be served by personal delivery or by registered or certified mail, return receipt requested, with postage prepaid or by reputable overnight courier. Notices to and service of process upon Tenant shall be sent to the address set forth in the preamble on the printer form of Lease, with a copy to: Shaw Bleckner, 350 Fifth Avenue, Suite 816, New York, NY 10018, Attention: David Bleckner, Esq. Notices to Landlord shall also be sent to Howard Kurtzberg, Esq., 380 North Broadway, Suite 300, Jericho, New York 11753. Any such notice shall be deemed given and effective on the date of personal delivery thereof, three (3) business days after being sent via certified mail, or on the next business day following delivery by reputable overnight courier. The parties acknowledge that notices from attorneys or the Landlord's managing agent shall have the same force and effect as if such notice was given by either party directly.

54. ADDENDUM TO ARTICLE 22:

Upon the expiration or other termination of this Lease, Tenant shall quit and surrender to Landlord the Demised Premises, vacant, broom clean, in good order and condition, ordinary wear and tear and damage for which Tenant is not responsible under the terms of this Lease excepted, and otherwise in compliance with the provisions of Article 3 hereof. If the last day of the term or any renewal thereof falls on Saturday or Sunday, this Lease shall expire on the business day immediately preceding. Tenant expressly waives, for itself and for any person claiming through or under Tenant, any rights which Tenant or any such person may have under the provisions of Section 2201 of the New York Civil Practice Law and Rules and of any successor law of like import then in force in connection with any holdover summary proceedings which Landlord may institute to enforce the foregoing provisions of this Article 54. Tenant acknowledges that possession of the Demised Premises must be surrendered to Landlord on the Expiration Date. Tenant agrees to indemnify and save Landlord harmless from and against all claims, losses, damages, liabilities, costs and expenses (including, without limitation, attorneys' fees and disbursements) resulting from delay by Tenant in so surrendering the Demised Premises for a period of more than thirty (30) days, including, without limitation, any penalties, rent concessions and/or claims made by any succeeding tenant founded on such delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant to timely surrender possession of the Demised Premises as aforesaid will be extremely substantial, will exceed the amount of the monthly installments of the Fixed Rent and Additional Rent theretofore payable hereunder, and will be impossible to accurately measure. Tenant therefore agrees that if possession of the Demised Premises is not surrendered to Landlord within twenty-four (24) hours after the Expiration Date, in addition to any other rights or remedies Landlord may have hereunder or at law, and without in any manner limiting Landlord's right to demonstrate and collect any damages suffered by Landlord and arising from Tenant's failure to surrender the Demised Premises as provided herein, Tenant shall pay to Landlord on account of use and occupancy of the Demised Premises for each month and for each portion of any month during which Tenant holds over in the Demised Premises after the Expiration Date, a sum equal to one and one-half (1 1/2) times the aggregate of that portion of the Fixed Rent and Additional Rent which was payable under this Lease during the last month of the term. Nothing herein contained shall be deemed to permit Tenant to retain possession of the Demised Premises after the Expiration Date or to limit in any manner Landlord's right to regain possession of the Demised Premises through summary proceedings, or otherwise, and no acceptance by Landlord of payments from Tenant after the Expiration Date shall be deemed to be other than on account of the amount to be paid by Tenant in accordance with the provisions of this Article 54. The provisions of this Article 54 shall survive the Expiration Date. Upon surrender by Tenant of the Demised Premises in accordance with this Lease, and provided that no event of default has occurred and is continuing, Landlord shall return the Security Deposit to Tenant within thirty (30) days after said surrender.

55. COMMENCEMENT OF TERM:

Supplementing Article 42, Tenant shall undertake, at its own cost and expense (but with Landlord's reasonable cooperation), to obtain all required operating certificates, authorizations or approvals that are required by any federal, state or municipal agency, bureau or department in connection with the conduct of Tenant's

business at the demised premises. Tenant's failure or inability to obtain any and all required operating certificates, authorizations or approvals by the commencement of the term hereof shall neither delay the commencement of the term of this Lease nor relieve Tenant of its obligations under this Lease.

56. MECHANIC'S LIENS:

Tenant covenants that no mechanic's liens will be placed against the demised premises by reason of Tenant's Work, other authorized alterations made by the Tenant, or for any other reason. In the event a mechanic's lien is placed upon the demised premises by reason of any repair construction, or otherwise, the Tenant is to remove the said lien within twenty (20) days from the date Tenant receives notice of such filing by filing a bond or as otherwise permitted by law. It is agreed and understood between the Landlord and the Tenant herein, that the Landlord may, at its option, treat any such default on the part of the Tenant which continues beyond the applicable notice and/or grace period as a material breach of the covenants of this lease.

