FORM 10-K

AGENUS INC - AGEN

Filed: March 16, 2015 (period: December 31, 2014)

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, 2014
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, 2014 was: $147.3 million. There were 70,759,935 shares of the registrant's Common Stock outstanding as of February 24, 2015.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the definitive proxy statement for the registrant's 2015 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, 2014, 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 current expectations of our management 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, our ability to successfully integrate the operations of our wholly-owned subsidiary, 4-Antibody AG, the timing of the introduction of products, the effect of new accounting pronouncements, uncertainty regarding our future operating results and our profitability, availability of additional capital 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.

Oncophage®, Stimulon® and Retrocyte Display™ are trademarks of Agenus Inc. and its subsidiaries.

PART I

Item 1. *Business*

Our Business

Agenus Inc. (including its subsidiaries, also referred to as "Agenus," the "Company," "we," "us," and "our") is an immunotherapy company discovering and developing innovative treatments for patients with cancer and other diseases in which modulation of immune function could provide therapeutic benefit. Our approaches are driven by three platform technologies:

- our antibody platform, including our proprietary Retrocyte Display™ technology designed to produce quality human monoclonal antibodies, currently focused on advancing checkpoint modulators, or CPMs;
- our heat shock protein (HSP)-based vaccines; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

We have a portfolio of programs in pre-clinical and clinical stages, including a series of CPMs in investigational new drug (IND)-enabling studies, our Prophage Series vaccine, a Phase 3 ready HSP-based autologous vaccine for glioblastoma multiforme, or GBM, a form of brain cancer, and a number of advanced QS-21 Stimulon-containing vaccine candidates in late stage development by our partner, GlaxoSmithKline (GSK).

For the treatment of cancer, our programs aim to stimulate the immune system to recognize and eradicate cancer cells and disable the mechanisms that cancer cells employ to evade detection and destruction by the immune system. Because of the breadth of our portfolio, we have the ability to combine our proprietary vaccines with a portfolio of checkpoint modulating antibodies against major checkpoint targets to explore and optimize cancer treatments. Our strategy is to develop these agents either alone or in combinations to yield best-in-class treatments. We assess the development, commercialization and/or partnering strategies with respect to each of our internal product candidates periodically based on several factors, including clinical trial results, competitive positioning and funding requirements and resources.

Agenus' core technologies include Retrocyte Display™, a powerful proprietary platform designed to effectively discover and optimize novel, fully human and humanized monoclonal antibodies against antigens of interest. Our Retrocyte Display™ platform is applied to the discovery and development of antibodies, including those targeting significant checkpoint targets. Through collaborative arrangements with our partners, Agenus has preclinical programs targeting GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1.

In February 2015, Agenus entered into a broad, global alliance with Incyte Corporation (Incyte) to pursue the discovery and development of CPMs, initially targeting GITR, OX40, TIM-3 and LAG-3 in the fields of hematology and oncology. Agenus also began collaborating with Merck Sharpe & Dohme (Merck) in April 2014 to discover antibodies against two undisclosed CPM targets. We anticipate initiating clinical trials with the first of our CPM antibody candidates in 2016.

Agenus has also been advancing a series of HSP -peptide based vaccines to treat cancer and infectious disease. In July 2014, we reported positive results from a Phase 2 clinical trial with our Prophage Series vaccine, which showed that patients with newly-diagnosed GBM who were treated with a combination of our Prophage Series vaccine and standard of care showed substantial improvement both in progression-free survival and median overall survival, as compared to historical control data. We are currently exploring options to advance our Prophage Series vaccine into a Phase 3 clinical trial for newly diagnosed GBM, either alone or through a strategic relationship with a third party. We also reported positive results in June 2014 from a Phase 2 clinical trial with our HerpV vaccine candidate for genital herpes.

The Company's QS-21 Stimulon adjuvant is a key component in several of GSK's pre-clinical and clinical stage vaccine programs, which target prophylactic or therapeutic impact in a variety of infectious diseases and cancer. In December 2014, GSK reported that its Phase 3 clinical trial with shingles vaccine HZ/su, using our QS-21 Stimulon adjuvant, met its primary endpoint, reducing the risk of shingles by 97.2% in adults aged 50 years and older compared to placebo. GSK also reported positive Phase 3 clinical trial results for its malaria vaccine using QS-21 Stimulon in October 2013. QS-21 Stimulon is also being used in a vaccine for Alzheimer's disease in partnership with Janssen Sciences Ireland UC, or Janssen.

Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, 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

Our research and development expenses for the years ended December 31, 2014, 2013, and 2012, were $22.3 million, $13.0 million, and $10.6 million respectively. Set forth below are the details of our research and development programs.

Retrocyte Display™ and the Checkpoint Antibody Program

We acquired our Retrocyte Display™ platform in February 2014 when we acquired 4-Antibody AG ("4-AB"), a private European-based biopharmaceutical company. Retrocyte Display™ (Retroviral B Lymphocyte Display) is a proprietary antibody discovery platform designed for the rapid discovery and optimization of fully-human and humanized monoclonal antibodies against a wide array of molecular targets. The Retrocyte Display™ platform is designed to rapidly screen and generate quality therapeutic antibody drug candidates using a high-throughput approach incorporating human antibody libraries expressed in mammalian B-lymphocytes. This approach is intended to combine the speed and diversity of an in vitro discovery platform with the selectivity of an in vivo system yielding high affinity antibodies. We are applying this antibody platform to discover and optimize CPMs that regulate immune response to cancers and other diseases. In addition to the use of the Retrocyte Display™ platform to drive the discovery of future CPMs and potentially other antibody candidates, we may also employ a variety of techniques to discover and optimize our antibody candidates.

Checkpoints are processes that regulate immune response within the body. Checkpoints can:

- contribute to the rapid activation of the immune system when there is a threat of infection;
- help to prevent immune responses to false alarms;
- dampen on-going immune responses when a threat has been eliminated; and
- limit the extent of the immune response so that collateral damage to unimpaired tissues is minimized.

There are dozens of checkpoints as well as ligands that interact with these checkpoints, each of which are expressed on various cell types involved in immune responses. In most instances, these checkpoints and ligands work extremely well to control and shape our immune responses and promote our health. In the last decade, however we have begun to understand that these checkpoint processes can also intensify diseases, including cancer and auto-immune diseases. Understanding the roles that checkpoint processes can play in cancer has led to great advances in the treatment of many patients with advanced cancer. We have learned that, while cancer can be recognized by the immune system as "non-self" and trigger potential immune control, cancer can hijack checkpoint processes to protect itself from either immune detection or immune destruction. Advances in cancer treatment are rapidly emerging based on therapeutic monoclonal antibodies targeting checkpoint receptors or their ligands, facilitating immune response against cancers. Some of the CPM antibodies that have been developed to date include Bristol-Myers Squibb's ipilimumab and nivolumab and Merck's pembrolizumab. Agents like these have not only led to increased survival periods for many patients with certain forms of cancer, such as melanoma and lung cancer, they are leading to apparent cures in patients with advanced metastatic cancer.

We currently have pre-clinical programs exploring fully human and humanized monoclonal antibodies against six important checkpoint targets: GITR, OX40, CTLA-4, PD-1, TIM-3, and LAG-3. We are working to discover and develop monoclonal CPM antibodies to modulate the activity of these targets and selectively reactivate the immune system and thwart attempts by cancer to evade destruction. We believe these CPM antibodies will be beneficial in the treatment of cancer patients by allowing the immune system to more effectively recognize and destroy cancer cells.

We have selected product candidates targeting GITR, OX40, CTLA-4 and PD-1 to advance into IND-enabling studies. In addition, we plan to identify development candidates for TIM-3 and LAG-3 during 2015. We also plan to file INDs for one or more of our previously identified product candidates in 2015 and for at least three product candidates in 2016. We anticipate initiating clinical trials with our first CPM product candidates in 2016.

Partnered Retrocyte Display and CPM Programs

In February 2015, Agenus entered into a broad, global alliance with Incyte to develop and commercialize novel immune-therapeutics using our Retrocyte Display™ platform. The collaboration is initially focused on four CPM programs that target GITR, OX40, TIM-3 and LAG-3. Pursuant to the terms of the collaboration, Incyte made non-creditable, non-refundable upfront payments to Agenus totaling $25.0 million. The parties will share all costs and profits for the GITR and OX40 antibody programs on a 50:50 basis. Incyte is obligated to reimburse our development costs that we incur in connection with LAG-3 and TIM-3 antibody programs, and Agenus is eligible to receive royalties for future product sales, if any. For each

profit-share product, Agenus will be eligible to receive up to $20.0 million in future contingent development milestones. For each royalty-bearing product, Agenus will be eligible to receive (i) up to $155.0 million in future contingent development, regulatory, and commercialization milestones and (ii) tiered royalties on global net sales at rates generally ranging from 6%-12%. For each royalty-bearing product, Agenus will also have the right to elect to co-fund 30% of development costs incurred following initiation of pivotal clinical trials in return for increased royalties. In addition to the initial four antibody programs subject to the collaboration, Agenus and Incyte have the option to jointly nominate and pursue the development and commercialization of CPM programs that target additional checkpoint targets during a five-year discovery period. For each antibody arising from a program that the parties elect to bring into the collaboration, Agenus will have the option to designate that program as one in which the parties will share costs and profits, or one in which Incyte will fund developmental costs with Agenus eligible to receive milestones and royalties. Concurrent with the execution of the collaboration agreement, the parties entered into a Stock Purchase Agreement pursuant to which Incyte purchased approximately 7.76 million shares of Agenus' common stock for an aggregate purchase price of $35.0 million, or approximately $4.51 per share.

In addition, in April 2014, we entered into a collaboration and license agreement with Merck to discover and optimize fully-human antibodies against two undisclosed CPM targets. Under this agreement, Merck is responsible for the clinical development and commercialization of antibodies generated under the collaboration, and we are eligible to receive approximately $100.0 million in potential payments associated with the completion of certain clinical, regulatory and commercial milestones, as well as royalty payments on any worldwide product sales.

We also continue to collaborate with Recepta SA on the development of antibodies targeting CTLA-4, and we expect to continue exploring additional future collaborations. Our strategy includes identifying opportunities to advance the emerging portfolio of CPMs as single agents and in optimized combinations, including potential combinations with Prophage and other agents.

The Heat Shock Protein-based Vaccine Platform

Our HSP-based vaccine platform includes our Prophage Series vaccine candidates for the treatment of cancer and our HerpV vaccine candidate for the treatment of genital herpes. HSPs are a group of proteins present at high levels in most mammalian cells. Their expression is increased when cells are exposed to elevated temperatures or other stresses. A potential role for HSPs in regulating immune responses was revealed when it was first discovered that HSP complexes purified from cancer cells produced immunity to cancer, whereas HSP complexes purified from normal tissue did not. This discovery led to the understanding that HSPs bind to and carry a broad sampling of the protein environment within cells, including mutant proteins that might arise from genetic mutations within cancer cells. It was further shown that immunization with HSP complexes purified from tumors interact with antigen-presenting cells that then express the HSP-associated antigenic peptides to generate a CD4+ and CD8+ T-cell immune response, which in turn targets the cancer cells of the tumor from which the HSP complexes were derived. Collectively, many years of research taught us the importance of targeting cancer with high specificity. In order to provide effective immunization in this manner, HSP complexes isolated from cancer cells are particularly effective. Since HSPs are expressed in all tumor cells, the approach of immunizing with the HSP complexes isolated from a particular tumor is broadly applicable to a variety of cancer types. We believe that we pioneered the use of the HSP, gp96, purified from a patient's own tumor tissue, as a way to make vaccines tailored to stimulating immune recognition and potential immune control of that specific patient's cancer.

Because cancer is a highly variable disease from one patient to another, due to extensive mutation of cancer cells, we believe that a patient-specific vaccination approach is optimal 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, over thirty defined antigenic herpes peptides to an HSP, Hsc70, that we express by genetic engineering, creating HSP70-peptide complexes, or HSPPC. HSPPC, when injected into the body, is designed to elicit a cellular immune response to the synthetic peptides complexed with the HSP.

The Prophage Series Vaccine Candidates

Our Prophage Series cancer vaccine candidates are autologous therapies derived from cancer tissues that are surgically removed from each patient. As a result, Prophage Series vaccines contain a broad sampling of potentially antigenic mutant proteins from each patient's tumor, which is used to produce a tailored Prophage Series vaccine for each patient. Prophage Series vaccines are designed to program the body's immune system to target only the specific cells expressing these mutant antigens, thereby reducing the risk that the body's immune response against the tumor after vaccination will also affect healthy tissue and cause debilitating side effects often associated with chemotherapy and radiation therapy.

Since the first patient was enrolled in a clinical trial studying a Prophage Series vaccine in 1997, we have treated nearly 1,000 cancer patients with Prophage Series vaccines, covering a broad range of cancer types in many clinical trials, and no

serious immune-mediated side effects have been observed. The results of these trials have been published and/or presented at major conferences. These results indicate observable clinical and/or immunological activity across many types of cancer.

Our Prophage Series vaccines are currently being studied in two different settings of GBM: patients who have been newly diagnosed as well as those with recurrent disease. Glioblastoma is the most common primary malignant brain tumor and accounts for the majority of diagnoses of malignant cancers of the brain. Our Prophage Series vaccines are also currently being studied in stage III and IV metastatic melanoma.

Agenus or its partners have completed various clinical trials for HSP-based vaccines for cancer and infectious disease including the following recent Phase II trials: (1) Prophage autologous HSP-based vaccine in newly diagnosed GBM and (2) HerpV recombinant HSP70-synthetic peptide vaccine for the treatment of herpes simplex virus 2 (HSV2) infection, each with encouraging results.

Glioblastoma Multiforme

GBM is a cancer affecting the central nervous system arising from glial cells that become malignant. GBM, the most common primary malignant brain tumor, is currently a rapidly fatal disease. The American Cancer Society estimates that 22,850 new cases of the brain and other nervous system cancers will be diagnosed in the United States during 2015, and that 15,320 people in the United States will die from these tumors during 2015.

Prophage Series vaccine candidates are being studied in newly diagnosed and recurrent GBM, respectively. In June 2011, results from the Phase 2 trial in recurrent GBM were presented at the 47th Annual Meeting of the American Society of Clinical Oncology, or ASCO, showing, among other things, that measures of immune response post vaccination with Prophage Series vaccine demonstrated a significant tumor-specific CD8+ T-cell response as well as innate immune responses as marked by a significant increase in the levels of circulating NK cells. Subsequently, in December 2013, these Phase 2 results were published demonstrating that more than 90% of the patients treated with Prophage Series vaccine were alive at six months after surgery and 30% were alive at 12 months after surgery. Additionally, the median overall survival was approximately 11 months. This compares favorably to historical control data with expected median survival for recurrent GBM patients of three to nine months. The primary objective of this multi-center, single arm Phase 2 trial was to assess the survival rate at six months. The data was published in a manuscript in *Neuro-Oncology,* the official journal of the Society of Neuro-Oncology.

In July 2014, we announced final results from a single-arm, multiple-center, open-label Phase 2 clinical trial in 46 patients with newly diagnosed GBM treated with Prophage Series vaccine in combination with the current standard of care, radiation and temozolomide. These results showed that patients treated with Prophage had a median progression free survival, or PFS, of 18 months, with 33% of patients progression free at 24 months. These results indicate improvement when compared to historical data for patients treated with the standard of care, for which median progression free survival is 6.9 months. Median overall survival, or OS, the primary endpoint of the trial, was 23.8 months and remains durable in patients treated with Prophage. In this study, the 12 month survival rate was 85% with many surviving beyond the 24 month study period. For the standard of care alone, the historical median OS rate is approximately 16 months. Interestingly, positive results seemed to be more pronounced in patients with less expression of the checkpoint ligand PDL-1 on their white blood cells, which suggests a potential benefit from the combination of Prophage with CPMs like PD-1 antagonists.

In addition to the Phase 2 trial in patients with newly diagnosed GBM, the Alliance for Clinical Trials in Oncology, a cooperative group of the National Cancer Institute, or NCI, is supporting a randomized Phase 2 clinical trial of the Prophage Series vaccine in combination with bevacizumab in approximately 222 patients with surgically resectable, recurrent GBM. This trial is the largest vaccine trial ever funded by the NCI in brain tumors and the largest vaccine study ever conducted in combination with bevacizumab. The study is designed to compare efficacy of the Prophage Series vaccine administered with bevacizumab either concomitantly or at progression, as compared to treatment with bevacizumab alone. The primary endpoint of this study is overall survival. This study design is supported in part by previous research indicating a potential synergistic effect between the mechanisms of action behind both the Prophage Series vaccine and and incorporated herein by reference. Although this trial is ongoing, it has been slow to recruit patients; additional U.S. sites have been added in response to this recruitment challenge, which may or may not increase enrollment rates.

Melanoma

In January 2014, we announced the initiation of an investigator-sponsored, randomized Phase 2 clinical trial of the Prophage Series vaccine in combination with ipilimumab in patients with stage III and IV metastatic melanoma. This investigator sponsored study conducted at the University of Texas Health Science Center in Houston, is designed to evaluate the safety, feasibility and immunogenicity of the combination of the Prophage Series vaccine and ipilimumab with or without low-dose cyclophosphamide in approximately 25 patients. Patient enrollment has not yet begun. In light of recent positive data arising from studies in which ipilimumab is combined with PD-1 agonists, the design of this study protocol was recently

modified to incorporate a non-randomized trial of the Prophage Series vaccine in combination with ipilimumab with a reference to prospective comparative patients treated with ipilimumab only.

Other Indications

In April 2008, the Russian Ministry of Public Health issued a registration certificate for the use of Prophage, referred to as 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, 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 focused on the development of innovative technology for cancer immunotherapy. This arrangement expired in December 2014 and all activity under the agreement has ceased. To date, we have not been able to meaningfully launch Oncophage® sales in Russia.

Agenus has also completed numerous Phase 1 and 2 trials with Prophage across many different tumor types, including colorectal cancer, gastric cancer, glioma, lung cancer, melanoma, pancreatic cancer, renal cell carcinoma and lymphoma.

Manufacturing

Prophage Series vaccines 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 approximately 10 hours of direct processing time to manufacture a patient batch of vaccine.

Each Prophage Series vaccine is manufactured using a patient's own tumor. After the patient undergoes surgery to remove cancerous tumor tissue, the tumor is shipped frozen in a specially designed kit provided by the Company to our Lexington, Massachusetts facility. Each Prophage Series vaccine is produced in approximately 10 hours, after which it undergoes extensive quality testing for approximately 2 weeks. The turnaround time from the date of surgery to delivery of vaccine is approximately 3 to 4 weeks, which generally fits well with the patient's recovery time from surgery. Once we release the vaccine, it is shipped frozen overnight to the hospital pharmacy or clinician. Prophage Series vaccines are given as a simple intradermal injection. Agenus has established, within a single facility, well-defined, cost efficient manufacturing under Good Manufacturing Practices, or GMPs.

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 GMP, or 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.

HerpV

HerpV, formerly known as AG-707 plus QS-21 Stimulon, is an investigational therapeutic vaccine candidate directed at a virus that causes genital herpes, also known as 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 consists of recombinant human HSP -70 associated with a total of 32 distinct 35-mer peptide antigens representative of the genital herpes virus proteome. Genital herpes is one of the most common ulcerating diseases of the genital mucosa. The World Health Organization currently estimates that in the United States, approximately 40 to 60 million people are infected with HSV-2, with an incidence of 1-2 million infections and 600,000 to 800,000 clinical cases per year with a prevalence in the 30-40 year old population of approximately 30%.

In June 2014, we reported positive results from a randomized, Phase 2 study for HerpV, where the majority of patients showed an immune response to the HSV antigens after a series of vaccinations and a booster dose at six months. More than half of those vaccinated developed a robust anti-HSV cytotoxic T-cell immune response, and in those patients there was a statistically significant 75% reduction in viral load ($P<0.001$; CI: 46.2 - 88.6%). We believe this is the first demonstration of a correlation between immune responders and a statistically significant reduction in viral load with HSV-2. A reduction in viral load is thought to be relevant in reduction of transmission and symptoms if such reduction is of sufficient magnitude. After the booster shot, HerpV demonstrated a durable reduction in viral shedding approximating 14% (RR=0.86 and CIs: 0.58-1.26) and remains consistent with the reduction in viral shedding observed during the initial treatment period. The protocol defined secondary analyses were viral load and viral shedding after the booster shot. Earlier published results of a Phase 1 study

showed that HerpV administered with our QS-21 Stimulon adjuvant was associated with a significant induction of both CD4+ and CD8+ cellular immune responses.

While the HerpV Phase clinical 2 trial met its formal endpoints, it is unclear that the magnitude of the effect on viral load would be sufficient to significantly reduce the incidence, severity, or duration of herpetic lesions or reduce the risk of viral transmission. The study does, however, demonstrate that the HSP70-peptide-QS21 vaccine produces significant CD8 and CD4 positive T-cell responses to antigenic peptides and that the side effects are mild to moderate and tolerable. We believe that the HSP70-synthetic peptide platform will have applications for other viruses and potentially for cancer vaccines as well.

QS-21 Stimulon® Adjuvant

QS-21 Stimulon is a substance other than the antigens themselves added to a vaccine or other immunotherapy that is intended to enhance immune response to the target antigens. A natural product, QS-21 Stimulon is a triterpene glycoside, or saponin, purified from the bark of the Chilean soapbark tree, *Quillaja saponaria*. QS-21 Stimulon has the ability to stimulate antibody immune response and has also been shown to activate cellular immunity. QS-21 Stimulon is sufficiently characterized with a known molecular structure, thus distinguishing it from other adjuvant candidates, which are typically emulsions, polymers or biologicals of less defined composition, making it one of the most widely tested vaccine adjuvants currently in clinical development. Accordingly, QS-21 Stimulon has become a key component in the development of investigational preventive vaccine formulations across a wide variety of diseases. 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.

The pipeline of product candidates containing QS-21 Stimulon is diverse, encompassing prophylactic as well as therapeutic vaccines for infectious diseases, multiple cancer types and Alzheimer's disease. There are several vaccine candidates containing QS-21 Stimulon in pre-clinical and clinical development by our licensees, including two vaccine candidates for the treatment of shingles and malaria which have successfully completed Phase 3 clinical trials with GSK, and one vaccine candidate for the treatment of Alzheimer's disease in Phase 2 trials with Janssen. In addition to our licensees' programs, our internally-developed vaccine candidate HerpV, which has completed a Phase 2 study for the treatment of genital herpes in Herpes Simplex Virus 2 (HSV2) positive subjects, contains QS-21 Stimulon. See "The Heat Shock Protein-based Vaccine Platform - HerpV" above.

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. 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, which right expires in March 2017. 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 collectively as the GSK Agreements. As of December 31, 2014, we have received $23.3 million of a potential $24.3 million in upfront and milestone payments under 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, including its shingles and malaria vaccine candidates which have successfully completed Phase 3 clinical trials. In December 2014, GSK reported that its ZOE-50 Phase 3 clinical trial evaluating the efficacy of its shingles vaccine candidate, HZ/su, met its primary endpoint. Analysis of the primary endpoint showed that HZ/su reduced the risk of shingles by 97.2% in adults aged 50 years and older compared to placebo. In addition, GSK has reported two positive Phase 3 clinical trials of its RTS,S malaria vaccine candidate containing QS-21 Stimulon, which was accepted by the EMA, for regulatory review in July 2014. In November 2013, Phase 3 data was reported that shows that RTS,S helps protect children and infants from clinical malaria up to 18 months post 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 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. GSK met both of its co-primary endpoints in the large ongoing efficacy clinical trial. In October 2011, *The New England Journal of Medicine* published results of the first Phase 3 clinical trial of GSK's RTS,S malaria vaccine candidate containing QS-21 Stimulon. Results of the study, the largest malaria vaccine efficacy and safety clinical trial ever conducted, demonstrate that RTS,S provided African children with significant protection against clinical and severe malaria, reducing risk by 56% and 47%, respectively, for the 12-month period following vaccination. In contrast, GSK's MAGE-A3ii clinical trial in non-small cell lung cancer containing QS-21 was terminated in May 2014 after reporting in March 2014 that it did not meet its primary endpoint. GSK's DERMA study, a Phase 3 randomized, blinded, placebo-controlled MAGE-A3 clinical trial did not meet its first co-primary endpoint in melanoma patients. In an independent analysis, the study did not significantly extend the disease-free survival period when compared to placebo in the overall MAGE-A3 positive clinical trial population. In line with the Independent Data Monitoring Committee's unanimous recommendation, GSK will continue the study until the second co-primary endpoint is assessed. This co-primary endpoint is based on predefined criterion that was agreed upon by regulatory authorities. This analysis, which is based on gene signature, is designed to prospectively identify patients who may have the capability to be more immunologically responsive and therefore can potentially benefit from treatment. If further analysis shows that the predefined gene signature subset data are successful, there is the potential that a regulatory filing could be considered. GSK anticipates that these data will be available in 2015.

Assuming regulatory approval, the first products containing QS-21 Stimulon are anticipated to be launched by GSK in 2016. If any of our partners' products containing QS-21 Stimulon successfully complete clinical development and receive approval for commercial sale, we are generally entitled to receive royalties for 10 years after commercial launch, with some exceptions. We do not incur clinical development costs for our partners' product candidates.

Manufacturing

Except in the cases of GSK and Janssen, we have retained worldwide manufacturing rights for QS-21 Stimulon, and we have the right to subcontract manufacturing for QS-21 Stimulon. In addition, under the terms of our agreement with GSK, upon request by us, GSK is committed to supply certain quantities of commercial grade QS-21 Stimulon to us and our licensees for a fixed period of time.

Intellectual Property Portfolio

We seek to protect our technologies through a combination of patents, trade secrets and know-how and currently have ownership of or exclusive rights to approximately 60 issued United States patents and approximately 100 issued foreign patents. We also have exclusive rights to approximately 9 pending United States patent applications and approximately 40 pending foreign patent applications. We may not have rights in all territories where we may pursue regulatory approval for Prophage Series vaccine candidates.

Through our acquisition of 4-AB, we also own a number of patents and patent applications directed to various methods and compositions, including methods for identifying therapeutic antibodies and product candidates arising out of 4-AB's technology platforms. In particular, we own patents and patent applications relating to Retrocyte Display™ technology platform. This patent family is projected to expire between 2029 and 2031. In addition, as we advance our research and development efforts with our institutional and corporate collaborators, we intend to seek patent protection for newly-identified therapeutic antibodies and product candidates. We can provide no assurance that any of our patents, including the patents that were acquired with 4-AB, will have commercial value, or that any of our existing or future patent applications, including the patent applications that were acquired with 4-AB, will result in the issuance of valid and enforceable patents.

We may not have the rights in all territories where we may pursue regulatory approval for Prophage Series vaccine candidates. The issued patents that cover the Prophage Series vaccines expire at various dates between 2015 and 2024. The issued patents related to HerpV expire at various dates between 2015 and 2030.

Our issued patents include those that cover our core technologies, including HSP-based vaccines for the treatment of cancers and treatment/prevention of infectious diseases, and saponin adjuvants, in combination with other agents.

Our QS-21 Stimulon composition of matter patent family expired in 2008. Additional protection for QS-21 Stimulon in combination with other agents is provided by our other issued patents which expire between 2017 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:

Ludwig Institute for Cancer Research

On December 5, 2014, 4-AB, entered into a license agreement with the Ludwig Institute for Cancer Research Ltd., or Ludwig, which replaced and superseded a prior agreement entered into between the parties in May 2011. Pursuant to the terms of the license agreement, Ludwig granted 4-AB an exclusive, worldwide license under certain intellectual property rights of Ludwig and Memorial Sloan Kettering Cancer Center arising from the prior agreement to further develop and commercialize GITR, OX40 and TIM-3 antibodies. Pursuant to the license agreement, 4-AB made an upfront payment of $1.0 million to Ludwig. The license agreement also obligates 4-AB to make potential milestone payments of up to $20.0 million for events prior to regulatory approval of licensed products, and potential milestone payments in excess of $80.0 million if licensed products are approved in multiple jurisdictions, in more than one indication, and certain sales milestones are achieved. 4-AB will also be obligated to pay low to mid-single digit royalties on all net sales of licensed products during the royalty period, and to pay Ludwig a percentage of any sublicensing income, ranging from a low to mid-double digit percentage depending on various factors. The license agreement may be terminated as follows: (i) by either party if the other party commits a material, uncured breach; (ii) by either party if the other party initiates bankruptcy, liquidation or similar proceedings; or (iii) by 4-AB for convenience upon 90 days' prior written notice. The license agreement also contains customary representations and warranties, mutual indemnification, confidentiality and arbitration provisions.

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, or 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 in 2016 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, or fulfill our due diligence requirements, Mount Sinai can terminate the agreement. The Mount Sinai Agreement does not contain any milestone payment provisions.

Fordham University

During 1995, Dr. Srivastava moved his research to Fordham University, or 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 in 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, or 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 in 2024 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, 2014, we had paid approximately $640,000 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 NDA, or in the case of biologics, like the Prophage Series vaccines, a biologics license application, or 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 are 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, or 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.

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-Risks Related to our Business-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 have CPM antibody programs currently in preclinical development targeting GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1. We are aware of many companies that have antibody-based products on the market or in clinical development that are directed to the same biological target as some of our programs, including, without limitation, the following: (1) Bristol-Myers Squibb, which has an anti-PD1 antibody in development and also markets ipilimumab, an anti-CTLA-4 antibody, (2) Merck, which has an approved anti-PD1 antibody in the United States, (3) Ono Pharmaceuticals, which has an approved anti-PD1 antibody in Japan, (4) Medimmune, which has anti-CTLA-4, OX40 and PD1 antibodies in development, (5) Curetech, which has an anti-PDI antibody in development, and (6) Pfizer, which has an anti-CTLA-4 antibody in development. Tesaro also has antibody programs targeting PD-1, TIM-3 and LAG-3 and these include both monospecific and dual reactive antibody drug candidates.

With respect to competition with our Prophage Series cancer vaccines, some of our competitors are developing cancer vaccines produced from a patient's own cells or tissue. Others are focusing on developing HSP products. In recent years, it has become possible to cost-effectively obtain DNA sequence information from tumor samples, allowing the potential prediction of the mutations within a particular tumor that might be recognized by the immune system as abnormal and could trigger a useful anti-cancer immune response in the patient with that tumor. 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.

Several companies have products that utilize similar technologies and/or patient-specific medicine techniques that compete with our HSP based vaccines. For treatment of recurrent glioma, Roche markets bevacizumab and Eisai and Arbor Pharmaceuticals market carmustine. Schering Corporation, a subsidiary of Merck, markets temozolmide for treatment of patients with newly diagnosed glioblastoma and refractory astrocytoma. Other companies are developing vaccines 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 (rindopepimut). Celldex's Rindopepimut received FDA Breakthrough Therapy Designation for the treatment of adult patients with ECFRvIII-positive glioblastoma.

Valaciclovir, marketed by GSK, and famciclouir, marketed by Novartis, are small molecule drugs marketed for treatment of genital herpes. Other companies are engaged in research and/or clinical development for vaccines for treatment of genital herpes include Genocea, Vical and AiCuris Gmbh.

We are aware of compounds that claim to be comparable to QS-21 Stimulon that are being used in clinical trials. 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 (Pfizer, Idera, Colby, and Dynavax0, Novartis, Intercell, and 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., CSL Limited, and Novavax, Inc., 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 also aware of a third party that manufactures pre-clinical material purporting to be comparable to QS-21 Stimulon. The claims being made by this third party may create marketplace confusion and have an adverse effect on the goodwill generated by us and our partners with respect to QS-21 Stimulon. Any diminution of this goodwill may have an adverse effect on our ability to commercialize this technology, either alone or with a third party.

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 23, 2015, we had approximately 131 employees, of whom 38 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. On 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, as amended ("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 "Financial" and "News," as sources of information about us.

The public may read and copy any materials filed by Agenus with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Room 1580, Washington, DC 20549. The public may obtain information on the operation of the Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC maintains an Internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC at www.sec.gov.e

The contents of the websites referred to above are not incorporated into this filing. Further, our references to the URLs for these websites are intended to be inactive textual references only.

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 occur, 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, 2014, 2013, and 2012, were $42.5 million, $30.1 million, and $11.3 million, respectively. We expect to incur additional losses over the next several years as we continue research and clinical development of our technologies and pursue partnering opportunities, regulatory strategies, 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 CPM product candidates, including through our collaboration with Incyte, our Prophage Series vaccines, and vaccines containing QS-21 Stimulon. From our inception through December 31, 2014, we have incurred net losses totaling $691.3 million.

On December 31, 2014, we had $40.2 million in cash and cash equivalents and short-term investments. We believe that, based on our current plans and activities, our working capital resources at December 31, 2014 together with aggregate proceeds of $60.0 million received in February 2015 from our global alliance with, and related equity investment by, Incyte as well as an aggregate of $9.0 million of new proceeds generated from our issuance of senior subordinated promissory notes, will be sufficient to satisfy, our liquidity requirements through the first half of 2016 . We expect to attempt to raise additional funds in advance of depleting our current funds although additional funding may not be available on favorable terms, or at all. For the year ended December 31, 2014, our average monthly cash used in operating activities was approximately $3.2 million. We anticipate capital expenditures during 2015 will be approximately $3.5 million.

To date, we have financed our operations primarily through the sale of equity and debt securities. In order to finance future operations, we will be required to raise additional funds in the capital markets, through arrangements with collaborative partners, such as our global alliance with Incyte, 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 or if we incur operating losses for longer than we expect, 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 are on unfavorable terms or 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;
- our ability to successfully develop, manufacture and commercialize CPM product candidates, including pursuant to our collaboration agreement with Incyte;
- the scope, progress, results and costs of researching and developing our future product candidates, and conducting preclinical and clinical trials, including with respect to our GITR and OX40 antibody programs, for which we have agreed to share all costs and profits with Incyte on a 50:50 basis;
- the timing of, and the costs involved in, obtaining regulatory approvals for our and our licensees' product candidates;
- the cost of manufacturing;
- our ability to establish and maintain strategic partnerships, licensing or other arrangements and the financial terms of such arrangements;

- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing our intellectual property rights;
- the costs associated with any successful commercial operations; and
- the timing, receipt and amount of sales of, or royalties on, our future products and those of our partners, if any.

General economic conditions in the United States economy and abroad 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 deterioration in the credit markets on our collaborative partners could limit potential revenue from our product candidates.

Certain of our outstanding debt instruments contain significant restrictive and affirmative covenants and we may not be able to make interest or principal payments when due or otherwise remain in compliance with their terms.

On April 15, 2013, we entered into a Securities Exchange Agreement with the holders of our 2006 Notes whereby we exchanged all of the 2006 Notes, including accrued and unpaid interest, for $10.0 million in cash, 2,500,000 shares of our common stock , and a contractual right to the proceeds of 20% of our revenue interests from certain QS-21 Stimulon partnered programs and a 0.5% royalty on net sales of HerpV. To finance the cash portion of this exchange we entered into two new debt arrangements. We concurrently entered into a Loan and Security Agreement with Silicon Valley Bank for senior secured debt in the aggregate principal amount of $5.0 million (the "SVB Loan"). The SVB Loan bears interest at a rate of 6.75% per annum, payable in cash on the first day of each month with principal payments beginning November 2013 and ending with the final principal payment in April 2015. We also entered into a Note Purchase Agreement with various investors for senior subordinated notes (the "2013 Subordinated Notes)" in the aggregate principal amount of $5.0 million due in April 2015. The 2013 Subordinated Notes bear interest at a rate of 10% per annum, payable in cash on the first day of each month in arrears. We also issued the holders of the 2013 Subordinated Notes four year warrants to purchase 500,000 unregistered shares of our common stock at an exercise price of $4.41 per share. In February 2015, we exchanged the 2013 Subordinated Notes for new senior subordinated notes in the aggregate principal amount of $5.0 million with annual interest at 8% and also issued an additional $9.0 million principal amount of such notes (the "2015 Subordinated Notes"). The SVB Loan is payable in equal monthly installments of approximately $278,000 until April 2015. The 2015 Subordinated Notes are due February 2018.

The SVB Loan is secured by a lien against substantially all of our assets and contains, among other things, a number of restrictions and covenants that limit our ability to:

- incur certain additional indebtedness;
- make certain investments;
- pay dividends other than dividends required pursuant to pre-existing commitments;
- make payments on subordinated indebtedness other than regularly scheduled payments of interest;
- create certain liens;
- consolidate, merge, sell or otherwise dispose of our assets; and/or
- change our line of business.

The SVB Loan also specifies a number of events of default (some of which are subject to applicable cure periods), including, among other things:

- covenant defaults;
- other non-payment defaults;
- bankruptcy;
- certain penalties and judgments from a governmental authority;
- cross-defaults in respect of indebtedness over $50,000; and
- insolvency defaults.

Additionally, any material adverse change with respect to us or Antigenics Inc., constitutes an event of default. Upon the occurrence of an event of default under the SVB Loan, subject to cure periods in certain circumstances, the lender may declare all amounts outstanding to be immediately due and payable and may foreclose upon our assets that secure the SVB Loan. During the continuance of an event of default which does not accelerate the maturity of the SVB Loan, interest will accrue at a

default rate equal to the otherwise applicable rate plus 5%. We may prepay the SVB Loan at any time, in full, subject to certain notice requirement and a prepayment premium equal to 4% of the outstanding principal amount of the SVB Loan.

The 2015 Subordinated Notes also include default provisions which allow for the acceleration of the principal payment of the 2015 Subordinated Notes in the event we become involved in certain bankruptcy proceedings, become insolvent, fail to make a payment of principal or (after a grace period) interest on the 2015 Subordinated Notes, default on other indebtedness with an aggregate principal balance of $13.5 million or more if such default has the effect of accelerating the maturity of such indebtedness, or become subject to a legal judgment or similar order for the payment of money in an amount greater than $13.5 million if such amount will not be covered by third-party insurance.

If we default on the SVB Loan or the 2015 Subordinated Notes and the repayment of such indebtedness is accelerated, our liquidity will be materially and adversely affected.

Our ability to satisfy our obligations under this indebtedness 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 do not have sufficient cash on hand 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 favorable terms, if at all.

We are dependent upon our collaborative relationship with Incyte to further develop, manufacture and commercialize CPM antibodies against certain targets using our proprietary Retrocyte Display™ platform. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration would be significantly reduced, the development and/or commercialization of these CPM antibodies may be terminated or substantially delayed, and our business would be severely harmed.

Under the terms of our collaboration agreement with Incyte, we and Incyte have created a joint steering committee that oversees and manages worldwide regulatory, development, manufacturing and commercialization activities for our CPM antibody product candidates. Agenus leads preclinical development activities until the filing of an investigational new drug application, or IND for a particular CPM antibody, and Incyte leads all clinical development activities. Accordingly, the timely and successful completion by Incyte of clinical development activities will significantly affect the timing and amount of any revenues we may receive under the collaboration agreement. Incyte's activities will be influenced by, among other things, the efforts and allocation of resources by Incyte, which we cannot control. If Incyte does not perform in the manner we expect or fulfill its responsibilities in a timely manner, or at all, the clinical development, manufacturing, regulatory approval and commercialization efforts related to CPM antibodies under the collaboration could be delayed or terminated, and it could become necessary for us to assume the responsibilities for the clinical development, manufacturing, regulatory approval or commercialization of the CPM antibodies at our own expense. Accordingly, there can be no assurance that any of the development, regulatory or sales milestones will be achieved, that we will receive any future milestone or royalty payments under the collaboration agreement, or that we will share in any revenues under the collaboration agreement.

In addition, our collaboration with Incyte may be unsuccessful due to other factors, including the following:

- After the first anniversary of the effective date of the collaboration agreement, Incyte may terminate the agreement or any individual program for convenience upon 12 months' notice;
- We may have disagreements with Incyte that are not settled amicably or in our favor, particularly on the joint steering committee where Incyte will under most circumstances have the deciding vote in the event of a disagreement;
- Incyte may change the focus of its development and commercialization efforts or prioritize other programs more highly and, accordingly, reduce the efforts and resources allocated to our collaboration;
- Incyte may choose not to develop and commercialize CPM products, if any, in all relevant markets or for one or more indications, if at all; and
- if Incyte is acquired during the term of our collaboration, the acquirer may have competing programs or different strategic priorities that could cause it to reduce its commitment to our collaboration.

If Incyte terminates our collaboration agreement, we would need to raise additional capital and may need to identify and come to agreement with another collaboration partner to advance our CPM programs. Even if we are able to find another partner, this effort could cause delays in our timelines and/or additional expenses, which could adversely affect our business prospects and the future of our CPM antibody product candidates.

Our CPM programs are still in pre-clinical development, and there is no guarantee that they will be successful or produce any revenues from CPM antibody product candidates, if any.

Our CPM programs are currently in pre-clinical development. Even if our pre-clinical studies produce positive results, they may not necessarily be predictive of the results of future clinical trials in humans. Many companies in the pharmaceutical and biotechnology industries have suffered significant setbacks in clinical trials after achieving positive results in pre-clinical development, and we cannot be certain that we will not face similar setbacks. These setbacks have been caused by, among other things, pre-clinical findings made while clinical trials were underway or safety or efficacy observations made in clinical trials, including adverse events. Moreover, pre-clinical and clinical data are often susceptible to varying interpretations and analyses, and many companies that believed their product candidates performed satisfactorily in pre-clinical studies and clinical trials nonetheless failed to obtain FDA or EMA approval. If we fail to produce positive results in future clinical trials of CPM antibodies, our business and financial prospects would be materially adversely affected.

We are undergoing significant growth, and we may encounter difficulties in managing this growth, which could disrupt our operations.

We increased our employee headcount from 68 to 132 in 2014, 38 of whom were new hires made in connection with the acquisition of 4-AB in February 2014. In addition, through 4-AB, we also expanded our research and development activities internationally to Switzerland and Germany. We expect to continue increasing our headcount as we continue to build our research and development capabilities. To manage this anticipated growth and expansion, we must continue to implement and improve our managerial, operational and financial systems and continue to recruit, train and retain qualified personnel. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our ability to generate revenue could be reduced, and we may not be able to implement our business strategy.

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

We currently rely upon and expect to continue to rely upon third party licensees, particularly GlaxoSmithKline, or GSK to develop, test, market and manufacture vaccines that utilize our QS-21 Stimulon adjuvant.

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 terminate programs containing QS-21 Stimulon at any time. Clinical trials being conducted by our licensees, including those being conducted by GSK and Janssen, may not be successful. For example, in April 2014, GSK announced the termination of a Phase 3 trial of its MAGE-A3 cancer immunotherapeutic (a vaccine containing QS-21 Stimulon) in non-small cell lung cancer and in 2013 GSK announced the Phase 3 trial of their MAGE-A3 cancer immunotherapeutic in melanoma missed its first co-primary endpoint and that the study would continue until completion of its second co-primary endpoint, which is expected to occur in 2015. The results of these trials and other trials conducted by our licensees, as well as other factors, may cause our licensees to terminate additional programs containing QS-21 Stimulon, which could materially diminish future potential revenue from QS-21 Stimulon. In addition, even if our licensees successfully complete clinical trials with vaccine candidates using QS-21 Stimulon there is no guarantee that these products will obtain regulatory approval or, if so approved, will generate any future milestones or royalty payments.

Any inability to receive anticipated revenues, or a reduction in revenues, generated from QS-21 Stimulon could 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 it may not warrant further internal investment or be sufficiently compelling to generate partnering interest.

In June 2014, we reported positive results from a Phase 2 trial with our HerpV vaccine candidate for genital herpes, which includes QS-21 Stimulon. While the HerpV Phase 2 met its formal endpoints, it is unclear that the magnitude of the effect on viral load would be sufficient to significantly reduce the incidence, severity, or duration of herpetic lesions or reduce the risk of viral transmission. In addition, although we would consider potential partnering relationships for the further development of our HerpV program, we are not currently engaged in any discussions with any such potential partners. In addition, even if we or a potential licensee were to proceed with further HerpV development, there is no guarantee that future clinical trials will be successful, that a reduction in viral shedding will translate into clinical benefit, or that the safety profile will be considered acceptable. Furthermore, it is possible that research and discoveries by others will render our product candidate obsolete or noncompetitive.

We may not be able to advance clinical development or commercialize Prophage Series vaccines or realize any benefits from this program without a partner or an alternative means of financing.

The probability of future clinical development efforts leading to marketing approval and commercialization of Prophage Series vaccines is highly uncertain. Prophage Series vaccines have been in clinical development for over 15 years, including multiple Phase 1 and 2 trials in eight different tumor types as well as randomized Phase 3 trials in metastatic melanoma and adjuvant renal cell carcinoma. To date, none of our clinical trials with Prophage Series vaccines has resulted in a marketing approval, except in Russia where commercialization of the approved product was unsuccessful. Due to our limited resources and our corporate priorities, we do not expect to support on-going clinical studies with Prophage Series vaccines or perform additional studies without the help of a partner or alternative means of financing.

We do not currently sponsor any on-going clinical trials with Prophage Series vaccines and therefore we lack the ability to control trial design, timelines and data availability. Current and future studies may eventually be terminated due to, among other things, slow enrollment, lack of probability that they will yield useful translational and/or efficacy data, lengthy timelines, or the unlikelihood that results will support timely or successful regulatory filings. Currently, the only actively enrolling Prophage Series vaccine clinical study is a Phase 2 trial of Prophage Series vaccine in combination with bevacizumab in patients with surgically resectable recurrent glioma. This trial is being conducted under the sponsorship of the Alliance for Clinical Trials in Oncology, a cooperative group of the NCI. To date, clinical site activation and patient enrollment have not met expectations, which could curtail the viability of sustaining the trial. Furthermore, potential changes in clinical practices trending away from the administration of bevacizumab for the treatment of recurrent glioma could exacerbate enrollment issues and/or render the trial design impractical. In January 2014, we initiated a randomized Phase 2 trial with Prophage Series vaccine and Bristol-Myers Squibb's ipilimumab, for the treatment of Stage III and IV metastatic melanoma. This study is being sponsored by an investigator at the University of Texas and, although the investigator-held investigational new drug application (IND) was activated to allow initiation of the trial, patient enrollment has not yet begun. The design of this study protocol was recently modified to incorporate a non-randomized trial of Prophage Series vaccine in combination with ipilimumab with a reference prospective comparative patients treated with ipilimumab only. This redesign may enable us to more quickly evaluate safety and immunologic correlates of responders in patients with metastatic melanoma. While we believe the combination of Prophage Series vaccines and ipilimumab has the potential to trigger a more effective immune response against the tumor than ipilimumab alone, there is no guarantee that this trial will be completed or that it will yield useful translational and/or efficacy data.

Changes in our manufacturing strategies, manufacturing problems, or increased demand may cause delays, unanticipated costs, or loss of revenue streams within or across our programs.

Our CPM antibody programs, including those partnered with Incyte will require substantial manufacturing development and investment to progress. The CPM antibody programs are preclinical, and we have only recently initiated the development of the reagents, cell lines and systems required to manufacture our antibody candidates. If these development-stage efforts are delayed or do not produce the desired outcomes, this will cause delays in development timelines and increased costs, which may cause us to limit the size and scope of our efforts and studies. In addition, our staff has limited experience in the manufacture and development of the CPM antibody programs and we have recruited or are recruiting additional staff with expertise in these areas. We also currently utilize consultants and advisors to assist advancing these operations. We rely on contract manufacturing organizations, or CMOs, and contract research organizations, or CROs to support our CPM antibody programs. In the future, we may need to secure additional manufacturing capacity with our current, or additional CMOs. Such an effort could divert resources away from the CPM antibody programs and lead to delays in the development of product candidates. We may also need to develop or secure later phase and/or commercial manufacturing capabilities, all of which would cause us to incur additional costs and risk. In the event that our CPM antibody programs require progressively larger production capabilities, our options for qualified CMOs may become more limited. In addition, while we currently have our own cGMP manufacturing facility in Lexington, MA, our facility is not currently configured or equipped to adequately support manufacturing of the required cell lines or the downstream production of cGMP antibody product candidates.

We currently manufacture our Prophage Series vaccines in our Lexington, MA facility. Manufacturing of the Prophage Series vaccines is complex, and various factors could cause delays or an inability to supply the vaccine. Deviations in the processes controlling manufacture could result in production failures. Furthermore, we have limited financial, personnel, and manufacturing resources and there is no assurance that we will be able to allocate resources necessary for the continued manufacturing of Prophage Series vaccines in light of competing corporate priorities. In addition, 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 Prophage Series vaccines in addition to other product candidates in our current facility.

We have given our corporate QS-21 Stimulon licensees, GSK and Janssen, manufacturing rights for QS-21 Stimulon for use in their product programs. If they or their third party contract manufacturers encounter problems with QS-21 Stimulon

manufacturing, their programs containing QS-21 Stimulon could be delayed or terminated, and this could have an adverse effect on our license fees, milestone payments and royalties that we may otherwise receive from these programs. We have retained the right to manufacture QS-21 for ourselves and third parties, although no other such programs are anticipated to bring us substantial revenues in the near future, if ever.

Our ability to efficiently manufacture our products is contingent upon a CMO's ability to ramp up production in a timely manner without the benefit of years of experience and familiarity with the processes, which we may not be able to adequately transfer.

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 either our manufacturing facility or the facilities of our CMOs 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.

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.

We have research and development operations in Switzerland and Germany. We have in the past, and may continue to pursue pathways to develop and commercialize our product candidates in non-U.S. jurisdictions. Various risks associated with foreign operations may impact our success. Possible risks of foreign operations include fluctuations in the value of foreign and domestic currencies, disruptions in the import, export, and transportation of patient tumors and our products or product candidates, the product and service needs of foreign customers, difficulties in building and managing foreign relationships, the performance of our licensees or collaborators, geopolitical instability, unexpected regulatory, economic, or political changes in foreign markets and limitations on the flexibility of our operations and costs imposed by local labor laws. For example, our Oncophage® vaccine is approved for sale in Russia, but we have not and do not expect to receive any revenues from sales in Russia. 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."

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. 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, if ever; or
- adversely affect our ability to recruit patients for our clinical trials.

There is no guarantee that our products or product candidates will be able to compete with potential future products being developed by our competitors.

We have CPM antibody programs currently in pre-clinical development targeting GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1. We are aware of many companies that have antibody-based products on the market or in clinical development that are directed to the same biological target as some of our programs, including, without limitation, the following: (1) Bristol-Myers Squibb, which markets ipilimumab, an anti-CTLA-4 antibody, and also has an anti-PD1 antibody in development, (2) Merck, which has an approved anti-PD1 antibody in the United States, (3) Ono Pharmaceuticals, which has an approved anti-PD1 antibody in Japan, (4) Medimmune, which has anti-CTLA-4, OX-40 and PD1 antibodies in development, (5) Curetech, which has an anti-PDI antibody in development, and (6) Pfizer, which has an anti-CTLA-4 antibody in development. Tesaro also has antibody programs targeting PD-1, TIM-3 and LAG-3 and these include both monospecific and dual reactive antibody drug candidates. There is no guarantee that our antibody product candidates will be able to compete with those under development by our competitors.

We are aware of compounds that claim to be comparable 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., CSL Limited, and Novavax, Inc., 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 arrangements 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 also aware of a third party that manufactures pre-clinical material purporting to be comparable to QS-21 Stimulon. The claims being made by this third party may create marketplace confusion and have an adverse effect on the goodwill generated by us and our partners with respect to QS-21 Stimulon. Any diminution of this goodwill may have an adverse effect on our ability to commercialize this technology, either alone or with a third party.

Competitive products in our HerpV program include valaciclovir (GSK) and famciclovir (Novartis), which are small molecule drugs marketed for treatment of genital herpes. Other companies are engaged in research and/or clinical development 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.

In competition with our Prophage Series product candidates, Genentech markets bevacizumab and Eisai and Arbor Pharmaceuticals market carmustine. 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 temozolmide 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 recently received approval for its vaccine candidate for patients with recurrent glioma who have the mutant EGF receptor variant 3. Other companies may begin development programs as well.

If vaccines from our Prophage Series vaccines are 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.

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 or product candidates;
- 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/or acquire, in-license, and/or advance new product candidates. 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 and/or maintain significant licensing, distribution and/or collaboration agreements on favorable terms to us may hinder or cause us to cease our efforts to develop and commercialize our product candidates, increase our development timelines, and/or increase our need to rely on partnering or financing mechanisms, such as sales of debt or equity securities, to fund our operations and continue our current and anticipated programs.

As previously noted, our ability to advance our CPM programs depends in part on collaborative agreements such as our global alliance with Incyte. See "Risk Factor - We are dependent on our collaborative relationship with Incyte to further develop, manufacture and commercialize CPM antibodies against certain targets using our proprietary Retrocyte Display™ platform. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration would be significantly reduced, the development and/or commercialization of these CPM antibodies may be terminated or substantially delayed, and our business would be severely harmed." In addition, 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 other 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 for our Prophage Series vaccine, we have not entered into a substantial agreement other than the agreement with NewVac which was unsuccessful and expired in 2014. In addition, other companies may not be interested in pursuing patient-specific vaccines like our Prophage Series vaccines, and 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.

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 on favorable terms and on the success of the other parties in performing research, preclinical and clinical testing, completing regulatory applications, and commercializing product candidates. Our research, development, and commercialization efforts with respect to antibody candidates from the Retrocyte Display™ technology platform are, in part, contingent upon the participation of institutional and corporate collaborators. For example, 4-AB has or has had collaborative arrangements with Ludwig Cancer Research (“LCR”) and Brazil-based Recepta Biopharma SA (“Recepta”), among others. In

December 2014, we entered into a new license agreement with LCR, which replaced the prior agreement for some of our target programs. We are in continued discussions with LCR and Recepta with respect to certain of our other target programs. If we are not able to come to agreement on terms or maintain and optimize these arrangements, as well as advance other current or potential collaborations on terms favorable to us, this could have a negative impact on our operations. In February 2015 we began a broad global alliance with Incyte to pursue the discovery and development of CPMs. See "Risk Factors-Risks Related to our Business-We are dependent upon our collaborative relationship with Incyte to further develop, manufacture and commercialize CPM antibodies against certain targets using our proprietary Retrocyte Display™ platform. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration would be significantly reduced, the development and/or commercialization of these CPM antibodies may be terminated or substantially delayed, and our business would be severely harmed."

In addition, substantially all product candidates containing QS-21 Stimulon, other than HerpV, depend on the success of our collaborative partners or licensees, and our 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 necessary to advance these product candidates, obtaining regulatory approvals, and successfully commercializing product candidates.

The development of Prophage Series vaccine for the treatment of patients with recurrent glioma is dependent, in large part, on the efforts of the Alliance for Clinical Trials in Oncology, a National Cancer Institute cooperative group, which is sponsoring a Phase 2 clinical trial of this product candidate in this indication. When our licensees or third party collaborators sponsor clinical trials using our product candidates, we cannot control the timing of enrollment, data readout, or quality of such trials or related activities. In addition, substantially all product candidates containing QS-21 Stimulon, other than HerpV, depend on the success of our collaborative partners or licensees, and our 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. We previously granted NewVac an exclusive license to manufacture, market and sell Oncophage® in the Russian Federation and certain other CIS countries, but the relationship was unsuccessful and expired in 2014 with no benefit to us.

Development activities for our collaborative programs 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, or be unable to, devote resources to these arrangements or adhere to required timelines, 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 could increase our need to fund our operations through sales of debt or equity securities and would negatively affect our business prospects.

Our ability to use net operating loss carryforwards to reduce future tax payments may be limited or restricted.

We have generated significant net operating loss carryforwards, or NOLs, as a result of our incurrence of losses since inception. We generally are able to carry NOLs forward to reduce taxable income in future years. However, our ability to utilize the NOLs is subject to the rules of Section 382 of the Internal Revenue Code of 1986, as amended. Section 382 generally restricts the use of NOLs after an "ownership change." An ownership change occurs if, among other things, the stockholders (or specified groups of stockholders) who own or have owned, directly or indirectly, 5% or more of a corporation's common stock or are otherwise treated as 5% stockholders under Section 382 and the United States Treasury Department regulations promulgated thereunder increase their aggregate percentage ownership of that corporation's stock by more than 50 percentage points over the lowest percentage of the stock owned by these stockholders over the applicable testing period. In the event of an ownership change, Section 382 imposes an annual limitation on the amount of taxable income a corporation may offset with NOL carry forwards. This annual limitation is generally equal to the product of the value of the corporation's stock on the date of the ownership change, multiplied by the long-term tax-exempt rate published monthly by the Internal Revenue Service. Any unused annual limitation may be carried over to later years until the applicable expiration date for the respective NOL carry

forwards. We may have experienced an "ownership change" within the meaning of Section 382 in the past and there can be no assurance that we have not experienced additional ownership changes. As a result, our NOLs may be subject to limitations and we may be required to pay taxes earlier and in larger amounts than would be the case if our NOLs were freely usable. Any such limitation could have a material adverse effect on our results of operations in future years. We have not completed a study to assess whether an ownership change for purposes of Section 382 has occurred, or whether there have been multiple ownership changes since our inception, due to the significant costs and complexities associated with such a study.

Our internal computer systems, or those of our third-party clinical research organizations or other contractors or consultants, may fail or suffer security breaches, which could result in a material disruption in our business and operations.

Despite the implementation of security measures, our internal computer systems and those of our current and future clinical research organizations and other contractors and consultants are vulnerable to damage from computer viruses, unauthorized access, natural disasters, terrorism, war and telecommunication and electrical failures. While we are not aware of any such material system failure, accident or security breach to date, if such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our development programs and our business operations. For example, the loss of clinical trial data from completed, ongoing or future clinical trials could result in delays in our regulatory approval efforts and significant costs to recover or reproduce the data. Likewise, we rely on third parties to manufacture our drug candidates and conduct clinical trials, and similar events relating to their computer systems could also have a material adverse effect on our business. To the extent that any disruption or security breach were to result in a loss of, or damage to, our data or applications, or inappropriate disclosure of confidential or proprietary information, we could incur liabilities and the further development and commercialization of our product candidates could be delayed.

We are highly reliant on our Chief Executive Officer and other members of our management team. In addition, 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 is unable or unwilling to continue 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.

Our future growth success depends to a significant extent on the skills, experience and efforts of our executive officers and key members of our clinical and scientific staff. We face intense competition for qualified individuals from other pharmaceutical, biopharmaceutical and biotechnology companies, as well as academic and other research institutions. We may be unable to retain our current personnel or attract or assimilate other highly qualified management and clinical personnel in the future on acceptable terms. The loss of any or all of these individuals could harm our business and could impair our ability to support our collaboration with Incyte or to support our expected growth. If our management is unable to effectively manage our growth, our expenses may increase more than expected, our ability to generate revenue could be reduced and we may not be able to implement our business strategy.

We rely on a small staff of highly trained and experienced senior management and scientific, administrative and operations personnel and consultants to conduct our business in certain key areas of our organization.

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, 2014, we have spent approximately 20 years and $309.7 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 Foreign Corrupt Practices Act prohibits U.S. companies and their representatives from offering, promising, authorizing, or making payments to foreign governmental 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 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 are unable to obtain and enforce patent protection for our product candidates and related technology, our business could be materially harmed.

Issued patents may be challenged, narrowed, invalidated or circumvented. In addition, court decisions may introduce uncertainty in the enforceability or scope of patents owned by biotechnology companies. The legal systems of certain countries do not favor the aggressive enforcement of patents, and the laws of foreign countries may not allow us to protect our inventions with patents to the same extent as the laws of the United States. Because patent applications in the United States and many foreign jurisdictions are typically not published until 18 months after filing, or in some cases not at all, and because publications of discoveries in scientific literature lag behind actual discoveries, we cannot be certain that we were the first to make the inventions claimed in our issued patents or pending patent applications, or that we were the first to file for protection of the inventions set forth in our patents or patent applications. As a result, we may not be able to obtain or maintain protection for certain inventions. Therefore, the enforceability and scope of our patents in the United States and in foreign countries cannot be predicted with certainty and, as a result, any patents that we own or license may not provide sufficient protection against competitors. We may not be able to obtain or maintain patent protection from our pending patent applications, from those we may file in the future, or from those we may license from third parties. Moreover, even if we are able to obtain patent protection, such patent protection may be of insufficient scope to achieve our business objectives.

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.

Our strategy depends on our ability to identify and seek patent protection for our discoveries. This process is expensive and time consuming, and we may not be able to file and prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner or in all jurisdictions where protection may be commercially advantageous. Despite our efforts to protect our proprietary rights, unauthorized parties may be able to obtain and use information that we regard as proprietary. The issuance of a patent does not ensure that it is valid or enforceable, so even if we obtain patents, they may not be valid or enforceable against third parties. In addition, the issuance of a patent does not give us the right to practice the patented invention. Third parties may have blocking patents that could prevent us from marketing our own patented product and practicing our own patented technology.

The patent landscape in the field of therapeutic antibody development, manufacture and commercialization is crowded. For example, we are aware of third party patents directed to methods for identifying and producing therapeutic antibodies. We are also aware of third party patents directed to antibodies to numerous targets for which we also seek to identify, develop, and commercialize antibodies, including without limitation CTLA-4, PD-1, GITR, OX40, TIM-3, and LAG-3. For example, some patents claim antibodies based on competitive binding with existing antibodies, some claim antibodies based on specifying

sequence or other structural information, and some claim various methods of discovery, production, or use of such antibodies. These or other third party patents could impact our freedom to operate in relation to our technology platforms, including Retrocyte Display™, as well as in relation to development and commercialization of antibodies identified by us as therapeutic candidates. As we discover and develop our candidate antibodies, we will continue to conduct analyses of these third party patents to determine whether we believe we might infringe them, and if so, whether they would be likely to be deemed valid and enforceable if challenged. If we determine that a license for a given patent or family of patents is necessary or desirable, there can be no guarantee that a license would be available on favorable terms, or at all. Inability to obtain a license on favorable terms, should such a license be determined to be necessary or desirable, could, without limitation, result in increased costs to design around the third party patents, delay product launch, or result in cancellation of the affected program or cessation of use of the affected technology.

Third parties may also seek to market biosimilar versions of any approved products. Alternatively, third parties may seek approval to market their own products similar to or otherwise competitive with our products. In these circumstances, we may need to defend and/or assert our patents, including by filing lawsuits alleging patent infringement. In any of these types of proceedings, a court or agency with jurisdiction may find our patents invalid and/or unenforceable. Even if we have valid and enforceable patents, these patents still may not provide protection against competing products or processes sufficient to achieve our business objectives.

We have ownership of or exclusive rights to approximately 60 issued United States patents and approximately 100 issued foreign patents. We also have ownership of or exclusive rights to approximately 9 pending United States patent applications and approximately 40 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, or USPTO, 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.

Through our acquisition of 4-AB, we also own a number of patents and patent applications directed to various methods and compositions, including methods for identifying therapeutic antibodies and product candidates arising out of 4-AB's technology platforms. In particular, we own patents and patent applications relating to Retrocyte Display™ technology platform, a high throughput antibody expression platform for the identification of fully-human and humanized monoclonal antibodies. This patent family is projected to expire between 2029 and 2031. In addition, as we advance our research and development efforts with our institutional and corporate collaborators, we intend to seek patent protection for newly-identified therapeutic antibodies and product candidates. We can provide no assurance that any of our patents, including the patents that were acquired along with 4-AB, will have commercial value, or that any of our existing or future patent applications, including the patent applications that were acquired with 4-AB, will result in the issuance of valid and enforceable patents.

The issued patents that cover the Prophage Series vaccines expire at various dates between 2015 and 2024. The issued patents related to HerpV expire at various dates between 2015 and 2030. Our QS-21 Stimulon composition of matter patent family expired in 2008. Additional protection for QS-21 Stimulon in combination with other agents is provided by our other issued patents which expire between 2017 and 2022. We continue to explore means of extending the life cycle of our patent portfolio.

The patent position of pharmaceutical or biotechnology companies, including ours, is generally uncertain and involves complex legal and factual considerations. The standards which the USPTO and its foreign counterparts use to grant patents are not always applied predictably or uniformly and can change. There is also no uniform, worldwide policy regarding the subject matter and scope of claims granted or allowable in pharmaceutical or biotechnology patents. The laws of some foreign countries do not protect proprietary information to the same extent as the laws of the United States, and many companies have encountered significant problems and costs in protecting their proprietary information in these foreign countries. Outside the United States, patent protection must be sought in individual jurisdictions, further adding to the cost and uncertainty of obtaining adequate patent protection outside of the United States. Accordingly, we cannot predict whether additional patents protecting our technology will issue in the United States or in foreign jurisdictions, or whether any patents that do issue will have claims of adequate scope to provide competitive advantage. Moreover, we cannot predict whether third parties will be able to successfully obtain claims or the breadth of such claims. The allowance of broader claims may increase the incidence and cost of patent interference proceedings, opposition proceedings, post-grant review, inter partes review, and/or reexamination proceedings, the risk of infringement litigation, and the vulnerability of the claims to challenge. On the other hand, the allowance of narrower claims does not eliminate the potential for adversarial proceedings, and may fail to provide a

competitive advantage. Our issued patents may not contain claims sufficiently broad to protect us against third parties with similar technologies or products, or provide us with any competitive advantage.

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

Our QS-21 Stimulon composition of matter patent family has expired, 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, such as 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 other agents covered by our patents. We are aware of other companies that claim to produce material comparable to QS-21 Stimulon. At least one other party has also developed derivatives of QS-21 that have shown biological activity.

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, 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.

We may become involved in lawsuits to protect or enforce our patents, which could be expensive, time consuming and unsuccessful.

Even after they have been issued, our patents and any patents which we license may be challenged, narrowed, invalidated or circumvented. If our patents are invalidated or otherwise limited or will expire prior to the commercialization of our product candidates, other companies may be better able to develop products that compete with ours, which could adversely affect our competitive business position, business prospects and financial condition.

The following are examples of litigation and other adversarial proceedings or disputes that we could become a party to involving our patents or patents licensed to us:

- we or our collaborators may initiate litigation or other proceedings against third parties to enforce our patent rights;
- third parties may initiate litigation or other proceedings seeking to invalidate patents owned by or licensed to us or to obtain a declaratory judgment that their product or technology does not infringe our patents or patents licensed to us;
- third parties may initiate opposition proceedings, post-grant review, inter partes review, or reexamination proceedings challenging the validity or scope of our patent rights, requiring us or our collaborators and/or licensors to participate in such proceedings to defend the validity and scope of our patents;
- there may be a challenge or dispute regarding inventorship or ownership of patents currently identified as being owned by or licensed to us;
- the USPTO may initiate an interference or derivation proceeding between patents or patent applications owned by or licensed to us and those of our competitors, requiring us or our collaborators and/or licensors to participate in an interference or derivation proceeding to determine the priority of invention, which could jeopardize our patent rights; or
- third parties may seek approval to market biosimilar versions of our future approved products prior to expiration of relevant patents owned by or licensed to us, requiring us to defend our patents, including by filing lawsuits alleging patent infringement.

These lawsuits and proceedings would be costly and could affect our results of operations and divert the attention of our managerial and scientific personnel. There is a risk that a court or administrative body could decide that our patents are invalid or not infringed by a third party's activities, or that the scope of certain issued claims must be further limited. An adverse outcome in a litigation or proceeding involving our own patents could limit our ability to assert our patents against these or other competitors, affect our ability to receive royalties or other licensing consideration from our licensees, and may curtail or preclude our ability to exclude third parties from making, using and selling similar or competitive products. Any of these occurrences could adversely affect our competitive business position, business prospects and financial condition.

The degree of future protection for our proprietary rights is uncertain because legal means afford only limited protection and may not adequately protect our rights or permit us to gain or keep our competitive advantage. For example:

- others may be able to develop a platform that is similar to, or better than, ours in a way that is not covered by the claims of our patents;
- others may be able to make compounds that are similar to our product candidates but that are not covered by the claims of our patents;
- we might not have been the first to make the inventions covered by patents or pending patent applications;
- we might not have been the first to file patent applications for these inventions;
- any patents that we obtain may not provide us with any competitive advantages or may ultimately be found invalid or unenforceable; or
- we may not develop additional proprietary technologies that are patentable.

Our commercial success depends significantly on our ability to operate without infringing the patents and other proprietary rights of third parties.

Our success will depend in part on our ability to operate without infringing the proprietary rights of third parties. Other entities may have or obtain patents or proprietary rights that could limit our ability to make, use, sell, offer for sale or import our future approved products or impair our competitive position. In particular the patent landscape around the discovery, development, manufacture and commercial use of our six preclinical CPM antibody programs and therapeutic antibodies is crowded.

Patents that we own may ultimately be found to infringe could be issued to third parties. Third parties may have or obtain valid and enforceable patents or proprietary rights that could block us from developing product candidates using our technology. Our failure to obtain a license to any technology that we require may materially harm our business, financial condition and results of operations. Moreover, our failure to maintain a license to any technology that we require may also materially harm our business, financial condition, and results of operations. Furthermore, we would be exposed to a threat of litigation.

In the biopharmaceutical industry, significant litigation and other proceedings regarding patents, patent applications, trademarks and other intellectual property rights have become commonplace. The types of situations in which we may become a party to such litigation or proceedings include:

- we or our collaborators may initiate litigation or other proceedings against third parties seeking to invalidate the patents held by those third parties or to obtain a judgment that our products or processes do not infringe those third parties' patents;
- if our competitors file patent applications that claim technology also claimed by us or our licensors, we or our licensors may be required to participate in interference, derivation or other proceedings to determine the priority of invention, which could jeopardize our patent rights and potentially provide a third party with a dominant patent position;
- if third parties initiate litigation claiming that our processes or products infringe their patent or other intellectual property rights, we and our collaborators will need to defend against such proceedings; and
- if a license to necessary technology is terminated, the licensor may initiate litigation claiming that our processes or products infringe or misappropriate their patent or other intellectual property rights and/or that we breached our obligations under the license agreement, and we and our collaborators would need to defend against such proceedings.

These lawsuits would be costly and could affect our results of operations and divert the attention of our management and scientific personnel. There is a risk that a court would decide that we or our collaborators are infringing the third party's patents and would order us or our collaborators to stop the activities covered by the patents. In that event, we or our collaborators may not have a viable alternative to the technology protected by the patent and may need to halt work on the affected product candidate or cease commercialization of an approved product. In addition, there is a risk that a court will order us or our collaborators to pay the other party damages. An adverse outcome in any litigation or other proceeding could subject us to significant liabilities to third parties and require us to cease using the technology that is at issue or to license the technology

from third parties. We may not be able to obtain any required licenses on commercially acceptable terms or at all. Any of these outcomes could have a material adverse effect on our business.

The biopharmaceutical industry has produced a significant number of patents, and it may not always be clear to industry participants, including us, which patents cover various types of products or methods of use. The coverage of patents is subject to interpretation by the courts, and the interpretation is not always uniform or predictable. If we are sued for patent infringement, we would need to demonstrate that our products or methods either do not infringe the patent claims of the relevant patent or that the patent claims are invalid, and we may not be able to do this. Proving invalidity is difficult. For example, in the United States, proving invalidity requires a showing of clear and convincing evidence to overcome the presumption of validity enjoyed by issued patents. Even if we are successful in these proceedings, we may incur substantial costs and divert management's time and attention in pursuing these proceedings, which could have a material adverse effect on us. If we are unable to avoid infringing the patent rights of others, we may be required to seek a license, defend an infringement action or challenge the validity of the patents in court. Patent litigation is costly and time consuming. We may not have sufficient resources to bring these actions to a successful conclusion. In addition, if we do not obtain a license, develop or obtain non-infringing technology, fail to defend an infringement action successfully or have infringed patents declared invalid, we may incur substantial monetary damages, encounter significant delays in bringing our product candidates to market and be precluded from manufacturing or selling our product candidates.

The cost of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Some of our competitors may be able to sustain the cost of such litigation and proceedings more effectively than we can because of their substantially greater resources. Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time.

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

We are currently party to various intellectual property license agreements. These license agreements impose, and we expect that future license agreements may impose, various diligence, milestone payment, royalty, insurance and other obligations on us. These licenses typically include an obligation to pay an upfront payment, yearly maintenance payments and royalties on sales. If we fail to comply with our obligations under the licenses, the licensors may have the right to terminate their respective license agreements, in which event we might not be able to market any product that is covered by the agreements. Termination of the license agreements or reduction or elimination of our licensed rights may result in our having to negotiate new or reinstated licenses with less favorable terms, which could adversely affect our competitive business position and harm our business.

If we are unable to protect the confidentiality of our proprietary information, the value of our technology and products could be adversely affected.

In addition to patent protection, we also rely on other proprietary rights, including protection of trade secrets, and other proprietary information. To maintain the confidentiality of trade secrets and proprietary information, we enter into confidentiality agreements with our employees, consultants, collaborators and others upon the commencement of their relationships with us. These agreements require that all confidential information developed by the individual or made known to the individual by us during the course of the individual's relationship with us be kept confidential and not disclosed to third parties. Our agreements with employees and our personnel policies also provide that any inventions conceived by the individual in the course of rendering services to us shall be our exclusive property. However, we may not obtain these agreements in all circumstances, and individuals with whom we have these agreements may not comply with their terms. Thus, despite such agreement, such inventions may become assigned to third parties. In the event of unauthorized use or disclosure of our trade secrets or proprietary information, these agreements, even if obtained, may not provide meaningful protection, particularly for our trade secrets or other confidential information. To the extent that our employees, consultants or contractors use technology or know-how owned by third parties in their work for us, disputes may arise between us and those third parties as to the rights in related inventions. To the extent that an individual who is not obligated to assign rights in intellectual property to us is rightfully an inventor of intellectual property, we may need to obtain an assignment or a license to that intellectual property from that individual, or a third party or from that individual's assignee. Such assignment or license may not be available on commercially reasonable terms or at all.

Adequate remedies may not exist in the event of unauthorized use or disclosure of our proprietary information. The disclosure of our trade secrets would impair our competitive position and may materially harm our business, financial condition and results of operations. Costly and time consuming litigation could be necessary to enforce and determine the scope of our proprietary rights, and failure to maintain trade secret protection could adversely affect our competitive business position. In

addition, others may independently discover or develop our trade secrets and proprietary information, and the existence of our own trade secrets affords no protection against such independent discovery.

As is common in the biopharmaceutical industry, we employ individuals who were previously or concurrently employed at research institutions and/or other biotechnology or pharmaceutical companies, including our competitors or potential competitors. We may be subject to claims that these employees, or we, have inadvertently or otherwise used or disclosed trade secrets or other proprietary information of their former employers, or that patents and applications we have filed to protect inventions of these employees, even those related to one or more of our product candidates, are rightfully owned by their former or concurrent employer. Litigation may be necessary to defend against these claims. Even if we are successful in defending against these claims, litigation could result in substantial costs and be a distraction to management.

Obtaining and maintaining our patent protection depends on compliance with various procedural, documentary, fee payment and other requirements imposed by governmental patent agencies, and our patent protection could be reduced or eliminated for non-compliance with these requirements.

Periodic maintenance fees, renewal fees, annuity fees and various other governmental fees on patents and/or applications will be due to the USPTO and various foreign patent offices at various points over the lifetime of our patents and/or applications. We have systems in place to remind us to pay these fees, and we rely on our outside counsel or service providers to pay these fees when due. Additionally, the USPTO and various foreign patent offices require compliance with a number of procedural, documentary, fee payment and other similar provisions during the patent application process. We employ reputable law firms and other professionals to help us comply, and in many cases, an inadvertent lapse can be cured by payment of a late fee or by other means in accordance with rules applicable to the particular jurisdiction. However, there are situations in which noncompliance can result in abandonment or lapse of the patent or patent application, resulting in partial or complete loss of patent rights in the relevant jurisdiction. If such an event were to occur, it could have a material adverse effect on our business. In addition, we are responsible for the payment of patent fees for patent rights that we have licensed from other parties. If any licensor of these patents does not itself elect to make these payments, and we fail to do so, we may be liable to the licensor for any costs and consequences of any resulting loss of patent rights.

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.

From time to time we 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 may face even greater risks if we sell Oncophage® in Russia or our other product candidates commercially. An individual may bring a product liability claim against us if one of our product candidates causes, or merely appears to have caused, an injury. Product liability claims may result in:

- decreased demand for 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. 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

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 our 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 following 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, 2014, and for the year ended December 31, 2014, the closing price of our common stock has fluctuated between $1.80 (or $0.30 pre-reverse stock split) and $315.78 (or $52.63 pre-reverse stock split) per share and $2.41 and $5.10 per share, respectively. The average daily trading volume for the year ended December 31, 2014 was approximately 728,000 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 to incur 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;

- failure to realize the anticipated benefits of the acquisition of 4-AB;
- developments concerning proprietary rights, including patent and litigation matters;
- publicity regarding actual or potential results with respect to product candidates under development;
- 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 management or scientific 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, 2014, we had 62,720,065 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. As of December 31, 2014, we had filed registration statements to permit the sale of approximately 12,200,000 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, 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, 2014, an aggregate of approximately 21.8 million of these shares remain available for sale. Contingent milestone payments, payable in cash or shares of our common stock at our option, will be due to the former shareholders of 4-AB as follows (i) $10 million upon our market capitalization exceeding $750 million for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date (b) the sale of 4-AB or (c) the sale of Agenus, and (ii) $10 million upon our market capitalization exceeding $1.0 billion for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date, (b) the sale of 4-AB or (c) the sale of Agenus.

As of December 31, 2014, warrants to purchase approximately 2,951,450 shares of our common stock with a weighted average exercise price per share of $10.87 were outstanding.

As of December 31, 2014, options to purchase 6,525,724 shares of our common stock with a weighted average exercise price per share of $4.40 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, 2014 we have 78,828 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.

We do not intend to pay dividends on our common stock and, consequently your ability to obtain a return on your investment will depend on appreciation in the price of our common stock.

We have never declared or paid any cash dividend on our common stock and do not intend to do so in the foreseeable future. We currently anticipate that we will retain future earnings for the development, operation and expansion of our business. Therefore, the success of an investment in shares of our common stock will depend upon any future appreciation in their value. There is no guarantee that shares of our common stock will appreciate in value or maintain their current value.

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 SEC 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, 2014, 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.

We anticipate additional commitments of management time to ensure that our internal control over financial reporting of the operations of 4-AB complies with Section 404 of the Sarbanes-Oxley Act of 2002. Prior to the acquisition, 4-AB was a privately held company organized under the laws of Switzerland and, as such, it had not been subject to financial reporting requirements applicable to public companies and was not required to prepare and publish audited financial statements in accordance with U.S. GAAP. Accordingly, our on-going efforts to ensure that our internal control over the financial reporting of the operations of 4-AB will cause us to incur significant additional costs.

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 SEC. 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 portions of this facility under a lease that expire in June 2016.

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 also have facilities in Jena, Germany and Basel, Switzerland both under leases that expire in June 2016.

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, 2015:

Name	Age	Title
Garo H. Armen, PhD	62	Chairman of the Board and Chief Executive Officer
Christine M. Klaskin	49	Vice President, Finance
Ozer Baysal	59	Chief Business Officer
Robert Stein, MD PhD	64	Chief Scientific Officer
Karen H. Valentine	43	Vice President and General Counsel

Garo H. Armen, PhD—Dr. Armen has been Chairman and CEO since the Company's founding in 1994. From mid-2002 through 2004, he was Chairman of the Board of Directors for the biopharmaceutical company Elan Corporation, plc, which he helped restructure. Dr. Armen is also the founder and Chairman of the Children of Armenia Fund, a philanthropic organization established in 2000 that is dedicated to the positive development of the children and youth of rural Armenia. He holds a PhD degree in physical organic chemistry from the City University of New York.

Christine M. Klaskin—Christine M. Klaskin has been Vice President, Finance since October 2006. 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.

Ozer Baysal - Ozer Baysal has been Chief Business Officer since January 2013. His principal role is to lead Agenus' efforts in establishing commercial capability and accelerating Agenus' transition to becoming a fully integrated biopharmaceutical company. Prior to joining Agenus Mr. Baysal spent more than 30 years with Pfizer in a broad number of functional and geographic areas, most recently serving as President of Europe, Emerging Markets Region. While at Pfizer, he held key leadership positions in Marketing, Sales, and Manufacturing, and was actively involved with numerous licensing and M&A activities. Mr. Baysal holds a bachelor's degree from Bosphorus University in Industrial Engineering and has completed the Programs for Leadership and Management Development at Harvard Business School.

Robert Stein, MD, PhD - Bob Stein has been Chief Scientific Officer since February 2014. Dr. Stein leads our Research, Preclinical Development and Translational Medicine functions and helps shape our clinical development strategy for the Prophage Series vaccines and HerpV. In addition, he is leading the integration of 4-Antibody into our business. Dr. Stein brings over 30 years of experience and accomplishments in the pharmaceutical and biotech industry to the Agenus leadership team. Over the course of his career Dr. Stein has played a pivotal role in bringing eight drugs to the market including Sustiva®, Fablyn®, Viviant®, PanRetin®, TargRetin®, Promacta®, & Eliquis®. Prior to joining Agenus he held a number of senior management positions including Chief Scientific Officer & Senior Vice President of Research for Ligand Pharmaceuticals, Executive Vice President of Research & Preclinical Development for Dupont Merck, President and Chief Scientific Officer for Incyte Pharmaceuticals, President of Roche Palo Alto and CEO of KineMed. Dr. Stein spent the early part of his career at Merck, Sharp and Dohme Research Laboratories. He holds an MD and a PhD in Physiology & Pharmacology from Duke

University. Dr. Stein filed a personal voluntary bankruptcy petition under Chapter 7 in August of 2012 and the bankruptcy was discharged in May 2013.

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 Locke Lorde Edwards LLP). Ms. Valentine is currently a member of the board of directors of the Northeast Chapter of the Association of Corporate Counsel. 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.

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
2013		
First Quarter	$ 4.95	$ 3.71
Second Quarter	5.40	3.55
Third Quarter	4.13	2.45
Fourth Quarter	3.49	2.40
2014		
First Quarter	5.10	2.72
Second Quarter	3.61	2.41
Third Quarter	3.95	2.81
Fourth Quarter	4.13	2.61

As of February 23, 2015, there were approximately 1,259 holders of record and approximately 19,417 beneficial holders of our common stock.

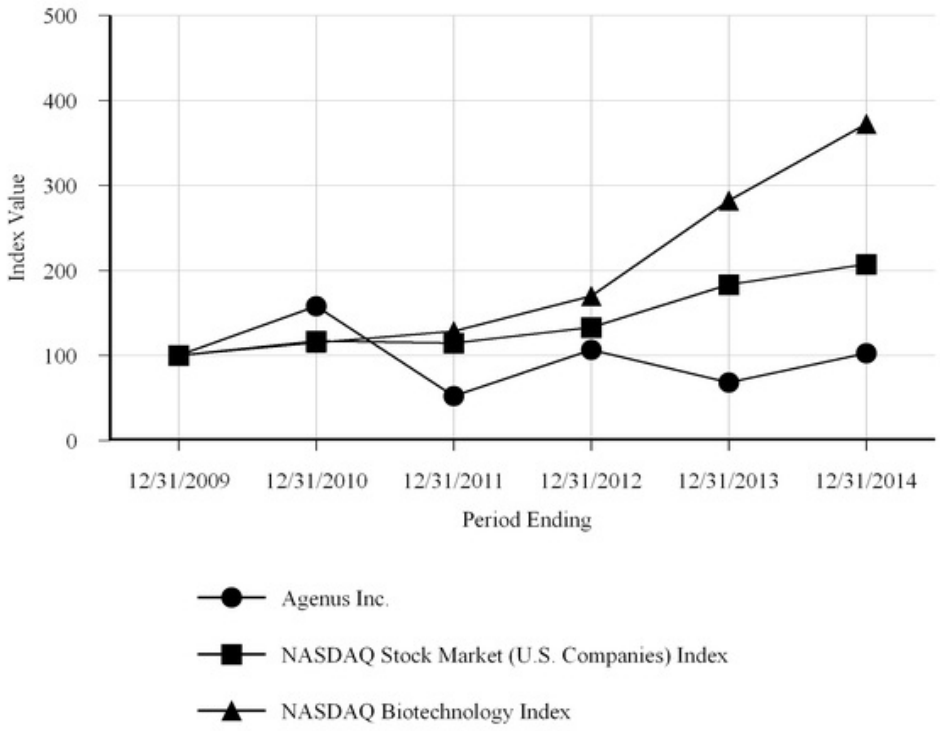
We have never paid cash dividends on our common stock, and we do not anticipate paying any cash dividends in the foreseeable future. We currently intend to retain future earnings, if any, for the future operation and expansion of our business. Any future payment of dividends on our common stock will 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, 2009 to December 31, 2014, 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, 2009. 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 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**



	12/31/2009	12/31/2010	12/31/2011	12/31/2012	12/31/2013	12/31/2014
Agenus Inc.	100.00	158.00	52.14	106.89	68.41	102.62
NASDAQ Stock Market (U.S. Companies) Index	100.00	117.00	114.66	133.01	183.55	207.41
NASDAQ Biotechnology Index	100.00	115.00	128.80	170.02	282.23	372.54

Recent Sales of Unregistered Securities

On February 19, 2015, we issued 7,763,968 shares of our common stock to Incyte Corporation pursuant to a Stock Purchase Agreement dated January 9, 2015. The issuance of these shares of our common stock was not registered under the Securities Act in reliance upon the exemptions from registration afforded by Section 4(2) of the Securities Act of 1933, as amended, and Rule 506 of Regulation D promulgated thereunder. Incyte is an "accredited investor" within the meaning of Regulation D.

On February 20, 2015, the Company, certain existing investors and certain additional investors entered into an Amended and Restated Note Purchase Agreement, pursuant to which we (i) canceled the 2013 Subordinated Notes in exchange for 2015 Subordinated Notes in the aggregate principal amount of $5.0 million, (ii) issued additional 2015 Subordinated Notes in the aggregate principal amount of $9.0 million and (iii) issued five year warrants to purchase 1,400,000 shares of our common stock at an exercise price of $5.10 per share.

Information concerning our equity compensation plans is set forth in our Definitive Proxy Statement with respect to our 2015 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 condensed consolidated balance sheet data set forth below as of December 31, 2014 and 2013, and the condensed consolidated statement of operations data for each of the years in the three-year period ended December 31, 2014, from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

You should read the selected condensed 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' equity (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 employee stock purchases that totaled approximately $57.0 million, $36.6 million , $10.5 million, $8.1 million, and $11.6 million in the years ended December 31, 2014, 2013, 2012, 2011, and 2010, respectively.