57. AIR CONDITIONING, HEATING, SPRINKLER AND FIRE ALARM SYSTEMS:

Landlord shall deliver the Demised Premises to the Tenant with the heating, ventilation and air-conditioning system in good working order. Heat will be provided via perimeter system radiators in their "as is, where is" location within the Demised Premises. The air conditioning system shall be air-cooled and Tenant controlled. Tenant shall, at Tenant's sole cost and expense, maintain (such maintenance shall include obtaining a contract with a reputable company) all air-conditioning unit(s) in the Demised Premises at Tenant's sole cost and expense. Provided that Tenant obtains and maintains the maintenance contract set forth above (which contract will be submitted by Tenant to Landlord for approval prior to signing it), Landlord shall be responsible for all major repairs (for the purpose of this Lease, a major repair shall mean any repairs in excess of $2,500/year for each component) to the unit(s) to the extent not covered by said contract.
If Tenant fails to maintain the air-conditioning units, Tenant shall be responsible for all loss, claim or damage arising therefrom (including necessary repairs).

Unless otherwise agreed to by Landlord, in writing, Tenant agrees to exclusively use Hy-Lee Electric, Inc. (or such other company as Landlord may from time to time designate in writing) in connection with any work relating to or involving the Building's fire alarm system (at competitive rates). Landlord shall provide Tenant with contact information for said company.

58. RUBBISH REMOVAL:

Tenant shall be responsible to remove all rubbish and refuse from the Demised Premises, provided, however, that Tenant shall place all of its rubbish and refuse in the rubbish removal area of the freight elevator for said purposes and shall not use any other area of the building for this purpose. Tenant agrees that Tenant shall not place rubbish and/or refuse in any other part of the Building. Landlord agrees that Tenant shall have the right to use the freight elevator for said purpose and to make it available for same. Landlord agrees to remove rubbish and refuse from the freight elevator to the rubbish pickup area. Tenant shall, at Tenant's sole cost and expense retain the services of a private rubbish carter for carting of Tenant's rubbish and refuse. Upon request by Tenant, Landlord shall provide the name of one or more private carters being used by other tenants in the Building.

59. CLEANING SERVICE AND BATHROOM MAINTENANCE:

Tenant shall be responsible for cleaning the Demised Premises. Landlord shall be responsible to clean and replenish supplies for the bathrooms on the common floor area of the Demised Premises, as well as such common floor area and the lobby. Landlord is not responsible for cleaning the interior of the Demised Premises.

60. WINDOW CLEANING:

Tenant shall, at Tenant's sole cost and expense, be responsible for maintaining the windows in the Demised Premises. Landlord shall be responsible to clean the windows on the exterior of the Demised Premises, no less than once a year.

61. ACCESS:

Landlord shall provide access to the Demised Premises on a twenty-four (24) hour per day, seven (7) days per week basis.

62. SIGNAGE:

Subject to Landlord's prior consent, which shall not be unreasonably withheld, conditioned or delayed, Tenant shall be entitled to Tenant's proportionate share of signage in the Building lobby directory and on the floor where the demised premises are located. Notwithstanding the foregoing, Landlord shall reserve the right to determine the location of such directory and the location of such signage. Tenant or any permitted occupant shall also be entitled to a sign on the entrance door to the Demised Premises.

63. RENT CONCESSION

A rent concession of five (5) months in the first year of the Lease term has been reflected in the difference between the Commencement Date and the Rent Commencement Date. All other terms of this Lease shall apply during this concession period. Tenant agrees that the foregoing rent concession is fair and adequate and representative of the agreement between the parties as described in the "term sheet" dated October 16, 2012 as amended (see also paragraph 65 below).

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64. TENANT'S FUND:

(a) Supplementing Article 42 above, Tenant shall be entitled to receive a maximum contribution of $111,460.00 ($20.00/rentable square foot) towards the cost of Tenant's Work (the "Tenant's Fund"). The terms governing such Tenant's Fund, shall be as set forth below.