	For the Year Ended December 31,				
	2014	2013	2012	2011	2010
	(In thousands, except per share data)				
Condensed Consolidated Statement of Operations Data:					
Revenue	$ 6,977	$ 3,045	$ 15,961	$ 2,756	$ 3,360
Operating expenses:					
Cost of goods sold	—	(536)	(672)	—	(123)
Research and development	(22,349)	(13,005)	(10,564)	(11,023)	(12,878)
General and administrative	(21,250)	(14,484)	(11,465)	(10,820)	(12,112)
Contingent Consideration	(6,699)	—	—	—	—
Loss from operations	(43,321)	(24,980)	(6,740)	(19,087)	(21,753)
Non-operating income (expense)	2,096	(2,673)	110	2	4,680
Interest expense, net	(1,261)	(2,420)	(4,695)	(4,191)	(4,834)
Net loss (1)	(42,486)	(30,073)	(11,325)	(23,276)	(21,907)
Dividends on convertible preferred stock	(204)	(3,159)	(792)	(790)	(790)
Net loss attributable to common stockholders	$ (42,690)	$ (33,232)	$ (12,117)	$ (24,066)	$ (22,697)
Net loss attributable to common stockholders per common share, basic and diluted	$ (0.71)	$ (1.12)	$ (0.51)	$ (1.21)	$ (1.41)
Weighted average number of shares outstanding, basic and diluted	59,754	29,766	23,629	19,899	16,108

	December 31,				
	2014	2013	2012	2011	2010
	(In thousands)				
Condensed Consolidated Balance Sheet Data:					
Cash, cash equivalents, and short-term investments	$ 40,224	$ 27,352	$ 21,468	$ 10,748	$ 19,782
Total current assets	42,670	28,175	22,615	12,004	20,854
Total assets	74,527	34,835	29,093	19,808	30,907
Total current liabilities	9,229	10,296	4,813	4,754	5,416
Long-term debt, less current portion	4,769	5,348	35,714	32,726	34,050
Stockholders' equity (deficit)	23,018	(4,481)	(17,600)	(20,831)	(14,707)

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(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

We are an immunotherapy company discovering and developing innovative treatments for patients with cancer and other diseases in which modulation of immune function could provide therapeutic benefit. Our approaches are driven by three platform technologies:

- our antibody platform, including our proprietary Retrocyte Display™ technology designed to produce quality human monoclonal antibodies, currently focused on advancing checkpoint modulators or CPMs;
- our heat shock protein (HSP)-based vaccines, either autologous or recombinant; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

We have a portfolio of programs in pre-clinical and clinical stages, including a series of CPMs in investigational new drug (IND)-enabling studies, a Phase 3 ready HSP-based autologous vaccine for glioblastoma multiforme, or GBM, a form of brain cancer, and a number of advanced QS-21 Stimulon-containing vaccine candidates in late stage development by our partner, GlaxoSmithKline (GSK). We assess the development, commercialization and/or partnering strategies with respect to each of our internal product candidates periodically based on several factors, including clinical trial results, competitive positioning and funding requirements and resources.

For the treatment of cancer, our programs aim to stimulate the immune system to recognize and eradicate cancer cells and disable the mechanisms that cancer cells employ to evade detection and destruction by the immune system. Because of the breadth of our portfolio, we have the ability to combine our proprietary vaccines with a portfolio of checkpoint modulating antibodies against major checkpoint targets to explore and optimize cancer treatments. Our strategy is to develop these agents either alone or in combinations to yield best-in-class treatments. We assess the development, commercialization and/or partnering strategies with respect to each of our internal product candidates periodically based on several factors, including clinical trial results, competitive positioning and funding requirements and resources.

Our Retrocyte Display™ platform has been applied to the discovery and development of CPMs targeting significant checkpoint targets. Through collaborative arrangements with our partners, Agenus has preclinical programs targeting GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1.

In February 2015, we announced a broad, global alliance with Incyte to pursue the discovery and development of CPMs that initially target GITR, OX40, TIM-3 and LAG-3, and potentially other antibodies for the treatment of patients with cancer. Agenus also began collaborating with Merck Sharpe & Dohme (Merck) in April 2014 to discover antibodies against two undisclosed checkpoint targets. We anticipate initiating clinical trials with the first of our CPM antibody candidates in 2016.

Our research and development expenses for the years ended December 31, 2014, 2013, and 2012, were $22.3 million, $13.0 million, and $10.6 million, respectively. We have incurred significant losses since our inception. As of December 31, 2014, we had an accumulated deficit of $691.3 million.

We have financed our operations primarily through the sale of equity and debt securities. We believe that, based on our current plans and activities, our working capital resources at December 31, 2014, together with subsequently received aggregate proceeds of $25.0 million from the global alliance with Incyte Corporation, $35.0 million received from the sale of our common stock, and an aggregate of $9.0 million of new proceeds generated from our 2015 Subordinated Notes, will be sufficient to satisfy our liquidity requirements through the first half of 2016. We expect to attempt to raise additional funds in advance of depleting our current funds. We may attempt to raise funds by: (1) pursuing collaborative, out-licensing and/or partnering opportunities for our portfolio programs and product candidates with 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 substantial out-licensing or partnering arrangements for our Retrocyte Display™ technology platform, CPM antibody programs, HerpV and the Prophage Series vaccines, and vaccines containing QS-21 Stimulon under development by our licensees. Our long term success will also be dependent on the successful identification, development and commercialization of potential other product candidates, each of which will require additional capital with no certainty of timing or probability of success. 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.

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

Historical Results of Operations

Year Ended December 31, 2014 Compared to the Year Ended December 31, 2013

Revenue: We generated revenue of $7.0 million and $3.0 million during the years ended December 31, 2014 and 2013, respectively. Revenue primarily includes license fees earned, in 2014, grant revenue, and in 2013, service revenue. The increase in revenue for the year ended December 31, 2014 is primarily attributable to (i) the amortization of deferred revenue associated with the acquisition of 4-AB and (ii) a milestone payment received. During the years ended December 31, 2014 and 2013, we recorded revenue of $3.5 million and $1.6 million, respectively, from the amortization of deferred revenue.

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 increased 72% to $22.3 million for the year ended December 31, 2014 from $13.0 million for the year ended December 31, 2013. Increased expenses in 2014 primarily relate to the increased research and development costs of the CPM antibody program and compensation expense related to our increased headcount, in each case as a result of the acquisition of 4-AB.

General and Administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses increased 47% to $21.2 million for the year ended December 31, 2014 from $14.5 million for the year ended December 31, 2013. Increased expenses in 2014 primarily related to increased professional fees related to our corporate activities and expenses of 4-AB as a result of the acquisition.

Contingent purchase price consideration fair value adjustment: Contingent purchase price consideration fair value adjustment represents the increase in the fair value of our purchase price consideration in connection with our acquisition of 4-AB during the year ended December 31, 2014. The fair value of our contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization and has increased primarily due to an increase in our market capitalization since the initial valuation during February 2014.

Non-operating income (expense): Non-operating income for the year ended December 31, 2014 represents primarily the decrease in the fair value of our contingent royalty obligation due to the termination of GSK's Phase 3 MAGE-A3 trial in non-small cell lung cancer, which occurred during the first quarter of 2014. For the year ended December 31, 2013, the non-operating expense resulted primarily from the loss on extinguishment of our convertible notes of approximately $3.3 million.

Interest Expense, net: Interest expense decreased to $1.3 million for the year ended December 31, 2014 from $2.4 million for the year ended December 31, 2013 due to the extinguishment of our convertible notes during 2013.

Dividends on Series A and A-1 convertible preferred stock: Dividends decreased to approximately $204,000 for the year ended December 31, 2014 from approximately $3.2 million for the year ended December 31, 2013 due to the deemed dividend of 666,666 shares of our common stock issued during the exchange of the Series A for Series A-1 convertible preferred stock during the quarter ended March 31, 2013 and the related reduced dividend obligation subsequent to that exchange.

Year Ended December 31, 2013 Compared to the Year Ended December 31, 2012

Revenue: We generated revenue of $3.0 million and $16.0 million during the years ended December 31, 2013 and December 31, 2012, respectively. Revenue includes license fees and service revenue, and in 2012, royalties earned. 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, 2013 and 2012, we recorded revenue of $1.6 million and $1.5 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 expense increased 23% to $13.0 million for the year ended December 31, 2013 from $10.6 million for the year ended December 31, 2012. Increased expenses related to the increased activity in our HerpV program as well as increased compensation expense related to bonuses for research and development personnel partially offset by decreased amortization expense.

General and Administrative: General and administrative expenses increased 26% to $14.5 million for the year ended December 31, 2013 from $11.5 million for the year ended December 31, 2012. Increased expenses related to increased

compensation expense in connection with bonuses for general and administrative personnel and increased professional fees related to our corporate activities, partially offset by decreased amortization expense.

Non-operating (expense) income: Non-operating expense for the year ended December 31, 2013 consists primarily of a loss on the extinguishment of our convertible notes partially offset by the decrease in the fair value of our contingent royalty obligation and the gain on the sale of an equity investment.

Interest Expense, net: Interest expense decreased to $2.4 million for the year ended December 31, 2013 from $4.7 million for the year ended December 31, 2012 due to the extinguishment of our 2006 Notes during 2013.

Dividends on Series A and A-1 convertible preferred stock: Dividends increased to $3.2 million for the year ended December 31, 2013 from approximately $792,000 for the year ended December 31, 2012 due to the deemed dividend issued to the Series A convertible preferred stock holder during the quarter ended March 31, 2013 in exchange for a reduced dividend obligation.

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 2014, these research and development programs consisted largely of our Prophage Series vaccines, HerpV and CPM antibody programs as indicated in the following table (in thousands).

Research and Development Program	Product	Year Ended December 31, 2014	2013	2012	Prior to 2012	Total
Heat shock proteins for cancer	Prophage Series Vaccines	$ 6,153	$ 5,882	$ 5,613	$ 292,033	$ 309,681
Heat shock proteins for infectious diseases	HerpV	2,443	6,358	4,862	19,088	32,751
Vaccine adjuvant *	QS-21 Stimulon	321	753	85	12,498	13,657
Checkpoint modulator program**		13,422	—	—	—	13,422
Other research and development programs		10	12	4	33,540	33,566
Total research and development expenses		$ 22,349	$ 13,005	$ 10,564	$ 357,159	$ 403,077

* Prior to 2000, costs were incurred by Aquila Biopharmaceuticals, Inc., a company we acquired in November 2000.
** Prior to 2014, costs were incurred by 4-AB which we acquired in February 2014.

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 clinical 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 total cost of any particular clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, number of patients, and trial sponsorship. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because our CPM antibody programs are preclinical, and because further development of HerpV and Prophage are dependent on successful partnering or funding efforts, among other factors, we are unable to reliably estimate the cost of completing our research and development programs or, the timing for bringing such programs to various markets, or substantial partnering or out-licensing arrangements, 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

Retrocyte Display™ and the Checkpoint Antibody Program

We acquired our Retrocyte Display™ platform in February 2014 when we acquired 4-AB. Our acquisition of 4-AB provided us with the Retrocyte Display™ (Retroviral B Lymphocyte Display) platform, a proprietary antibody discovery platform designed for the rapid discovery and optimization of fully-human and humanized monoclonal antibodies against a wide array of molecular targets. We are applying this antibody platform to discover and optimize CPMs that regulate immune response to cancers and other diseases. In addition to the use of our Retrocyte Display™ platform to drive the discovery of future CPMs and potentially other antibody candidates, we may also employ a variety of techniques to discover and optimize our antibody candidates.

We have pre-clinical programs exploring fully human or humanized monoclonal antibodies against six important checkpoint targets: GITR, OX40, CTLA-4, PD-1, TIM-3, and LAG-3. We have selected product candidates targeting GITR, OX40, CTLA-4 and PD-1 to advance into IND-enabling studies, and we plan to identify development candidates for TIM-3 and LAG-3 during 2015. We plan to file INDs for one or more of our previously identified product candidates in 2015 and for at least three product candidates in 2016. We anticipate initiating clinical trials with the first our CPM product candidates in 2016. For additional information regarding our Retrocyte Display™ and checkpoint antibody program, please read Part I-Item 1. “Business” of this Annual Report on Form 10-K.

Prophage Series Vaccines

Since the first patient was enrolled in a clinical trial studying a Prophage Series vaccine in 1997, we have treated nearly 1,000 cancer patients with a Prophage Series vaccine, covering a broad range of cancer types in many clinical trials. The results of these trials have been published and/or presented at major conferences. These results indicate observable clinical and/or immunological activity across many types of cancer.

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.

Our Prophage Series vaccines are currently being studied in two different settings of GBM: patients who have been newly diagnosed as well as those with recurrent disease. Through the support of the Alliance for Clinical Trials in Oncology, a cooperative group of the National Cancer Institute (NCI), the NCI opened patient enrollment in 2013 for a 222-patient, multi-center, randomized Phase 2 trial of Prophage Series vaccine in combination with bevacizumab in patients with surgically resectable recurrent glioma. Glioblastoma is the most common primary malignant brain tumor and accounts for the majority of diagnoses of malignant cancers of the brain. Our Prophage Series vaccines are also currently being studied in stage III and IV metastatic melanoma. For additional information regarding our Prophage Series vaccines, please read Part I-Item 1. “Business” of this Annual Report on Form 10-K.

HerpV

HerpV, formerly known as AG-707 plus QS-21 Stimulon, is an investigational therapeutic vaccine candidate directed at a virus that causes genital herpes, also known as 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 consists of recombinant human HSP -70 associated with a total of 32 distinct 35-mer peptide antigens representative of the genital herpes virus proteome.

In June 2014, we reported positive results from a randomized, Phase 2 study for HerpV, where the majority of patients showed an immune response to the HSV antigens after a series of vaccinations and a booster dose at six months. More than half of those vaccinated developed a robust anti-HSV cytotoxic T-cell immune response, and in those patients there was a statistically significant 75% reduction in viral load ($P<0.001$; CI: 46.2 - 88.6%). We believe this is the first demonstration of a correlation between immune responders and a statistically significant reduction in viral load with HSV-2. A reduction in viral load is thought to be relevant in reduction of transmission and symptoms if of sufficient magnitude. After the booster shot, HerpV demonstrated a durable reduction in viral shedding approximating 14% (RR=0.86 and CIs: 0.58-1.26) and remains consistent with the reduction in viral shedding observed during the initial treatment period. The protocol defined secondary analyses were viral load and viral shedding after the booster shot. The primary endpoint of the study was reported in

November 2013. Earlier published results of a Phase 1 study showed that HerpV administered with our QS-21 Stimulon adjuvant was associated with a significant induction of both CD4+ and CD8+ cellular immune responses. For additional information regarding HerpV, please read Part I-Item 1. “Business” of this Annual Report on Form 10-K.

QS-21 Stimulon

QS-21 Stimulon is an adjuvant, or a substance added to a vaccine or other immunotherapy, that is intended to enhance immune response. The corporate licensees of QS-21 Stimulon are GSK and Janssen. There are several vaccines containing QS-21 Stimulon in clinical development, including two that have successfully completed Phase 3 testing by GSK for malaria and shingles, and one in Phase 2 clinical trials with Janssen for the treatment of Alzheimer's disease. Assuming regulatory approval, the first products containing QS-21 Stimulon are anticipated to be launched in 2016, 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. 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.

Liquidity and Capital Resources

We have incurred annual operating losses since inception, and we had an accumulated deficit of $691.3 million as of December 31, 2014. We expect to incur significant losses over the next several years as we continue clinical trials, manage our regulatory processes, prepare for potential commercialization of products, and continue development of our technologies. We have financed our operations primarily through the sale of equity and debt, and interest income earned on cash, cash equivalents, and short-term investment balances. From our inception through December 31, 2014, we have raised aggregate net proceeds of $618.6 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 and other notes. During February 2015, we raised aggregate proceeds of $60.0 million through our global alliance with Incyte Corporation and issued $9.0 million in subordinated notes.

In January 2015, we achieved the first contingent milestone pursuant to the terms of our Share Exchange Agreement with the former shareholders of 4-AB and accordingly are obligated to pay $20.0 million to such shareholders of 4-AB.

In October 2014, we filed a Registration Statement on Form S-3 (SEC file no. 333-100255), declared effective by the Securities and Exchange Commission on October 23, 2014 (the "Shelf Registration Statement"), covering the offering of up to $150.0 million of common stock, preferred stock, warrants, debt securities and units. The Shelf Registration Statement included a prospectus covering the offering, issuance and sale of up to ten million shares of our common stock from time to time in “at the market offerings” pursuant to an At Market Sales Issuance Agreement (the “Sales Agreement”) entered into with MLV & Co. LLC (the “Sales Agent”) on October 10, 2014. Pursuant to the Sales Agreement, sales will be made only upon instructions by us to the Sales Agent, and we cannot provide any assurances that we will issue any shares pursuant to the Sales Agreement.

Also in October 2014, we exercised our right under that certain Amended and Restated At Market Issuance Sales Agreement by and between us and MLV & Co. LLC dated as of December 21, 2012 (the “Prior Sales Agreement”) to terminate the Prior Sales Agreement upon effectiveness of the Shelf Registration Statement.

As of December 31, 2014, we had debt outstanding of $6.3 million in principal. On April 15, 2013, we entered into a Securities Exchange Agreement with the holders of our 2006 Notes whereby we exchanged all of the 2006 Notes, including accrued and unpaid interest, for $10.0 million in cash, 2,500,000 shares of our common stock, and a contractual right to the proceeds of 20% of our revenue interests from certain QS-21 Stimulon partnered programs and a 0.5% royalty on net sales of HerpV. To finance the cash portion of this exchange we entered into two new debt arrangements. We concurrently entered into a Loan and Security Agreement with Silicon Valley Bank for senior secured debt in the aggregate principal amount of $5.0 million (the “SVB Loan”). The SVB Loan bears interest at a rate of 6.75% per annum, payable in cash on the first day of each month with principal payments beginning November 2013 and ending with the final principal payment in April 2015. We also entered into a Note Purchase Agreement with various investors for senior subordinated notes (the “2013 Notes”) in the aggregate principal amount of $5.0 million due in April 2015. The 2013 Notes bear interest at a rate of 10% per annum, payable in cash on the first day of each month in arrears. We also issued to the holders of the 2013 Notes four year warrants to purchase 500,000 unregistered shares of our common stock at an exercise price of $4.41 per share. In February 2015, we exchanged the 2013 Notes for new senior subordinated notes in the aggregate principal amount of $5.0 million with annual interest at 8% and also issued an additional $9.0 million principal amount of such notes due February 2018 (the "2015 Subordinated Notes"). In addition, we also issued to the holders of the 2015 Subordinated Notes, five year warrants to purchase 1.4 million unregistered shares of our common stock at an exercise price of $5.10 per share.

Our cash, cash equivalents and short-term investments at December 31, 2014 were $40.2 million, an increase of $12.9 million from December 31, 2013. We believe that, based on our current plans and activities, our cash, cash equivalents and short-term investments balance of $40.2 million as of December 31, 2014, plus aggregate proceeds of $60.0 million received from Incyte in February 2015 and $9.0 million from the 2015 Subordinated Notes, will be sufficient to satisfy our liquidity

requirements through the first half of 2016. 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. We may attempt to raise funds by: (1) pursuing collaborative, out-licensing and/or partnering opportunities for our portfolio programs and product candidates with 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 substantial out-licensing or partnering arrangements for our Retrocyte Display™ technology platform, CPM antibody programs, HerpV and the Prophage Series vaccines, and vaccines containing QS-21 Stimulon under development by our licensees. Our long term success will also be dependent on the successful identification, development and commercialization of potential other product candidates, each of which will require additional capital with no certainty of timing or probability of success. 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.

Our future cash requirements include, but are not limited to, supporting our pre-clinical programs, clinical trial and regulatory efforts and continuing other research and development programs. Since inception, we have entered into various agreements with clinical trial sites 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 total payments to be $53.5 million over the term of the studies. Through December 31, 2014, we have expensed $51.4 million as research and development expenses and $51.1 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 $6.6 million, all of which have been paid as of December 31, 2014. We plan to enter into additional sponsored research and/or joint collaboration 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. For example, we have various agreements with collaborative partners and/or licensees that 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 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 used in operating activities for the years ended December 31, 2014 and 2013 was $38.2 million and $19.5 million, respectively. This increase primarily resulted from increased costs related to our CPM program, increased personnel costs, costs related to the acquisition of 4-AB, as well as reduced service revenue period to period. We continue to support and develop our QS-21 Stimulon partnering collaborations. If applications for marketing approval of vaccines that are submitted by our licensees are approved, the first products containing QS-21 Stimulon are anticipated to be launched in 2016. We are generally entitled to royalties on sales by our licensees of vaccines using QS-21 Stimulon for at least 10 years after commercial launch, with some exceptions. Our future ability to generate cash from operations will depend on achieving regulatory approval of our product candidates, and market acceptance of our product candidates, achieving benchmarks as defined in existing collaborative agreements, and our ability to enter into new collaborations. Under our global alliance and collaboration agreement Incyte, we are required under the GITR and OX40 antibody programs to split costs with Incyte on a 50:50 basis and there is a potential for these costs to be high and the budgets for the development of these antibody projects may not be in our control. Please see the "Note Regarding Forward-Looking Statements" 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, 2014 (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)	$ 6,471	$ 1,257	$ 5,214	$ —	$ —
Operating leases (2)	13,734	1,924	3,276	3,248	5,286
Total (3)	$ 20,205	$ 3,181	$ 8,490	$ 3,248	$ 5,286

(1) Includes fixed interest payments.

(2) Effective May 2013, we sublet part of our Lexington facility to ImmuneXcite, Inc. whose lease expires in June 2016. Our Lexington facility and New York office leases expire August 2023 and May 2020, respectively.

(3) Excluded from our contractual obligations table is our required contributions of $104,000 in 2015 to our multiple employer benefit plan; our required contributions for the years beyond 2015 to our multiple employer benefit plan are unknown at this time and cannot be reasonably estimated.

Off-Balance Sheet Arrangements

At December 31, 2014, 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 contained elsewhere in this Annual Report on Form 10-K. 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 the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("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 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 10 of the notes to our consolidated financial statements contained elsewhere in this Annual Report on Form 10-K 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 ASC 605-25, *Revenue Recognition—Multiple Element Arrangements*, as amended by Accounting Standards Update 2009-13.

Fair Value Measurements

In accordance with ASC 820, *Fair Value Measurements and Disclosures*, 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.

We measure our contingent royalty obligation and contingent purchase price consideration at fair value in accordance with ASC 825, *Financial Instruments*. The fair value of our contingent royalty obligation and contingent purchase price consideration are based on significant inputs not observable in the market, which require them to be reported as a Level 3 liability within the fair value hierarchy. The valuation of these liabilities uses assumptions we believe would be made by a market participant. In particular, the valuation analysis for the contingent royalty obligation used the income approach based on the sum of the economic income that an asset is anticipated to produce in the future. In this case that asset is the potential royalty income to be paid to us as a result of certain license agreements for QS-21 Stimulon and the potential net sales generated from HerpV. The fair value of the contingent royalty obligation is estimated by applying a risk adjusted discount rate to the probability adjusted royalty revenue stream based on expected approval dates. These fair value estimates are most sensitive to changes in the probability of regulatory approvals. The discounted cash flow method of the income approach was chosen as the method best suited to valuing the contingent royalty obligation.

The fair value of our contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization. Market capitalization was evolved using a geometric brownian motion, calculated daily for the life of the contingent purchase price consideration.

Business Combinations

In February 2014, we acquired all of the outstanding capital stock of 4-AB in a business combination transaction. The acquisition method of accounting requires that the assets acquired and liabilities assumed be recorded as of the date of the merger or acquisition at their respective fair values with limited exceptions. Assets acquired and liabilities assumed in a business combination that arise from contingencies are recognized at fair value if fair value can reasonably be estimated. If the acquisition date fair value of an asset acquired or liability assumed that arises from a contingency cannot be determined, the asset or liability is recognized if probable and reasonably estimable; if these criteria are not met, no asset or liability is recognized. Fair value is defined as the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Accordingly, we may be required to value assets at fair value measures that do not reflect our intended use of those assets. Any excess of the purchase price (consideration transferred) over the estimated fair values of net assets acquired is recorded as goodwill. The operating results of the acquired business are reflected in our consolidated financial statements after the date of the merger or acquisition. If we determine the assets acquired do not meet the definition of a business under the acquisition method of accounting, the transaction will be accounted for as an acquisition of assets rather than a business combination and, therefore, no goodwill will be recorded. The fair values of intangible assets, including acquired in-process research and development ("IPR&D"), are determined utilizing information available near the merger or acquisition date based on expectations and assumptions that are deemed reasonable by management. The judgments made in determining estimated fair values assigned to assets acquired and liabilities assumed in a business combination, as well as asset lives, can materially affect the Company’s results of operations.

Acquired Intangible Assets, including IPR&D

IPR&D acquired in a business combination represents the fair value assigned to research and development assets that have not reached technological feasibility. The value assigned to acquired IPR&D is determined by estimating the costs to develop the acquired technology into commercially viable products, estimating the resulting revenue from the projects, and discounting the net cash flows to present value. The revenue and costs projections used to value acquired IPR&D are, as applicable, reduced based on the probability of success of developing a new drug. Additionally, the projections consider the relevant market sizes and growth factors, expected trends in technology, and the nature and expected timing of new product

introductions by us and our competitors. The rates utilized to discount the net cash flows to their present value are commensurate with the stage of development of the projects and uncertainties in the economic estimates used in the projections. Upon the acquisition of IPR&D, we complete an assessment of whether our acquisition constitutes the purchase of a single asset or a group of assets. We consider multiple factors in this assessment, including the nature of the technology acquired, the presence or absence of separate cash flows, the development process and stage of completion, quantitative significance and our rationale for entering into the transaction.

We review amounts capitalized as acquired IPR&D for impairment at least annually, as of October 31, and whenever events or changes in circumstances indicate that the carrying value of the assets might not be recoverable. When performing our impairment assessment, we have the option to first assess qualitative factors to determine whether it is necessary to recalculate the fair value of our acquired IPR&D. If we elect this option and believe, as a result of the qualitative assessment, that it is more-likely-than-not that the fair value of our acquired IPR&D is less than its carrying amount, we calculate the fair value using the same methodology as described above. If the carrying value of our acquired IPR&D exceeds its fair value, then the intangible asset is written-down to its fair value. Alternatively, we may elect to not first assess qualitative factors and immediately recalculate the fair value of our acquired IPR&D.

Goodwill

Goodwill was $17.9 million at December 31, 2014 of which approximately $15.3 million was acquired as a result of our acquisition of 4-AB. Goodwill is tested at least annually for impairment on a reporting unit basis. We have concluded we consist of a single operating segment and one reporting. We assess goodwill for impairment by performing a quantitative analysis to determine whether the fair value of our single reporting unit exceeds its carrying value. We perform our annual impairment test as of October 31 of each year and the first step of our impairment analysis compares the fair value to our net book value to determine if there is an indicator of impairment. Fair value is based on the quoted market price of our common stock to derive the market capitalization as of the date of the impairment test.

Recent Accounting Pronouncements

In July 2013, the FASB issued Accounting Standards Update No. 2013-11, "Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists", ("ASU 2013-11"). ASU 2013-11 amends ASC 740, "Income Taxes", by providing guidance on the financial statement presentation of an unrecognized benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. ASU 2013-11 does not affect the recognition or measurement of uncertain tax positions under ASC 740. ASU 2013-11 is effective for interim and annual periods beginning after December 15, 2013, with early adoption permitted. The adoption of ASU 2013-11 did not have an impact on our consolidated financial statements.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, ("ASU 2014-09"). ASU 2014-09 amends revenue recognition principles and provides a single set of criteria for revenue recognition among all industries. This new standard provides a five step framework whereby revenue is recognized when promised goods or services are transferred to a customer at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard also requires enhanced disclosures pertaining to revenue recognition in both interim and annual periods. ASU 2014-09 is effective for interim and annual periods beginning after December 15, 2016. We are currently evaluating the potential impact that ASU 2014-09 may have on our financial position and results of operations.

In August 2014, the FASB issued ASU No. 2014-15, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, ("ASU 2014-15"). ASU 2014-15 describes how an entity should assess its ability to meet obligations and sets rules for how this information should be disclosed in the financial statements. The standard provides accounting that will be used along with existing auditing standards. ASU 2014-15 applies to all entities and is effective for the annual period ending after December 15, 2016, and for annual and interim periods thereafter with early adoption permitted. We are currently evaluating the potential impact that ASU 2014-15 may have on our consolidated financial statements and related disclosures.

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

Our primary market risk exposure is foreign currency exchange rate risk. International revenues and expenses are generally transacted by our foreign subsidiary and are denominated in local currency. Approximately 22% and 0% of our operating expenses for the years ended December 31, 2014 and 2013, respectively, were from a foreign subsidiary. Additionally, 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 and Swiss Franc, in large part due to our wholly-owned subsidiary, 4-AB, a company with operations in Switzerland and Germany. During the year ended December 31, 2014, there has been no material change with respect to our approach toward those exposures.

We had cash, cash equivalents and short-term investments at December 31, 2014 of $40.2 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 and US Treasury Securities, our carrying value approximates the fair value of these investments at December 31, 2014, 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 derivatives 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 (the Company) as of December 31, 2014 and 2013, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2014. 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, 2014 and 2013, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2014, 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, 2014, based on criteria established in *Internal Control-Integrated Framework (1992)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 16, 2015 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Our report dated March 16, 2015, on the effectiveness of internal control over financial reporting as of December 31, 2014, contains an explanatory paragraph that states management excluded from its assessment of the effectiveness of Agenus Inc. and subsidiaries' internal control over financial reporting as of December 31, 2014, 4-Antibody AG's internal control over financial reporting associated with total assets of approximately $4.2 million and revenue of $1.5 million that was included in the Company's consolidated financial statements as of and for the year ended December 31, 2014. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of 4-Antibody AG.

/s/ KPMG LLP

Boston, Massachusetts
March 16, 2015

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED BALANCE SHEETS

	December 31, 2014	December 31, 2013
ASSETS		
Cash and cash equivalents	$ 25,714,519	$ 27,351,969
Short-term investments	14,509,570	—
Inventories	95,700	—
Accounts receivable	—	1,200
Prepaid expenses	1,247,548	658,412
Other current assets	1,102,964	162,997
Total current assets	42,670,301	28,174,578
Plant and equipment, net of accumulated amortization and depreciation of $28,369,982 and $27,637,443 at December 31, 2014 and 2013, respectively	5,996,687	2,784,845
Goodwill	17,869,023	2,572,203
Acquired intangible assets, net of accumulated amortization of $462,248 at December 31, 2014	6,773,722	—
Other long-term assets	1,216,795	1,303,855
Total assets	$ 74,526,528	$ 34,835,481
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current portion, long-term debt	$ 1,257,178	$ 3,518,550
Current portion, deferred revenue	184,421	1,660,679
Accounts payable	1,710,946	834,740
Accrued liabilities	5,501,527	4,215,221
Other current liabilities	575,351	66,683
Total current liabilities	9,229,423	10,295,873
Long-term debt	4,769,359	5,347,690
Deferred revenue	3,009,568	3,193,809
Contingent royalty obligation	15,279,000	18,799,141
Contingent purchase price consideration	16,420,300	—
Other long-term liabilities	2,800,491	1,679,671
Commitments and contingencies (Notes 13 and 16)		
STOCKHOLDERS' EQUITY (DEFICIT)		
Preferred stock, par value $0.01 per share; 5,000,000 authorized at December 31, 2014 and 2013:		
Series A-1 convertible preferred stock; 31,620 shares designated, issued, and outstanding at December 31, 2014 and 2013, respectively; liquidation value of $32,012,472 at December 31, 2014	316	316
Series B2 convertible preferred stock; 0 and 3,105 shares designated, issued, and outstanding at December 31, 2014 and 2013, respectively	—	31
Common stock, par value $0.01 per share; 140,000,000 and 70,000,000 shares authorized December 31, 2014 and 2013 respectively; 62,720,065 and 36,391,191 shares issued at December 31, 2014 and 2013, respectively	627,201	363,912
Additional paid-in capital	715,667,633	644,571,866
Treasury stock, at cost; 0 and 43,490 shares at December 31, 2014 and 2013, respectively	—	(324,792)
Accumulated other comprehensive loss	(1,970,420)	—
Accumulated deficit	(691,306,343)	(649,092,036)
Total stockholders' equity (deficit)	23,018,387	(4,480,703)
Total liabilities and stockholders' equity	$ 74,526,528	$ 34,835,481

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
For the Years Ended December 31, 2014, 2013, and 2012

	2014	2013	2012
Revenue:			
Grant revenue	$ 504,228	$ —	$ —
Service revenue	—	1,417,864	1,489,821
Research and development revenue	6,473,227	1,627,343	14,470,895
Total revenues	6,977,455	3,045,207	15,960,716
Operating expenses:			
Cost of service revenue	—	(536,118)	(671,972)
Research and development	(22,349,327)	(13,005,366)	(10,564,195)
General and administrative	(21,249,710)	(14,483,835)	(11,465,092)
Contingent purchase price consideration fair value adjustment	(6,699,300)	—	—
Operating loss	(43,320,882)	(24,980,112)	(6,740,543)
Other income (expense):			
Non-operating income (expense)	2,096,334	(2,672,759)	110,473
Interest expense, net	(1,261,626)	(2,419,798)	(4,694,701)
Net loss	(42,486,174)	(30,072,669)	(11,324,771)
Dividends on Series A and A-1 convertible preferred stock	(203,832)	(3,159,782)	(791,735)
Net loss attributable to common stockholders	$ (42,690,006)	$ (33,232,451)	$ (12,116,506)
Per common share data, basic and diluted:			
Net loss attributable to common stockholders	$ (0.71)	$ (1.12)	$ (0.51)
Weighted average number of common shares outstanding, basic and diluted	59,753,552	29,765,547	23,628,903
Other comprehensive loss:			
Foreign currency translation adjustments	$ (1,778,184)	$ —	$ —
Unrealized gain on investments	1,764	—	—
Pension liability	(194,000)	—	—
Other comprehensive loss	(1,970,420)	—	—
Comprehensive loss	$ (44,660,426)	$ (33,232,451)	$ (12,116,506)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
For the Years Ended December 31, 2014, 2013, and 2012

	Series A Convertible Preferred Stock		Series A-1 Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock			Treasury Stock					
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Additional Paid-In Capital	Number of Shares	Amount	Accumulated Other Comprehensive Loss	Accumulated Deficit	Noncontrolling Interest	Total
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)
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 STOCKHOLDERS' EQUITY (DEFICIT)
(Continued)
For the Years Ended December 31, 2014, 2013, and 2012

	Series A Convertible Preferred Stock		Series A-1 Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional Paid-In Capital	Treasury Stock		Accumulated Other Comprehensive Loss	Accumulated Deficit	Noncontrolling Interest	Total
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value		Number of Shares	Amount				
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(30,072,669)	—	(30,072,669)
Shares sold at the market	—	—	—	—	—	—	4,831,132	48,312	16,942,004	—	—	—	—	—	16,990,316
Common stock issued to preferred shareholder	(31,620)	(316)	31,620	316	—	—	666,666	6,667	(6,667)	—	—	—	—	—	—
Extinguishment of debt	—	—	—	—	—	—	2,500,000	25,000	17,971,813	—	—	—	—	(5,580,124)	12,416,689
Shares sold in registered direct offering	—	—	—	—	—	—	3,333,333	33,333	9,439,161	—	—	—	—	—	9,472,494
Share-based compensation	—	—	—	—	—	—	—	—	4,054,561	—	—	—	—	—	4,054,561
Reclassification of liability classified option grants	—	—	—	—	—	—	—	—	(4,347)	—	—	—	—	—	(4,347)
Vesting of nonvested shares	—	—	—	—	—	—	339,800	3,398	(3,398)	—	—	—	—	—	—
Shares issued to CEO in lieu of cash compensation	—	—	—	—	—	—	43,887	439	157,961	—	—	—	—	—	158,400
Exercise of stock options	—	—	—	—	—	—	4,503	45	15,085	—	—	—	—	—	15,130
Employee share purchases	—	—	—		—	—	26,758	267	88,613	—	—	—	—	—	88,880
Balance at December 31, 2013	—	$ —	31,620	$ 316	3,105	$ 31	36,391,191	$363,912	$ 644,571,866	43,490	$ (324,792)	$ —	$ (649,092,036)	$ —	$ (4,480,703)

See accompanying notes to consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(Continued)
For the Years Ended December 31, 2014, 2013, and 2012

	Series A Convertible Preferred Stock		Series A-1 Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock			Treasury Stock					
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Additional Paid-In Capital	Number of Shares	Amount	Accumulated Other Comprehensive Loss	Accumulated Deficit	Noncontrolling Interest	Total
Net loss	—	—	—	—	—	—	—	—	—	—	—	—	(42,486,174)	—	(42,486,174)
Other comprehensive loss	—	—	—	—	—	—	—	—	—	—	—	(1,970,420)	—	—	(1,970,420)
Shares sold at the market	—	—	—	—	—	—	215,489	2,155	598,504	—	—	—	—	—	600,659
Shares sold in registered direct offering	—	—	—	—	—	—	22,236,000	222,360	55,969,233	—	—	—	—	—	56,191,593
Share-based compensation	—	—	—	—	—	—	—	—	4,604,713	—	—	—	—	—	4,604,713
Reclassification of liability classified option grants	—	—	—	—	—	—	—	—	(487,227)	—	—	—	—	—	(487,227)
Vesting of nonvested shares	—	—	—	—	—	—	48,239	483	(483)	—	—	—	—	—	—
Issuance of stock for acquisition	—	—	—	—	—	—	3,334,079	33,341	10,068,918	—	—	—	—	—	10,102,259
Shares issued to CEO in lieu of cash compensation	—	—	—	—	—	—	25,989	260	78,940	—	—	—	—	—	79,200
Shares issued for acquisition liability	—	—	—	—	—	—	35,124	351	119,423	—	—	—	—	—	119,774
Retirement of treasury shares	—	—	—	—	—	—	(43,490)	(435)	(596,224)	(43,490)	324,792	—	271,867	—	—
Retirement of preferred shares	—	—	—	—	(3,105)	(31)	—	—	31	—	—	—	—	—	—
Shares issued to to settle convertible notes	—	—	—	—	—	—	383,038	3,830	949,935	—	—	—	—	—	953,765
Exercise of stock options	—	—	—	—	—	—	48,381	484	144,830	—	—	—	—	—	145,314
Employee share purchases	—	—	—	—	—	—	46,025	460	106,137	—	—	—	—	—	106,597
Dividends on series A convertible preferred stock ($14.58 per share)	—	—	—	—	—	—	—	—	(460,963)	—	—	—	—	—	(460,963)
Balance at December 31, 2014	—	$ —	31,620	$ 316	—	$ —	62,720,065	$ 627,201	$ 715,667,633	—	$ —	$ (1,970,420)	$ (691,306,343)	$ —	$ 23,018,387

See accompanying notes to consolidated financial statements.

	2014	2013	2012
Cash flows from operating activities:			
Net loss	$ (42,486,174)	$ (30,072,669)	$ (11,324,771)
Adjustments to reconcile net loss to net cash (used in) provided by operating activities:			
Depreciation and amortization	1,583,960	586,343	1,622,736
Share-based compensation	4,672,256	4,127,786	4,303,961
Non-cash interest expense	619,846	1,820,787	3,141,475
Change in fair value of contingent liabilities	3,579,159	—	—
Change in fair value of convertible notes	(201,092)	—	—
Loss on extinguishment of debt	—	3,322,657	—
Gain on sale of investment	—	(355,500)	—
Change in fair value of derivative liability	—	(291,517)	—
Loss on disposal of assets	4,583	59,110	11,026
Changes in operating assets and liabilities:			
Accounts receivable	1,200	551,134	(552,334)
Inventories	(95,700)	16,022	4,050
Prepaid expenses	(254,045)	(112,505)	(9,637)
Accounts payable	(45,902)	189,638	(181,848)
Deferred revenue	(3,610,811)	(1,474,171)	2,707,613
Accrued liabilities and other current liabilities	(1,316,169)	1,916,467	542,349
Other operating assets and liabilities	(685,696)	183,473	747,982
Net cash (used in) provided by operating activities	(38,234,585)	(19,532,945)	1,012,602
Cash flows from investing activities:			
Cash acquired in acquisition	514,470	—	—
Purchases of available-for-sale securities	(14,507,806)	—	—
Proceeds from sale of investment	—	450,000	—
Purchases of plant and equipment	(2,819,764)	(813,520)	(103,442)
Net cash used in investing activities	(16,813,100)	(363,520)	(103,442)
Cash flows from financing activities:			
Net proceeds from sales of equity	56,792,252	26,462,810	10,464,203
Proceeds from employee stock purchases and option exercises	251,911	104,010	78,574
Financing of property and equipment	(39,156)	(53,297)	(38,744)
Payments of series A convertible preferred stock dividends	(460,963)	—	(592,875)
Payments of contingent royalty obligation	(400,000)	—	—
Payments of long-term debt	(3,333,334)	(555,556)	(100,000)
Debt issuance costs	—	(177,802)	—
Proceeds from issuance of long-term debt	—	10,000,000	—
Payments of convertible notes	—	(10,000,000)	—
Net cash provided by financing activities	52,810,710	25,780,165	9,811,158
Effect of exchange rate changes on cash	599,525	—	—
Net (decrease) increase in cash and cash equivalents	(1,637,450)	5,883,700	10,720,318
Cash and cash equivalents, beginning of year	27,351,969	21,468,269	10,747,951
Cash and cash equivalents, end of year	$ 25,714,519	$ 27,351,969	$ 21,468,269
Supplemental cash flow information:			
Cash paid for interest	$ 675,391	$ 579,650	$ 1,573,554
Non-cash investing and financing activities:			
Issuance of senior secured convertible notes as payment in-kind for interest	$ —	$ —	$ 1,499,981
Deemed dividend on Series A convertible preferred stock	—	2,906,664	—
Issuance of common stock, $0.01 par value, for acquisition of 4-Antibody AG	10,102,259	—	—
Contingent purchase price consideration issued in connection with the acquisition of 4-Antibody AG	9,721,000	—	—
Issuance of common stock, $0.01 par value, as payment of long-term debt including accrued and unpaid interest	953,765	11,275,000	—
Contingent royalty obligation	—	19,090,658	—

Elimination of non-controlling interest	—	5,580,124	—

See accompanying 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 an immunotherapy company discovering and developing innovative treatments for patients with cancer and other diseases in which modulation of immune function could provide therapeutic benefit. Our approaches are driven by three platform technologies:

- our antibody platform, including our proprietary Retrocyte Display™ technology designed to produce quality human monoclonal antibodies, currently focused on advancing checkpoint modulators, or CPMs;
- our heat shock protein (HSP)-based vaccines, either autologous or recombinant; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

We have a portfolio of programs in pre-clinical and clinical stages, including a series of CPMs in investigational new drug (IND)-enabling studies, our Prophage Series vaccine, a Phase 3 ready HSP-based autologous vaccine for a form of brain cancer and a number of advanced QS-21 Stimulon-containing vaccine candidates in late stage development by our licensee.

Our core technologies include Retrocyte Display™, a powerful proprietary platform designed to effectively discover and optimize novel, fully human and humanized monoclonal antibodies against antigens of interest. For the last several years, our Retrocyte Display™ platform has been applied to the discovery and development of CPMs targeting significant checkpoint targets. Through collaborative arrangements with our partners, we have preclinical programs targeting GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1. We have completed the following Phase 2 trials for HSP-based vaccines for cancer and infectious disease: (1) Prophage autologous HSP-based vaccine in newly diagnosed glioblastoma multiforme (GBM) and (2) HerpV recombinant HSP70-synthetic peptide vaccine for the treatment of herpes simplex virus 2 (HSV2) infection. Our QS-21 Stimulon adjuvant platform is extensively partnered with GlaxoSmithKline (GSK).

Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development activities, 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, 2014, we had an accumulated deficit of $691.3 million. Since our inception, we have financed our operations primarily through the sale of equity and convertible and other 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, cash equivalents and short-term investments balance of $40.2 million as of December 31, 2014, plus proceeds of $60.0 million received in February 2015 from our global alliance with, and related equity investment by, Incyte and $9.0 million received in February 2015 from our issuance of senior subordinated promissory notes (see Note 20), will be sufficient to satisfy our liquidity requirements through the first half of 2016. 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 our CPM antibody programs are pre-clinical and because further development of HerpV and our Prophage Series vaccines are dependent on successful partnering or funding efforts, among other factors, we are unable to reliably estimate the cost of completing research and development programs, the timing of bringing such programs to various markets, or substantial partnering or out-licensing arrangements, and, therefore, are unable to determine when, if ever, material cash inflows from operating activities are likely to commence. We will continue to adjust our spending as needed in order to preserve liquidity.

(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.

(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 Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("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. At December 31, 2014, all marketable securities are classified as available for sale and as such, the investments are recorded at fair value. Gains and losses on the sale of marketable securities are recognized in operations based on the specific identification method. At December 31, 2014, our investments consisted of institutional money market funds and U.S. treasury bills.

(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, cash equivalents and short-term investments 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.

(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, 2014 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 $1.1 million, $586,000, and $1.6 million, for the years ended December 31, 2014, 2013, and 2012, 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 outstanding debt is based on a present value methodology. The outstanding principal amount of our debt, including the current portion, was $6.3 million and $9.6 million at December 31, 2014 and 2013, 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. Grant revenue is recognized when the associate expense is recorded. 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. For the years ended December 31, 2014, 2013, and 2012, 48%, 44%, and 49%, respectively, of our revenue was earned from one research partner. In addition, 40% of our revenue for the year December 31, 2012, was earned from one of our licensees and 47% and 9%, of our revenue for the years ended December 31, 2013 and 2012, respectively, was earned from one service customer. The revenues from the licensee did not continue past 2012 and the revenue from the service customer did not continue past 2013.

(k) Foreign Currency Transactions

Gains and losses from our foreign currency based accounts and 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 within other income (expense). We do not currently use derivative financial instruments to manage the risks associated with foreign currency fluctuations. We recorded foreign currency losses of $773,000, $9,000, and $11,000, for the years ended December 31, 2014, 2013, and 2012, respectively.

(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. The non-cash charge to operations for non-employee options with vesting or other performance criteria is affected each reporting period 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. See Note 10 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, 2014, 2013, and 2012, as they would be anti-dilutive:

	At December 31,		
	2014	2013	2012
Warrants	2,951,450	3,280,396	3,309,378
Stock options	6,525,724	4,163,100	2,748,883
Nonvested shares	78,828	147,274	249,968
Convertible preferred stock	333,333	333,333	333,333

(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. The first step of our impairment analysis compares our fair value to our net book value to determine if there is an indicator of impairment. We operate as a single operating segment and single reporting unit and our fair value is based on our quoted market price of our common stock to derive the market capitalization as of the date of the impairment test. ASC 350, *Intangibles, Goodwill and Other* states that if the carrying value of the reporting unit is negative, the second step of the impairment test shall be performed to measure the amount of impairment loss, if any, if qualitative factors indicate that it is more likely than not that a goodwill impairment exists. No goodwill impairment has been recognized for the periods presented.

(q) In-process Research and Development

Acquired in-process research and development ("IPR&D") represents the fair value assigned to research and development assets that have not reached technological feasibility. The value assigned to acquired IPR&D is determined by estimating the costs to develop the acquired technology into commercially viable products, estimating the resulting revenue from the projects, and discounting the net cash flows to present value. The revenue and costs projections used to value acquired IPR&D are, as applicable, reduced based on the probability of success of developing a new drug. Additionally, the projections consider the relevant market sizes and growth factors, expected trends in technology, and the nature and expected timing of new product introductions by us and our competitors. The rates utilized to discount the net cash flows to their present value are commensurate with the stage of development of the projects and uncertainties in the economic estimates used in the projections. Upon the acquisition of IPR&D, we complete an assessment of whether our acquisition constitutes the purchase of a single asset or a group of assets. We consider multiple factors in this assessment, including the nature of the technology acquired, the presence or absence of separate cash flows, the development process and stage of completion, quantitative significance and our rationale for entering into the transaction.

If we acquire an asset or group of assets that do not meet the definition of a business under applicable accounting standards, then the acquired IPR&D is expensed on its acquisition date. Future costs to develop these assets are recorded to research and development expense as they are incurred.

We review amounts capitalized as acquired IPR&D for impairment at least annually, as of October 31, and whenever events or changes in circumstances indicate that the carrying value of the assets might not be recoverable. When performing our impairment assessment, we have the option to first assess qualitative factors to determine whether it is necessary to recalculate the fair value of our acquired IPR&D. If we elect this option and believe, as a result of the qualitative assessment, that it is more-likely-than-not that the fair value of our acquired IPR&D is less than its carrying amount, we calculate the fair value using the same methodology as described above. If the carrying value of our acquired IPR&D exceeds its fair value, then the intangible asset is written-down to its fair value. Alternatively, we may elect to not first assess qualitative factors and immediately recalculate the fair value of our acquired IPR&D. No IPR&D impairments were recognized for the years presented.

(r) 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.

(s) Long-lived Assets

If required based on certain events and circumstances, 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.

(t) Recent Accounting Pronouncements

In July 2013, the FASB issued Accounting Standards Update No. 2013-11, "Presentation of an Unrecognized Tax Benefit When a Net Operating Loss Carryforward, a Similar Tax Loss, or a Tax Credit Carryforward Exists", ("ASU 2013-11"). ASU 2013-11 amends ASC 740, "Income Taxes", by providing guidance on the financial statement presentation of an unrecognized benefit when a net operating loss carryforward, a similar tax loss, or a tax credit carryforward exists. ASU 2013-11 does not affect the recognition or measurement of uncertain tax positions under ASC 740. ASU 2013-11 is effective for interim and annual periods beginning after December 15, 2013, with early adoption permitted. The adoption of ASU 2013-11 did not have an impact on our consolidated financial statements.

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, ("ASU 2014-09"). ASU 2014-09 amends revenue recognition principles and provides a single set of criteria for revenue recognition among all industries. This new standard provides a five step framework whereby revenue is recognized when promised goods or services are transferred to a customer at an amount that reflects the consideration to which the entity expects to be entitled in exchange for those goods or services. The standard also requires enhanced disclosures pertaining to revenue recognition in both interim and annual periods. ASU 2014-09 is effective for interim and annual periods beginning after December 15, 2016. We are currently evaluating the potential impact that ASU 2014-09 may have on our consolidated financial statements and related disclosures.

In August 2014, the FASB issued ASU No. 2014-15, Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern, ("ASU 2014-15"). ASU 2014-15 describes how an entity should assess its ability to meet obligations and sets rules for how this information should be disclosed in the financial statements. The standard provides guidance that will be used along with existing auditing standards. ASU 2014-15 applies to all entities and is effective for the annual period ending after December 15, 2016, and for annual and interim periods thereafter with early adoption permitted. We are currently evaluating the potential impact that ASU 2014-15 may have on our consolidated financial statements and related disclosures.

(3) 4-Antibody Acquisition

On January 10, 2014, we entered into a Share Exchange Agreement (the "Share Exchange Agreement") providing for our acquisition of all of the outstanding capital stock of 4-Antibody AG (" 4-AB"), from the shareholders of 4-AB (the “4-AB Shareholders”). The transaction closed on February 12, 2014 (the "Closing Date"). In exchange for their shares, the 4-AB Shareholders received an aggregate of 3,334,079 shares of our common stock paid upon closing and valued at $10.1 million. Contingent milestone payments of up to $40 million (the "contingent purchase price consideration"), payable in cash or shares of our common stock at our option, will be due to the 4-AB Shareholders as follows: (i) $20 million upon our market capitalization exceeding $300 million for 10 consecutive trading days prior to the earliest of (a) the fifth anniversary of the Closing Date (b) the sale of the 4-AB or (c) the sale of Agenus; (ii) $10 million upon our market capitalization exceeding $750 million for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date (b) the sale of 4-AB, or (c) the sale of Agenus, and (iii) $10 million upon our market capitalization exceeding $1 billion for 30 consecutive trading days prior to the earliest of (a) the tenth anniversary of the Closing Date, (b) the sale of 4-AB, or (c) the sale of Agenus. We assigned an acquisition date fair value of $9.7 million to the contingent purchase price consideration as of the acquisition date. During January 2015, the first milestone noted above was achieved, see Note 20 for further detail. This acquisition provided us with the Retrocyte Display™ technology platform for the rapid discovery and optimization of fully-human and humanized monoclonal antibodies against a wide array of molecular targets and a portfolio of CPM antibodies.

The acquisition of 4-AB was accounted for under the acquisition method of accounting. The purchase price of approximately $19.8 million has been allocated to the tangible and intangible assets acquired and liabilities assumed.

The following table summarizes the purchase price of the 4-AB acquisition, the identified assets acquired and liabilities assumed at the acquisition date (in thousands):

Assets acquired:		
Cash	$	514
Other current assets		600
Plant and equipment		1,340
In-process research and development		2,100
Patented technology		5,700
Other finite-lived intangible asset		190
Goodwill		16,891
Total assets		27,335
Liabilities assumed:		
Accounts Payable		649
Other current liabilities		2,889
Convertible notes		1,142
Deferred revenue		1,890
Deferred tax liability		420
Other long-term liabilities		522
Total liabilities		7,512
Total purchase price	$	19,823

The fair value of the IPR&D and patented technology was determined using the income approach and the relief from royalty rate method, respectively, using significant inputs, including an 18% discount rate, that are not observable. We consider the fair value of the IPR&D and patented technology to be Level 3 due to the significant estimates and assumptions used by management in establishing the estimated fair values.

All of the convertible notes assumed by us in the acquisition were converted into approximately 383,000 shares of our common stock on May 8, 2014.

The following table summarizes the supplemental statements of operations information on an unaudited pro forma basis as if the 4-AB acquisition had occurred on January 1, 2013 (in thousands except per share data):

	2014	2013
Pro forma revenues	$ 7,183	$ 6,949
Pro forma net loss attributable to common stockholders	(43,282)	(39,065)
Basic and diluted pro forma net loss attributable to common stockholders per share	$ (0.72)	$ (1.18)

The pro forma results presented above are for illustrative purposes only for the periods presented and do not purport to be indicative of the actual results which would have occurred had the transaction been completed as of the beginning of the period, nor are they indicative of results of operations which may occur in the future. For the year ended December 31, 2014, revenues and net loss related to 4-AB of $3.3 million and $7.9 million, respectively, are included in our consolidated statement of operations and comprehensive loss.

(4) Goodwill and Acquired Intangible Assets

The following table sets forth the changes in the carrying amount of goodwill for year ended December 31, 2014 (in thousands):

Balance December 31, 2013	$	2,572
Goodwill from 4-AB acquisition		16,891
Foreign currency translation adjustments		(1,594)
Balance December 31, 2014	$	17,869

Acquired intangible assets consisted of the following at December 31, 2014 (in thousands):

	Amortization Period (Years)	Gross Carrying Amount	Accumulated Amortization	Net Carrying Amount
Intellectual Property	15 years	$ 4,348	$ (254)	$ 4,094
Trademarks	4.5 years	815	(158)	657
Other	4 years	172	(50)	122
In-process research and development	Indefinite	1,901	—	1,901
Total		$ 7,236	$ (462)	$ 6,774

The weighted average amortization period of our finite-lived intangible assets is 13 years. Amortization expense related to acquired intangibles is estimated at $528,000 for each of the years ending 2015 and 2016, $478,000 for the year ending 2017, $402,000 for the year ending 2018, and $290,000 for each of the years 2019-2028, and $37,000 for the year ending 2029.

The acquired IPR&D asset relates to the six pre-clinical CPM antibody programs acquired in the 4-AB transaction. IPR&D acquired in a business combination is capitalized at fair value until the underlying project is completed and is subject to impairment testing. Once the project is completed, the carrying value of IPR&D is amortized over the estimated useful life of the asset. Post-acquisition research and development expenses related to the acquired IPR&D are expensed as incurred.

(5) Investments

Cash Equivalents and Short-term Investments

Cash equivalents and short-term investments consisted of the following as of December 31, 2014 and 2013:

	2014		2013	
	Cost	Estimated Fair Value	Cost	Estimated Fair Value
Institutional Money Market Funds	$ 25,149	$ 25,149	$ 27,291	$ 27,291
U.S. Treasury Bills	14,508	14,510	—	—
	$ 39,657	$ 39,659	$ 27,291	$ 27,291

We did not receive proceeds from maturities of available-for-sale securities for the years ended December 31, 2014, 2013 or 2012. No available-for-sale securities were sold before their maturity in 2014. As a result of the short-term nature of our investments, there were minimal unrealized holding gains or losses as of December 31, 2014, and none as of December 31, 2013 and 2012.

Of the investments listed above, $25.1 million and $27.3 million have been classified as cash equivalents on our consolidated balance sheet as of December 31, 2014 and 2013, respectively. Approximately $14.5 million was classified as short-term investments as of December 31, 2014.

(6) Plant and Equipment

Plant and equipment as of December 31, 2014 and 2013 consists of the following (in thousands):

	2014	2013	Estimated Depreciable Lives
Furniture, fixtures, and other	$ 1,930	$ 1,698	3 to 10 years
Laboratory and manufacturing equipment	7,917	4,532	4 to 10 years
Leasehold improvements	18,455	18,412	2 to 12 years
Software and computer equipment	6,065	5,780	3 years
	34,367	30,422	
Less accumulated depreciation and amortization	(28,370)	(27,637)	
	$ 5,997	$ 2,785	

(7) 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 2011 through 2014. 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 2010 and prior. However, net operating losses from the tax year 2010 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, 2014, we have available net operating loss carryforwards of $555.5 million and $63.9 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 2014 and 2033. 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 $9.3 million and $7.4 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 2015 and 2034 and 2017 and 2029, respectively. We also have foreign income tax net operating loss carryforwards of approximately $44.7 million which are available to offset future foreign taxable income, if any, and expire between 2015 and 2021. 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, 2014 and 2013 are presented below (in thousands).

	2014	2013
Deferred tax assets:		
U.S. Federal and State net operating loss carryforwards	$ 192,223	$ 177,589
Foreign net operating loss carryforwards	10,153	—
Research and development tax credits	14,393	13,674
Contingent royalty obligation	3,370	7,384
Other	15,059	14,230
Total deferred tax assets	235,198	212,877
Less: valuation allowance	(234,149)	(212,577)
Net deferred tax assets	1,049	300
Deferred tax liabilities	(1,471)	(300)
Net deferred tax liability	$ (422)	$ —

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 $21.6 million and $9.6 million during the years ended December 31, 2014 and 2013, 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, 2014, 2013, and 2012, 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).

	2014	2013	2012
Computed “expected” Federal tax benefit	$ (14,445)	$ (10,225)	$ (3,850)
(Increase) reduction in income taxes benefit resulting from:			
Change in valuation allowance	14,043	9,561	2,944
Increase due to uncertain tax positions	117	102	26
State and local income benefit, net of Federal income tax benefit	(642)	(1,359)	(581)
Net operating loss expirations	996	1,778	821
Foreign rate differential	726	—	—
Other, net	(795)	143	640
	$ —	$ —	$ —

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

Balance, December 31, 2013	$ 5,649
Increase related to current year positions	90
Increase related to previously recognized positions	39
Balance, December 31, 2014	$ 5,778

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.

(8) Accrued Liabilities

Accrued liabilities consist of the following as of December 31, 2014 and 2013 (in thousands):

	2014	2013
Professional fees	$ 1,438	$ 1,121
Payroll	3,134	1,635
Clinical trials	245	1,021
Other	685	438
	$ 5,502	$ 4,215

(9) Equity

Effective April 24, 2014, our certificate of incorporation was amended to increase the authorized number of shares of our common stock from 70,000,000 to 140,000,000.

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. In February 2013, 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 0.63% 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.

Under the terms and conditions of the Certificate of Designation creating the Series A-1 Preferred Stock, this stock is convertible by the holder at any time into our common stock, is non-voting, 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-1 Preferred Stock ranks senior to our common stock. In a liquidation, dissolution, or winding up of the Company, the Series A-1 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-1 Preferred Stock affect our ability to declare or pay dividends on our common stock as long as the Series A-1 Preferred Stock's dividends are accruing. The liquidation value of this Series A-1 Preferred stock is equal to $1,000 per share outstanding plus any accrued unpaid dividends. Dividends in arrears with respect to the Series A-1 Preferred Stock were approximately $392,000 or $12.40 per share, at December 31, 2014, and dividends in arrears with respect to the Series A Preferred Stock were approximately $650,000, or $20.56 per share, at December 31, 2013.

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% 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, with such right expiring 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 were still outstanding although no further shares could 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) had 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. On September 7, 2014, all 3,105 shares of our issued and outstanding Series B2 Convertible Preferred Stock remained unconverted and were canceled and extinguished in accordance with the Certificate of Designation.

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. These warrants expired unexercised April 2013.

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. 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. The six-month and four-year warrants expired unexercised in January 2010 and October 2013, respectively.

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. 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. The six-month warrants expired unexercised in July 2010.

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.

During 2012, we terminated our then existing At Market Issuance Sales Agreement (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 five million shares of our common stock (the “2012 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 2012 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 2012 ATM Program and received net proceeds of approximately $7.7 million after deducting offering costs of approximately $244,000. During the years ended December 31, 2014 and 2013, we sold an aggregate of approximately 215,000 and 4.8 million shares of our common stock in at the market offerings under the 2012 ATM Program and received net proceeds of approximately $601,000 and $17.0 million, respectively, after deducting offering costs of approximately $20,000 and $499,000, respectively. These offerings were made under effective shelf registration statements and proceeds from the offerings were used for general corporate purposes.

During September 2013, we sold approximately 3,333,000 shares of our common stock and warrants to purchase 1,000,000 shares of our common stock in a registered direct public offering raising net proceeds of approximately $9.5 million, after deducting offering expenses. The common stock and warrants were sold in units, with each unit consisting of one share of common stock and a warrant to purchase 0.3 of a share of common stock. Subject to certain ownership limitations, the warrants will become exercisable beginning 6 months following issuance and will expire five years from the date they become exercisable, at an exercise price of $3.75 per share. The number of shares issuable upon exercise of the warrants and the exercise price of the warrants are adjustable in the event of stock splits, stock dividends, combinations of shares and similar recapitalization transactions.

In February 2014, we issued and sold 22,236,000 shares of our common stock in a public underwritten offering. Net proceeds after deducting offering expenses were approximately $56.0 million. This offering was made under an effective shelf registration statement and proceeds from the offering are being used for general corporate purposes.

In February 2014, our Board of Directors retired 43,490 shares of our treasury stock then outstanding and returned those shares to authorized and unissued shares of our common stock.

In October 2014, we filed a Registration Statement on Form S-3, declared effective by the SEC on October 23, 2014 (the "2014 Registration Statement"), covering the offering of up to $150 million of common stock, preferred stock, warrants, debt securities and units. The 2014 Registration Statement included a prospectus covering the offering, issuance and sale of up to 10 million shares of our common stock from time to time in “at the market offerings” pursuant to an At Market Sales Issuance Agreement entered into with MLV on October 10, 2014. On October 10, 2014, we exercised our right under 2012 ATM Program to terminate the 2012 ATM Program upon effectiveness of the 2014 Registration Statement.

(10) 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). On March 7, 2013, our Board of Directors adopted, and on June 12, 2013, our stockholders approved, an amendment to the 2009 EIP increasing shares available for award under the plan to 6.2 million. On February 26, 2014, our Board of Directors adopted, and on April 23, 2014, our stockholders approved, an amendment to the 2009 EIP

increasing shares available for award under the plan to 10.2 million. 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, 2014, 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 221,630 units, each representing a share of our common stock at a weighted average common stock price of $5.70, have been credited to participants' stock accounts as of December 31, 2014. 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 3 or 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:

	2014	2013	2012
Expected volatility	84%	87%	96%
Expected term in years	6	6	6
Risk-free interest rate	1.7%	1.5%	0.9%
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 2014 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2013	4,163,100	$ 5.72		
Granted	3,277,700	3.02		
Exercised	(48,381)	3.00		
Forfeited	(464,941)	3.41		
Expired	(401,754)	8.16		
Outstanding at December 31, 2014	6,525,724	$ 4.40	7.89	$ 3,788,900
Vested or expected to vest at December 31, 2014	6,000,984	$ 4.51	7.79	$ 3,307,644
Exercisable at December 31, 2014	3,197,167	$ 5.63	6.74	$ 1,057,765

The weighted average grant-date fair values of options granted during the years ended December 31, 2014, 2013, and 2012, was $1.87, $2.42, and $3.94, respectively.

The aggregate intrinsic value in the table above represents the difference between our closing stock price on the last trading day of fiscal 2014 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, 2014 (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, 2014, 2013, and 2012, determined on the dates of exercise, was $45,000, $5,000, and $12,000, respectively.

During 2014, 2013, and 2012, all options were granted with exercise prices equal to the market value of the underlying shares of common stock on the grant date other than awards dated February 14, 2014. In February 2014, our Board of Directors approved awards subject to forfeiture in the event shareholder approval was not obtained to increase the shares available under our 2009 EIP. This approval was obtained in April 2014. Accordingly, these awards have a grant date of April 2014 with an exercise price as of the date the Board of Director's approved the awards in February 2014.

As of December 31, 2014, there was $4.4 million of total unrecognized compensation cost related to stock options granted to employees and directors expected to be recognized over a weighted average period of 2.2 years.

As of December 31, 2014, 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 $314,000. 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 2014 is presented below:

	Nonvested Shares	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2013	147,274	$ 3.99
Granted	—	
Vested	(48,239)	4.26
Forfeited	(20,207)	3.59
Outstanding at December 31, 2014	78,828	3.93

As of December 31, 2014, there was $192,000 of unrecognized share-based compensation expense related to these nonvested shares. The remaining cost is expected to be recognized over a weighted average period of 1.9 years. The total intrinsic value of shares vested during the years ended December 31, 2014, 2013, and 2012, was $205,000, $1.6 million, and $2.1 million, respectively.

Cash received from option exercises and purchases under our 2009 ESPP for the years ended December 31, 2014, 2013, and 2012, was $252,000, $104,000, and $79,000, 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, 2014, 2013, and 2012, 46,025 shares, 26,758 shares, and 28,859 shares, were issued under the 2009 ESPP, respectively. During the years ended December 31, 2014, 2013, and 2012, 48,239 shares, 339,800 shares and 523,210 shares, respectively were issued as a result of the vesting of nonvested stock.

The impact on our results of operations from share-based compensation for the years ended December 31, 2014, 2013, and 2012, was as follows (in thousands).

	2014	2013	2012
Research and development	$ 1,272	$ 1,147	$ 1,138
General and administrative	3,400	2,981	3,166
Total share-based compensation expense	$ 4,672	$ 4,128	$ 4,304

(11) License, Research, and Other Agreements

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 (2024) 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, 2014, we have paid $640,000 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 with UConn. 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, 2014, 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 had an initial term of three years and could have been 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 were 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. In December 2014, the NewVac Agreement expired in accordance with its terms.

On December 5, 2014, we entered into a license agreement with the Ludwig Institute for Cancer Research Ltd. ("Ludwig"), which replaced and superseded the Collaborative Research and Development Agreement entered into on May 23, 2011 (the "Prior Agreement"). Pursuant to the terms of the license agreement, Ludwig granted us an exclusive, worldwide license under certain intellectual property rights of Ludwig and Memorial Sloan Kettering Cancer Center arising from the Prior Agreement, to further develop and commercialize GITR, OX40 and TIM-3 antibodies. Pursuant to the license agreement, we made an upfront payment of $1.0 million to Ludwig. The license agreement also obligates us to make potential milestone

payments of up to $20.0 million for events prior to regulatory approval of licensed products, and potential milestone payments in excess of $80.0 million if licensed products are approved in multiple jurisdictions, in more than one indication, and certain sales milestones are achieved. We will also be obligated to pay low to mid-single digit royalties on all net sales of licensed products during the royalty period, and to pay Ludwig a percentage of any sublicensing income, ranging from a low to mid-double digit percentage depending on various factors. The license agreement may be terminated as follows: (i) by either party if the other party commits a material, uncured breach; (ii) by either party if the other party initiates bankruptcy, liquidation or similar proceedings; or (iii) by us for convenience upon 90 days' prior written notice. The license agreement also contains customary representations and warranties, mutual indemnification, confidentiality and arbitration provisions.

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 $53.5 million over the term of the studies. For the years ended December 31, 2014, 2013, and 2012, $895,000, $2,720,000, and $654,000, respectively, have been expensed in the accompanying consolidated statements of operations related to these clinical studies. Through December 31, 2014, $51.1 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 GlaxoSmithKline ("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, the "GSK Agreements". As of December 31, 2014, we have received $23.3 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 the years ended December 31, 2014, 2013, and 2012, we recognized revenue of $3.3 million, $1.3 million, and $1.3 million, respectively, 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. Deferred revenue of $2.5 million related to the GSK Agreements is included in deferred revenue on our consolidated balance sheet as of December 31, 2014.

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.

(12) Certain Related Party Transactions

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. Of the 2,287,581 shares of our common stock issued and sold, 358,496 of these shares of common stock were issued and sold to our CEO.

Effective February 12, 2014, in connection with our acquisition of the capital stock of 4-Antibody and pursuant to the Share Exchange Agreement, our Board of Directors elected Shahzad Malik, M.D. as a director. Dr. Malik is a General Partner of Advent Venture Partners LLP ("Advent"). Advent, through its affiliated entities, was 4-Antibody's largest shareholder prior to the completion of the acquisition. Upon completion of the acquisition, Advent and its affiliates received 996,088 shares of our common stock, having a value of approximately $3.0 million. In connection with the achievement of the first milestone in January 2015 under the Share Exchange Agreement, Advent and its affiliates received consideration of approximately $6.2 million. The above listed consideration was received by Advent and its affiliated entities, not Dr. Malik in his individual capacity.

(13) Leases

We lease manufacturing, research and development, and office facilities under various long-term lease arrangements. Rent expense (before sublease income) was $2.1 million, $1.6 million, and $1.0 million, for the years ended December 31, 2014, 2013, and 2012, 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. Through our acquisition of 4-AB, we lease facilities in Jena, Germany and Basel, Switzerland for 4-AB's manufacturing, research and development and corporate offices.

The future minimum rental payments under our leases of our New York City facility, which expires in 2020, our Lexington headquarters, which expires in 2023 and our Jena, Germany and Basel, Switzerland leases, which expire in 2016, are as follows (in thousands).

Year ending December 31,		
2015	$	1,924
2016		1,728
2017		1,548
2018		1,601
2019		1,647
Thereafter		5,286
Total	$	13,734

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, 2014. 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 $365,000, $481,000, and $399,000 for the years ended December 31, 2014, 2013, and 2012, respectively. We are contractually entitled to receive rental payments of $376,000 in 2015.

(14) Debt

As of December 31, 2014, we have $6.3 million in principal of debt outstanding: $6.1 million of notes and $146,000 of debentures.

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 bore 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 2012, we issued additional 2006 Notes in the amount of $1.5 million 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.

On April 15, 2013, we entered into a Securities Exchange Agreement (the "Exchange") with the holders of all of our 2006 Notes which were due August 2014 (outstanding principal of $39.0 million). The holders exchanged the 2006 Notes, including all accrued interest thereon, for $10.0 million in cash, 2,500,000 shares of our common stock (for purpose of the Exchange, valued at $4.51 per share) (the "Shares"), and a contractual right to the proceeds of 20% of our revenue interests from certain QS-21 Stimulon partnered programs and a 0.5% royalty on net sales of HerpV. The rights are governed by a Revenue Interests Assignment Agreement dated as of April 15, 2013 between us and the holders of the 2006 Notes. The rights were valued at $19.1 million on April 15, 2013, ($15.3 million and $18.8 million at December 31, 2014 and December 31, 2013 respectively) based on management's estimate with the assistance of a third party valuation and are reflected in the consolidated balance sheet as contingent royalty obligation. For the year ended December 31, 2013 we recorded a loss of $3.3 million in non-operating (loss) income based on the Exchange and eliminated $5.6 million of non-controlling interest.

Notes—2013 Notes

In connection with the Exchange, we entered into a Loan and Security Agreement with Silicon Valley Bank for senior secured debt in the aggregate principal amount of $5.0 million (the "SVB Loan"). The SVB Loan bears interest at a rate of 6.75% per annum, payable in cash on the first day of each month. Principal payments of approximately $278,000 are due monthly beginning November 2013 and ending in April 2015. As of December 31, 2014, $1.1 million remains outstanding on the SVB Loan. The SVB Loan is secured by a lien against substantially all of our assets and contains a number of restrictions and covenants, including, but not limited to, restrictions and covenants that limit our ability to incur certain additional indebtedness, make certain investments, pay dividends other than dividends required pursuant to pre-existing commitments, make payments on subordinated indebtedness other than regularly scheduled payments of interest, create certain liens, consolidate, merge, sell or otherwise dispose of our assets, and/or change our line of business. The SVB Loan also specifies a number of events of default (some of which are subject to applicable cure periods), including, among other things, covenant defaults, other non-payment defaults, bankruptcy, certain penalties and judgments from a governmental authority, cross-defaults in respect of indebtedness over $50,000, and insolvency defaults.

Additionally, any material adverse change with respect to us or our subsidiary, Antigenics Inc., constitutes an event of default. Upon the occurrence of an event of default under the SVB Loan, subject to cure periods in certain circumstances, Silicon Valley Bank may declare all amounts outstanding to be immediately due and payable and may foreclose upon our assets that secure the SVB Loan. During the continuance of an event of default which does not accelerate the maturity of the SVB Loan, interest will accrue at a default rate equal to the otherwise applicable rate plus 5%. We may prepay the SVB Loan at any time, in full, subject to certain notice requirements and a prepayment premium equal to 4% of the outstanding principal amount of the SVB Loan.

In addition, in connection with the Exchange, we also entered into a Note Purchase Agreement, dated as of April 15, 2013 with various investors to issue senior subordinated notes (the "2013 Subordinated Notes") in the aggregate principal amount of $5.0 million and four year warrants to purchase 500,000 unregistered shares of our common stock at an exercise price of $4.41 per share. We recorded a debt discount of $1.1 million based on the relative fair values of the 2013 Subordinated Notes and 4 year warrants. The 2013 Subordinated Notes bear interest at a rate of 10% per annum, payable in cash on the first day of each month in arrears and were due April 2015. The 2013 Subordinated Notes include default provisions which allow for the acceleration of the principal payment of the 2013 Subordinated Notes in the event we become involved in certain bankruptcy proceedings, become insolvent, fail to make a payment of principal or (after a grace period) interest on the 2013 Subordinated Notes, default on other indebtedness with an aggregate principal balance of $5.0 million or more if such default has the effect of accelerating the maturity of such indebtedness, or become subject to a legal judgment or similar order for the payment of money in an amount greater than $5.0 million if such amount will not be covered by third-party insurance. The debt discount, and issuance costs of approximately $178,000, are being amortized using the effective interest method over 2 years, the expected life of the SVB Loan and the 2013 Subordinated Notes. During February 2015, we exchanged the 2013 Subordinated Notes, see Note 20 for further discussion. As a result of this exchange, the 2013 Subordinated Notes outstanding as of December 31, 2014 are classified as long-term within our consolidated balance sheets.

Other

At December 31, 2014, 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 our long-term debt.

(15) 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 each note and considering the prevailing economic and market conditions at the balance sheet date.

We measure our contingent royalty obligation and our contingent purchase price at fair value. The fair values of our contingent royalty obligation and contingent purchase price, $15.3 million and $16.4 million respectively at December 31, 2014, are based on significant inputs not observable in the market, which require it to be reported as a Level 3 liability within the fair value hierarchy. The valuations use assumptions we believe would be made by a market participant. In particular, the valuation analysis for the contingent royalty obligation used the Income Approach based on the sum of the economic income that an asset is anticipated to produce in the future. In this case that asset is the potential royalty income to be paid to us as a result of certain license agreements for QS-21 Stimulon and the potential net sales generated from HerpV. The fair value of the contingent royalty obligation is estimated by applying a risk adjusted discount rate (10.2%) to the probability adjusted royalty revenue stream based on expected approval dates. These fair value estimates are most sensitive to changes in the probability of regulatory approvals. The Discounted Cash Flow method of the Income Approach was chosen as the method best suited to valuing the contingent royalty obligation.

The fair value of our contingent purchase price consideration is based on estimates from a Monte Carlo simulation of our market capitalization and other factors impacting the probability of triggering the milestone payments. Market capitalization was evolved using a geometric brownian motion, calculated daily for the life of the contingent purchase price consideration.

Assets and liabilities measured at fair value are summarized below (in thousands):

Description	December 31, 2014	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Short-term investments	$ 14,510	$ 14,510	$ —	$ —
Liabilities:				
Contingent royalty obligation	15,279	—	—	15,279
Contingent purchase price consideration	16,420	—	—	16,420
	$ 31,699	$ —	$ —	$ 31,699

Description	December 31, 2013	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Liabilities:				
Contingent royalty obligation	$ 18,799	$ —	$ —	$ 18,799

The following table presents our liabilities measured at fair value using significant unobservable inputs (Level 3), as of December 31, 2014 (amounts in thousands):

Balance, December 31, 2013	$ 18,799
Contingent purchase price consideration	9,721
Change in fair value of contingent royalty obligation during period	(3,120)
Change in the fair value of purchase price consideration during period	6,699
Payment of contingent royalty obligation during period	(400)
Balance, December 31, 2014	$ 31,699

The decrease in fair value of the contingent royalty obligation liability is included in non-operating income (expense) in our consolidated statement of operations for the year ended December 31, 2014. There were no changes in the valuation techniques during the period and there were no transfers into or out of Levels 1 and 2.

The fair value of our outstanding debt balance at December 31, 2014 and 2013, was $6.1 million and $9.6 million, respectively based on the level 2 valuation hierarchy of the fair value measurements standard using a present value methodology. The principal value of our outstanding debt balance at December 31, 2014 and 2013 was $6.3 million and $9.6 million, respectively.

In connection with the acquisition of 4-AB, we assumed convertible notes which upon a change of control of 4-AB had the ability to convert into shares of our common stock. All of the convertible notes assumed in connection with the acquisition of 4-AB were converted into approximately 383,000 shares of our common stock on May 8, 2014. We elected to account for these convertible notes using fair value as a Level 1 liability. The fair value of our convertible notes on the date of settlement was approximately $954,000.

(16) 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.

(17) Benefit Plans

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 $17,500 for individuals under 50 years old and $23,000 for individuals 50 years old and older in 2014. Each participant is fully vested in his or her contributions and related earnings and losses. No discretionary contributions or expense was recorded for the years ended December 31, 2014 and 2013. For the year ended December 31, 2012, we expensed $48,000 related to a discretionary contribution.

We also have a multiple employer benefit plan that covers all of our international employees. The annual measurement date for this plan is December 31. Benefits are based upon years of service and compensation. We are required to recognize the funded status (the difference between the fair value of plan assets and the projected benefit obligations) of our multiple employer plan in our consolidated balance sheets which amounted to a liability of approximately $621,000 with a corresponding adjustment to accumulated other comprehensive loss, of $194,000 for the year ended December 31, 2014. During the year ended December 31, 2014 we contributed approximately $98,000 to our international benefit plan and we expect to contribute approximately $104,000 to that plan during 2015. As of December 31, 2014, the benefits expected to be paid under this plan in the next five years and in the aggregate for the five years thereafter are as follows, $90,000 in 2015, $85,000 in 2016, $80,000 in 2017, $77,000 in 2018, $69,000 in 2019 and $313,000 for the years 2020-2024.

(18) Geographic Information

The following is geographical information regarding our revenues for the years ended December 31, 2014, 2013 and 2012 and the Company's long-lived assets as of December 31, 2014 and 2013 (in thousands):

	2014	2013	2012
Revenue:			
United States	$ 3,664	$ 3,045	$ 15,961
Europe	3,313	—	—
	$ 6,977	$ 3,045	$ 15,961

Revenue by geographic region is allocated based on the domicile of our respective business operations.

	2014	2013
Long-lived Assets:		
United States	$ 5,111	$ 4,089
Europe	2,102	—
	$ 7,213	$ 4,089

Long-lived assets include "Property and equipment, net" and "Other long-term assets" from the consolidated balance sheets, by the geographic location where the asset resides.

(19) Quarterly Financial Data (Unaudited)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2014				
Revenue	$ 721	$ 3,074	$ 1,563	$ 1,619
Net loss	(357)	(8,042)	(8,109)	(25,978)
Net loss attributable to common stockholders	(409)	(8,091)	(8,161)	(26,029)
Per common share, basic and diluted:				
Basic and diluted net loss attributable to common stockholders	$ (0.01)	$ (0.13)	$ (0.13)	$ (0.41)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2013				
Revenue	$ 1,109	$ 807	$ 736	$ 393
Net loss	(5,835)	(11,142)	(7,319)	(5,777)
Net loss attributable to common stockholders	(8,842)	(11,193)	(7,370)	(5,827)
Per common share, basic and diluted:				
Basic and diluted net loss attributable to common stockholders	$ (0.35)	$ (0.40)	$ (0.24)	$ (0.16)

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.

(20) Subsequent Events

On January 9, 2015, we entered into a global license, development and commercialization agreement (the “Collaboration Agreement”) with Incyte Corporation ("Incyte") and a wholly-owned subsidiary thereof, pursuant to which the parties agreed to develop and commercialize novel immuno-therapeutics using Agenus’ proprietary Retrocyte Display™ antibody discovery platform.

Pursuant to the terms of the Collaboration Agreement, Incyte paid upfront payments to us totaling $25.0 million in February 2015. The collaboration will initially focus on four checkpoint modulator programs directed at GITR, OX40, LAG-3 and TIM-3. The parties will share all costs and profits for the GITR and OX40 antibody programs on a 50:50 basis, and we will be eligible to receive potential milestone payments for these two antibody programs. Incyte is obligated to reimburse us for all development costs that we incur in connection with the LAG-3 and TIM-3 antibody programs, and we will be eligible to receive potential milestone payments and royalties. Through the direction of a joint steering committee, the parties anticipate that, for each program, we will lead preclinical development activities through IND filing, and Incyte will lead all clinical development activities. The parties expect to initiate the first clinical trials of antibodies arising from these programs in 2016. The Collaboration Agreement became effective February 19, 2015.

On January 9, 2015, we also entered into a Stock Purchase Agreement with Incyte (the “Stock Purchase Agreement” and together with the Collaboration Agreement, the “Agreements”), pursuant to which Incyte purchased approximately 7.76 million shares of our common stock (the “Shares”) in February 2015 for an aggregate purchase price of $35.0 million, or approximately $4.51 per share. Incyte owns approximately 11% of the outstanding shares of our common stock after such purchase. Under the Stock Purchase Agreement, Incyte has agreed not to dispose of any of the Shares for a period of 12 months and we have agreed to register the Shares for resale under the Securities Act of 1933, as amended (the “Securities Act”).

On January 23, 2015, we achieved the first contingent milestone pursuant to the terms of our Share Exchange Agreement with the 4-AB Shareholders and accordingly are obligated to pay $20.0 million to such 4-AB Shareholders.

On February 20, 2015, the Company, certain existing investors and certain additional investors entered into an Amended and Restated Note Purchase Agreement, pursuant to which we (i) canceled the 2013 Subordinated Notes in exchange for new senior subordinated promissory notes (the “2015 Subordinated Notes”) in the aggregate principal amount of $5.0 million, (ii) issued additional 2015 Subordinated Notes in the aggregate principal amount of $9.0 million and (iii) issued five year warrants to purchase 1,400,000 shares of our common stock at an exercise price of $5.10 per share.

The 2015 Subordinated Notes bear interest at a rate of 8% per annum, payable in cash on the first day of each month in arrears. Among other default and acceleration terms customary for indebtedness of this type, the 2015 Subordinated Notes include default provisions which allow for the acceleration of the principal payment of the 2015 Subordinated Notes in the event we become involved in certain bankruptcy proceedings, become insolvent, fail to make a payment of principal or (after a grace period) interest on the 2015 Subordinated Notes, default on other indebtedness with an aggregate principal balance of $13.5 million or more if such default has the effect of accelerating the maturity of such indebtedness, or become subject to a legal judgment or similar order for the payment of money in an amount greater than $13.5 million if such amount will not be covered by third-party insurance. The 2015 Subordinated Notes are not convertible and will mature on February 20, 2018, at which point the we must repay the outstanding balance in cash. The Company may prepay the 2015 Subordinated Notes at any time, in part or in full, without premium or penalty.

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 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 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* (1992) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Effective February 12, 2014, the Company acquired all of the outstanding capital stock of 4-Antibody AG ("4-AB"), and management excluded from its assessment of the effectiveness of the Company's internal controls over financial reporting as of December 31, 2014, 4-AB's internal controls over financial reporting associated with total assets of approximately $4.2 million and revenue of $1.5 million generated by 4-AB that was included in the Company's consolidated financial statements as of and for the year ended December 31, 2014. Based on our evaluation under the framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2014.

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 was no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) that occurred during the fourth quarter 2014 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. However, in the first quarter of 2014, we completed the acquisition of 4-AB, at which time 4-AB became our wholly-owned subsidiary. We are currently in the process of assessing and integrating 4-AB's internal controls over financial reporting into our financial reporting systems.

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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, 2014, based on criteria established in *Internal Control - Integrated Framework (1992)* 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 Annual 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, 2014, based on criteria established in *Internal Control - Integrated Framework (1992)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

Agenus Inc. acquired 4-Antibody AG during 2014, and management excluded from its assessment of the effectiveness of Agenus Inc. and subsidiaries' internal control over financial reporting as of December 31, 2014, 4-Antibody AG's internal control over financial reporting associated with total assets of approximately $4.2 million and revenue of $1.5 million that was included in the Company's consolidated financial statements as of and for the year ended December 31, 2014. Our audit of internal control over financial reporting of Agenus Inc. and subsidiaries also excluded an evaluation of the internal control over financial reporting of 4-Antibody AG.

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, 2014 and 2013, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2014, and our report dated March 16, 2015 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Boston, Massachusetts
March 16, 2015

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

None.

PART III

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

Information regarding our executive officers is incorporated herein by reference to the information contained in Part I of this Annual Report on Form 10-K under the heading "Executive Officers of the Registrant." The balance of the information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2015 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

Item 11. ***Executive Compensation***

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2015 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

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

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2015 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

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

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2015 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

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

The information required by this Item is incorporated herein by reference to the information that will be contained in our proxy statement related to the 2015 Annual Meeting of Stockholders, which we intend to file with the Securities and Exchange Commission within 120 days of the end of our fiscal year pursuant to General Instruction G(3) of Form 10-K.

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.
3.1.5	Certificate of Fourth 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 April 25, 2014 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 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.
4.4	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.
4.5	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.
4.6	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.
4.7	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.
4.8	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.
4.9	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.
4.10	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.
4.11	Securities Exchange Agreement dated as of February 4, 2013 by and between Agenus Inc., and Mr. Brad Kelley. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on February 5, 2013 and incorporated herein by reference.
4.12	Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.1 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.13	Form of Senior Subordinated Note under the Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.2 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.14	Form of Warrant under the Note Purchase Agreement dated as of April 15, 2013 by and between Agenus Inc., and the Purchasers listed on Schedule 1.1 thereto. Filed as Exhibit 4.3 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.15	Loan and Security Agreement dated as of April 15, 2013 by and among Agenus Inc., Antigenics Inc., a Massachusetts corporation (and wholly-owned subsidiary of Agenus Inc.), and Silicon Valley Bank, a California corporation. Filed as Exhibit 4.4 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.16	Securities Exchange Agreement dated as of April 15, 2013 by and among Agenus Inc., Ingalls & Snyder Value Partners L.P. and Arthur Koenig. Filed as Exhibit 4.5 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference.
4.17	Securities Purchase Agreement, dated September 18, 2013, as amended, by and between Agenus Inc. and the investors party thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2013 and incorporated herein by reference.

4.18	Form of Warrant under the Securities Purchase Agreement, dated September 18, 2013, as amended, by and between Agenus Inc. and the investors party thereto. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2013 and incorporated herein by reference.
4.19	Share Exchange Agreement, dated January 10, 2014, by and among Agenus Inc., 4-Antibody AG, certain shareholders of 4-Antibody AG and Vischer AG. Filed as Exhibit 2.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 13, 2014 and incorporated herein by reference.
4.20	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.
4.21	Stock Purchase Agreement dated as of January 9, 2015, by and between Agenus Inc. and Incyte Corporation. Filed herewith.
	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. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on March 10, 2014 and incorporated herein by reference.
10.2.1*	Third Amendment to the Agenus Inc. 2009 Equity Incentive Plan. Filed as Appendix C to our Definitive Proxy Statement on Schedule 14A filed on March 10, 2014 and incorporated herein by reference.
10.2.2*	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.
10.2.3*	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 as Exhibit 10.4 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2012 and incorporated herein by reference.
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.
10.5.1*	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.
10.6*	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.