(b) The Tenant's Fund shall be Landlord's contribution toward the costs of the portion of Tenant's Work carried out or installed by Tenant within one (1) year from the Commencement Date (time being of the essence), subject, however, to delays due to strikes or any other cause beyond Tenant's reasonable control (i.e., force majeure), and prior to Tenant (or any one claiming under or through Tenant) opening for business in the Demised Premises. Tenant shall provide Landlord with notice of any events which, in Tenant's reasonable judgment, require an extension of the foregoing one (1) year period. Landlord shall notify Tenant of any reasonable objections to the extension within ten (10) days after receipt of said notice.

(c) Tenant may use an amount not to exceed ten (10%) percent of the Tenant's Fund for "soft costs".

(d) Landlord shall disburse portions of the Tenant's Fund to Tenant as follows:

(i) Thirty three (33%) percent upon written certification by Tenant to Landlord that Tenant's Work is one-third (1/3) complete;

(ii) An additional thirty-three (33%) percent upon written confirmation by Tenant to Landlord that Tenant's Work is two-thirds (2/3) complete;

(iii) An additional twenty-four (24%) percent upon written confirmation by Tenant to Landlord that Tenant's Work is one hundred (100%) complete; and

(iv) The final ten (10%) percent upon Tenant providing Landlord with all necessary certificates regarding the completion of Tenant's Work.

(e) Landlord's obligation to make disbursements from the Tenant's Fund shall be subject to Landlord's verification of the total cost of Tenant's Work as estimated by Tenant's independent licensed architect and receipt of: (i) a request for such disbursement from Tenant signed by a senior financial officer of Tenant, together with the certification required by Subsection (d) hereof, (ii) copies of all receipts, invoices and bills for the work completed and materials furnished in connection with Tenant's Work, which are to be paid from the requested disbursement or which have been paid by Tenant and for which Tenant is seeking reimbursement, (iii) copies of all contracts, work orders, change orders and other materials relating to the work or materials which are the subject of the requested disbursement or reimbursement, (iv) if requested by Landlord, partial waivers of lien from all contractors and subcontractors involved in the performance of Tenant's Work relating to the portion of Tenant's Work theretofore performed and materials theretofore provided and for which previous disbursements have been made (except to the extent such waivers of lien were previously furnished to Landlord upon a prior request).

(f) In no event shall the aggregate amount paid by Landlord to Tenant hereunder exceed the amount of the Tenant's Fund. Upon the disbursement of the entire Tenant's Fund, Landlord shall have no further obligation or liability whatsoever to Tenant for further disbursement of any other sums to Tenant for the initial alterations in the Demised Premises. It is expressly understood and agreed that Tenant shall complete, at its sole cost and expense, the initial Alterations in the Demised Premises, whether or not the Tenant's Fund is sufficient to fund such completion. Any costs to complete the initial Alterations in the Demised Premises in excess of the Tenant's Fund shall be the sole responsibility and obligation of Tenant.

(g) Notwithstanding the foregoing, Tenant's right to collect Landlord's Fund shall exist only with respect to work performed by Tenant during the one (1) year period after the Commencement Date and, to the extent not utilized within such period, Landlord's Fund shall be deemed waived by Tenant and Landlord shall be under no further obligation to make any further payments to Tenant from Landlord's Fund or otherwise with respect to initial alterations.

(h) Within thirty (30) days after completion of Tenant's Work, Tenant shall deliver to Landlord general releases and waivers of lien from all contractors and subcontractors involved in the performance of Tenant's Work and the materials furnished in connection therewith (unless same previously were furnished pursuant to subsection (c) hereof), and a certificate from Tenant's independent licensed architect certifying that (i) "in his opinion Tenant's Work has been performed in a good and workerlike manner and substantially completed in accordance with the final detailed plans and specifications for Tenant's Work as approved by Landlord and (ii) to his knowledge all contractors, subcontractors and material men have been paid for Tenant's Work and materials furnished through such date".

65. RELOCATION OF ENTRANCE DOOR TO THE DEMISED PREMISES.

Tenant shall promptly submit to Landlord one or more commercially reasonable estimates to relocate the entrance door (and other structures affected thereby) further into the Demised Premsies (in order to create an entrance where the electrical panel that is presently within the Demised Premises will be outside of the Demised Premises (which the parties believe will be approximately seven (7) feet) and, if commercially reasonably necessary, replace the entrance door. Upon approval of an estimate (not to be unreasonably withheld, delayed or

condition), Tenant shall perform the work necessary (including replacement of the door, if commercially reasonably necessary) whereupon Landlord shall be obligated to reimburse Tenant for the full cost of such work promptly upon receipt of a paid invoice therefor. The parties have agreed to an additional one (1) month of rent concession (for a total of five (5) months) as per paragraph 37 (b) above and further agree that the foregoing additional rent concession is fair and adequate consideration for the change to the Demised Premises contemplated by this paragraph.