10.7	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.
10.8	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.
10.9*	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.
10.9.1*	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.
10.9.2*	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.
10.10*	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.
10.10.1*	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.
10.10.2*	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.
10.11.1*	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.
10.11.2*	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.
10.11.3*	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.
	License and Collaboration Agreements
10.12(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.
10.13(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.
10.14(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.
10.14.1(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.
10.14.2(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.

10.15(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.
10.16(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.
10.17(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 and incorporated herein by reference. .
10.18(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.
10.19	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.
10.20(1)	Revenue Interests Assignment Agreement dated as of April 15, 2013 by and among Agenus Inc., Ingalls & Snyder Value Partners L.P., Arthur Koenig and Antigenics Inc., a Massachusetts corporation (and wholly-owned subsidiary of Agenus Inc.). Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-029089) for the quarter ended March 31, 2013 and incorporated herein by reference. .
10.21(1)	License Agreement dated as of December 5, 2014 by and between 4-Antibody AG, a limited liability company organized under the laws of Switzerland (and wholly-owned subsidiary of Agenus Inc.) and Ludwig Institute for Cancer Research Ltd. Filed herewith.
10.22(1)	License, Development and Commercialization Agreement dated as of January 9, 2015 by and among Agenus Inc., 4-Antibody AG, a limited liability company organized under the laws of Switzerland (and wholly-owned subsidiary of Agenus Inc.), Incyte Corporation and Incyte Europe Sarl, a Swiss limited liability company (and wholly-owned subsidiary of Incyte Corporation). Filed herewith.
	Real Estate Leases
10.23	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.
10.23.1	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.
10.23.2	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.
10.23.3	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.
10.23.4	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.
10.23.5	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.

10.24	Standard Form of Office Lease dated December 13, 2012 between 149 Fifth Ave. Corp. and Agenus Inc. Filed as Exhibit 10.22 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2012 and incorporated herein by reference.
10.25	Sublease Agreement between 4-Antibody AG, and Technologie Park Basel AG dated January 28, 2011. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.25.1	Addendum to the Lease Agreement from January 28, 2011 between 4-Antibody AG and Technologie Park Basel AG dated March 31, 2012. Filed as Exhibit 10.3.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.25.2	Addendum No. 4 to the Lease Agreement from January 28, 2011 between 4-Antibody AG and Technologie Park Basel AG dated June 2013. Filed as Exhibit 10.3.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.25.3	Addendum No. 5 to the Lease Agreement from January 28, 2011 between 4-Antibody AG and Technologie Park Basel AG dated April 30, 2013. Filed as Exhibit 10.3.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.25.4	Addendum No. 6 to the Lease Agreement from January 28, 2011 between 4-Antibody AG and Technologie Park Basel AG dated July 31, 2013. Filed as Exhibit 10.3.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.26	Commercial Lease Agreement No. 01/2003 between BioCentiv GmbH and 4-Antibody AG dated December 1, 2002. Filed as Exhibit 10.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.26.1	20th Addendum to Commercial Lease Agreement No. 01/2003 between BioCentiv GmbH and 4-Antibody AG dated November 1, 2010. Filed as Exhibit 10.4.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.26.2	28th Addendum to Commercial Lease Agreement No. 01/2003 between BioCentiv GmbH and 4-Antibody AG dated July 2, 2013. Filed as Exhibit 10.4.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
10.26.3	29th Addendum to Commercial Lease Agreement No. 01/2003 dated between BioCentiv GmbH and 4-Antibody AG August 9, 2013. Filed as Exhibit 10.4.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2014 and incorporated herein by reference.
	Sales Agreement
10.27	At Market Issuance Agreement, dated as of October 24, 2014, by and between Agenus Inc. and MLV & Co. LLC. Filed as Exhibit 1.2 to our Registration Statement on Form S-3 (File No. 333-199255) and incorporated herein by reference.
21.1	Subsidiaries of Agenus Inc. Filed herewith.
23.1	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	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
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document

101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Taxonomy Presentation Linkbase Document

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* 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.

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 16, 2015

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 16, 2015
/S/ CHRISTINE M. KLASKIN **Christine M. Klaskin**	Vice President, Finance (Principal Accounting and Financial Officer)	March 16, 2015
/S/ BRIAN CORVESE **Brian Corvese**	Director	March 16, 2015
/S/ TOM DECHAENE **Tom Dechaene**	Director	March 16, 2015
/S/ WADIH JORDAN **Wadih Jordan**	Director	March 16, 2015
/S/ SHAHZAD MALIK **Shahzad Malik**	Director	March 16, 2015
/S/ SHALINI SHARP **Shalini Sharp**	Director	March 16, 2015
/S/ TIMOTHY R. WRIGHT **Timothy R. Wright**	Director	March 16, 2015

Exhibit 4.21

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "Agreement") is dated as of January 9, 2015, between Agenus Inc., a Delaware corporation (the "Company"), and Incyte Corporation, a Delaware corporation (the "Purchaser").

WHEREAS, the Company, the Company's wholly-owned subsidiary, 4-Antibody AG, a joint stock company formed under the laws of Switzerland, Purchaser and Inctye Europe SARL, a Swiss limited liability company (a société à responsabilité limitée), entered into that certain License, Development and Commercialization Agreement dated as of the date hereof (the "Collaboration Agreement"); and

WHEREAS, in connection with the execution of the Collaboration Agreement, the Company desires to sell to Purchaser, and Purchaser desires to purchase from the Company, shares of Common Stock of the Company in the amount and upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants contained in this Agreement, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Company and Purchaser agree as follows:

ARTICLE I.
DEFINITIONS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, for all purposes of this Agreement, the following terms have the meanings set forth in this Section 1.1:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person as such terms are used in and construed under Rule 405 under the Securities Act.

"Board of Directors" means the board of directors of the Company.

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Closing" means the closing of the purchase and sale of the Shares pursuant to Section 2.1.

"Closing Date" means the Trading Day on which all conditions precedent to (i) Purchaser's obligation to pay the Purchase Price and (ii) the Company's obligation to deliver the Shares, in each case, have been satisfied or waived, but it no event later than the third Trading Day following the HSR Clearance Date.

"Collaboration Agreement" has the meaning ascribed to such term in the preamble.

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the common stock of the Company, par value $0.01 per share, and any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Company which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, right, option, warrant or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Company Counsel" means Choate, Hall & Stewart LLP, with offices located at Two International Place, Boston, MA 02110.

"Disclosure Schedules" means the schedules attached to this Agreement, as they may be updated pursuant to Section 2.3(a).

"DOJ" means the United States Department of Justice.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"FCPA" means the Foreign Corrupt Practices Act of 1977, as amended.

"FTC" means the United States Federal Trade Commission.

"GAAP" has the meaning ascribed to such term in Section 3.1(g).

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (15 U.S.C. §18a), and the rules and regulations promulgated thereunder.

"HSR Clearance" means the earlier of (a) notification to the Parties from the FTC or DOJ of early termination of the applicable waiting period under the HSR Act with respect to the HSR Filings, or (b) expiration of the applicable waiting period under the HSR Act with respect to the HSR Filings; provided, however, that if the FTC or DOJ shall commence any investigation by means of a second request or otherwise, HSR Clearance means the termination of such investigation, without action to prevent the Parties from implementing the transactions contemplated by this Agreement with respect to the United States.

"HSR Clearance Date" means the earlier of (a) the date on which the FTC or DOJ shall notify the Parties of early termination of the waiting period under the HSR Act with respect to the HSR Filings, or (b) the date on which the applicable waiting period under the HSR Act with respect to the HSR Filings expires; provided, however, that if the FTC or DOJ shall commence any investigation by means of a second request or otherwise, HSR Clearance Date means the date on which any investigation opened by the FTC or DOJ shall have been terminated, without action to prevent the Parties from implementing the transactions contemplated by this Agreement with respect to the United States.

"HSR Filings" means the filings by the Parties with the FTC and the DOJ of their respective premerger notification and report forms with respect to the matters set forth in this Agreement and the Collaboration Agreement, together with all required documentary attachments thereto.

"IFRS" has the meaning ascribed to such term in Section 3.1(g).

"Intellectual Property" means patents, patent applications, trademarks, trademark applications, service marks, trade names, trade dress, trade secrets, inventions and discoveries and invention disclosures whether or not patented, copyrights in both published and unpublished works, including without limitation all compilations, data bases and computer programs, materials and other documentation, licenses, internet domain names and other intellectual property rights and similar rights.

"Liens" means a lien, charge, pledge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

"Lock-Up Period" has the meaning assigned to such term in Section 5.1(a).

"Material Adverse Effect" means any (i) material adverse effect on the legality, validity or enforceability of this Agreement, (ii) material adverse effect on the results of operations, assets, business or condition (financial or otherwise) of the Company, taken as a whole, or (iii) material adverse effect on the Company's ability to perform in any material respect on a timely basis its obligations under this Agreement.

"Nasdaq" means the NASDAQ Capital Market (or any successor thereto).

"Party" means any party to this Agreement.

"Person" means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

"Purchase Price" has the meaning ascribed to such term in Section 2.1.

"Registration Statement" means the registration statement on Form S-3 (or any successor form related to secondary offerings) required to be filed hereunder as contemplated by Article 4, including the prospectus, amendments and supplements to such registration statement or prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference or deemed to be incorporated by reference in such registration statement.

"Rule 144" means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended or interpreted from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same purpose and effect as such Rule.

"SEC Reports" has the meaning ascribed to such term in Section 3.1(g).

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Shares" has the meaning ascribed to such term in Section 2.1.

"Subsidiary" means the Company's wholly-owned subsidiaries, as set forth on Schedule 1.1.

"Trading Day" means a day on which Nasdaq is open for trading.

"Transfer Agent" means American Stock Transfer & Trust Company, LLC, the current transfer agent of the Company, with a mailing address of 6201 15th Avenue, Brooklyn, NY 11219 and a facsimile number of (718) 236-4588, and any successor transfer agent of the Company.

"WilmerHale" means Wilmer Cutler Pickering Hale and Dorr LLP, with offices located at 60 State Street, Boston, MA 02109.

ARTICLE II.
PURCHASE AND SALE

2.1 Purchase and Sale of Shares; Closing. Subject to the terms and conditions of this Agreement, the Company agrees to sell to Purchaser at the Closing, and Purchaser agrees to purchase from the Company at the Closing, that certain number of whole shares of Common Stock (the "Shares") equal in value to, or as close as possible without exceeding, $35,000,000 (the "Purchase Price"), each share valued at a price per share equal to the product of (i) 1.2 and (ii) the simple average of the daily closing Volume Weighted Average Price (VWAP) over the 20 Trading Days preceding the date of this Agreement on the Nasdaq Stock Market as defined by Bloomberg. Upon satisfaction or waiver of the covenants and conditions set forth in Sections 2.3 and 2.4, the Closing shall occur at the offices of WilmerHale or such other location as the parties shall mutually agree.

2.2 Condition Precedent. The obligation of the Company and Purchaser to enter into this Agreement is subject to the Company and Purchaser having executed and delivered the Collaboration Agreement on or prior to the date hereof.

2.3 Deliveries at Closing. At the Closing, subject to the terms and conditions of this Agreement:

(a) the Company shall deliver to Purchaser updated Disclosure Schedules that update the Disclosure Schedules delivered as of the date hereof for any matter or fact that arises at any time after the date hereof and prior to the Closing Date that, if such matter or fact had been in existence or had occurred at or before the date hereof, would have made a representation or warranty of the Company in Section 3.1 untrue had it not been set forth or described in the Disclosure Schedules delivered on the date hereof;

(b) the Company shall deliver to Purchaser a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver the Shares to Purchaser on an expedited basis via The Depository Trust Company's Deposit and Withdrawal at Custodian system;

(c) Company Counsel shall deliver to Purchaser a legal opinion, substantially in the form of Exhibit A attached hereto; and

(d) Purchaser shall pay to the Company, by wire transfer of immediately available funds to an account or accounts designated by the Company, the Purchase Price.

2.4 Closing Conditions.

(a) The obligation of the Company to sell the Shares to Purchaser at the Closing is subject to the following conditions being met or waived in writing by the Company:

(i) the representations and warranties of Purchaser contained in Section 3.2 shall be true and correct as of the date hereof and as of the Closing Date;

(ii) Purchaser shall have performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by Purchaser on or before the Closing;

(iii) the Collaboration Agreement shall continue to be in full force and effect;

(iv) Purchaser shall have delivered the Purchase Price; and

(v) HSR Clearance shall have been obtained.

(a) The obligation of Purchaser to purchase the Shares at the Closing is subject to the following conditions being met or waived in writing by the Purchaser:

(vi) the representations and warranties of the Company contained in Section 3.1 that are qualified as to materiality shall be true and correct as of the date hereof and as of the Closing Date, and those that are not so qualified shall be true and correct as of the date hereof and true and correct in all material respects as of the Closing Date (unless a representation or warranty speaks as of the date hereof or another specific date, in which case such representation or warranty shall be true and correct as of the date hereof or such other specific date);

(vii) the Company shall have performed and complied with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Company on or before the Closing;

(viii) the Company shall deliver to Purchaser a certificate executed by an authorized officer of the Company confirming the conditions set forth in Sections 2.4(b)(i) and (ii) have been duly satisfied;

(ix) the Collaboration Agreement shall continue to be in full force and effect;

(x) the Company shall have delivered the items set forth in Section 2.3(a)-(b) of this Agreement;

(xi) Company Counsel shall have delivered the item set forth in Section 2.3(c) of this Agreement;

(xii) there shall be no Material Adverse Effect with respect to the Company existing as of the Closing;

(xiii) from the date hereof to the Closing Date, trading in the Common Stock shall not have been suspended by the Commission or Nasdaq; and

(xiv) HSR Clearance shall have been obtained.

2.5 Effect of Waiver of Condition to Closing. In the event that, as of the Closing, Purchaser expressly waives in writing the condition regarding a Material Adverse Effect set forth in Section 2.4 of this Agreement, Purchaser shall be deemed to have waived any right of recourse against the Company for, and agreed not to sue the Company in respect of, any and all events or inaccuracies in any representations or warranties of the Company (a) that, as of the Closing, have caused or would reasonably be expected to cause such Material Adverse Effect and (b) of which Purchaser had notice in writing from the Company at least two (2) business days prior to the Closing.

ARTICLE III.
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of the Company. Except as set forth in the Disclosure Schedules, the Company hereby represents and warrants to Purchaser as of the date hereof (unless specifically made as of another date, in which case as of such other date) as follows:

(a) Capitalization. The capitalization of the Company as of September 30, 2014 is as set forth on Schedule 3.1(a). The Company has not issued any capital stock since its most recently filed periodic report under the Exchange Act, other than pursuant to the exercise of stock options under the Company's stock option plans, the issuance of shares of Common Stock to employees pursuant to the Company's employee stock purchase plans, the issuance of shares of Common Stock pursuant to the Company's at-the-market sales agreement and pursuant to the conversion and/or exercise of Common Stock Equivalents outstanding as of the date of the most recently filed periodic report under the Exchange Act. No Person has any right of first refusal, preemptive right, right of participation, or any similar right to participate in the transactions contemplated by this Agreement. Except as disclosed

on Schedule 3.1(a) and as a result of the purchase and sale of the Shares, there are no outstanding options, warrants, scrip rights to subscribe to, calls or commitments of any character whatsoever relating to, or securities, rights or obligations convertible into or exercisable or exchangeable for, or giving any Person any right to subscribe for or acquire, any shares of Common Stock, or contracts, commitments, understandings or arrangements by which the Company is or may become bound to issue additional shares of Common Stock or Common Stock Equivalents. The issuance and sale of the Shares will not obligate the Company to issue shares of Common Stock or other securities to any Person and will not result in a right of any holder of Company securities to adjust the exercise, conversion, exchange or reset price under any of such securities. All of the outstanding shares of capital stock of the Company are duly authorized, validly issued, fully paid and nonassessable, have been issued in compliance with all federal and state securities laws, and none of such outstanding shares was issued in violation of any preemptive rights or similar rights to subscribe for or purchase securities. No further approval or authorization of any stockholder, the Board of Directors or others is required for the issuance and sale of the Shares. There are no stockholders agreements, voting agreements or other similar agreements with respect to the Company's capital stock to which the Company is a party or, to the knowledge of the Company, between or among any of the Company's stockholders.

(b) Litigation. There are no actions, suits, proceedings or, to the knowledge of the Company, any investigations, pending or currently threatened against the Company that questions the validity of this Agreement or the issuance of the Shares contemplated hereby or would, if there were an unfavorable decision, have or could reasonably be expected to result in a Material Adverse Effect on the Company. As of the date hereof, there is no other material action, suit, or proceeding pending or, to the knowledge of the Company, currently threatened in writing against the Company. As of the date hereof, there are no material outstanding consents, orders, decrees or judgments of any governmental entity naming the Company. Neither the Company, nor, to the knowledge of the Company, any director or officer thereof, is or has been the subject of any action involving a claim of violation of or liability under federal or state securities laws or a claim of breach of fiduciary duty. There has not been, and to the knowledge of the Company, there is not pending or contemplated, any investigation by the Commission involving the Company or any current or former director or officer of the Company. The Commission has not issued any stop order or other order suspending the effectiveness of any registration statement filed by the Company under the Exchange Act or the Securities Act.

(c) Organization and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to own, lease and operate its properties and carry on its business as now conducted. The Company is duly qualified and is in good standing as a foreign corporation in each jurisdiction in which the properties owned, leased or operated, or the business conducted, by it requires such qualification except where the failure to be so qualified or in good standing, individually or in the aggregate, would not have a Material Adverse Effect.

(d) Authorization. All corporate actions on the part of the Company, its officers, directors and stockholders necessary for the authorization, execution and delivery of this Agreement and for the issuance of the Shares have been taken. The Company has the requisite corporate power to enter into this Agreement and to carry out and perform its obligations hereunder. This Agreement has been duly authorized, executed and delivered by the Company and, upon due execution and delivery by Purchaser, will be a valid and binding agreement of the Company, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles.

(e) Subsidiaries. All of the issued and outstanding shares of capital stock of each Subsidiary are, where applicable, validly issued, fully paid, non-assessable and free of preemptive and similar rights to subscribe for or purchase securities. Other than the Subsidiaries and as otherwise set forth on Schedule 3.1(e), the Company does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity. Except as disclosed in the SEC Reports, the Company is not a participant in any material joint venture, partnership or similar arrangement.

(f) No Conflict With Other Instruments. Neither the execution, delivery nor performance of this Agreement, nor the issuance of the Shares contemplated hereby will result in (i) any violation of, be in conflict with, cause any acceleration or any increased payments under, or constitute a default under, with or without the passage of time or the giving of notice: (a) any provision of the Company's certificate of incorporation or bylaws; (b) any provision of any judgment, decree or order to which the Company is a party or by which it is bound; (c) any law, rule or regulation applicable to the Company; or (d) any note, mortgage, material contract, material agreement, license, waiver, exemption, order or permit; or (ii) the creation or imposition of any lien, encumbrance, claim, security interest or restriction whatsoever upon any of the material properties or assets of the Company or an acceleration of indebtedness pursuant to any obligation, agreement or condition contained in any material bond, debenture, note or any other evidence of indebtedness or any material indenture, mortgage, deed of trust or any other agreement or instrument to which the Company is a party or by which it is bound or to which any of the material property or assets of the Company is subject.

(g) Disclosure Documents. For the two years preceding the date hereof, the Company has filed, on a timely basis or has received a valid extension as of such time of filing and has thereafter made such filings prior to the expiration of any such extension, all reports, schedules, forms, statements and other documents required to be filed by the Company with the Commission under the Securities Act and the Exchange Act, including pursuant to Section 13(a) or 15(d) thereof (the foregoing materials, including the exhibits thereto and documents incorporated by reference therein, being collectively referred to herein as the "SEC Reports"), and the Company has paid all fees and assessments due and payable in connection with the SEC Reports. As of their respective dates, the SEC Reports complied in all material respects with all statutes and applicable rules and regulations of the

Commission, including the requirements of the Securities Act and the Exchange Act, as applicable, and none of the SEC Reports, when filed, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. The financial statements of the Company included in the SEC Reports comply in all material respects with applicable accounting requirements and the rules and regulations of the Commission with respect thereto as in effect at the time of filing. Such financial statements have been prepared in accordance with United States generally accepted accounting principles ("GAAP") or, to the extent applicable, the International Financial Reporting Standards ("IFRS"), applied on a consistent basis during the periods involved, except as may be otherwise specified in such financial statements or the notes thereto and except that unaudited financial statements may not contain all footnotes required by GAAP or IFRS, as applicable, and fairly present in all material respects the financial position of the Company and its consolidated Subsidiaries as of and for the dates thereof and the results of operations and cash flows for the periods then ended, subject, in the case of unaudited statements, to normal, immaterial, year-end audit adjustments.

(h) Absence of Certain Events and Changes. Except as otherwise disclosed in the SEC Reports, since the date of the Company's Quarterly Report on Form 10-Q for the quarter ended on September 30, 2014: (i) the Company has conducted its business in the ordinary course consistent with past practice, (ii) there has not been any event, change or development which, individually or in the aggregate, has had or could reasonably be expected to have a Material Adverse Effect, (iii) the Company has not incurred any material liabilities (contingent or otherwise) other than expenses incurred in the ordinary course of business consistent with past practice, (iv) the Company has not altered its method of accounting in any material respect, and (v) the Company has not declared or made any dividend or distribution of cash or other property to its shareholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock.

(i) Intellectual Property. Except as otherwise disclosed by the Company in writing to the Purchaser on or before the date hereof, the Company owns, or has the right pursuant to a valid, written license agreement to use and exploit, all Intellectual Property used in or necessary for the conduct of the business of the Company and that is material to the business of the Company as conducted as of the Closing (the "Company Intellectual Property"). To the knowledge of the Company, (i) all issued patents and registered trademarks that are Company Intellectual Property and that are owned by the Company are valid and enforceable and are currently in compliance with formal legal requirements (including without limitation, as applicable, payment of filing, examination and maintenance fees, proofs of working or use, timely post registration filing of affidavits of use and incontestability and renewal applications), and (ii) there is no existing infringement or misappropriation by another Person of any of the Company Intellectual Property. Except as disclosed in the SEC Reports, since January 1, 2012, no claims have been asserted by a third party in writing (a) alleging that the conduct of the business of the Company has infringed or misappropriated any Intellectual Property rights of such third party, or (b) challenging or questioning the validity or effectiveness of any Intellectual Property right of

the Company, and, to the Company's knowledge, there is no valid basis for any such claim. No loss or early expiration of any of the Company's material Intellectual Property is pending, or, to the Company's knowledge, threatened. The Company has taken reasonable steps in accordance with standard industry practices to protect its rights in the Company Intellectual Property and at all times has maintained the confidentiality of all information used in connection with the business that constitutes or constituted a trade secret of the Company.

(j) Compliance. The Company has all material permits, licenses, franchises, authorizations, orders and approvals of (collectively, "Permits"), and has made all filings, applications and registrations with, governmental entities that are required in order to permit the Company to own or lease its properties and assets and to carry on its business as presently conducted. Neither the sale of the Shares hereunder nor the performance of the Company's other obligations under this Agreement will result in the suspension, revocation, impairment, forfeiture or nonrenewal of any Permit applicable to the Company, its businesses or operations or any of its assets or properties. The Company has complied and is in compliance in all material respects with all Permits, statutes, laws, regulations, rules, judgments, orders and decrees of all governmental entities applicable to it that relate to its business, including but not limited to compliance with the FCPA and any applicable similar laws in foreign jurisdictions in which the Company is currently, or has previously, conducted its business. The Company has not received any notice alleging noncompliance, and, to the knowledge of the Company, the Company is not under investigation with respect to, or threatened to be charged with, any material violation of any applicable statutes, laws, regulations, rules, judgments, orders or decrees of any governmental entities. The Company has not received any notice of proceedings relating to the revocation or modification of any Permit. No Permit is subject to termination as a result of the execution of this Agreement or consummation of the transactions contemplated hereby. Except as disclosed in the SEC Reports, since January 1, 2012, the Company has not entered into or been subject to any judgment, consent decree, compliance order or administrative order with respect to any aspect of the business, affairs, properties or assets of the Company or received any formal or informal complaint or claim from any regulatory agency with respect to any aspect of the business, affairs, properties or assets of the Company.

(k) Valid Issuance of Shares. The Shares are duly authorized and, when issued and paid for in accordance with this Agreement, will be duly and validly issued, fully paid and nonassessable, free and clear of all Liens imposed by the Company, and, based in part on the representations of Purchaser in Section 3.2 of this Agreement, will be issued in compliance with all applicable federal and state securities laws. Neither the Company nor any person acting on behalf of the Company has offered or sold any of the Shares by any form of general solicitation or general advertising. The Company has offered the Shares for sale only to the Purchaser.

(l) Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority on the part of the Company is required in connection with the consummation of the transactions contemplated by this Agreement, except for (i) notices

required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis, and (ii) the HSR Filings.

(m) No Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by the Company.

(n) No Undisclosed Liabilities. The Company does not have any liabilities (contingent or otherwise), except for (i) liabilities reflected or reserved against in financial statements of the Company (or otherwise disclosed in the accompanying footnotes) included in the SEC Reports filed with the Commission prior to the date of this Agreement, (ii) liabilities incurred in the ordinary course of business or otherwise disclosed in SEC Reports subsequent to the period covered by the Company's Quarterly Report on Form 10-Q for the quarter ended on September 30, 2014 and (iii) liabilities that have not been and would not reasonably be expected to be material.

(o) Internal Controls. The Company has implemented and maintains a system of internal control over financial reporting (as required by Rule 13a-15(a) under the Exchange Act) that is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of consolidated financial statements for external purposes, and, to the knowledge of the Company, such system of internal control over financial reporting is effective. For purposes of this Section 3.1(o), "knowledge of the Company" means the actual knowledge of the Chief Executive Officer and the Vice President, Finance of the Company. The Company has implemented and maintains disclosure controls and procedures (as required by Rule 13a-15(a) of the Exchange Act) that are designed to ensure that information required to be disclosed by the Company in the reports it files or submits under the Exchange Act is recorded, processed, summarized and reported within the timeframes specified by the Commission's rules and forms (and such disclosure controls and procedures are effective), and has disclosed, based on its most recent evaluation of its system of internal control over financial reporting prior to the date of this Agreement, to the Company's outside auditors and the audit committee of the Company Board (i) any significant deficiencies and material weaknesses known to it in the design or operation of its internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act) that would reasonably be expected to adversely affect the Company's ability to record, process, summarize and report financial information and (ii) any fraud known to it, that involves management or other employees who have a significant role in the Company's internal control over financial reporting.

(p) Company Not An "Investment Company." The Company has been advised of the rules and requirements under the Investment Company Act of 1940, as amended (the "Investment Company Act"). The Company is not, and immediately after receipt of payment for the Shares will not be, an "investment company" or an entity "controlled" by an "investment company" within the meaning of the Investment Company Act.

(q) Solvency. The Company has not: (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy or suffered the filing of

any involuntary petition by its creditors; (iii) suffered the appointment of a receiver to take possession of all, or substantially all, of its assets; (iv) suffered the attachment or other judicial seizure of all, or substantially all, of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(r) No Integrated Offering. Neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause this offering of the Shares to be integrated with prior offerings by the Company for purposes of the Securities Act or any applicable shareholder approval provisions, including, without limitation, under the rules and regulations of any exchange or automated quotation system on which any of the securities of the Company are listed or designated.

(s) Whistleblowers. To the knowledge of the Company, as of the date hereof, no employee of the Company or its subsidiaries has provided since January 1, 2012 or is providing information to any law enforcement agency regarding the violation of any applicable Law of the type described in Section 806 of the Sarbanes-Oxley Act by the Company or its Subsidiaries. Neither the Company nor its Subsidiaries have discharged, demoted or suspended an employee of the Company or its Subsidiaries in the terms and conditions of employment because of any lawful act of such employee described in Section 806 of the Sarbanes-Oxley Act

3.2 Representations and Warranties of Purchaser. Purchaser hereby represents and warrants to the Company as of the date hereof (unless specifically made as of another date, in which case as of such other date) as follows:

(a) Legal Power. Purchaser has the requisite corporate power to enter into this Agreement and to carry out and perform its obligations hereunder.

(b) Due Execution. This Agreement has been duly authorized, executed and delivered by Purchaser, and, upon due execution and delivery by the Company, will constitute a valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally or by equitable principles.

(c) Investment Representations. In connection with the offer, purchase and sale of the Shares, Purchaser makes the following representations:

(i) Purchaser is acquiring the Shares for its own account for the purpose of investment and not with a view to or for sale in connection with any distribution thereof, and has no present intention to effect, or any present or contemplated plan, agreement, undertaking, arrangement, obligation, indebtedness, or commitment providing for, any distribution of the Shares.

(ii) Purchaser has carefully reviewed the representations concerning the Company contained in this Agreement and has made detailed inquiry concerning the Company, its business and its personnel.

(iii) Purchaser understands that the Shares have not been registered under the Securities Act or any applicable state securities laws and, consequently, Purchaser may have to bear the risk of owning the Shares for an indefinite period of time because the Shares may not be transferred unless (x) the resale of the Shares is registered pursuant to an effective registration statement under the Securities Act in accordance with the terms and conditions set forth in Section 4.1 hereof; (y) Purchaser has delivered to the Company an opinion of counsel (in form, substance and scope customary for opinions of counsel in comparable transactions) to the effect that the Shares to be sold or transferred may be sold or transferred pursuant to an exemption from such registration; or (z) the Shares are sold or transferred pursuant to Rule 144.

(iv) Purchaser has such knowledge and experience in financial or business matters that it is capable of evaluating the merits and risks of the investment in the Shares to be purchased hereunder.

(v) Purchaser is an "accredited investor" as defined in Rule 501(a) of the rules and regulations promulgated under the Securities Act.

(d) Certain Fees. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based on arrangements made by Purchaser.

(e) Legends. In connection with the issuance and sale of the Shares, Purchaser understands that each of the Shares, whether certificated or in book-entry form, will be endorsed with the following legend:

"THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM OR UNLESS THE COMPANY HAS RECEIVED AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY AND ITS COUNSEL THAT SUCH REGISTRATION IS NOT REQUIRED."

The Company acknowledges and agrees that the representations contained in Section 3.2 shall not modify, amend or affect Purchaser's right to rely on the Company's representations and warranties contained in this Agreement or any representations and warranties contained in the Collaboration Agreement or any other document or instrument executed and/or delivered in connection with this

Agreement or the Collaboration Agreement or the consummation of the transactions contemplated hereby.

ARTICLE IV.
REGISTRATION RIGHTS

4.1 Registration of the Shares. The Company shall file with the Commission, on or before the date that is 90 days prior to the first anniversary of the Closing Date, a Registration Statement covering the resale of the Shares to the public by Purchaser. The Company shall use commercially reasonable efforts to cause the Registration Statement covering the Shares to be declared effective by the Commission by the first anniversary of the Closing Date. The Company shall cause such Registration Statement to remain effective under the Securities Act until all Shares covered by such Registration Statement have been sold or may be sold without volume restrictions pursuant to Rule 144. The Company shall promptly notify Purchaser of the effectiveness of such Registration Statement after the Company confirms effectiveness with the Commission. The Company hereby covenants and agrees to use reasonable commercial efforts to maintain its eligibility to make filings with the Commission on Form S-3 until one or more registrations statements covering the resale of all of the Shares shall have been filed with, and declared effective by, the Commission pursuant to the terms and conditions of this Agreement.

4.2 Registration Covenant. Purchaser covenants and agrees that it will comply with the prospectus delivery requirements of the Securities Act as applicable to it in connection with sales of the Shares pursuant to a Registration Statement. The Company shall comply in all material respects with all applicable rules and regulations of the Commission applicable to the filing of a Registration Statement.

4.3 Registration Procedures.

(a) In connection with the filing by the Company of a Registration Statement covering the Shares, the Company shall furnish to Purchaser (i) a copy of the prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act and (ii) such other documents as Purchaser may reasonably request, in order to facilitate the public sale or other disposition of the Shares.

(b) The Company shall use commercially reasonable efforts to register or qualify the Shares covered by a Registration Statement under the securities laws of each state of the United States as Purchaser shall reasonably request; provided, however, that the Company shall not be required in connection with this subsection (b) to qualify as a foreign corporation or execute a general consent to service of process in any jurisdiction.

(c) If the Company has delivered preliminary or final prospectuses to Purchaser and after having done so the prospectus is amended or supplemented to comply with the requirements of the Securities Act, the Company shall promptly notify Purchaser and, if requested by the Company, Purchaser shall immediately cease making offers or sales of the Shares covered by a Registration Statement and return all prospectuses to the Company. The Company shall promptly provide Purchaser with revised or supplemented prospectuses

and, following receipt of the revised or supplemented prospectuses, Purchaser shall be free to resume making offers and sales of the Shares under such Registration Statement.

(d) The Company shall be entitled to include in a Registration Statement the shares of Common Stock held by other shareholders of the Company, provided such other shares of Common Stock are excluded first from such Registration Statement in order to comply with any applicable laws or request from any governmental entity or Nasdaq, or in the case of an underwritten offering, in order to comply with a cutback request of any underwriter.

(e) The Company shall pay all expenses incurred in connection with the preparation and filing of such Registration Statement pursuant to this Article 4, including all registration and filing fees and printer, legal and accounting fees related thereto but excluding (i) any brokerage fees, selling commissions or underwriting discounts incurred by Purchaser in connection with sales under any Registration Statement covering the Shares and (ii) the fees and expenses of counsel retained by Purchaser.

(f) The Company shall use commercially reasonable efforts to avoid the issuance of any order suspending the effectiveness of a Registration Statement, or any suspension of the qualifications (or exemption from qualification) of any of the Shares covered by a Registration Statement for sale in any jurisdiction. The Company shall advise Purchaser promptly after it shall receive notice of any stop order or issuance of any order by the Commission delaying or suspending the effectiveness of a Registration Statement covering the Shares or of the initiation of any proceeding for that purpose, and it will promptly use commercially reasonable efforts to prevent the issuance of any stop order or to obtain its withdrawal at the earliest possible moment if such stop order should be issued.

4.4 Registration Confidentiality. Purchaser agrees to treat as confidential (unless otherwise publicly disclosed by the Company or a third party not to the knowledge of Purchaser in breach of an agreement of confidentiality with the Company) any written notice from the Company regarding the Company's plans to file a Registration Statement and shall not disclose such information to any other person, or use such information, except as is necessary to exercise its rights under this Agreement.

4.5 Indemnification.

(a) The Company agrees to indemnify and hold harmless Purchaser and each other person, if any, who controls Purchaser within the meaning of the Securities Act or Exchange Act from and against any losses, claims, damages or liabilities to which Purchaser or controlling person may become subject (under the Securities Act, the Exchange Act, state securities or "Blue Sky" laws or otherwise) insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon any untrue statement of a material fact contained in any Registration Statement covering the Shares or in any preliminary prospectus or final prospectus contained in such Registration Statement, or any amendment or supplement to such Registration Statement, or the omission or alleged omission to state a material fact required to be stated therein or necessary to make

the statements therein not misleading, and the Company will reimburse Purchaser or controlling person for any reasonable legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim, or preparing to defend any such action, proceeding or claim; provided, however, that the Company shall not be liable in any such case to the extent that such loss, claim, damage or liability arises out of, or is based upon, an untrue statement made in such Registration Statement, preliminary prospectus or prospectus, or any amendment or supplement in reliance upon and in conformity with written information furnished to the Company by or on behalf of Purchaser or controlling person specifically for use in the preparation thereof or any statement or omission in any prospectus that is corrected in any subsequent prospectus that was delivered to Purchaser prior to the pertinent sale or sales by Purchaser.

(b) Purchaser agrees to indemnify and hold harmless the Company and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, each officer of the Company who signs the Registration Statement and each director of the Company, from and against any losses, claims, damages or liabilities to which the Company or any officer, director or controlling person may become subject (under the Securities Act, the Exchange Act, state securities or "Blue Sky" laws or otherwise), insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of, or are based upon any untrue statement of a material fact contained in any Registration Statement covering the Shares or in any preliminary prospectus, final prospectus contained in such Registration Statement, or any amendment or supplement to such Registration Statement or the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if such untrue statement or omission was made in reliance upon and in conformity with written information furnished by or on behalf of Purchaser specifically for use in preparation of the Registration Statement, prospectus, amendment or supplement and Purchaser will reimburse the Company, or such officer, director or controlling person, as the case may be, for any legal or other expenses reasonably incurred in investigating, defending or preparing to defend any such action, proceeding or claim; provided, however, that Purchaser's obligation to indemnify the Company shall be limited to the Purchase Price.

(c) Promptly after receipt by any indemnified person of a notice of a claim or the beginning of any action in respect of which indemnity is to be sought against an indemnifying person pursuant to this Section 4.5, such indemnified person shall notify the indemnifying person in writing of such claim or of the commencement of such action, but the omission to so notify the indemnifying party will not relieve it from any liability which it may have to any indemnified party under this Section 4.5 (except to the extent that such omission materially and adversely affects the indemnifying party's ability to defend such action). Subject to the provisions hereinafter stated, in case any such action shall be brought against an indemnified person, the indemnifying person shall be entitled to participate therein, and, to the extent that it shall elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice from such indemnified party, shall be entitled to assume the defense thereof, with counsel reasonably satisfactory to such indemnified person. After notice from the indemnifying person to such indemnified person

of its election to assume the defense thereof, such indemnifying person shall not be liable to such indemnified person for any legal expenses subsequently incurred by such indemnified person in connection with the defense thereof; provided, however, that if there exists or shall exist a conflict of interest that would make it inappropriate, in the opinion of counsel to the indemnified person, for the same counsel to represent both the indemnified person and such indemnifying person or any Affiliate or associate thereof, the indemnified person shall be entitled to retain its own counsel at the expense of such indemnifying person; provided, however, that no indemnifying person shall be responsible for the fees and expenses of more than one separate counsel (together with appropriate local counsel) for all indemnified parties. In no event shall any indemnifying person be liable in respect of any amounts paid in settlement of any action unless the indemnifying person shall have approved the terms of such settlement; provided, however, that such consent shall not be unreasonably withheld. No indemnifying person shall, without the prior written consent of the indemnified person, effect any settlement of any pending or threatened proceeding in respect of which any indemnified person is or could have been a party and indemnification could have been sought hereunder by such indemnified person, unless such settlement includes an unconditional release of such indemnified person from all liability on claims that are the subject matter of such proceeding.

(d) If the indemnification provided for in this Section 4.5 is unavailable to or insufficient to hold harmless an indemnified party under subsection (a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of such losses, claims, damages or liabilities (or actions in respect thereof) in such proportion as is appropriate to reflect the relative fault of the Company on the one hand and Purchaser on the other hand, in connection with the statements or omissions or other matters which resulted in such losses, claims, damages or liabilities (or actions in respect thereof), as well as any other relevant equitable considerations. The relative fault shall be determined by reference to, among other things, in the case of an untrue statement, whether the untrue statement relates to information supplied by the Company on the one hand or Purchaser on the other hand and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement. The Company and Purchaser agree that it would not be just and equitable if contribution pursuant to this subsection (d) were determined by pro rata allocation or by any other method of allocation which does not take into account the equitable considerations referred to above in this subsection (d). The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to above in this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), Purchaser shall not be required to contribute any amount in excess of the amount by which the net amount received by Purchaser from the sale of the Shares to which such loss relates exceeds the amount of any damages which Purchaser has otherwise been required to pay by reason of such untrue statement. No person guilty of fraudulent misrepresentation (within the

meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

(e) The rights and obligations of the Company and Purchaser under this Section 4.5 shall survive the termination of this Agreement.

ARTICLE V.
COVENANTS AND ADDITIONAL AGREEMENTS

5.1 Stock Ownership Governance.

(a) Lock-Up Period. Excluding any transfers of Shares between Purchaser and any of its Affiliates, during the twelve (12) month period beginning on the Closing Date and ending on the first anniversary thereof (the "Lock-Up Period"), Purchaser shall not, and shall not cause any other holder of the Shares to, without the prior written consent of the Company, sell, contract to sell, pledge or otherwise dispose of, directly or indirectly, any Shares or enter into a transaction which would have the same effect.

(b) Market Stand-Off Agreement. During the Lock-Up Period, Purchaser agrees that in connection with any registration of the Company's securities that, upon the request of the Company or the underwriters managing any underwritten offering of the Company's securities, Purchaser will not sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any Shares without the prior written consent of the Company or such underwriters, as the case may be, for such period of time within the Lock-Up Period from the effective date of such registration as the Company or the underwriters may specify.

(c) Remedies. Without prejudice to the rights and remedies otherwise available to the parties, the Company shall be entitled to equitable relief by way of injunction if Purchaser or any other holder of the Shares breaches or threatens to breach any of the provisions of this Section 5.1.

5.2 Non-Public Information. Except as contemplated by the Collaboration Agreement, the Company covenants and agrees that neither it, nor any other Person acting on its behalf will provide Purchaser or its agents or counsel with any information that the Company believes constitutes material non-public information, unless prior thereto Purchaser shall have entered into a written agreement with the Company regarding the confidentiality and use of such information. The Company understands and confirms that Purchaser shall be relying on the foregoing covenant in effecting transactions in securities of the Company.

5.3 Use of Proceeds. The Company shall use the net proceeds from the sale of the Shares hereunder for working capital purposes and shall not use such proceeds: (a) for the redemption of any Common Stock or Common Stock Equivalents, (b) for the settlement of any outstanding litigation or (c) in violation of FCPA or regulations of the Office of Foreign Assets Control of the U.S. Treasury Department.

5.4 Listing of Common Stock, No Integrated Offerings. The Company shall take no action designed to, or which to the knowledge of the Company is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act. The Company hereby agrees to use commercially reasonable efforts to maintain the listing of the Common Stock, including the Shares, on Nasdaq. The Company further agrees, if the Company applies to have the Common Stock traded on any other trading market, it will include in such application all of the Shares, and will take such other action as is necessary to cause all of the Shares to be listed on such other trading market as promptly as possible. The Company will take all action reasonably necessary to continue the listing and trading of its Common Stock, including the Shares, on Nasdaq and will comply in all material respects with the Company's reporting, filing and other obligations under the bylaws or rules of Nasdaq. The Company has taken no action designed to, or which to its knowledge is likely to have the effect of, terminating the registration of the Common Stock under the Exchange Act or delisting the Common Stock from the Nasdaq National Market nor has the Company received in the past twelve (12) months any notification that the Commission or the NASD is contemplating terminating such registration or listing. The Company currently meets the continuing eligibility requirements for listing on Nasdaq. The Company has not, and to its knowledge no one acting on its behalf has, (i) taken, directly or indirectly, any action designed to cause or to result in the stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of any of the Shares, (ii) sold, bid for, purchased, or paid any compensation for soliciting purchases of, any of the Shares, or (iii) paid or agreed to pay to any Person any compensation for soliciting another to purchase any other securities of the Company. The Company agrees to file with the Commission in a timely manner all reports and other filings required of the Company under the Securities Act and the Exchange Act. The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in Section 2 of the Securities Act) that would be integrated with the offer or sale of the Shares in a manner that would require the registration under the Securities Act of the sale of the Shares to the Purchaser or that would be integrated with the offer or sale of the Shares for purposes of the rules and regulations of Nasdaq.

5.5 Notification under the HSR Act. Both Parties shall promptly file (and, in any event, within seven (7) Business Days after the date hereof) the HSR Filings with the FTC and the DOJ pursuant to the HSR Act. The Parties shall use their commercially reasonable efforts to promptly obtain HSR Clearance for the consummation of this Agreement and the Collaboration Agreement and the transactions contemplated hereby and thereby and shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ and shall comply promptly with any such inquiry or request; provided, however, that neither Party shall be required to consent to the divestiture or other disposition of any assets (including the assets of any Affiliate of either Party) or to consent to any other structural or conduct remedy, and each Party and its Affiliates shall have no obligation to contest or settle, administratively or in court, any ruling, order or other action of the FTC or DOJ or any Third Party respecting the transactions contemplated by this Agreement or the Collaboration Agreement. The Parties shall instruct their respective counsel to cooperate with each other and use their commercially reasonable efforts to facilitate and expedite the identification and resolution of any such issues and, consequently, the expiration of the applicable HSR Act waiting period. Each Party's counsel will undertake (i) to keep each other appropriately informed of communications from and to personnel of the reviewing antitrust authority, and (ii) to confer with each other regarding appropriate contacts

with and responses to personnel of the FTC or DOJ. Purchaser shall be responsible for any filing fees in connection with the HSR Filings.

ARTICLE VI.
MISCELLANEOUS

6.1 Termination. This Agreement may be terminated at any time prior to Closing:

(g) by mutual written consent of Purchaser and the Company;

(h) by Purchaser or the Company:

(i) if there shall be any statute, law, regulation or rule that makes consummating the transactions contemplated hereby to be illegal or if any government or any court of competent jurisdiction, administrative agency or commission or other governmental authority or agency, federal, state, local or foreign shall have issued a judgment, order, decree or ruling, or shall have taken such other action restraining, enjoining or otherwise prohibiting the issuance of the Shares contemplated hereby and such judgment, order, decree or ruling shall have become final and non-appealable;

(ii) if the HSR Clearance Date shall not have occurred on or before the date that is ninety (90) days after the Parties make their respective HSR Filings pursuant to Section 5.5; or

(iii) if the Collaboration Agreement shall have terminated.

(i) by Purchaser:

(i) if the Company shall have (A) failed to perform any of its material obligations contained herein, or (B) breached any of its material representations or warranties contained herein, provided that Purchaser gives the Company written notice of such failure to perform or breach and the Company does not cure such failure to perform or breach within thirty (30) days after its receipt of such written notice;

(ii) if any of the conditions set forth in Section 2.4(b) shall become impossible to fulfill (other than as a result of any breach by Purchaser of the terms of this Agreement) and shall not have been waived in accordance with the terms of this Agreement; or

(iii) if the Common Stock shall no longer be listed for trading on Nasdaq or another national securities exchange or automated quotation system.

(j) by the Company:

(i) if Purchaser shall have (A) failed to perform any of its material obligations contained herein, or (B) breached any of its material representations or warranties

contained herein, provided that the Company gives Purchaser written notice of such failure to perform or breach and Purchaser does not cure such failure to perform or breach within thirty (30) days after its receipt of such written notice; or

(ii) if any of the conditions set forth in Section 2.4(a) shall become impossible to fulfill (other than as a result of any breach by the Company of the terms of this Agreement) and shall not have been waived in accordance with the terms of this Agreement.

(k) If this Agreement is terminated and the transactions contemplated hereby are not consummated as described above, this Agreement shall become void and of no further force and effect, provided, however, that (i) none of the parties hereto shall have any liability in respect of a termination of this Agreement pursuant to Section 6.1(a) or 6.1(b)(i) or 6.1(b)(ii), and (ii) nothing shall relieve any of the parties from liability for actual damages resulting from a termination of this Agreement pursuant to Section 6.1(c) or 6.1(d); and provided, further, that none of the parties hereto shall have any liability for speculative, indirect, unforeseeable or consequential damages or lost profits resulting from any legal action relating to any termination of this Agreement.

6.2 Publicity. The Parties shall issue a press release, in the form attached as Exhibit B, within one (1) Business Day after the date hereof, to announce the execution of this Agreement and describe the material financial and operational terms of this Agreement. Except as required by judicial order or applicable Law, or as set forth below, neither Party shall make any public announcement concerning this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Party preparing any such public announcement shall provide the other Party with a draft thereof at least three (3) Business Days prior to the date on which such Party would like to make the public announcement. Neither Party shall use the name, trademark, trade name or logo of the other Party or its employees, in any publicity or news release relating to this Agreement or its subject matter, without the prior express written permission of the other Party. Notwithstanding the terms of this Section 6.2, either Party shall be permitted to disclose the existence and terms of this Agreement to the extent required, based on the advice of such Party's legal counsel, to comply with applicable Laws, including the rules and regulations promulgated by the Commission or any other governmental authority. Notwithstanding the foregoing, before disclosing this Agreement or any of the terms hereof pursuant to this Section 6.2, the Parties will consult with one another on the terms of this Agreement for which confidential treatment will be sought in making any such disclosure. If a Party wishes to disclose this Agreement or any of the terms hereof in accordance with this Section 6.2, such Party agrees, at its own expense, to seek confidential treatment of the portions of this Agreement or such terms as may be reasonably requested by the other Party; provided that the disclosing Party shall always be entitled to comply with legal requirements, including the requirements of the Commission. Either Party may also disclose the existence and terms of this Agreement in confidence to its attorneys and advisors, and to potential acquirors (and their respective professional advisors), in connection with a potential merger, acquisition or reorganization and to existing and potential investors or lenders of such Party, as a part of their due diligence investigations, or to existing and potential sublicensees or to permitted sublicensees and assignees, in each case under an agreement to keep the terms of this Agreement confidential under terms of confidentiality and non-use substantially no less rigorous than the terms

contained in this Agreement and to use such information solely for the purpose permitted pursuant to this Section 6.2.

For purposes of clarity, either Party may issue a press release or public announcement or make such other disclosure if the content of such press release, public announcement or disclosure has previously been made public other than through a breach of this Agreement by the issuing Party or its Affiliates.

6.1 Fees and Expenses. Each party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement. The Company shall pay all Transfer Agent fees (including, without limitation, any fees required for same-day processing of any instruction letter delivered by the Company and any exercise notice delivered by Purchaser), stamp taxes and other taxes and duties levied in connection with the delivery of any Shares to Purchaser.

6.2 Entire Agreement. This Agreement, together with the exhibits and schedules hereto, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters, which the parties acknowledge have been merged into this Agreement.

6.3 Notices. Any and all notices or other communications or deliveries required or permitted to be provided hereunder shall be in writing and shall be deemed given and effective on the earliest of: (a) the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth below at or prior to 5:30 p.m. (New York City time) on a Trading Day, (b) the next Trading Day after the date of transmission, if such notice or communication is delivered via facsimile at the facsimile number set forth below on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (c) the second (2 nd) Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service or (d) upon actual receipt by the party to whom such notice is required to be given. The address for such notices and communications shall be as set forth below:

If to the Company:

Agenus Inc.
3 Forbes Road
Lexington, Massachusetts 02421-7305, USA
Attention: General Counsel
Facsimile: (781) 674-4200

with a copy to:

Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110, USA
Attention: Gerald E. Quirk, Esq.

Facsimile: (617) 248-4000

If to Purchaser:

Incyte Corporation
1801 Augustine Cut-Off
Wilmington, Delaware 19803, USA
Attention: General Counsel
Facsimile: (302) 425-2707

with a copy to:

WilmerHale
60 State Street
Boston, Massachusetts 02109, USA
Attention: Steven D. Singer, Esq.
Facsimile: (617) 526-5000

6.4 Amendments; Waivers. No provision of this Agreement may be waived, modified, supplemented or amended except in a written instrument signed by the Company and Purchaser. No waiver of any default with respect to any provision, condition or requirement of this Agreement shall be deemed to be a continuing waiver in the future or a waiver of any subsequent default or a waiver of any other provision, condition or requirement hereof, nor shall any delay or omission of any party to exercise any right hereunder in any manner impair the exercise of any such right.

6.5 Headings. The headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

6.6 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns. The Company may not assign this Agreement or any rights or obligations hereunder without the prior written consent of Purchaser (other than by merger). Purchaser may assign any or all of its rights under this Agreement to any Person to whom Purchaser assigns or transfers any Shares, provided that such transferee agrees in writing to be bound, with respect to the transferred Shares, by the provisions of this Agreement that apply to "Purchaser."

6.7 No Third-Party Beneficiaries. This Agreement is intended for the benefit of the parties hereto and their respective successors and permitted assigns and is not for the benefit of, nor may any provision hereof be enforced by, any other Person, except as otherwise set forth in Section 4.5.

6.8 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Delaware, USA, including all matters of construction, validity and performance, in each case without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

6.9 Survival of Representation and Warranties. The representations and warranties contained herein shall survive the Closing and the delivery of the Shares.

6.10 Execution in Counterparts. This Agreement may be executed in two or more counterparts, all of which when taken together shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to each other party, it being understood that the parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

6.11 Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their commercially reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

6.12 Replacement of Securities. If any certificate or instrument evidencing any of the Shares is mutilated, lost, stolen or destroyed, the Company shall issue or cause to be issued in exchange and substitution for and upon cancellation thereof (in the case of mutilation), or in lieu of and substitution therefor, a new certificate or instrument, but only upon receipt of evidence reasonably satisfactory to the Company of such loss, theft or destruction. The applicant for a new certificate or instrument under such circumstances shall also pay any reasonable third-party costs (including customary indemnity) associated with the issuance of such replacement Shares.

6.13 Remedies. In addition to being entitled to exercise all rights provided herein or granted by law, including recovery of damages, Purchaser and the Company will be entitled to specific performance under this Agreement. The parties agree that monetary damages may not be adequate compensation for any loss incurred by reason of any breach of obligations contained in this Agreement and hereby agree to waive and not to assert in any action for specific performance of any such obligation the defense that a remedy at law would be adequate.

6.14 Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

6.15 Construction. The parties agree that each of them and/or their respective counsel have reviewed and had an opportunity to revise this Agreement and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto. In addition, each and every reference to share prices and shares of Common Stock in this Agreement shall be subject

to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the date of this Agreement.

6.16 **WAIVER OF JURY TRIAL . IN ANY ACTION, SUIT, OR PROCEEDING IN ANY JURISDICTION BROUGHT BY ANY PARTY AGAINST ANY OTHER PARTY, THE PARTIES EACH KNOWINGLY AND INTENTIONALLY, TO THE GREATEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY ABSOLUTELY, UNCONDITIONALLY, IRREVOCABLY AND EXPRESSLY WAIVES FOREVER TRIAL BY JURY.**

(Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have caused this Stock Purchase Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

AGENUS INC.

By: /s/ Garo H. Armen
Name: Garo H. Armen
Title: Chief Executive Officer

INCYTE CORPORATION

By: /s/ Hervé Hoppenot
Name: Hervé Hoppenot
Title: President and Chief Executive Officer

Exhibit A

Form of Opinion of Company Counsel

Exhibit A

_____, 2015

Incyte Corporation
1801 Augustine Cut-Off
Wilmington, Delaware 19803

Ladies and Gentlemen:

This opinion letter is furnished to you pursuant to Section 2.3(c) of the Stock Purchase Agreement, dated January 9, 2015 (the "Purchase Agreement"), between Incyte Corporation, a Delaware corporation ("you"), and Agenus Inc., a Delaware corporation (the "Company"), in connection with the offer and sale to you of an aggregate of 7,763,968 shares (the "Shares") of Common Stock, $0.01 par value per share (the "Common Stock").

We have acted as counsel to the Company in connection with the offer and sale of the Shares. For purposes of the following opinions, we have examined the Purchase Agreement and have made such examination of law as we have deemed necessary or appropriate. In our examination of documents, we have assumed the authenticity of all documents submitted to us as originals and the conformity to original documents of all documents submitted to us as conformed or copies, the genuineness of all signatures, the legal capacity of all natural persons, and the completeness and accuracy of the corporate records and stock books of the Company provided to us.

Insofar as the opinions hereinafter expressed in this opinion letter relate to factual matters, we have relied, with your permission, upon certificates, statements and representations of officers and other representatives of the Company, certificates of public officials and representations made in the Purchase Agreement. For purposes of this opinion letter, we have assumed that all such statements and representations are also true as of the date hereof.

We direct your attention to the fact that our opinions are limited in scope consistent with the Legal Opinion Principles issued by the Committee on Legal Opinions of the American Bar Association's Business Law Section as published in 53 Business Lawyer 831 (May, 1998).

Our opinion set forth in paragraph 1 below as to the valid existence and good standing of the Company in the State of Delaware is based solely upon a certificate dated January 6, 2015 from the Secretary of State of the State of Delaware, and such opinion is, accordingly, rendered as of the date of such certificate. Our opinion set forth in paragraph 1 below as to the good standing of the Company and qualification of the Company to conduct business in the Commonwealth of Massachusetts is based solely upon a certificate dated January 5, 2015 from the Secretary of the Commonwealth of the Commonwealth of Massachusetts, and such opinion

is, accordingly, rendered as of the date of such certificate. Finally, our opinion set forth in paragraph 1 that each of the subsidiaries of the Company is a corporation validly existing under the laws of its state of organization is based solely upon a certificate of an officer of the Company.

We express no opinion herein as to the applicability or effect of the laws of any state or jurisdiction other than the laws of the Commonwealth of Massachusetts, the Delaware General Corporation Law and the federal law of the United States of America that, in our experience, are applicable to transactions of the type contemplated in the Purchase Agreement. We express no opinion with respect to the effect of the laws of any other jurisdiction on the transactions contemplated by the Purchase Agreement. We note that the Purchase Agreement provides that it shall be governed by and construed in accordance with the internal laws of the State of Delaware and that we are not rendering any opinion herein with respect to Delaware law (except as otherwise stated above). Therefore, we are rendering our opinions herein as to the Purchase Agreement in the event a court determines that the substantive law of Massachusetts, rather than Delaware, should be applied (as to which application of law we express no opinion). We express no opinion as to the application of or compliance with the securities and Blue Sky laws of any state, the by-laws and rules of the Financial Industry Regulatory Authority, Inc. or the rules of the Nasdaq Capital Market in connection with the transactions contemplated by the Purchase Agreement.

Our opinion that the Purchase Agreement is enforceable against the Company in accordance with its terms is qualified to the extent that enforcement of the rights and remedies created thereby is subject to bankruptcy and similar laws of general applicability affecting the rights and remedies of the contracting parties, and to the extent that the availability of the remedy of specific performance or of injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

Based upon and subject to the foregoing and to the last paragraph of this opinion letter, we are of the opinion that:

1. The Company is a corporation validly existing and in corporate good standing under the laws of the State of Delaware. The Company has all requisite corporate power to own and operate its properties and assets and to carry on its business as now conducted (all as described in the Company's Annual Report on Form 10-K for its fiscal year ended December 31, 2013). The Company is duly qualified to transact business and is in good standing in the Commonwealth of Massachusetts. Each of the subsidiaries of the Company is a corporation validly existing under the laws of its state of organization.

2. The Company has all requisite power and authority to (i) execute, deliver and perform the Purchase Agreement, (ii) to issue, sell and deliver the Shares pursuant to the Purchase Agreement, and (iii) to carry out and perform its obligations under, and to consummate the transactions contemplated by, the Purchase Agreement.

3. All action on the part of the Company, its directors and its stockholders necessary for the authorization, execution and delivery by the Company of the Purchase Agreement and the authorization, issuance, sale and delivery of the Shares pursuant to the Purchase Agreement has been duly taken. The Purchase Agreement has been duly and validly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

4. The Shares have been duly authorized and, assuming payment therefor in accordance with the Purchase Agreement, are validly issued, fully paid and nonassessable, are free of preemptive or similar rights, and have been issued in compliance with applicable securities laws, rules and regulations. The rights, privileges and preferences of the Common Stock are as stated in the Company's Amended and Restated Certificate of Incorporation, as amended to date (the "Corporate Charter").

5. Assuming the accuracy of, all the representations made by you in the Purchase Agreement, the Company has complied with, or is exempt from, all registration requirements of applicable federal securities laws in connection with the issuance and sale of the Shares.

6. The execution, delivery and performance by the Company of, and the compliance by the Company with the terms of, the Purchase Agreement and the issuance, sale and delivery of the Shares pursuant to the Purchase Agreement do not (a) conflict with or result in a violation of any provision of law, rule or regulation or any rule or regulation applicable to the Company or its subsidiaries or of the Corporate Charter or by-laws of the Company, (b) conflict with, result in a breach of or constitute a default (or an event which with notice or lapse of time or both would become a default) under, or result in or permit the termination or modification of, any agreement, instrument, order, writ, judgment or decree known to us to which the Company of its subsidiaries is a party or is subject or (c) result in the creation or imposition of any lien, claim or encumbrance on any of the assets or properties of the Company or its subsidiaries.

7. In connection with the valid execution, delivery and performance by the Company of the Purchase Agreement, or the offer, sale, issuance or delivery of the Shares, no consent, license, permit, waiver, approval or authorization of, or designation, declaration, registration or filing with, any court, governmental or regulatory authority, or self-regulatory organization, is required which has not been made or obtained.

Except as specifically stated herein, we render no opinion on matters relating to the Purchase Agreement or the transactions contemplated thereby. This opinion letter is given and speaks only as of the date hereof and is limited to our knowledge of the facts and the laws, statutes, rules and regulations, and judicial and administrative interpretations thereof, as currently

in effect, and assumes no event will take place in the future which will affect the opinions set forth herein. These are all subject to change, possibly with retroactive effect. We assume no obligation to advise you of changes of any kind that may hereafter be brought to our attention, even if such changes would affect our opinion, or to update or supplement this opinion letter after the date hereof. This opinion letter is furnished to you solely and is solely for your benefit. This opinion letter is not to be made available to or relied upon by any other persons, firms or entities without our prior written consent. This opinion letter may not be copied, used, quoted, disseminated or circulated in whole or in part.

Very truly yours,

CHOATE, HALL & STEWART LLP

Exhibit B

Press Release

Exhibit 10.8

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
Ozer Baysal
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.
Robert Stein
Peter Thornton
Karen Valentine
Kerry Wentworth
Alastair Wood
Timothy Wright

EXHIBIT 10.21

CONFIDENTIAL TREATMENT REQUESTED: ***Information for which confidential treatment has been requested is omitted and is noted with asterisks. An unredacted version of this document has been filed separately with the Securities and Exchange Commission (the "Commission").***

LICENSE AGREEMENT

This License Agreement (this "**Agreement**"), dated as of December 5, 2014 (the "**Effective Date**"), is made by and between 4-Antibody AG, a limited liability company organized under the laws of Switzerland with an office at Hochbergerstrasse 60C, CH-4057 Basel, Switzerland ("**4-AB**"), and the Ludwig Institute for Cancer Research Ltd., a non-profit corporation organized under the laws of Switzerland with its registered office at Stadelhoferstrasse 22, 8001 Zurich, Switzerland and an office at 666 Third Avenue, New York, New York 10017, USA (" **LICR**"). Each of 4-AB and LICR may be referred to in this Agreement individually as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

WHEREAS, 4-AB is engaged in the research, development and commercialization of fully human and humanized monoclonal antibodies to treat human diseases;

WHEREAS, LICR has technology and know-how related to the development of immunotherapeutic products;

WHEREAS, 4-AB and LICR entered into a Collaborative Research and Development Agreement dated as of May 23, 2011 (the "**Prior Agreement**");

WHEREAS, the term of the Prior Agreement has terminated in accordance with its terms, which, among other, includes survival clauses relating to ownership of intellectual property and know-how generated under the Prior Agreement;

WHEREAS, 4-AB desires to develop and commercialize, for the public benefit, products arising out of technologies developed in the course of research activities conducted under the Prior Agreement; and

WHEREAS, to 4-AB wishes to obtain a license to products arising out of technologies developed in the course of research activities conducted under the Prior Agreement and LICR wishes to grant such a license in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants set forth herein, 4-AB and LICR, intending to be legally bound, hereby agree as follows:

Article I
DEFINITIONS

1.1 "**Accounting Standards**" means (a) U.S. generally accepted accounting principles, consistently applied, or (b) to the extent applicable, International Financial Reporting Standards as issued by the International Accounting Standards Board.

1.2 "**Affiliate**" means as to a Party or to MSKCC, as applicable, any entity which, directly or indirectly, controls, is controlled by, or is under common control with such Party or MSKCC. For the purposes of this definition, "control" refers to any of the following: (a) direct or indirect ownership of fifty percent

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(50%) or more of the voting securities entitled to vote for the election of directors in the case of a corporation, or of fifty percent (50%) or more of the equity interest with the power to direct management in the case of any other type of legal entity; (b) status as a general partner in any partnership; or (c) any other arrangement where an entity possesses, directly or indirectly, the power to direct the management or policies of another entity, whether through ownership of voting securities, by contract or otherwise.

1.3 "**Business Day**" means a day other than Saturday, Sunday or any other day on which commercial banks located in New York, New York USA are authorized or obligated by applicable laws to close.

1.4 "**Confidential Information**" has the meaning set forth in Section 6.1 of this Agreement.

1.5 "**Dollars**" or "**$**" means U.S. Dollars.

1.6 **"Expenditure**" means, on a Licensed Product basis, the identified and documented direct internal and external costs incurred by 4-AB and its Affiliates related to the discovery, research and development of the Licensed Products leading up to the filing of an investigational new drug application ("**IND**") with respect to such Licensed Product, and direct costs associated with intellectual property filing, prosecution, and maintenance covering such Licensed Product. Direct internal costs are calculated to include salaries of R&D personnel of 4-AB and its Affiliates based on the percentage of time such personnel are actively working on the discovery, research and development of the Licensed Products plus an addition of 50% to cover payroll taxes, reagents and related consumable costs.

1.7 "**Field**" means the diagnosis, prognosis, prevention, treatment and palliation of human diseases or conditions.

1.8 "**First Commercial Sale**" means, with respect to any Licensed Product, the first sale by 4-AB or one of its Affiliates to a Third Party of such Licensed Product in a country in the Territory after the applicable Marketing Approval of such Licensed Product has been obtained in such country. For avoidance of doubt, the following would not constitute a First Commercial Sale: (a) the sale of a Licensed Product by 4-AB or one of its Affiliates to another Affiliate; (b) the disposal or use of a Licensed Product in clinical trials, as free samples, or under a compassionate use or patient assistance program; (c) the disposal or use a Licensed Product in a named patient or test marketing program or in non-registrational studies or other similar programs or studies; (d) the donation of Licensed Product by 4-AB or one of its Affiliates to non-profit institutions or government agencies for a non-commercial purpose; (e) any free Licensed Product that is supplied to a Third Party in conjunction with the offer for sale, or sale of any other product (in an amount customary in the industry); (f) the use of a Licensed Product for research and development purposes; or (g) sales made to a distributor until such time as 4-AB or one of its Affiliates recognizes the revenue for such transfers pursuant to Accounting Standards.

1.9 "**GITR Patent** " means: (a) U.S. Patent Application Serial No. 62/004,071; (b) any provisional patent applications claiming the subject matter of the invention disclosure attached hereto as Appendix A; and (c) any Patent Rights claiming priority to the foregoing to the extent that such Patent Rights are supported by the disclosure of the foregoing .

1.10 "**Know-How**" means any and all technical information which at the Effective Date is not in the public domain, including information comprising or relating to data, materials, results, inventions, improvements, protocols, formulas, processes, methods, compositions, articles of manufacture, formulations, discoveries, findings, know-how and trade secrets of any kind, including scientific, preclinical, clinical,

regulatory, manufacturing, marketing, financial and commercial information or data, sequence information, vectors and host cells that include DNA, in each case (whether or not patented or patentable) in written, electronic or any other form now known or hereafter developed.

1.11 "**Licensed Antibody**" means one or more molecules, or one or more genes encoding such molecule(s), which comprises or consists of one or more immunoglobulin domains, or a fragment thereof, that specifically bind to a Target.

1.12 "**Licensed Know-How**" means all Know-How owned or controlled by a Licensor or 4-AB or any of their respective Affiliates existing as of the Effective Date, that was generated in the course of the research program conducted pursuant to the Prior Agreement.

1.13 "**Licensed Patent Rights**" means: (i) the GITR Patent and all Patent Rights thereto; and (ii) any Patent Rights owned or controlled solely or jointly by a Licensor or 4-AB or any of their respective Affiliates as of the Effective Date or during the Term that disclose an invention conceived in the course of the research program conducted pursuant to the Prior Agreement. Without limiting the generality of the foregoing, the Licensed Patent Rights on the Effective Date include the Patent Rights set forth on Exhibit A, provided that the failure to list any specific Patent Right on such Exhibit shall not determine whether a specific Patent Right constitutes a Licensed Patent Right.

1.14 "**Licensed Product**" means any therapeutic, diagnostic, prognostic or prophylactic preparation that contains one or more Licensed Antibodies: (i) the manufacture, use, sale, offer for sale or importation of which would, but for the licenses granted hereunder, infringe a Valid Claim or (ii) that is developed using Licensed Know-How.

1.15 "**Licensors**" means, together, LICR and MSKCC.

1.16 "**Major EU Market**" means France, Germany, Italy, Spain or the United Kingdom.

1.17 "**Major Market**" means the US or any Major EU Market.

1.18 "**Marketing Approval**" means, with respect to a Licensed Product, all approvals (including supplements, amendments, pre- and post-approvals), permits, licenses, registrations and authorizations necessary for the manufacture, distribution, use, promotion, marketing, transport, offer for sale, sale or other commercialization of such Licensed Product in a regulatory jurisdiction, including, where required, any approval, agreement, determination or decision establishing the price or level of reimbursement for such Licensed Product, as required in a given jurisdiction prior to sale of such Licensed Product in such jurisdiction.

1.19 "**MSKCC**" means the Memorial Sloan-Kettering Cancer Center.

1.20 "**Net Sales**" means, with respect to a given period, the gross amount invoiced for sales of Licensed Products during such period, in arm's length sales by 4-AB or its Affiliates to Third Parties less, in each case solely to the extent relating to such Licensed Products and solely to the extent actually incurred, allowed, paid, accrued or specifically allocated to the gross amount invoiced, and determined in accordance with applicable financial reporting standards:

(a) normal and customary trade, cash and quantity discounts actually given, coupons actually taken, credits, price adjustments or allowances for damaged Licensed Product, returns or rejections of such Licensed Product;

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(b) adjustments, allowances, credits, fees, reimbursements, chargeback payments and rebates (or the equivalent thereof) actually given for Licensed Products granted to group purchasing organizations or other buying groups, managed health care organizations, pharmacy benefit management companies, health maintenance organizations or any other providers of health insurance coverage, health care institutions (including hospitals) or other health care organizations, Third Party health care administrators or patient assistance or other similar programs, or to federal, state/provincial, local and other governments, including their agencies, or to wholesalers, distributors or other trade customers;

(c) reasonable and customary freight, shipping insurance and other transportation expenses, each directly related to the sale of Licensed Products (if actually borne without reimbursement from any Third Party);

(d) distribution commissions/fees paid or payable to any Third Party providing distribution services to 4-AB or its Affiliates;

(e) sales, value-added or excise taxes, tariffs and duties, and all other taxes and government charges related to the sale of Licensed Products, in each case to the extent that each such item is actually borne by 4-AB or its Affiliates without reimbursement from any Third Party (but excluding taxes properly assessed or assessable against the income derived by 4-AB or its Affiliates from such sale);

(f) actual bad debt expense (but not exceeding 5% of Net Sales);

(g) adjustments for overbilling, errors, rejection, recalls or return of Licensed Product;

(h) rebates payable in connection with state or federal Medicare (Title XVIII of the Social Security Amendments of 1965, as amended), Medicaid (Title XIX of the Social Security Amendments of 1965, as amended) or similar programs in the United States and comparable programs elsewhere in the Territory; and

(i) any item substantially similar in character or substance to any of the foregoing, which is permitted by applicable financial reporting standards to be accounted for in the calculation of Net Sales prevailing at the time and customary in the medical diagnostics industry at the time.

The transfer of any Licensed Product by 4-AB or one of its Affiliates to another Affiliate or to a Sublicensee shall not be considered a Net Sale, but the resale of such Licensed Product by any of the foregoing to Third Parties for commercial use shall be included in Net Sales. For the avoidance of doubt, disposal of any Licensed Product for, or use of any Licensed Product in, clinical trials, as free samples, or under compassionate use, patient assistance, named patient or test marketing programs or non-registrational studies or other similar programs or studies where Licensed Product is supplied or delivered without charge, shall not result in any Net Sales. No Licensed Product donated to non-profit institutions or government agencies for a non-commercial purpose shall result in any Net Sales. Similarly, no free Licensed Product that is supplied to a Third Party in conjunction with the offer for sale, or sale of any Licensed Product (such free Licensed Product being in an amount customary in the industry) will result in any Net Sales of such free Licensed Product. The use of any Licensed Product by 4-AB or one of its Affiliates for research and development purposes shall similarly not result in any Net Sales.

1.21 "**Other Licensed Products**" means all Licensed Products that are not Select Licensed Products.

1.22 "**Patent Rights**" means all the rights and interests in and to all patents and patent applications in any jurisdiction in the Territory, including, without limitation, certificates of invention, applications for certificates of invention and priority rights, provisional patent applications, divisionals, continuations, substitutions, continuations-in-part, and all patents granted thereon; and all re-examinations, re-issues, additions, renewals, extensions, confirmations or registrations based on any such patent or patent application; and any extensions or restorations by existing or future extension or restoration mechanisms, including, without limitation, patent term extensions and supplementary protection certificates.

1.23 "**Phase 1 Clinical Trial**" means a clinical trial in any country that generally meets the requirements of 21 CFR § 312.21(a), as amended (or its successor regulation or comparable laws in countries outside the United States).

1.24 "**Phase 2 Clinical Trial**" means a clinical trial in any country that generally meets the requirements of 21 CFR § 312.21(b), as amended (or its successor regulation or comparable laws in countries outside of the United States), that is intended to support a preliminary determination as to whether such Select Licensed Product is safe for its intended use, and to provide preliminary information about such product's efficacy, in order to permit the design of further clinical trial(s).

1.25 "**Phase 3 Clinical Trial**" means a clinical trial in any country that generally meets the requirements of 21 CFR § 312.21(c), as amended (or its successor regulation or comparable laws in countries outside of the United States), that, together with any other such clinical trials that are planned or have been conducted, is intended to (a) serve as a primary basis for establishing that the Select Licensed Product is safe and efficacious for its intended use, (b) provide an adequate basis to establish physician labeling, including, contraindications, warnings, precautions and adverse reactions and (c) support Marketing Approval for such Select Licensed Product.

1.26 "**Royalty Term**" means, Licensed Product-by-Licensed Product and country-by-country basis, the time from the First Commercial Sale of such Licensed Product in such country until the later to occur of (a) the expiration of the last Valid Claim covering the Licensed Product in the country in which such Licensed Product is used, or (b) [**] years after the First Commercial Sale of such Licensed Product in such country.

1.27 "**Select Licensed Product**" means a Licensed Product, the manufacture, use, sale, offer for sale or importation of which would, but for the licenses granted hereunder, infringe a Valid Claim of the GITR Patent.

1.28 "**Sublicense Income**" means any payments or other consideration that 4-AB receives as consideration for a sublicense under the Licensed Patent Rights or Licensed Know-How, other than reimbursement for expenses related to the prosecution, maintenance and defense of the Licensed Patent Rights, reimbursement for, or payments specifically committed to cover, fully loaded costs that have been or will be actually incurred in the research and development of Licensed Products that are the subject matter of the sublicense, and amounts received from any Third Party for the purchase of the publically traded equity securities at fair market value (any amounts paid in excess of fair market value shall be deemed Sublicense Income).

1.29 "**Sublicensee**" means any Third Party expressly licensed by 4-AB or its Affiliates under the Licensed Patent Rights or Licensed Know-How to develop, manufacture or commercialize Licensed Products.

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1.30 "**Target**" means (a) glucocorticoid-induced TNFR-related protein (GITR), (b) OX-40 (also known as CD134) or (c) T cell immunoglobulin mucin-3 (TIM-3).

1.31 "**Term**" has the meaning set forth in Section 7.1 of this Agreement.

1.32 "**Territory**" means all the countries and territories of the world.

1.33 "**Third Party(ies)**" means any party(ies) other than LICR, MSKCC, 4-AB and their respective Affiliates (including for the avoidance of doubt, with respect to 4-AB, Agenus Inc.)_.

1.34 "**Valid Claim**" means a claim in an unexpired and issued patent or patent application included in the Licensed Patent Rights that has not been disclaimed, revoked or held invalid or unenforceable by a final, unappealable decision of a government agency or court of competent jurisdiction, or unappealed within the time limit allowed for appeal, or which has not been admitted to be invalid or unenforceable through reissue, reexamination or disclaimer or otherwise, provided that if any pending patent application is pending for more than seven (7) years, it shall cease to be within the definition of Valid Claim unless and until it issues.

ARTICLE II
LICENSE GRANTS

2.1 **License Grant**. LICR hereby grants to 4-AB: (i) an exclusive license, with the right to grant sublicenses, under all of the Licensors' right, title and interest in and to the Licensed Patent Rights, and (ii) a non-exclusive license, with the right to grant sublicenses, under all of the Licensors' right, title and interest in and to the Licensed Know-How, in each case, to develop, make, have made, use, sell, offer for sale and import Licensed Products in the Territory and in the Field, subject to the retained rights of the Licensors set forth in Section 2.2. Upon the expiration of the Royalty Term applicable to any Licensed Product in any country, the licenses under Section 2.1 with respect to such Licensed Product in such country shall convert to non-exclusive, fully paid-up licenses.

2.2 **Retained Rights**. Each of the Licensors, on behalf of itself and its academic collaborators, retains an irrevocable right to practice or use only for their own educational and non-commercial research purposes (including clinical research involving patient care, but not including a human clinical trial of a Licensed Product unless the protocol for such clinical trial has been approved, in writing in advance, by 4-AB, one of its Affiliates, or a Sublicensee), the inventions claimed in the Licensed Patent Rights and the Licensed Know-How.

2.3 **Sublicense Rights**. 4-AB shall have the right to extend or sublicense the rights granted to it under Section 2.1 to its Sublicensees, and any such Sublicensees shall have the right to extend or further sublicense the rights granted to it by 4-AB. All terms of any sublicense (whether by 4-AB or by any Sublicensee) shall be consistent in all respects with the restrictions, exceptions and conditions of this Agreement, and shall include, without limitation, a provision binding sublicensees to (i) reporting and record-keeping obligations with respect to sales of Licensed Products as provided in Sections 2.6 and 3.8; (ii) indemnification under Section 5.4(a)(ii); and (iii) obligations of non-use of name as provided in Section 6.5. 4-AB shall use diligent efforts to ensure compliance by its Affiliates and Sublicensees with all applicable terms of this Agreement. Performance or satisfaction of any of the obligations of 4-AB under this Agreement by any of its Affiliates or Sublicensees shall be deemed performance or satisfaction of such obligations by 4-AB. 4-AB shall notify LICR within ten (10) Business Days of executing any such sublicense, identifying each Sublicensee to LICR in writing by name and address, and shall provide LICR with a copy of the

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sublicense agreement. LICR shall retain this confidential copy for its use solely for the purpose of monitoring 4-AB or its Affiliate, and Sublicensee's compliance with their obligations hereunder and enforcing LICR (and MSKCC's) rights under this Agreement. 4-AB shall not grant a sublicense to a Third Party whose primary business is, to the best of 4-AB's knowledge, the manufacture and/or sale of tobacco containing products.

2.4 **No Implied Licenses**. No rights or licenses (either express or implied) to any intellectual property rights of a Party are granted to the other Party by this Agreement, except as provided in this Agreement.

2.5 **Due Diligence**. From and after the Effective Date, as between the Parties, 4-AB and its Affiliates shall be solely responsible, at its own expense, for the research, development, manufacture and commercialization of Licensed Products. 4-AB will use commercially reasonable efforts to register an IND filing with the FDA for at least one Licensed Product by [**]. 4-AB and its Affiliates will use, and will cause its Sublicensees to use, commercially reasonable efforts, consistent with their prudent business and scientific judgment, to research, develop, manufacture and commercialize one or more Licensed Products to achieve Marketing Approval in at least one Major Market.

2.6 **Reporting.** Within sixty (60) days after the end of each calendar year during the Term, 4-AB or its Affiliate shall furnish LICR with a written report summarizing its, its Affiliates' and its Sublicensees'efforts during the prior year to develop and commercialize Licensed Products, including: (a) research and development activities completed during the prior year; (b) work in progress, (c) material milestones anticipated during the present calendar year, (d) commercialization efforts; and (e) a summary of resources allocated to the development and commercialization of Licensed Products during the prior year. If LICR reasonably determines that information contained in any written report is insufficient or incomplete, it may request that 4-AB or its Affiliate provide reasonable additional information, by written request specifying the additional information which is needed which 4-AB or its Affiliate shall use reasonable efforts to provide additional information in such form and substance as mutually agreed. The foregoing reports shall be the Confidential Information of 4-AB subject to Article VI.

ARTICLE III
PAYMENTS

3.1 **License Fee**. 4-AB or its Affiliates shall pay to LICR a non-refundable, non-creditable license fee of one million Dollars ($1,000,000) within ten (10) Business Days of the Effective Date.

3.2 **Milestone Payments**. 4-AB or its Affiliates shall make the following milestone payments to LICR upon the first achievement of each of the following milestones by 4-AB or any of its Affiliates:

(a) **Development Milestones for the First Select Licensed Products**

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[**]	[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]

(b) **Commercial Milestones for Select Licensed Products**

[**]	[**]
[**]	$[**]
[**]	$[**]
[**]	$[**]

(c) **Development Milestones for Other Licensed Products**

[**]	[**]
[**]	$[**]
[**]	$[**]

(d) **No Multiple Payments; Notice of Achievement**. For the avoidance of doubt, none of the payments attributable to the achievement of the milestones set forth in Sections 3.2(a)-(c) above shall be payable more than once, irrespective of the number of Licensed Products achieving the applicable milestone. 4-AB shall notify LICR of the achievement of each of the foregoing milestones within forty-five (45) days after each such achievement. Any milestone payments shall be reflected on an invoice provided to 4-AB by LICR, and any such invoices shall be due and payable by 4-AB within forty-five (45) days after the date the invoice is received.

3.3 **Royalties**. 4-AB or its Affiliates shall pay LICR royalties on annual Net Sales in the Territory at the rates set forth in the following tables, subject to adjustment as set forth in Section 3.4 below:

[**]	[**]
[**]	[**]
[**]	[**]

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[**]	[**]

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For the avoidance of doubt, each royalty rate set forth in the table above shall apply only to that portion of Net Sales in a given calendar year that falls within the indicated range. Royalties on Net Sales hereunder shall be payable on a Licensed Product-by-Licensed Product and country-by-country basis until the expiration of the last to expire Valid Claim of the Licensed Patent Rights in the country of actual use of the Licensed Product.

3.4 **Royalty Adjustments**.

(a) **Absence of Valid Claim**. If the manufacture, use or sale of a Licensed Product is not covered by a Valid Claim in the country of sale at any time during the Royalty Term for such Licensed Product, the royalty rate applicable under Section 3.3 on Net Sales in such country shall be reduced by [**] for the applicable time no Valid Claim exists.

(b) **Royalty Stacking**. If 4-AB or any of its Affiliates or Sublicensees obtains a license from a Third Party under Patent Rights owned or controlled by such Third Party that are necessary to make, use or sell a Licensed Product in any country, it may offset any royalty payments payable under such Third Party license with respect to sales of Licensed Products against the royalty payments that are due to LICR with respect to Net Sales in such country, *provided* that in no event may the royalty payments otherwise due to LICR be reduced by more than [**] by operation of this Section 3.4(b).

3.5 **Sublicense Income**. 4-AB shall pay to LICR a percentage of Sublicensing Income at the rates set forth in the following tables, based on the stage of development of the most advanced Licensed Product that is the subject of the applicable sublicense agreement:

(a) **[**]**

[**]	**[**]**	**[**]**
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]

(b) **[**]**

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[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]

(c) **[**]**

	[**]	[**]
[**]	[**]	[**]

3.6 **Manner of Payments**. Following the First Commercial Sale, royalty payments due to LICR hereunder shall be made quarterly by 4-AB or its Affiliate no later than forty-five (45) days following completion of each calendar quarter with respect to Licensed Products sold during the prior calendar quarter. Each payment shall be accompanied by a report setting forth for the relevant calendar quarter the information and basis on which such royalties have been calculated. All reports delivered pursuant to this Agreement shall be deemed Confidential Information of 4-AB subject to Article VI. All payments to be made pursuant to this Agreement shall be payable in Dollars by bank wire transfer in immediately available funds to such bank account as LICR shall designate. If any payment is not made on or before the due date specified herein, 4-AB will pay interest on the outstanding amount until paid in full if requested to do so by LICR. Interest will be charged at a rate equal to the "Intended Federal Funds Rate" or equivalent plus [**] as specified by the Federal Open Market Committee and published by the US Federal Reserve Board.

3.7 **Tax Withholding**. Any tax, duty or other levy paid or required to be withheld by 4-AB on account of royalties payable to LICR under this Agreement shall be deducted from the amount of royalties otherwise due. 4-AB shall secure and send to LICR proof of payment of any such taxes, duties or other levies withheld and paid by 4-AB for the benefit of LICR, and cooperate at LICR's reasonable request to ensure that amounts withheld are reduced, creditable (or otherwise recoverable) to the fullest extent permitted by the relevant jurisdiction.

3.8 **Audit Right**. Following the First Commercial Sale and during the Term of this Agreement and a period of five (5) years thereafter, 4-AB shall keep, and shall cause its Affiliates and Sublicensees to keep, full, true and accurate books and records containing all particulars relevant to its sales of Licensed Products in sufficient detail to enable LICR to verify the amounts payable to it under this Agreement for the preceding five (5) year period. LICR shall have the right, not more than once during any calendar year, to have the books and records of 4-AB and its Affiliates audited by an independent certified public accounting firm of international standing. 4-AB shall include in each sublicense granted by it pursuant to this Agreement a provision requiring the Sublicensee to make reports to 4-AB or its Affiliates, to keep and maintain records of sales made pursuant to such sublicense and to grant access to such records to LICR's auditors to the same extent required of 4-AB and its Affiliates under this Section. Audits under this Section shall be conducted during normal business hours, upon at least forty-five (45) days' prior written notice, and for the sole purpose

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of verifying royalties payable to LICR under this Agreement. All information and data reviewed in any audit conducted under this Section shall be used only for the purpose of verifying royalties payable to LICR under this Agreement and shall be treated as Confidential Information of 4-AB subject to the terms of this Agreement. LICR shall cause its accounting firm to enter into an acceptable confidentiality agreement with 4-AB and its Affiliates and Sublicensees, as applicable. The accounting firm shall disclose to LICR only whether the royalty reports are correct or incorrect and the specific details concerning any discrepancies. No other information shall be provided to LICR. LICR shall bear the full cost of such audits, unless such inspection leads to the discovery of a discrepancy of greater than the greater of ten percent (10%) in reporting to LICR's detriment, or of $50,000, for any calendar year. In such instance, 4AB agrees to pay the reasonable cost of such audit plus interest as stipulated in Section 3.6 from and after the date the audit report is delivered to 4AB.

ARTICLE IV
INTELLECTUAL PROPERTY

4.1 **Licensed Patent Rights**. The Parties acknowledge, agree and confirm that (i) Licensed Antibody results, research data, know-how, materials, compounds and inventions which are created by the LICR or 4AB during the course of and as a direct result of carrying out the program under the Prior Agreement generated under the Prior Agreement are jointly owned between LICR and 4-AB (subject to LICR's obligations to MSKCC under the interinstitutional agreements dated September 17, 2007 and January 1, 2013 between LICR and MSKCC), and (ii) all other inventions and know-how shall be owned in accordance with inventorship under U.S. patent laws. 4-AB (either directly or through its Affiliates or Sublicensees) shall be responsible, at its expense, for the preparation, filing, prosecution and maintenance of all Licensed Patent Rights (including, for clarity, controlling any interference, derivation, post-grant review, inter-partes review, re-examination, reissue, opposition or cancellation proceeding with respect thereto). 4-AB shall consult with and keep LICR informed of material issues relating to the preparation and filing, prosecution and maintenance of the Licensed Patent Rights (including, for clarity, controlling any interference, derivation, post-grant review, *inter-partes* review, re-examination, reissue, opposition or cancellation proceeding with respect thereto), and shall furnish to LICR copies of all material documents relevant to such preparation, filing, prosecution or maintenance. In the event that 4-AB desires to abandon any patent or patent application within the Licensed Patent Rights, it shall provide LICR with reasonable prior written notice of such intended abandonment, and LICR shall have the right, at its expense, to prepare, file, prosecute, and maintain the relevant Patent Rights.