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SIGNATURE PAGE
TO SUPPLEMENTAL RIDER TO LEASE DATED AS OF DECEMBER 13, 2012 BETWEEN 149 FIFTH AVE. CORP., AS LANDLORD AND
AGENUS, INC., AS TENANT

Witness for Landlord: 149 FIFTH AVE. CORP.
By: William Colavito, Inc., its Managing Agent

/s/ illegible

By: /s/ Steven T. Colavito
Steven T. Colavito, President

Witness for Tenant: AGENUS INC.

/s/ Dimitra Dariotis-Diaz By: /s/ Garo H. Armen
Garo H. Armen, PhD
Chairman & CEO

STATE OF NEW YORK, COUNTY OF ____NY_____ :SS:

On the __13th___ day of December, in the year 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared Steven Colavtio, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

/s/Richard T Matthews
Notary Public

Commonwealth of Massachusetts

Middlesex, ss December 6, 2012

On this 6th day of December, 2012, before me, the undersigned notary public, personally appeared Garo H. Armen, known personally to me to be the person signing on the page above, and acknowledged to me that he signed it voluntarily for its stated purpose as Chairman and Chief Executive Officer of Agenus Inc., a corporation.

/s/Jennifer G. Garon
Jennifer G. Garon
My Commission Expires: May 9, 2019

EXHIBIT A
DEMISED PREMISES

EXHIBIT B
PLANS AND SPECIFICATIONS

Exhibit 23

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Agenus Inc.:

We consent to the incorporation by reference in the registration statement on Form S-8 (Nos. 333 -40440, 333-40442, 333-50434, 333-69580, 333-106072, 333-115984, 333-143807, 333-143808, 333-151745, 333-160084, 333-160087, 333-160088, 333-176609, 333-183066, and 333-183067) and on Form S-3 (Nos. 333 -151244, 333-161277, 333-163221, 333-164481, and 333-185657) of Agenus Inc. and subsidiaries of our reports dated March 18, 2013, with respect to the consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2012 and 2011, and the related consolidated statements of earnings, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2012, and the effectiveness of internal control over financial reporting as of December 31, 2012, which reports appear in the December 31, 2012 annual report on Form 10 -K of Agenus Inc. and subsidiaries.

/s/ KPMG LLP

Boston, Massachusetts
March 18, 2013

Exhibit 31.1

Certification Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended

I, Garo H. Armen, certify that:

1. I have reviewed this Annual Report on Form 10-K of Agenus Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

   a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles;

   c. evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent function):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

   b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 18, 2013

/s/ GARO H. ARMEN, PH.D.

Garo H. Armen, Ph.D.

Chief Executive Officer

Exhibit 31.2

Certification Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended

I, Christine M. Klaskin, certify that:

1. I have reviewed this Annual Report on Form 10-K of Agenus Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

    a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles;

    c. evaluated the effectiveness of the Registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the Registrant's internal control over financial reporting that occurred during the Registrant's most recent fiscal quarter (the Registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant's internal control over financial reporting; and

5. The Registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant's auditors and the audit committee of the Registrant's board of directors (or persons performing the equivalent function):

    a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant's ability to record, process, summarize and report financial information; and

    b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant's internal control over financial reporting.

Date: March 18, 2013

/s/ CHRISTINE M. KLASKIN

Christine M. Klaskin

Principal Financial Officer

Exhibit 32.1

Certification
Pursuant to 18 U.S.C. Section 1350,
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Agenus Inc. (the "Company") for the year ended December 31, 2012 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned to his/her knowledge hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

(i) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GARO H. ARMEN, PH.D.

Garo H. Armen, Ph.d.

Chief Executive Officer

/s/ CHRISTINE M. KLASKIN

Christine M. Klaskin

Principal Financial Officer

Date: March 18, 2013

A signed original of this written statement required by Section 906 has been provided to Agenus Inc. and will be retained by Agenus Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished to the Securities and Exchange Commission as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2012 and should not be considered filed as part of the Annual Report on Form 10-K.