4.2 **Enforcement of Licensed Patent Rights; Defense of Infringement Actions**. Each Party shall promptly notify the other in writing of any known or suspected Third Party infringement of any Licensed Patent Rights or if any action for a declaration of non-infringement or invalidity of Licensed Patent Rights is made by a Third Party, or if any allegation of infringement of Third Party patents is made against either Party or any Affiliates or Sublicensees as a result of the manufacture, use or sale of a Licensed Product.

(a) **First Right to Respond**. 4-AB (either directly or through its Affiliates or Sublicensees) shall have the first right to respond to any challenge or infringement of the Licensed Patent Rights at its own expense. In the event 4-AB elects to so respond, LICR will, at 4-AB's sole expense, cooperate with 4-AB's legal counsel, join in such suits as may be brought by 4-AB to enforce the Licensed Patent Rights, and be available at 4-AB's reasonable request to be an expert witness or otherwise to assist in such proceedings, at 4-AB's sole expense. During the pendency of any such suit, 4-AB may withhold from its royalty payments otherwise due to LICR in relation only to the disputed Licensed Patent Rights, fifty percent (50%) of the costs incurred by 4-AB in connection with such suit, *provided* that in no event may the royalty payments otherwise due to LICR in respect of disputed Licensed Patent Rights, be reduced

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by more than fifty percent (50%) by operation of this Section 4.2(a). Any royalty payments due to LICR in relation to Licensed Patent Rights not in dispute, shall be paid in full. If 4-AB recovers monetary damages from a Third Party in connection with any action described in this Section 4.2(a), such damages shall be applied in the following manner: (i) first, 4-AB shall be reimbursed for all costs and expenses incurred by it in connection with such action; (ii) second, LICR shall be reimbursed for any royalties withheld during the pendency of such suit; and (iii) any remaining damages shall be divided between the Parties, with LICR receiving the portion equal to the amount of royalties it would have received if such remaining compensatory damages had been an equivalent amount of Net Sales.

(b) **Second Right to Respond**. If, within three (3) months of providing to or receiving from 4-AB notice of Third Party infringement pursuant to this Section 4.2, 4-AB does not exercise its first right to initiate legal action under this Section or initiate discussions to avert such suit (by license or otherwise), then LICR shall have the option to do so at its sole expense and may, at its option, join 4-AB as a party in such suit; *provided* that, in determining whether or not to take action, LICR shall give good faith consideration to the position of 4-AB in declining to bring such action. In such event, all amounts recovered from such Third Party shall be retained by LICR, after reimbursement to 4-AB for any expenses it may have incurred in connection with such suit.

4.3 **Cooperation**. Each Party hereby agrees: (a) to make its employees, agents and consultants reasonably available to the other Party (or to the other Party's authorized attorneys, agents or representatives), to the extent reasonably necessary to enable such Party to undertake patent prosecution and maintenance as contemplated by this Agreement; (b) to cooperate, if necessary and appropriate, with the other Party in gaining patent term extensions wherever applicable to Patent Rights that are subject to this Agreement; and (c) to endeavor in good faith to coordinate its efforts with the other Party to minimize or avoid interference with the prosecution and maintenance of the other Party's patent applications that are subject to this Agreement. For the avoidance of doubt, each Party agrees that its employees, agents and consultants shall provide any and all information required for the other Party to comply with its relevant duties of disclosure as required by applicable law in the United States or any other jurisdiction.

4.4 **Patent Term Restoration**. 4-AB shall retain the sole and exclusive right to make any patent term restoration election or its equivalent, anywhere in the world, including under 35 U.S.C. §156 and its foreign counterparts with respect to any Licensed Patent Rights; *provided, however*, that 4-AB shall reasonably consider any input from the Licensors with respect to the extension of any Licensed Patent Right. LICR shall, and shall cause MSKCC to, abide by such elections and cooperate, as reasonably requested by 4-AB, in connection with the foregoing (including by providing appropriate information and executing appropriate documents).

4.5 **Recording**. If 4-AB deems it necessary or desirable to register or record this Agreement or evidence of this Agreement with any patent office or other appropriate government authorities in one or more jurisdictions throughout the world, then 4-AB shall submit to LICR any proposed evidence of such recording. LICR shall execute and deliver, and shall cause MSKCC to execute and deliver, to 4-AB any reasonable documents that are consistent with this Agreement and necessary or desirable, in 4-AB's reasonable judgment, to complete such registration or recordation and 4-AB may make complete such registration or recordation.

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ARTICLE V
REPRESENTATIONS, WARRANTIES AND COVENANTS

5.1 **By LICR**. LICR hereby represents and warrants and covenants to 4-AB that:

(a) this Agreement is a legal and valid obligation binding upon LICR and enforceable in accordance with its terms and, except as otherwise set forth herein, the execution, delivery and performance of this Agreement by LICR does not conflict with any agreement, instrument or understanding to which LICR is a party or by which it is bound;

(b) LICR controls all of the Licensors' interest in the Licensed Patent Rights and Licensed Know-How existing as of the Effective Date. LICR is entitled to grant the licenses specified herein on behalf of the Licensors. In particular, MSKCC has consented to the appointment of LICR as the "Exploitation Party" of all Patent Rights licensed to 4-AB hereunder as to which MSKCC has an interest, pursuant to the terms of the Agreement effective as of January 1, 2013 or the Agreement effective September 17, 2007, in each case, by and between LICR and MSKCC. LICR has not, and to the best of LICR's knowledge, MSKCC has not, previously assigned, transferred, conveyed or otherwise encumbered its right, title and interest in the Licensed Patent Rights and Licensed Know-How in the Field and the Territory with respect to the Licensed Products, that may be inconsistent with the rights granted to 4-AB under this Agreement, and shall not do so during the Term;

(c) to the best of LICR's knowledge, there is no actual or threatened infringement of the Licensed Patent Rights in the Field by any Third Party;

(d) to the best of LICR's knowledge, as of the Effective Date, there are no claims, judgments or settlements against, or amounts with respect thereto owed by a Licensor, or any of its Affiliates relating to the Licensed Patent Rights. As of the Effective Date, to the best of LICR's knowledge no claim or litigation has been brought against a Licensor or, to the best of LICR's knowledge, against any Third Party or, to the best of LICR's knowledge, threatened by any Third Party, alleging that (i) the Licensed Patent Rights are invalid or unenforceable or (ii) the Licensed Patent Rights or the licensing or exploiting of the Licensed Patent Rights or Licensed Know-How violates, infringes or otherwise conflicts or interferes with any intellectual property or proprietary right of any Third Party;

(e) as of the Effective Date, to the best of LICR's knowledge there are no claims, judgments or settlements against or owed by a Licensor or any of its Affiliates or, to the best of LICR's knowledge, pending or threatened claims, judgments or settlements against LICR or any of its Affiliates, relating to the Licensed Patent Rights or Licensed Know-How that are reasonably expected to materially impact 4-AB's ability to develop, manufacture or commercialize Licensed Products; and

(f) to the best of LICR's knowledge, all obligations, if any, under 37 CFR §1.56 have been satisfied for all patents and patent applications within the Licensed Patent Rights.

5.2 **By 4-AB**. 4-AB hereby represents and warrants to LICR that:

(a) The execution and delivery of this Agreement by 4-AB and the performance by 4-AB of the transactions contemplated hereby have been duly authorized by all appropriate 4-AB corporate action; and

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(b) This Agreement is a legal and valid obligation binding upon 4-AB and enforceable in accordance with its terms, and the execution, delivery and performance of this Agreement by 4-AB does not conflict with any agreement, instrument or understanding to which 4-AB is a party of or by which it is bound.

(c) as of the Effective Date, to the best of 4-AB's knowledge there are no claims, judgments or settlements against or owed by a 4-AB or any of its Affiliates or, to the best of 4-AB's knowledge, pending or threatened claims, judgments or settlements against 4-AB or any of its Affiliates, relating to the Licensed Patent Rights, Licensed Know-How or 4-AB's Patent Rights and Know-How that are reasonably expected to materially impact 4-AB's ability to develop, manufacture or commercialize Licensed Products; and

(d) to the best of 4AB's knowledge, all obligations, if any, under 37 CFR §1.56 have been satisfied and shall continue to be satisfied, for all patents and patent applications within the Licensed Patent Rights.

5.3 **Warranty Disclaimer**. Except as expressly set forth in this Agreement, NEITHER PARTY MAKES ANY REPRESENTATION OR EXTENDS ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, AND EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING WARRANTIES ARISING BY COURSE OF DEALING, PERFORMANCE, CUSTOM OR USAGE IN THE TRADE, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5.4 **Indemnification**.

(a) **4-AB Indemnity**. 4-AB shall indemnify, defend and hold harmless each Licensor and their respective directors, officers, employees and agents, and their respective successors, heirs and assigns (the "**LICR Indemnitees**") from and against any liability, damage, loss or expense (including reasonable outside attorneys' fees and expenses of litigation) (collectively, " **Losses**") incurred by or imposed upon such LICR Indemnitees, or any of them, resulting from any claim, action or proceeding brought or initiated by a Third Party (each a " **Claim**") to the extent that such Claim arises out of: (i) the breach or alleged breach of any obligation, representation or warranty of 4-AB under this Agreement; or (ii) the negligence or willful misconduct of any 4-AB Indemnitee; *provided* that (x) the LICR Indemnitees comply with the procedure set forth in subsection (c) below; and (y) such indemnity shall not apply to the extent such Claim arises from (i) the breach or alleged breach of any obligation, representation or warranty of LICR under this Agreement; or (ii) the negligence or willful misconduct of any LICR Indemnitee.

(b) **LICR Indemnity**. LICR shall indemnify, defend and hold harmless 4-AB, its Affiliates and Sublicensees and their respective directors, officers, employees, and agents, and their respective successors, heirs and assigns (the "**4-AB Indemnitees**") from and against any Loss incurred by or imposed upon such 4-AB Indemnitees, or any of them, in connection with any Claim arising arises out of: (i) the breach or alleged breach of any obligation, representation or warranty of LICR under this Agreement; or (ii) the negligence or willful misconduct of any LICR Indemnitee; *provided* that (x) the 4-AB Indemnitees comply with the procedure set forth in subsection (c) below; and (y) such indemnity shall not apply to the extent such Claim arises from (i) the breach or alleged breach of any obligation, representation or warranty of 4-AB under this Agreement; or (ii) the negligence or willful misconduct of any 4-AB Indemnitee.

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(c) **Indemnification Procedures**. In the event that a Party intends to claim indemnification under this Article V, such Party shall promptly notify the indemnifying Party thereof, and the indemnifying Party shall assume the defense thereof with counsel mutually satisfactory to the Parties; *provided, however,* that an indemnified Party shall have the right to retain its own counsel, with the fees and expenses to be paid by indemnifying Party, if representation of such indemnified Party by the counsel retained by the indemnifying Party would be inappropriate due to actual or potential differing interests between such indemnified Party and any other party represented by such counsel in such proceedings. The indemnity obligation set forth in this Section 5.4 shall not apply to amounts paid in settlement of any claims, suits, actions, demands or judgments if such settlement is effected without the consent of the indemnifying Party, which consent shall not be unreasonably withheld. The failure to deliver notice to the indemnifying Party within a reasonable time after the commencement of such action, if prejudicial to its ability to defend such action, shall relieve the indemnifying Party of any liability to the indemnified Party under this Article V, but the omission to so deliver notice to the indemnifying Party will not relieve it of any liability that it may have to any indemnified Party otherwise than under this Article V. The indemnified Party under this Article V shall cooperate fully with the indemnifying Party and its legal representatives in the investigation of any claim for which indemnification is sought hereunder.

5.5 **Limitation of Liability**. NEITHER PARTY SHALL BE LIABLE TO THE OTHER, OR TO ANY THIRD PARTY CLAIMING THROUGH OR UNDER THE OTHER PARTY, FOR ANY LOST PROFITS OR FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES OF ANY KIND ARISING OUT OF THIS AGREEMENT, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

ARTICLE VI
CONFIDENTIAL INFORMATION

6.1 "**Confidential Information**" shall mean any technical, scientific or business information furnished by or on behalf of one Party or its Affiliates (the "**Disclosing Party**") to the other Party or its Affiliates (the "**Receiving Party**") in connection with this Agreement or the activities contemplated hereunder, regardless of whether such information is specifically designated as confidential and regardless of whether such information is in oral, written, electronic or other form. The terms of this Agreement shall be considered Confidential Information of both Parties, subject to the provisions of this Article VI. Confidential Information shall not include information that:

(a) is generally available in the public domain or thereafter becomes available to the public through no act of the Receiving Party; or

(b) was independently known to the Receiving Party prior to receipt thereof or was discovered independently by an employee of the Receiving Party who had no access to the information supplied by or on behalf of the Disclosing Party; or

(c) was made available to the Receiving Party as a matter of lawful right by a Third Party who had no obligations of confidentiality to the Disclosing Party.

6.2 **Obligations**. The Receiving Party agrees that it shall not, without the prior written consent of the Disclosing Party, directly or indirectly:

(a) make any use of any portion of the Confidential Information of the Disclosing Party for purposes other than those set forth in this Agreement; or

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(b) disclose or transfer any portion of the Confidential Information to any person, except that the Receiving Party may disclose or permit the disclosure of Confidential Information to its Affiliates and their respective directors, officers, employees, consultants, and advisors, and, with respect to 4-AB and its Affiliates, their Sublicensees and subcontractors and partners and investors and potential investors in connection with a general financing transaction, who have an ethical or fiduciary duty to the Receiving Party or are otherwise obligated to maintain the confidential nature of such Confidential Information and who need to know such Confidential Information for the purposes set forth in this Agreement or for other legitimate business purposes.

Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party when required by applicable laws or government rules or regulations (including without limitation, applicable securities regulations), *provided* that to the extent reasonably possible, the Receiving Party provides reasonable prior written notice of such disclosure to the Disclosing Party and takes reasonable efforts to avoid and/or minimize the extent of disclosure.

6.3 Upon expiration or termination of this Agreement and upon request of the Disclosing Party, all copies of any Disclosing Party's Confidential Information shall be returned to the Disclosing Party, except that each Receiving Party may retain one (1) copy of the Confidential Information received hereunder in the possession of its legal counsel, solely for monitoring its obligations under this Agreement.

6.4 No option, license, or conveyance of such rights, express or implied, is granted to the Receiving Party in connection with any Confidential Information disclosed by the Disclosing Party, except for the express licenses granted in Article 2. If any such rights are to be granted to the Receiving Party, such grant shall be expressly set forth in a separate written instrument.

6.5 **Public Announcements**. Other than as required by a Party or its Affiliates to comply with applicable laws or regulations, each Party agrees that the terms of this Agreement are Confidential Information and neither Party shall make any public announcement disclosing the terms of this Agreement without the prior written consent of the other Party (not to be unreasonably withheld) and shall, if required by law to make such public announcement: (a) to the extent possible, notify the other Party if it anticipates that it may be required to make such public announcement; (b) provide such other Party with a copy of such public announcement, or the relevant portions thereof, a reasonable time prior to its release (and any revisions to such public announcement a reasonable time prior to the release thereof); (c) consult with and follow any reasonable directions from the other Party with respect to disclosures in such public announcement; and (d) if disclosure cannot be avoided, only disclose Confidential Information to the extent necessary to comply with law. LICR and 4-AB anticipate that they may desire to issue joint or individual press releases upon execution of this Agreement, and on the occurrence of significant development milestones (which for LICR shall relate to Select Licensed Products). In each case the Parties shall coordinate with respect thereto. 4-AB and its Affiliates shall be entitled to disclose the results of their research, development and commercialization activities related to this Agreement in their sole and absolute discretion. 4-AB and its Affiliates will not use the names of a Licensor or the names of any of a Licensors officers, scientific faculty or researchers without such Licensor's prior written consent in any press release, advertising or promotional materials. Public announcements and statements by 4-AB and its Affiliates reporting significant advances in the development and commercialization of Select Licensed Products will acknowledge Licensors' role in the discovery and validation of the Licensed Antibody(s), consistent with the provisions of Appendix B attached hereto.

6.6 **Publications**. In the event either of the Licensors wish to publish, present, or otherwise disclose any results of the research program conducted under the Prior Agreement, LICR shall provide 4-

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AB with copies of any such publication or presentation at least thirty (30) days prior to submission for publication or presentation. 4-AB shall, within a period of thirty (30) days of receipt of such publication or presentation, advise the applicable Licensor whether patent or commercial interests may be prejudiced by the proposed publication or presentation, in which case the Licensor shall delay submission of the publication or presentation for an additional period, not to exceed forty-five (45) days, in order to prepare and file appropriate Patent Rights. If 4-AB has not responded to LICR within the initial thirty (30) day time period, the proposed publication or presentation shall be deemed not to prejudice any patent or commercial interests and the Licensor shall be free to proceed with the proposed disclosure.

ARTICLE VII
TERM AND TERMINATION

7.1 **Term**. This Agreement shall be effective as of the Effective Date and, unless terminated early pursuant to this Article VII, shall continue until the date on which 4-AB has no further financial obligations to LICR hereunder (the "**Term**").

7.2 **Termination for Material Breach**. In the event that a Party has materially breached or defaulted in the performance of any of its obligations hereunder, and if such default is not corrected within sixty (60) days after receiving written notice from the other Party with respect thereto, such other Party shall have the right to terminate this Agreement by giving written notice to the breaching Party; *provided* that the time period for providing such notice of termination shall be extended for so long as the breaching Party is engaged in good faith efforts to cure such breach or default.

7.3 **Termination for Convenience**. 4-AB may terminate this Agreement at any time, for any reason or no reason, upon ninety (90) days' prior written notice to LICR.

7.4 **Termination for Insolvency**. In the event a Party files for protection under the bankruptcy laws, makes an assignment for the benefit of creditors, appoints or suffers appointment of a receiver or trustee over its property, files a petition under any bankruptcy or insolvency act or has any such petition filed against it which is not discharged within ninety (90) days of the filing thereof, then the other Party may terminate this Agreement effective immediately upon written notice to the Party.

7.5 **General Effect of Termination**.

(a) **Termination of Rights.** Upon any early termination of this Agreement by LICR by operation of Sections 7.2 or 7.4, or by 4-AB by operation of Section 7.3 the rights and licenses granted to 4-AB and its Affiliates under Section 2.1 shall terminate. Notwithstanding the foregoing, any Sublicensee shall become a direct licensee of the Licensors if the Sublicensee is not then in breach of its sublicense agreement with 4-AB or its Affiliate and the Sublicensee agrees in writing to abide by the terms and conditions of this Agreement including all financial consideration and other obligations to LICR, applicable to 4-AB and its Affiliates, provided that (i) the scope of the direct license granted by Licensors to such Sublicensee shall be co-extensive with the scope of the sublicense granted by 4-AB or its Affiliate to such Sublicensee and (ii) any such direct license to a Sublicensee shall not impose any representations, warranties, obligations or liabilities on Licensors that are not included in this Agreement.

(b) **Accrued Obligations**. Termination of this Agreement for any reason shall not release any Party hereto from any liability which, at the time of such termination, has already accrued to the other Party or which is attributable to a period prior to such termination, nor preclude either Party from

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pursuing any rights and remedies it may have hereunder or at law or in equity which accrued or are based upon any event occurring prior to such termination.

(c) So lo long as there are no Sublicensees for which a direct license would be available under Section 7.5 (a), in the event (1) LICR terminates this Agreement pursuant to Sections 7.2 or 7.4 or 4-AB terminates this Agreement pursuant to Section 7.3, and (2) 4-AB and its Affiliates and Sublicensees (if applicable) have decided to discontinue the development and commercialization of Select Licensed Products, 4-AB shall, upon the written request of LICR, promptly enter into good-faith discussions (which obligation for good faith discussions shall not exceed sixty (60) days to reach an agreement in principle term sheet and, assuming such term sheet is reached, one hundred twenty (120) days for agreement finalization) with LICR regarding providing a license to LICR under (i) 4-AB's and its Affiliates interest in the Licensed Patent Rights and Licensed Know-How and (ii) 4-AB and its Affiliates Patent Rights and Know-How relating to any Select Licensed Product that was developed and/or commercialized by 4-AB or its Affiliates, to the extent not restricted by any Third Party agreements or obligations (the "Applicable IP"), solely to the extent necessary and for the purpose of LICR's research, development and/or commercialization of Select Licensed Products. In the event the Parties reach agreement on such a license to LICR hereunder, such agreement will provide reasonable cooperation and transfer of information, documents and materials constituting the Know-How within the Applicable IP by 4-AB and its Affiliates. .

(d) **Survival**. Articles IV, VI and VIII and Sections 3.8, 5.3, 5.4, 5.5, 7.5, 9.1, 9.2, 9.4, 9.9, 9.10 and 9.12 hereof (and related definitions) shall survive the expiration or termination of this Agreement for any reason. In addition, any other provision required to interpret and enforce the Parties' rights and obligations under this Agreement shall also survive, but only to the extent required for the observation and performance of the aforementioned surviving portions of this Agreement.

ARTICLE VIII
DISPUTE RESOLUTION

8.1 **Dispute Resolution**. Except for the right of either Party to apply to a court of competent jurisdiction for a temporary restraining order, a preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, any dispute, other than disputes regarding the construction, validity or enforcement of Patent Rights, arising between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, shall be resolved in accordance with this Section 8.1.

(a) The chief executive officers of both Parties (or their respective designees) shall meet to attempt to resolve such dispute.

(b) If the chief executive officers of the Parties (or their respective designees) cannot resolve such dispute within thirty (30) days after either Party requests such a meeting in writing, then upon written notice by either Party to the other Party, such dispute, controversy or claim shall be finally resolved by binding arbitration conducted in the English language in New York, New York, USA under the Commercial Arbitration Rules of the American Arbitration Association by three (3) arbitrators. Each Party shall be entitled to appoint one (1) arbitrator. The Parties shall appoint their respective arbitrators within thirty (30) days after submission for arbitration. The two (2) arbitrators so appointed shall agree on the appointment of the third (3rd) arbitrator from the list of arbitrators maintained by the American Arbitration Association. If the Parties' appointed arbitrators shall fail to agree, within thirty (30) days from the date both Parties'

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arbitrators have been appointed, on the identity of the third (3rd) arbitrator, then such arbitrator shall be appointed by the appropriate administrative body of the American Arbitration Association.

(c) Within ten (10) days of appointment of the full arbitration panel, the Parties shall exchange their final proposed positions with respect to the matters to be arbitrated, which shall approximate as closely as possible the closest positions of the Parties previously taken in previous negotiations. Within thirty (30) days of appointment of the arbitration panel, each Party shall submit to the arbitrators a copy of the proposed position which it previously delivered to the other Party, together with a brief or other written memorandum supporting the merits of its proposed position. The arbitration panel shall promptly convene a hearing, at which time each Party shall have one (1) hour to argue in support of its proposed position. The Parties will not call any witnesses in support of their arguments.

(d) The arbitration panel shall select either Party's proposed position on the issue as the binding final decision to be embodied as an agreement between the Parties. In making their selection, the arbitrators shall not modify the terms or conditions of either Party's proposed position, nor will the arbitrators combine provisions from both proposed positions. In the event the arbitrators seek the guidance of the law of any jurisdiction, the law of the State of New York, USA shall govern.

(e) The arbitrators shall make their decision known to the Parties as promptly as possible by delivering written notice of their decision to both Parties. Such written notice need not justify their decision. The Parties will execute any and all papers necessary to obligate the Parties to the position selected by the arbitration panel within five (5) days of receipt of notice of such selection. The decision of the arbitrators shall be final and binding on the Parties, and specific performance may be ordered by any court of competent jurisdiction. Any arbitration award shall be subject to Section 5.5.

(f) Parties will bear their own costs in preparing for the arbitration. The costs of the arbitrators will be equally divided between the Parties.

(g) Any and all activities conducted under this Section 8.1 including any and all proceedings and decisions of the arbitration panel, shall be deemed Confidential Information of each of the Parties, and shall be subject to Article VI.

ARTICLE IX
MISCELLANEOUS

9.1 **Governing Law**. This Agreement shall be deemed to have been made in the State of New York, USA, and its form, execution, validity, construction and effect shall be determined in accordance with, and any dispute arising from the performance or breach hereof shall be governed by and construed in accordance with, the laws of the State of New York, USA, without reference to conflicts of laws principles. Each of the Parties irrevocably submits to the exclusive jurisdiction of the state and federal courts situated in New York, New York, USA for purposes of any suit, action or other proceeding arising out of this Agreement or any transaction contemplated hereby and agrees not to commence any action, suit or proceeding relating hereto except in such courts. No Party hereto shall challenge or contest the subject matter or personal jurisdiction of any such court or its venue or assert the defense of *forum non-conveniens*.

9.2 **Waiver**. Neither Party may waive or release any of its rights or interests in this Agreement except in writing. The failure of either Party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition. No waiver by either Party of any condition or term

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in any one or more instances shall be construed as a further or continuing waiver of such condition or term or of another condition or term.

9.3 **Assignment**. This Agreement shall not be assignable by either Party to any Third Party without the written consent of the other Party hereto; except either Party may assign this Agreement (in whole or in part), without such consent, to (a) an Affiliate or (b) an entity that acquires all or substantially all of the capital stock, business or assets of the Party to which this Agreement pertains (whether by merger, reorganization, acquisition, sale, or otherwise) and agrees in writing to be bound by the terms and conditions of this Agreement. The terms and conditions of this Agreement shall be binding on and inure to the benefit of the permitted successors and assigns of the Parties.

9.4 **Notices**. All notices hereunder will be in writing and will be delivered personally, by internationally recognized overnight courier service, registered or certified mail, postage prepaid, or mailed by express mail service to the following addresses of the respective Parties:

If to 4-AB: 4-Antibody AG
Hochbergerstrasse 60C
CH-4057 Basel, Switzerland
Attention: Robert Burns, Managing Director

With copies to: Agenus Inc.
3 Forbes Road
Lexington, Massachusetts 02421-7305, USA
Attention: Karen Higgins Valentine, Esq., General Counsel

Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110, USA
Attention: Gerald E. Quirk, Esq.

If to LICR: Ludwig Institute for Cancer Research Ltd.
666 Third Avenue, 28th Floor
New York, New York 10017, USA
Attention: Ed McDermott, Jr., President

With a copy to: Ludwig Institute for Cancer Research Ltd.
666 Third Avenue, 28th Floor
New York, New York 10017, USA
Attention: Jonathan Skipper, Ph.D., Executive Director, Technology Development

Notices will be effective upon receipt if personally delivered, on the third Business Day following the date of mailing if sent by certified or registered mail, and on the second Business Day following the date of delivery if sent by express mail or overnight courier. A Party may change its address listed above by written notice to the other Party provided in accordance with this Section.

9.5 **Independent Contractors**. Nothing contained in this Agreement is intended implicitly, or is to be construed, to constitute 4-AB or LICR as partners or joint venturers in the legal sense. No Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of

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or in the name of any other Party or to bind any other Party to any contract, agreement or undertaking with any Third Party.

9.6 **Other Obligations**. Except as expressly provided in this Agreement or as separately agreed upon in writing between LICR and 4-AB, each Party shall bear its own costs incurred in connection with the implementation of the obligations under this Agreement.

9.7 **Severability**. If any term or provision of this Agreement will for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other term or provision hereof, and in lieu of each such invalid, illegal or unenforceable provision there will be added automatically as a part of this Agreement a provision that is valid, legal and enforceable, and as similar in terms to such invalid, illegal or unenforceable provision as may be possible while giving effect to the benefits and burdens for which the Parties have bargained hereunder.

9.8 **Further Assurances**. At any time or from time to time on and after the date of this Agreement, either Party shall at the request of the other Party (a) deliver to the requesting Party such records, data or other documents consistent with the provisions of this Agreement, (b) execute, and deliver or cause to be delivered, all such consents, documents or further instruments of assignment, transfer or license, and (c) take or cause to be taken all such actions, as the requesting Party may reasonably deem necessary or desirable in order for the requesting Party to obtain the full benefits of this Agreement and the transactions contemplated hereby.

9.9 **Entire Agreement, Waivers, Etc**. This Agreement constitutes the entire agreement, both written or oral, with respect to the subject matter hereof, and supersedes and terminates all prior or contemporaneous understandings or agreements, whether written or oral, between the Parties with respect to the subject matter hereof, including without limitation the Prior Agreement. Upon execution of this Agreement by both Parties hereto, all surviving provisions of the Prior Agreement are and shall be null and void and of no further effect. No terms or provisions of this Agreement shall be varied or modified by any prior or subsequent statement, conduct or act of either of the Parties, except that the Parties may amend this Agreement by written instruments specifically referring to and executed in the same manner as this Agreement.

9.10 **Headings, Construction and Interpretations**. The headings used in this Agreement have been inserted for convenience of reference only and do not define or limit the provisions hereof. The Parties have had the opportunity to consult with counsel, and the Parties and their respective counsel have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. All terms defined in this Agreement shall have the defined meanings when used in any certificate or other document made or delivered pursuant hereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

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9.11 **Counterparts**. This Agreement may be executed in any number of separate counterparts, including .pdf versions, each of which will be deemed to be an original, but which together will constitute one and the same instrument.

9.12 **Costs**. Each Party shall bear its own costs and expenses in connection with the preparation, negotiation, execution and delivery of this Agreement.

[*signature page follows*]

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IN WITNESS WHEREOF, the Parties hereto have caused this License Agreement to be duly executed by their authorized representatives as of the Effective Date.

4-ANTIBODY AG	**4-ANTIBODY AG**
By: /s/ Garo H. Armen, Ph.D.	By: /s/ Christine M. Klaskin
Title: Chairman of the Board	Title: Director
Date: December 5, 2014	Date: December 5, 2014

LUDWIG INSTITUTE FOR CANCER RESEARCH LTD.	**LUDWIG INSTITUTE FOR CANCER RESEARCH LTD.**
By: /s/ Edward A. McDermott, Jr.	By: /s/ Jonathan Skipper
Title: President	Title: Executive Director of Technology Development
Date: December 5, 2014	Date: December 5, 2014

Acknowledged and agreed:

MEMORIAL SLOAN-KETTERING CANCER CENTER

By: /s/ Gregory Raskin, M.D.

Title: Vice President, Technology Development

Date: December 5, 2014

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Exhibit A

Licensed Patent Rights

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Exhibit B

[**]

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

Appendix A

[**]

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EXHIBIT 10.22

CONFIDENTIAL TREATMENT REQUESTED: ***Information for which confidential treatment has been requested is omitted and is noted with asterisks. An unredacted version of this document has been filed separately with the Securities and Exchange Commission (the "Commission").***

LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

BY AND BETWEEN

AGENUS INC.,

4-ANTIBODY AG,

INCYTE EUROPE SARL,

AND

INCYTE CORPORATION, SOLELY FOR PURPOSES OF SECTION 12.16

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

EXHIBIT 10.22

CONFIDENTIAL TREATMENT MATERIAL

LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

THIS LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT (the "**Agreement**") is entered into as of January 9, 2015 (the "**Execution Date**") by and between Agenus Inc., a Delaware corporation having its principal office at 3 Forbes Road, Lexington, Massachusetts 02421, USA ("**Agenus US**") and its wholly-owned subsidiary, 4-Antibody AG, a stock corporation organized under the laws of Switzerland with an office at Hochbergerstrasse 60C, CH-4057, Basel, Switzerland ("**4-AB**" and, together with Agenus US other than with respect to Section 12.17(s), "**Agenus**"), and Incyte Europe Sarl, a Swiss limited liability company (a société à responsabilité limitée) having its principal office at Cours de Rive 13, 1204, Geneva, Switzerland ("**Incyte**") and solely for purposes of Section 12.16, Incyte Corporation, a Delaware corporation having its principal office at 1801 Augustine Cut-off, Wilmington, Delaware 19803 USA ("**Parent**"). Agenus and Incyte may be referred to in this Agreement individually as a "**Party**" and, collectively, as the "**Parties**".

RECITALS

WHEREAS, Agenus has certain capabilities, technology and know how useful in the discovery of antibodies, including its proprietary technology platform known as the Retrocyte Display technology;

WHEREAS, Agenus is engaged in a number of research and development programs that have arisen out of its technologies;

WHEREAS, Incyte is engaged in the development and commercialization of pharmaceutical and biological products for human disease, primarily in the fields of hematology and oncology;

WHEREAS, Agenus and Incyte are interested in forming an alliance whose goal is to discover, develop and commercialize a robust portfolio of products to address hematologic and oncologic diseases or conditions.

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

Article I: DEFINITIONS

When used in this Agreement, each of the following terms shall have the meanings set forth in this Article I:

1.1 "**Accounting Standards**" with respect to a Party means that such Party shall maintain records and books of accounts in accordance with (a) U.S. generally accepted accounting principles, or (b) to the extent applicable, International Financial Reporting Standards, in each case of (a) and (b), consistently maintained.

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1.2 "**Affiliate**" means, as to a Person, any entity which, directly or indirectly, controls, is controlled by, or is under common control with such Person. For the purposes of this definition, "control" refers to any of the following: (a) direct or indirect ownership of [**] or more of the voting securities entitled to vote for the election of directors in the case of a corporation, or of [**] or more of the equity interest with the power to direct management in the case of any other type of legal entity; (b) status as a general partner in any partnership; or (c) any other arrangement where an entity possesses, directly or indirectly, the power to direct the management or policies of another entity, whether through ownership of voting securities, by contract or otherwise. The Parties acknowledge that in the case of certain entities organized under the Laws of certain countries outside of the United States, the maximum percentage ownership permitted by law for a foreign investor may be less than [**], and that in such case such lower percentage shall be substituted in the preceding sentence, provided that such foreign investor has the power to direct the management and policies of such entity.

1.3 "**Agenus IP**" means Agenus Know-How and Agenus Patent Rights.

1.4 "**Agenus Know-How**" means all Know-How other than Agenus Platform Know-How that (a) is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term; and (b) is necessary or useful to Develop, Manufacture or Commercialize any Licensed Antibody or Product.

1.5 "**Agenus Platform Know-How**" means Know-How Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term that relates to the Retrocyte Display Technology.

1.6 "**Agenus Platform Patent Rights**" means Patent Rights Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, to the extent Covering (a) the Retrocyte Display Technology or (b) a Vaccine (including the Prophage Series Vaccines), adjuvant (including the QS-21 Stimulon adjuvant) or heat shock protein technology, in each case Controlled by Agenus as of the Execution Date or during the Term.

1.7 "**Agenus Platform IP**" means Agenus Platform Know-How and Agenus Platform Patent Rights.

1.8 "**Agenus Patent Rights**" means all Patent Rights, other than Agenus Platform Patent Rights, that (a) are Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term; and (b) (i) Cover a Licensed Antibody or Product or a therapeutic preparation containing a Licensed Antibody or Product, or (ii) are otherwise necessary or useful to Develop, Manufacture or Commercialize a Licensed Antibody or Product.

1.9 "**Allowable Expenses**" means, with respect to a Profit-Share Product and each Calendar Quarter, all FTE Costs and Out-of-Pocket Costs incurred by the Parties or their Affiliates specific to the Development, Manufacture or Commercialization of such Profit-Share Product in the Field and the Territory during the applicable Calendar Quarter, including such FTE Costs and Out-of-Pocket Costs which are: (a) Development Costs, subject to Sections 4.1

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(c) and 4.4(b); (b) Manufacturing Costs; (c) Commercialization Costs, subject to Section 5.1(b); (d) Distribution Costs; (e) Regulatory Costs; (f) Patent and Trademark Costs; (g) Third Party IP Costs; (h) Product Liability Costs; and (i) Medical Affairs Costs; but Allowable Expenses shall exclude in all cases the cost of general corporate overhead and administrative personnel. For clarity, no milestone payment made to Agenus or its Affiliates pursuant to Section 7.5(a) hereof shall be an Allowable Expense.

1.10 "**Antibody**" means one or more molecules, or one or more genes encoding such molecule(s), which comprise or consist of one or more immunoglobulin domains, or fragment(s) thereof, that specifically bind(s) to one or more Targets.

1.11 "**Assumed Project**" means a Discovery Project added to the Program pursuant to Section 4.5.

1.12 "**Assumed Project Antibody**" means any Antibody arising out of an Assumed Project.

1.13 "**Biosimilar Product**" means, with respect to a Product, a biological product that: (1) (a) is biosimilar to such Product based upon data derived from (i) analytical studies that demonstrate that such biological product is highly similar to such Product, (ii) animal studies, or (iii) one or more clinical studies that are sufficient to demonstrate safety, purity, and potency in one or more Indications for which a BLA for such Product has been approved; and (b) utilizes the same mechanism of action as such Product; or (2) (a) (i) in the United States, is "similar" or "interchangeable," with respect to such Product as evaluated by the FDA and (ii) outside the United States, "similar," "comparable," "interchangeable," "bioequivalent," or "biosimilar" to such Product, as determined by an applicable Regulatory Authority, and (b) is not an Authorized Generic Version of such Product; where "**Authorized Generic Version**" means any biological product that is sold under the BLA filed by Incyte or its an Affiliate or sublicensee for such Product. A Product licensed or produced by Incyte or its Affiliates will not constitute a Biosimilar Product.

1.14 "**BLA**" means, with respect to a Product, a biologics license application, as defined in the U.S. Public Health Service Act, as amended, and the regulations promulgated thereunder, or any non-U.S. counterpart of the foregoing, and all supplements and amendments that may be filed with respect to the foregoing.

1.15 "**Bullpen Targets**" means Targets that are designated by the JSC during the Discovery Period as a source of potential Discovery Projects to be proposed for inclusion in the Program pursuant to Section 4.5, to consist of a minimum of **[**]** and a maximum of **[**]** such Targets at any time.

1.16 "**Business Day**" means a day other than a Saturday or Sunday or Federal holiday in New York, New York, USA.

1.17 "**Calendar Quarter**" means a calendar quarter ending on the last day of March, June, September or December.

1.18 "**Calendar Year**" means a period of time commencing on January 1 and ending on the following December 31.

1.19 "**Change in Control**" means, with respect to a Party, an event in which: (a) any Third Party not then beneficially owning more than [**] of the voting power of the outstanding securities of such Party acquires or otherwise becomes the beneficial owner of securities of such Party representing more than [**] of the voting power of the then outstanding securities of such Party with respect to the election of directors; or (b) such Party consummates a merger, consolidation or similar transaction with a Third Party where the voting securities of such Party outstanding immediately preceding such transaction represent less than [**] of the voting power of such Party or surviving entity, as the case may be, immediately following such transaction; or (c) such Party sells all or substantially all of its assets relating to this Agreement to a Third Party.

1.20 "**Clinical Trial**" means a Phase 1 Clinical Trial, Phase 2 Clinical Trial, Phase 3 Clinical Trial, Phase 4 Clinical Trial, Pivotal Clinical Trial, or a combination of two (2) of any of the foregoing studies.

1.21 "**Co-Developed Product**" means any Royalty-Bearing Product for which Agenus has exercised the Co-Development Option described in Section 4.4 and has paid all reasonably undisputed Co-Development Quarterly Payments, unless and until Agenus exercises its termination right with respect to such Royalty-Bearing Product pursuant to Section 4.4(d).

1.22 "**Combination Product**" means, with respect to a country, any Royalty-Bearing Product that has received Regulatory Approval in such country to be used or administered for use with an Incyte Product to treat patients in the Field.

1.23 "**Commercialization**" or "**Commercialize**" means any activities directed to new product planning activities, obtaining pricing and/or reimbursement approvals, marketing, promoting, distributing, importing, offering to sell, and/or selling a Product (including establishing the price for such product), whether or not Regulatory Approval for such product has been obtained, including related use and importation and commercial Manufacturing.

1.24 "**Commercialization Costs**" means, on a Profit-Share Product-by-Profit-Share Product basis, FTE Costs and Out-of-Pocket Costs incurred by Incyte or its Affiliates in the Territory and, to the extent Agenus US exercises the Co-Promotion Option for a Profit-Share Product pursuant to Section 5.4 and the Parties enter into a Co-Promotion Agreement, by Agenus US in the United States in accordance with the Co-Promotion Agreement, in Commercializing the relevant Profit-Share Product in the Field in accordance with this Agreement and the applicable Commercialization Plan, subject to Section 5.1(b), including such FTE Costs and Out-of-Pocket Costs which are: (a) Indirect Selling Expenses; (b) Includable Sales and Marketing Operations Costs; (c) Includable Sales Force Costs; and (d) Marketing and Education Expenses; in each case determined from the books and records of Incyte or its Affiliates or, if applicable, Agenus US, in each case maintained in accordance with Accounting Standards.

1.25 "**Commercially Reasonable Efforts**" of a Party means, with respect to an objective, the reasonable, diligent, good faith efforts of such Party (including the efforts of its

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Affiliates, and permitted sublicensees), of the type to accomplish such objective as a similarly situated (with respect to size, stage of development, and assets) biopharmaceutical company would normally use to accomplish a similar objective under similar circumstances, it being understood and agreed that, with respect to efforts to be expended in relation to a Product, including implementation of Development, Manufacturing and Commercialization strategies, such efforts shall be substantially equivalent to those efforts and resources that a similarly situated biopharmaceutical company would typically devote to its own internally discovered compound or product, which compound or product is at a similar stage in its development or product life and is of similar market and economic potential as products at a similar stage in its development or product life, taking into account the risks of development, the commercial potential for the Product, its proprietary position and other relevant factors.

1.26 "**Completion**" means, with respect to a Product and a Clinical Trial, the last dosing of a human with the relevant Product in such Clinical Trial.

1.27 "**Confidential Information**" means, subject to Section 11.1(b), (a) all confidential or proprietary information relating to Licensed Antibodies and Products, and (b) all other confidential or proprietary documents, technology, Know-How or other information (whether or not patentable) actually disclosed by one Party to the other Party pursuant to this Agreement or the Prior Confidentiality Agreement.

1.28 "**Control**" or "**Controlled**" means, with respect to any (a) material, document, item of information, method, data or other Know-How or (b) Patent Rights or other Intellectual Property Rights, the possession by a Party or, subject to Section 12.3(b)(ii), any of its Affiliates (whether by ownership or license (other than by a license granted under this Agreement)), of the ability to grant to the other Party access, a license and/or a sublicense as provided herein without requiring the consent of a Third Party or violating the terms of any agreement or other arrangement with any Third Party, in each case as of the Execution Date, or if any of the same are acquired or created after the Execution Date, at the date it is acquired or created by the relevant Party or its Affiliate; provided, however, that if such Party or, subject to Section 12.3(b)(ii), any of its Affiliate later gains the ability to grant such access, license or sublicense, such material, document, item of information, method, data, other Know-How, Patent Right or other Intellectual Property Right without requiring such consent or violating such terms, Control shall be deemed to exist thereafter.

1.29 "**Converted Product**" means any Profit-Share Product for which Agenus has elected to cease sharing in Profit-or-Loss as described in Section 4.6. For clarity, a Converted Product shall be deemed a Royalty-Bearing Product under this Agreement from and after the date such Profit-Share Product becomes a Converted Product.

1.30 "**Co-Promotion**" means, with respect to a Profit-Share Product, the joint Detailing efforts with respect to such Profit-Share Product in the United States, as further described in a Co-Promotion Agreement.

1.31 "**Cover**", "**Covering**" or "**Covered**" with respect to a product, technology, process or method, means that, but for Control by, or a license granted to, a Person under a Valid

Claim included in the Patent Rights under which such license is granted, the Development, Manufacture, Commercialization and/or other use of such product or the practice of such technology, process or method, by such Person would infringe such Valid Claim (or, in the case of a Valid Claim that has not yet issued, would infringe such Valid Claim if it were to issue).

1.32 "**CPI**" means the Consumer Price Index – Urban Wage Earners and Clerical Workers, U.S. City Average, All Items, 1982-84 = 100, published by the U.S. Department of Labor, Bureau of Labor Statistics (or its successor equivalent index).

1.33 "**Detail**" means (a) face-to-face discussions or other direct communication (*e.g.*, *e*detailing) with physicians and other health care practitioners who are permitted under applicable Laws to prescribe a Product, for the purpose of promoting a Product to such physicians or practitioners or (b) to the extent approved by the JSC or a Subcommittee established by the JSC, other interactions regarding the promotion of a Product with managed health care organizations, group purchasing organizations, pharmacy benefit managers, large employers, long-term care organizations, insurers, formularies, government agencies and programs (*e.g.*, Medicare and the Veterans Health Administration and other federal, state and local agencies), or similar organizations.

1.34 "**Development**" or "**Develop**" means, with respect to a Licensed Antibody, a Product, or an Antibody (or therapeutic preparation that contains an Antibody) that Interacts with a Discovery Target, discovery, research and preclinical and clinical development activities, including: the planning and conduct of Clinical Trials, test method development and stability testing, toxicology, formulation and delivery system development, cell line development, process development, pre-clinical and clinical supply, Manufacturing scale-up, development- and clinical-stage Manufacturing, quality assurance/quality control procedure development and performance with respect to clinical materials, performance of Clinical Trials, statistical analysis and report writing and clinical studies, regulatory affairs, and all other pre-Regulatory Approval activities, including related use, importation and Medical Affairs Activities. When used as a verb, "Develop" means to engage in Development.

1.35 "**Development Costs**" means, on a Project-by-Project or Product-by-Product basis (as applicable), FTE Costs and Out-of-Pocket Costs incurred by either Party or its Affiliates in Developing such Project or Product in the Field and in the Territory, in accordance with this Agreement and consistent with the applicable Development Plan, including such FTE Costs and Out-of-Pocket Costs which are: (a) explicitly included in the budget included in the applicable Development Plan, subject to Section 4.1(c) and Section 4.4, (b) Manufacturing Costs for such Product (or the relevant Products in such Project) used in Development, (c) Patent and Trademark Costs for Patent Rights Covering such Product (or the relevant Products in such Project) and (d) Medical Affairs Costs; in each case determined from the books and records of the applicable Party and its Affiliates maintained in accordance with Accounting Standards. Development Costs shall also include Patent and Trademark Costs pertaining to Bullpen Targets as provided in Section 1.103.

1.36 "**Discovery Period**" means the period beginning on the Effective Date and ending on December 31, 2019, subject to earlier termination as provided below (the "**Initial Discovery**

Period"). The Parties may mutually agree prior to December 31, 2018 to extend the Discovery Period for an additional period not to exceed three (3) Calendar Years, in which case the Discovery Period shall terminate at the end of such additional period. Notwithstanding the foregoing, Agenus may (but shall not be obligated to) terminate the Discovery Period upon delivery of written notice following the consummation of a Change in Control of Incyte, *provided* that (a) such notice of termination must be provided within three (3) months following the consummation of such Change in Control, and (b) such termination shall not have an effect on Projects that have commenced prior to the provision of any such notice of termination.

1.37 "**Discovery Project**" means an Antibody discovery research or development project directed against a Bullpen Target proposed for inclusion in the Program by either Party at any time during the Discovery Period pursuant to Section 4.5.

1.38 "**Distribution Costs**" means, with respect to a Profit-Share Product, FTE Costs and Out-of-Pocket Costs that are specifically identifiable and allocable to the distribution of such Profit-Share Product to a Third Party, including (a) handling, storage, distribution, transportation, customs clearance, containers, freight, shipping, sales, use, excise, value-added and similar customs, taxes, tariffs or duties and insurance (including shipments from Third Party logistics service providers to wholesalers), and (b) customer services including order entry, billing and adjustments, inquiry and credit and collection.

1.39 "**DOJ**" means the United States Department of Justice.

1.40 "**Effective Date**" means the second (2^{nd}) Business Day immediately following the HSR Clearance Date.

1.41 "**EMA**" means the European Medicines Agency, or a successor agency thereto.

1.42 "**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

1.43 "**Executive Officers**" means the Chief Executive Officers of each of Agenus US and Incyte (or a senior executive officer of Agenus US or Incyte designated by such Chief Executive Officers).

1.44 "**FDA**" means the United States Food and Drug Administration, or a successor agency thereto.

1.45 "**Field**" means any use of Antibodies for the treatment, control, mitigation, prevention or cure of any or all Indications in humans or animals in the Hematology Field and the Oncology Field.

1.46 "**First Commercial Sale**" means, with respect to a Product, the first sale of such Product intended for use by a patient, to a Third Party by, as applicable, Incyte or an Incyte Related Party in a country following applicable Regulatory Approval (other than applicable governmental price and reimbursement approvals) of such Product in such country. For the

avoidance of doubt, sales or transfers of Product for Clinical Trial or other Development purposes, or for compassionate or similar use, shall not be considered a First Commercial Sale.

1.47 "**Force Majeure Event**" means, with respect to a Party, an event, act, occurrence, condition or state of facts, in each case outside the reasonable control of such Party (which may include acts of God, acts of any government, any rules, regulations or orders issued by any governmental authority or by any officer, department, agency or instrumentality thereof, fire, storm, flood, earthquake, accident, war, rebellion, insurrection, riot, terrorism and invasion) that interfere with the normal business operations of such Party.

1.48 "**FTC**" means the United States Federal Trade Commission.

1.49 "**FTE**" means a full-time equivalent person year (consisting of a total of **[**]** hours per Calendar Year) of scientific, technical or commercial work, as applicable, undertaken by the applicable Party's or its Affiliates' employees. For purposes of clarity, a single individual who works more than **[**]** hours per Calendar Year in a single Calendar Year shall be treated as one (1) FTE regardless of the number of hours worked.

1.50 "**FTE Cost**" means, for any period, the product obtained by multiplying (a) the actual total FTEs (or portion thereof) devoted to a Development, Manufacturing or Commercialization activity pursuant to this Agreement by (b) the applicable FTE Rate.

1.51 "**FTE Rate**" means the rate per FTE (which may be prorated on a daily basis as necessary) of **[**]**, subject to annual adjustment in each Calendar Year during the Term by the percentage increase or decrease in the CPI as of December 31 of each Calendar Year over the level of the CPI as of December 31 of the prior Calendar Year, with the first such increase to be effective on **[**]**.

1.52 "**Generic Competition**" means, with respect to a Product in any country in a given Calendar Quarter, that, during such Calendar Quarter, one or more Biosimilar Products are commercially available in such country and such Biosimilar Products in the aggregate have a market share of **[**]** of the aggregate market share of such Product and Biosimilar Products (based on data provided by IMS International or, if such data is not available, such other reliable data source as agreed by the Parties (such agreement not to be unreasonably withheld)) as measured by unit sales in such country.

1.53 "**GITR**" means glucocorticoid-induced TNFR-related protein.

1.54 "**GITR Antibody**" means an Antibody that Interacts with GITR that is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term, or arises out of the GITR Project.

1.55 "**GITR Project**" means the project conducted under this Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with GITR.

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1.56 "**Hematology Field**" means all hematologic Indications as defined in subsections 280 — 289 (Diseases of the blood and blood-forming organs) of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), *provided* that the Hematology Field shall exclude the Indications set forth in Schedule 1.56.

1.57 "**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (15 U.S.C. §18a), and the rules and regulations promulgated thereunder.

1.58 "**HSR Clearance**" means the earlier of (a) notification to the Parties from the FTC or DOJ of early termination of the applicable waiting period under the HSR Act with respect to the HSR Filings, or (b) expiration of the applicable waiting period under the HSR Act with respect to the HSR Filings; *provided, however*, that if the FTC or DOJ shall commence any investigation by means of a second request or otherwise, HSR Clearance means the termination of such investigation, without action to prevent the Parties from implementing the transactions contemplated by this Agreement with respect to the United States.

1.59 "**HSR Clearance Date**" means the earlier of (a) the date on which the FTC or DOJ shall notify the Parties of early termination of the waiting period under the HSR Act with respect to the HSR Filings, or (b) the date on which the applicable waiting period under the HSR Act with respect to the HSR Filings expires; *provided, however*, that if the FTC or DOJ shall commence any investigation by means of a second request or otherwise, HSR Clearance Date means the date on which any investigation opened by the FTC or DOJ shall have been terminated, without action to prevent the Parties from implementing the transactions contemplated by this Agreement with respect to the United States.

1.60 "**HSR Filings**" means the filings by the Parties with the FTC and the DOJ of their respective premerger notification and report forms with respect to the matters set forth in this Agreement and the Stock Purchase Agreement, together with all required documentary attachments thereto.

1.61 "**Includable Sales and Marketing Operations Costs**" means, with respect to a Profit-Share Product, FTE Costs incurred (a) in developing advertising, promotional and educational materials, including related training materials and programs, for such Profit-Share Product, and (b) related to payer reimbursement services, each specifically identifiable and allocable to such Profit-Share Product.

1.62 "**Includable Sales Force Costs**" means, with respect to a Profit-Share Product, FTE Costs incurred in the field by sales representatives and regional and district managers, specifically identifiable and allocable to the selling of such Profit-Share Product.

1.63 "**Incremental Royalties**" means, with respect to Co-Developed Product as to which Agenus exercises its right under Section 4.4(d) or a Converted Product, the difference, in Dollars, in royalties actually paid to Agenus on Net Sales of a unit of the applicable Product at the rates set forth in Section 7.6(a)(iii) and those that would have otherwise been payable for the same unit of Product if the royalty rates set forth in Section 7.6(a)(i) had applied.

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1.64 "**Incyte IP**" means Incyte Know-How and Incyte Patent Rights.

1.65 "**Incyte Know-How**" means all Know-How that (a) is Controlled by Incyte or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term; and (b) is necessary or useful to Develop, Manufacture or Commercialize any Licensed Antibody or Product (excluding an Incyte Product).

1.66 "**Incyte Patent Rights**" means all Patent Rights that (a) are Controlled by Incyte or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term; and (b) (i) Cover a Licensed Antibody or Product (excluding an Incyte Product), or (ii) are otherwise necessary or useful to Develop, Manufacture or Commercialize a Licensed Antibody or Product (excluding an Incyte Product).

1.67 "**Incyte Product**" means, with respect to a Royalty-Bearing Product and a country, a product Controlled by Incyte or, subject to Section 12.3(b)(ii), any of its Affiliates, that (a) contains a compound for which IND-enabling toxicology studies have been initiated prior to or during the Term, and (b) has received a Regulatory Approval in such country that permits such product to be used or administered for use with such Royalty-Bearing Product in the Field.

1.68 "**Incyte Program Know-How**" means all Know-How that is (a) discovered, made or conceived solely by employees of, or others acting on behalf of, Incyte and its Affiliates during and in connection with the Program; and (b) is necessary or useful to Develop, Manufacture or Commercialize any Licensed Antibody or Product. For clarity, Know-How relating solely to an Incyte Other Invention shall not constitute Incyte Program Know-How.

1.69 "**Incyte Program Patent Rights**" means all Patent Rights claiming an Incyte Program Invention. For clarity, Patent Rights claiming an Incyte Other Invention shall not constitute Incyte Program Patent Rights.

1.70 "**Incyte Related Party**" means any of Incyte's Affiliates or any permitted Third Party licensees or sublicensees of Incyte's Program Rights to Develop, Manufacture or Commercialize Products in the Field, but not including any Third Party that functions as a distributor.

1.71 "**IND**" means an Investigational New Drug Application filed with the FDA under 21 C.F.R. §312 or similar non-United States application or submission in any country or group of countries for permission to conduct human clinical investigations.

1.72 "**Indication**" means any disease, condition or syndrome.

1.73 "**Indirect Selling Expenses**" means, with respect to a Profit-Share Product, Out-of-Pocket Costs incurred that are specifically identifiable and allocable to the selling of such Profit-Share Product and to operate and maintain the sales force that promotes such Profit-Share Product in the Territory (excluding corporate and administrative overhead, costs included in Includable Sales Force Costs and all other internal FTE Costs), including the costs of sales meetings, consultants (including fees for territory alignment and sales deployment consulting),

call reporting and other Third Party monitoring/tracking costs (including Third Party data purchases), and educational grant funds and charitable contributions related to Profit-Share Products.

1.74 "**Initiation**" means, with respect to a Product and a Clinical Trial, the first dosing in such Clinical Trial of the first human with the relevant Product.

1.75 "**Intellectual Property Rights**" means Patent Rights, trade secrets, trademarks, copyrights and other forms of proprietary or industrial rights pertaining to inventions, Know-How, original works, and other forms of intellectual property.

1.76 "**Interact**" means to bind specifically with a Target. In the event an Antibody binds specifically with more than one Target, it shall be deemed to Interact with whichever such Target it binds with greatest affinity unless the JSC determines otherwise.

1.77 "**Inventions**" means all patentable inventions, discoveries, improvements and other technology, and any Patent Rights based thereon, that are discovered, made or conceived during and in connection with the research, Development, Manufacture and Commercialization of Licensed Antibodies or Products.

1.78 "**Know-How**" means any and all technical information which, at the Execution Date or any time during the Term, is not in the public domain, including information comprising or relating to data, materials, results, inventions, improvements, protocols, formulas, processes, methods, compositions, articles of manufacture, formulations, discoveries, findings, know-how and trade secrets of any kind, including scientific, preclinical, clinical, regulatory, manufacturing, marketing, financial and commercial information or data, Regulatory Approvals and filings therefor, Regulatory Documentation, sequence information, vectors and host cells that include DNA, in each case (whether or not patented or patentable) in written, electronic or any other form now known or hereafter developed; but excluding any such information publicly disclosed in Patent Rights.

1.79 "**LAG-3**" means lymphocyte-activation gene 3.

1.80 "**LAG-3 Antibody**" means an Antibody that Interacts with LAG-3 that is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term, or arises out of the LAG-3 Project.

1.81 "**LAG-3 Project**" means the project conducted under this Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with LAG-3.

1.82 "**Law**" means any law, statute, rule, regulation, ordinance or other pronouncement having the effect of law, of any federal, national, multinational, state, provincial, county, city or other political subdivision, including, as applicable, (a) good manufacturing practices, good laboratory practices, good clinical practices and adverse event reporting requirements, guidance from the International Conference on Harmonization or other generally accepted conventions, and all other rules, regulations and requirements of the FDA and other applicable Regulatory

Authorities; (b) the Foreign Corrupt Practices Act of 1977, as amended, or any comparable laws in any country; and (c) all export control laws.

1.83 "**Licensed Antibody**" means a Profit-Share Antibody or a Royalty-Bearing Antibody.

1.84 "**LICR**" means the Ludwig Institute for Cancer Research Ltd.

1.85 "**LICR Agreement**" means that certain License Agreement dated December 5, 2014 between 4-AB and LICR, as may be amended in accordance with this Agreement.

1.86 "**Major EU Countries**" means **[**]**.

1.87 **[**]**.

1.88 "**Manufacture**" or "**Manufacturing**" means, as applicable, all activities and operations associated with the production, manufacture, supply, receipt, processing, filling, finishing, inspections, testing, packaging, labeling, shipping, warehousing, storage and handling of a Product, including: cell line development; process and formulation development; process validation; stability and release testing; manufacturing scale-up; pre-clinical, clinical and commercial manufacture and supply; qualification and validation of Third Party contract manufacturers, scale up, process and equipment validation, and initial manufacturing licenses, approvals and inspections; analytical development and product characterization; quality assurance and quality control development; testing and release; packaging development and final packaging and labeling; shipping configurations and shipping studies; and overseeing the conduct of any of the foregoing.

1.89 "**Manufacturing Costs**" means, with respect to a Product, the FTE Costs and Out-of-Pocket Costs incurred by either Party or any of their respective Affiliates in Manufacturing such Product, in accordance with this Agreement and consistent with the applicable Development Plan or, if applicable, the Commercialization Plan, including: (a) to the extent that such Product or its corresponding Licensed Antibody is Manufactured by a Third Party manufacturer, the Out-of-Pocket Costs incurred by a Party or its Affiliates to the Third Party manufacturer for the Manufacture and supply (including packaging and labeling) thereof, determined in accordance with the books and records of such Party or its Affiliates maintained in accordance with Accounting Standards; and (b) to the extent that such Product or its corresponding Licensed Antibody is Manufactured by a Party or its Affiliates, direct material costs and FTE Costs attributable to the Manufacture of such Product or its corresponding Licensed Antibody (excluding the cost of general corporate overhead and administrative personnel), determined in accordance with the books and records of such Party or its Affiliates maintained in accordance with Accounting Standards.

1.90 "**Marketing and Education Expense**" means, with respect to a Profit-Share Product, Out-of-Pocket Costs (excluding corporate and administrative overhead and all internal FTE Costs) that are specifically identifiable and allocable to the advertising, promotion and marketing of such Profit-Share Product consistent with the applicable Commercialization Plan,

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and related professional education in the Field (to the extent not performed by sales representatives), including such Out-Of Pocket Costs for (i) promotional/educational materials, (ii) reimbursement and patient assistance programs and health outcomes programs, (iii) development of information and data specifically identifiable for national accounts, managed care organizations and group purchasing organizations of such Profit-Share Product consistent with the Commercialization Plan, (iv) development of competitive intelligence, (v) branding expenses, (vi) packaging and labeling expenses, (vii) advertisements appearing in journals, newspapers, magazines or other media, including direct mail and electronic media, (viii) external market research, (ix) the Profit-Share Product-specific public relations programs, (x) sales operations and reimbursement services, and (xi) training programs and materials; *provided, however*, that such expenses shall exclude Indirect Selling Expenses and Medical Affairs Costs.

1.91 "**Medical Affairs Activities**" means, with respect to a Product, activities designed to ensure or improve appropriate medical use of, conduct medical education of, or further research regarding, such Product in the Territory, including, with respect to such Product: (a) conducting service based medical activities including providing input and assistance with consultancy meetings, recommending investigators for Clinical Trials and providing input in the design of such trials and other research related activities, and delivering non-promotional communications and conduct non-promotional activities including presenting new clinical trial data and other scientific information; (b) grants to support continuing medical education, symposia, or Third Party research specifically related to such Product in the Territory; (c) development, publication and dissemination of Publications relating to such Product and relevant disease states in the Territory; (d) medical information services provided in response to inquiries communicated via sales representatives or received by letter, phone call or email; (e) conducting advisory board meetings or other consultant programs; (f) support of investigator-initiated Clinical Trials; (g) managing relationships with cooperative groups, physician/hospital networks and advocacy groups; (h) establishing and implementing risk, evaluation and mitigation strategies; and (i) Phase 4 Clinical Trials.

1.92 "**Medical Affairs Costs**" means, with respect to a Product, FTE Costs and Out-of-Pocket Costs incurred in accordance with this Agreement and consistent with the applicable Development Plan or Commercialization Plan that are specifically identifiable and allocable to Medical Affairs Activities with respect to such Product in the Field.

1.93 "**MHLW**" means the Japanese Ministry of Health, Labor and Welfare, or a successor agency thereto.

1.94 "**MSKCC**" means the Memorial Sloan-Kettering Cancer Center.

1.95 "**Named Target**" means, as applicable, GITR, LAG-3, OX-40, TIM-3 or the Target as to which an Assumed Project is directed.

1.96 "**Net Sales**" means, with respect to any Product, the gross amount invoiced by Incyte and Incyte Related Parties on sales or other dispositions of such Product, and with respect to any Terminated Product, the gross amount invoiced by Agenus and its Affiliates, licensees and sublicensees on sales or other dispositions of such Terminated Product, as applicable, to Third

Parties, or otherwise directly or indirectly paid to or earned by Incyte or an Incyte Related Party with respect to the sale of such Product, or Agenus and its Affiliates and sublicensees with respect to the sale of such Terminated Product, in each case less the following:

(a) trade, cash and/or quantity discounts not already reflected in the amount invoiced, to the extent related to the gross amount invoiced;

(b) allowances and adjustments credited or payable, including credit for spoiled, damaged, outdated, recalled and returned Product or Terminated Product, to the extent related to the gross amount invoiced and substantiated by reasonable documentation;

(c) freight, insurance and other transportation charges incurred in shipping such Product or Terminated Product to Third Parties, to the extent identified as such in the invoice to the Third Party, to the extent included in the gross amount invoiced;

(d) amounts repaid or credited by reason of rejections, defects, recalls or returns or because of chargebacks, refunds, rebates (including wholesaler inventory management fees, retroactive price reductions, commissions, discounts or billing errors, and any other allowances which effectively reduce the net selling price);

(e) all tariffs, duties, excises, sales taxes, or other taxes (including value-added tax) and custom duties imposed on such Product or Terminated Product, in each case to the extent invoiced to customers or otherwise included within gross amounts invoiced; and

(f) other similar and customary deductions which are in accordance with the applicable Accounting Standards.

Net Sales will not include sales between or among Incyte and Incyte Related Parties, or Agenus and its Affiliates or sublicensees, as applicable; *provided, however*, that any resale to Third Parties shall be included in Net Sales.

Net Sales shall be calculated in accordance with Accounting Standards. In the case of any sale or other disposal for value, such as barter or counter-trade, of a Product or Terminated Product, or part thereof, other than in an arm's length transaction exclusively for cash, Net Sales shall be calculated as above on the value of the non-cash consideration received or the fair market price (if higher) of such Product or Terminated Product in the country of sale or disposal, as determined in accordance with Accounting Standards. Donated Product or Terminated Product in reasonable quantities will be excluded from Net Sales.

1.97 "**North America**" means the United States of America, Canada and Mexico and their respective territories and possessions.

1.98 "**Oncology Field**" means all oncology Indications as defined in subsections 140 — 239 (Neoplasms) of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM), including all hematologic malignancies, solid tumors and

myeloproliferative diseases (including myelofibrosis, polycythemia rubra vera and essential thrombocythemia) as listed in ICD-9-CM.

1.99 "**Out-of-Pocket Costs**" means, with respect to specified activities hereunder, direct expenses paid or payable by either Party or its Affiliates to Third Parties (other than employees of such Party or its Affiliates) that are specifically identifiable and incurred to conduct such activities for Products, and have been recorded in accordance with Accounting Standards.

1.100 "**OX-40**" means the member of the tumor necrosis factor superfamily of receptors that is otherwise known as CD-134.

1.101 "**OX-40 Antibody**" means an Antibody that Interacts with OX-40 that is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term, or arises out of the OX-40 Project.

1.102 "**OX-40 Project**" means the project conducted under this Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with OX-40.

1.103 "**Patent and Trademark Costs**" means, with respect to a Product, FTE Costs and Out-of-Pocket Costs incurred by either Party or its Affiliates in connection with (a) the Prosecution of Agenus Patent Rights, Incyte Program Patent Rights, or Joint Patent Rights that Cover such Product in the Field in the Territory, reasonably allocated to such Products in the Field if such Patent Rights Cover products other than Products or Indications outside of the Field; (b) conducting patentability, landscape and freedom to operate analyses (including preparing opinions of invalidity or non-infringement) with respect to Inventions and Patent Rights of potential relevance to such Product; (c) when mutually agreed by internal or external patent counsel to the Parties with notice to the JSC, conducting opposition, invalidation, reexamination, reissue, post-grant review, *inter partes* review, or other similar administrative proceeding, administrative appeal thereof, or litigation thereof with respect to Third Party Patent Rights of potential relevance to such Product; (d) enforcing the Agenus Patent Rights, Incyte Program Patent Rights and Joint Patent Rights Covering such Product in the Field in the Territory in accordance with this Agreement; (e) defending Third Party Infringement Claims and Invalidity Claims with respect to the Agenus Patent Rights, Incyte Program Patent Rights and Joint Patent Rights Covering such Product in the Field in the Territory; and (f) establishing, maintaining and enforcing Product-specific trademarks in the Territory. Patent and Trademark Costs shall include the foregoing activities as they pertain to Bullpen Targets if and to the extent mutually agreed by internal or external patent counsel to the Parties with notice to the JSC.

1.104 "**Patent Rights**" means United States and non-U.S. patents, patent applications and/or provisional patent applications, utility models and utility model applications, design patents or registered industrial designs and design applications or applications for registration of industrial designs, and all substitutions, divisionals, continuations, continuation-in-part applications, continued prosecution applications, reissues, reexaminations and extensions thereof.

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1.105 "**Patent Term Extension**" means any patent term extension under 35 U.S.C. §156 or any non-U.S. counterpart of the foregoing, including supplemental protection certificates.

1.106 "**PD-1**" means programmed cell death protein 1.

1.107 "**PD-1 Antibody**" means an Antibody that Interacts with PD-1 that is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates as of the Effective Date or arises out of an internal discovery project conducted by Agenus or, subject to Section 12.3(b)(ii) any of its Affiliates during the period beginning on the Effective Date and ending **[**]** thereafter.

1.108 "**Permitted Subcontractor**" means an Affiliate or a Third Party to which a Party may subcontract portions of the activities allocated to it under a Development Plan or Commercialization Plan in accordance with the terms of this Agreement.

1.109 "**Person**" means any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, association or organization or other legal entity.

1.110 "**Phase 1 Clinical Trial**" means a study in humans which provides for the first introduction into humans of a product, conducted in healthy volunteers or patients to obtain information on product safety, tolerability, pharmacological activity or pharmacokinetics, as more fully defined in 21 C.F.R. §312.21(a) (or the non-United States equivalent thereof).

1.111 "**Phase 2 Clinical Trial**" means a study in humans of the safety, dose ranging and efficacy of a product, which is prospectively designed to generate sufficient data (if successful) to commence pivotal clinical trials, as further defined in 21 C.F.R. §312.21(b) (or the non-United States equivalent thereof).

1.112 "**Phase 3 Clinical Trial**" means a controlled study in humans of the efficacy and safety of a product, which is prospectively designed to demonstrate statistically whether such product is effective and safe for use in a particular Indication in a manner sufficient to file a BLA to obtain regulatory approval to market the product, as further defined in 21 C.F.R. §312.21(c) (or the non-United States equivalent thereof).

1.113 "**Phase 4 Clinical Trial**" means a human clinical trial which is conducted on a product after Regulatory Approval of the product has been obtained from an appropriate Regulatory Authority, and includes (a) trials conducted voluntarily for enhancing marketing or scientific knowledge of an approved Indication or (b) trials conducted after Regulatory Approval due to request or requirement of a Regulatory Authority or as a condition of a previously granted Regulatory Approval.

1.114 "**Pivotal Clinical Trial**" means (a) a Phase 2 Clinical Trial that is prospectively designed to generate sufficient data (if successful) to file for accelerated approval of a BLA or (b) a Phase 3 Clinical Trial.

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1.115 "**Prior Confidentiality Agreement**" means the Confidentiality Agreement between Incyte and Agenus US, dated May 13, 2014, as amended on August 12, 2014.

1.116 "**Product Liability Costs**" means, with respect to a Product, FTE Costs and Out-of-Pocket Costs incurred by either Party or its Affiliates associated with (a) any recall of such Product in the Field in the Territory, including the cost of any investigations or corrective actions with respect thereto, and (b) any Excess Product Liability Costs to the extent set forth in Section 9.3.

1.117 "**Product**" **or** "**Products**" means, collectively, Profit-Share Products and Royalty-Bearing Products. For clarity, Products includes Combination Products.

1.118 "**Profit-or-Loss**" means, on a Profit-Share Product-by-Profit-Share Product basis with respect to a Calendar Quarter: (a) Net Sales of such Profit-Share Product in the Field in the Territory by Incyte and Incyte Related Parties, plus (b) Profit-Share Product Proceeds, minus (c) Allowable Expenses, to the extent such deductions have not already or otherwise been deducted, and determined from the books and records of the Parties and their respective Affiliates and Permitted Subcontractors, in accordance with Accounting Standards. For purposes of clarity, it is understood that (A) there shall be no double-counting of expenses within the definition of Profit-or-Loss and (B) the Profit-or-Loss shall be calculated and payable in accordance with Section 7.3 even if there are no Net Sales and prior to the First Commercial Sale.

1.119 "**Profit-Share Antibodies**" means GITR Antibodies, OX-40 Antibodies and Assumed Project Antibodies arising out of an Assumed Project designated by Agenus as a Profit-Share Project pursuant to Section 4.5(b)(i).

1.120 "**Profit-Share Product**" means any therapeutic preparation that contains one or more Profit-Share Antibodies; *provided, however*, that prior to the commencement of Development of any therapeutic preparation that contains both a Profit-Share Antibody and a Royalty-Bearing Antibody, the Parties (through the JSC) shall discuss in good faith and agree on the appropriate financial arrangements relating to such therapeutic preparation, which could include agreement upon an allocation of Allowable Expenses and Profit-and-Loss between the Parties with respect thereto.

1.121 "**Profit-Share Projects**" means the GITR Project, the OX-40 Project, and each Assumed Project designated by Agenus as a Profit-Share Project pursuant to Section 4.5(b)(i).

1.122 "**Profit-Share Product Proceeds**" means, with respect to a Profit-Share Product, any proceeds received by Incyte or its Affiliates from Third Parties with respect to the Development, Manufacture or Commercialization of such Profit-Share Product in the Field and in the Territory, including proceeds attributable to a grant of a license or sublicense, or a grant of distribution rights, to permitted sublicensees and distributors under this Agreement, to Develop, Manufacture or Commercialize such Profit-Share Product (or, if rights in addition to such rights to such Profit-Share Product are granted to such Third Party, then reasonably allocated to the rights granted to such Third Party with respect to such Profit-Share Product), but excluding:

(a) amounts received by Incyte or any of its Affiliates as payments for their actual reasonably allocated direct costs (including FTE Costs and Out-of-Pocket Costs) to perform Development, Manufacturing or Commercialization activities undertaken by Incyte or its Affiliates for, or in collaboration with, such Third Party with respect to such Profit-Share Product, to the extent such costs have not been included in Allowable Expenses;

(b) amounts received by Incyte or any of its Affiliates from such Third Party as the purchase price for Incyte's or any of its Affiliates' debt or equity securities, except that amounts which exceed the fair market value of such debt or equity securities shall not be so excluded to the extent otherwise falling within this definition;

(c) those Patent and Trademark Costs paid by Incyte or its Affiliates, and reimbursed by such Third Party, with respect to such Profit-Share Product or, if incurred with respect to multiple Profit-Share Products and/or other products, then reasonably allocated to the relevant Profit-Share Product, to the extent such costs have not been included in Allowable Expenses; and

(d) amounts received by Incyte as reimbursement for costs borne solely by Incyte, with respect to Third Party claims for which the Third Party is obligated to indemnify Incyte.

1.123 "**Program**" means the program to Develop, Manufacture and Commercialize Products in the Field and the Territory under this Agreement.

1.124 "**Program Right**" means the right to Develop, Manufacture and Commercialize Products pursuant to this Agreement.

1.125 "**Projects**" means, collectively, the GITR Project, the LAG-3 Project, the OX-40 Project, the TIM-3 Project, and all Assumed Projects.

1.126 "**Prosecution**" or "**Prosecute**" means, with respect to a particular Patent Right, all activities associated with the preparation, filing, prosecution and maintenance of such Patent Right (and patent application(s) derived from such Patent Right), as well as re-examinations, reissues, applications for patent term adjustments and extensions, supplementary protection certificates and the like with respect to that Patent Right, together with the conduct of interference, opposition, invalidation, reexamination, reissue proceeding, post-grant review, *inter partes* review, derivation proceeding or other similar administrative proceeding or administrative appeal thereof, with respect to that Patent Right.

1.127 "**Publication**" means any publication in a scientific journal, any abstract to be presented to any scientific audience not subject to confidentiality obligations, any presentation at any scientific conference, including slides and texts of oral or other public presentations presented to a scientific audience not subject to confidentiality obligations, any other scientific presentation and any other oral, written or electronic disclosure directed to a scientific audience not subject to confidentiality obligations, in each case which pertains to a Product or the use of a Licensed Antibody or Product in the Field.

1.128 "**Regulatory Approval**" means, with respect to a Product, all approvals (including any applicable governmental price and reimbursement approvals), licenses, registrations, and authorizations of any federal, national, multinational, state, provincial or local Regulatory Authority, department, bureau and other governmental entity that are necessary for the marketing and sale of such Product in a country or group of countries.

1.129 "**Regulatory Authority**" means, with respect to a country, the regulatory authority or regulatory authorities of such country with authority over the testing, manufacture, use, storage, importation, promotion, marketing, pricing or sale of a biological product in such country.

1.130 "**Regulatory Costs**" means, with respect to a Product, FTE Costs and Out-of-Pocket Costs incurred by a Party or its Affiliates associated with the preparation and filing of INDs and BLAs, and the maintenance of Regulatory Approvals, for such Product in the Field, including such FTE Costs and Out-of-Pocket Costs which are (a) fees paid to Regulatory Authorities directly related to INDs, BLAs and Regulatory Approvals for such Product in the Field, (ii) costs of any Regulatory Interactions with respect to such Product in the Field, and (iii) costs to establish and maintain the Global Safety Database for such Product.

1.131 "**Regulatory Documentation**" means, with respect to a Product, all INDs, BLAs and other regulatory applications submitted to any Regulatory Authority, copies of Regulatory Approvals, orphan drug designations, "fast-track", "breakthrough" or similar designations, regulatory materials, drug dossiers, master files (including Drug Master Files, as defined in 21 C.F.R. §314.420 and any non-United States equivalents), and any other reports, records, regulatory correspondence and other materials relating to Regulatory Approval of such Product, or required to manufacture, distribute or sell such Product, including any information that relates to pharmacology, toxicology, chemistry, manufacturing and controls data, batch records, safety and efficacy, and any safety database required to be maintained for Regulatory Authorities.

1.132 "**Regulatory Exclusivity**" means, with respect to a Product, that Third Parties are prevented from legally Developing, Manufacturing or Commercializing a product that could compete with such Product in a country, either through data exclusivity rights, orphan drug designation, or such other rights conferred by a Regulatory Authority in such country, other than through Patent Rights.

1.133 "**Regulatory Interactions**" means (a) all regulatory actions, communications and filings with, and submissions to, all Regulatory Authorities with respect to a Product, and (b) interfacing, corresponding and meeting with the Regulatory Authorities with respect to a Product.

1.134 "**Retrocyte Display Technology**" means (a) the Patent Rights Controlled by Agenus or its Affiliates that Cover, or Know-How Controlled by Agenus or its Affiliates that relate to, the discovery and optimization of Antibodies and other molecules against Targets of interest, including Patent Rights arising from PCT Application Publication Nos. WO03/068819, WO09/109368 and WO11/061336, (b) platforms embodying components, component steps or other portions of any of the foregoing, and (c) any Retrocyte Display Improvement, but, for

clarity excluding any Know-How that is specific to any Licensed Antibody(ies) or Product(s) and any Patent Right that Covers any Licensed Antibody(ies) or Product(s).

1.135 "**Retrocyte Display Improvement**" means any Invention constituting an improvement, enhancement, modification, or adaptation of the Retrocyte Display Technology, and all Patent Rights Covering any such Invention, and all Know-How that is specific to, and constitutes an improvement, enhancement, modification, or adaptation of, the Retrocyte Display Technology.

1.136 "**Royalty-Bearing Antibodies**" means TIM-3 Antibodies, LAG-3 Antibodies and Assumed Project Antibodies arising out of an Assumed Project designated by Agenus as a Royalty-Bearing Project pursuant to Section 4.5(b)(i).

1.137 "**Royalty-Bearing Product**" means, subject to Section 1.120, any therapeutic preparation that contains one or more Royalty-Bearing Antibodies.

1.138 "**Royalty-Bearing Projects**" means the TIM-3 Project, the LAG-3 Project and each Assumed Project designated by Agenus as a Royalty-Bearing Project pursuant to Section 4.5(b)(i).

1.139 "**Target**" means a protein or its corresponding DNA or RNA sequence.

1.140 "**Territory**" means the entire world.

1.141 "**Third Party**" means any Person other than a Party or its Affiliates.

1.142 "**Third Party IP Costs**" means, with respect to a Profit-Share Product, royalties, license fees or other payments, as applicable, that are (a) reasonably allocable to, and necessary or useful for, the Development, Manufacture or Commercialization of such Product in the Field in the Territory, (b) incurred by either Party or its Affiliates to license Intellectual Property Rights from a Third Party, and (c) are first licensed by such Party or its Affiliate after the Effective Date.

1.143 "**TIM-3**" means T cell immunoglobulin mucin-3.

1.144 "**TIM-3 Antibody**" means an Antibody that Interacts with TIM-3 that is Controlled by Agenus or, subject to Section 12.3(b)(ii), any of its Affiliates, as of the Execution Date or during the Term, or arises out of the TIM-3 Project.

1.145 "**TIM-3 Project**" means the project conducted under this Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with TIM-3.

1.146 "**Vaccine**" means an immunogen, the administration of which is intended to stimulate the immune system to result in the prevention, amelioration or therapy of any Indication.

1.147 "**Valid Claim**" means (a) a claim of an issued patent that has not expired or been abandoned, or been revoked, held invalid or unenforceable by a patent office, court or other

governmental agency of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period); or (b) a claim within a patent application that was filed in good faith and which has not been abandoned or finally disallowed without the possibility of appeal or refiling of such application, *provided* that **[**].**

1.148 "**Voting Stock**" means securities of any class or series of a corporation, limited liability company, association or other entity, the holders of which are ordinarily, in the absence of contingencies, entitled to vote generally in matters put before the shareholders or members of such corporation, limited liability company, association or other entity, including the right to vote for the election of directors or members of an equivalent governing body.

1.149 **Additional Definitions**. Each of the following definitions is set forth in the section of this Agreement indicated below:

Definition	Section Number
4-AB	Introduction
Abandoned Commercialization	5.3
Abandoned Development	4.3
Agreement	Introduction
Agenus	Introduction
Agenus Indemnified Parties	9.1(a)
Agenus US	Introduction
Authorized Generic Version	1.13
Bankruptcy Code	2.4(a)
Biosimilar Notice	6.3(a)
Breaching Party	8.2(b)
Co-Development Option	4.4
Co-Development Quarterly Payment	4.4(b)
Co-Development Royalty	4.4(c)
Commercialization Plan	5.1(b)
Co-Promotion Agreement	5.4(b)
Co-Promotion Option	5.4(a)
Development Plan	4.1(b)
Disclosing Party	11.1(a)
Discovery Option	4.5(b)(iii)
Discovery Target	4.5(a)
Excess Product Liability Costs	9.3
Execution Date	Introduction
Expert	Schedule 12.2
Global Safety Database	4.7(c)
Incyte	Introduction
Incyte Indemnified Parties	9.2(a)

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Incyte Other Invention	6.1(a)
Incyte Program Invention	6.1(a)
Initial Discovery Period	1.36
Insolvency Proceeding	2.4(b)
Invalidity Claim	6.5
JAMS	Schedule 12.2
Joint Inventions	6.1(a)
Joint Patent Rights	6.1(a)
JSC	3.1(a)
Licensed IP Infringement	6.3(a)
Losses	9.1(a)
Negotiation Notice	2.3(d)
Negotiation Period	2.3(d)
Non-Breaching Party	8.2(b)
Option Period	4.5(b)(iii)(B)
Option Product	4.5(b)(iii)(F)
Paragraph IV Notice	6.3(a)
Parent	Introduction
Party; Parties	Introduction
Payee	7.9
Payment	7.9
Payor	7.9
PD-1 Negotiation Notice	2.8
PD-1 Negotiation Period	2.8
PD-1 Territory	2.8
PD-1 Trigger Period	2.8
Project Management Team	3.2
Recipient	11.1(a)
ROFN Trigger Period	2.3(d)
Royalty Term	7.6(b)(i)
SEC	11.2(b)
Severed Clause	12.11
[**]	7.5(b)(ii)
Stock Purchase Agreement	10.5(c)
Subcommittee	3.2
Term	8.1
Terminated Product	8.3(a)
Terminated Project	8.3(a)
Third Party Infringement Claim	6.4
Triggering Information	4.4(a)
[**]	7.5(b)(ii)
UCC	5.4(b)(iii)

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Voting Securities	10.5(a)(i)
Withhold	7.9
Withholding Tax	7.9

ARTICLE II: LICENSES

2.1 **Rights Granted by Agenus**. Subject to the terms of this Agreement and, as applicable with respect to the relevant Agenus IP, any retained rights of LICR and MSKCC under the LICR Agreement, Agenus hereby grants Incyte, during the Term, an exclusive, royalty-bearing, non-transferable (except in accordance with Section 12.3) license or sublicense, as applicable, under the Agenus IP to Develop, Manufacture and Commercialize Licensed Antibodies and Products in the Territory and in the Field.

2.2 **Rights Granted by Incyte**. Subject to the terms of this Agreement, Incyte hereby grants to Agenus:

(a) a non-exclusive, royalty-free, non-transferable (except in accordance with Section 12.3) license or sublicense, as applicable, under the Incyte IP, solely to the extent necessary to permit Agenus and its Affiliates to exercise their respective rights and to perform their respective obligations under this Agreement; and

(b) a non-exclusive, fully paid-up, sublicensable license or sublicense, as applicable, under the Incyte Program Patent Rights and the Incyte Program Know-How to Develop, Manufacture and Commercialize Licensed Antibodies and Products (excluding Combination Products) in the Territory outside of the Field.

2.3 **Sublicense Rights**.

(a) Each Party shall have the right to grant sublicenses under the licenses granted to the other Party under Sections 2.1 and 2.2 to its Affiliates and, subject to Sections 2.3(b)-(d), as applicable, to Third Parties.

(b) Incyte and its Affiliates may freely sublicense the Agenus IP to Third Parties, directly or indirectly, through multiple tiers, except that any sublicense under Agenus IP (i) licensed to Agenus by LICR pursuant to the LICR Agreement shall require the prior written consent of Agenus (such consent not to be unreasonably withheld, delayed or conditioned), and (ii) Covering the Commercialization of a Product in the Field shall be subject to the provisions of subsection (d) below. Incyte shall provide Agenus with a copy of any such sublicense agreement within **[**]** after the execution thereof. Each sublicense of the Agenus IP shall be consistent with the terms and conditions of this Agreement and, if applicable, the LICR Agreement as set forth in Section 2.6 below, and Incyte shall guarantee the performance of its Affiliates and permitted sublicensees with respect to any sublicense granted pursuant to this Section 2.3(b).

(c) Agenus may freely sublicense the rights granted to Agenus under the Incyte Program Patent Rights and the Incyte Program Know-How outside of the Field to Third Parties, subject to the provisions of Section 2.7. Agenus shall provide Incyte with a copy of any

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such sublicense agreement within **[**]** after the execution thereof. Each sublicense of the Incyte Program Patent Rights or Incyte Program Know-How outside of the Field shall be consistent with the terms and conditions of this Agreement, and Agenus shall guarantee the performance of its permitted sublicensees with respect to any sublicense granted pursuant to this Section 2.3(c).

(d) In the event that Incyte desires to commence negotiations with any Third Party (other than Permitted Subcontractors or Third Party distributors) to license and sublicense all or a portion of Incyte's Program Rights to Commercialize a Product in the Field, Incyte shall promptly notify Agenus of its intent to enter into such a transaction, identifying the specific Product that will be the subject of such transaction. Within **[**]** after receipt of such notification (the "**ROFN Trigger Period**"), Agenus shall notify Incyte in writing either that (i) Agenus is interested in negotiating an agreement with respect to such Program Rights (the "**Negotiation Notice**") or (ii) Agenus has no interest and therefore waives its right of first negotiation with respect to such Program Rights. If Agenus notifies Incyte in writing within such **[**]** period that Agenus desires to negotiate an agreement with respect to such Program Rights, the Parties shall negotiate in good faith for up to **[**]** from the date of such notification (the "**Negotiation Period**"), or such longer period as agreed between the Parties, regarding the terms pursuant to which the Parties would enter into a transaction with respect to such Program Rights. Failure by Agenus to give written notice of its interest or lack of interest in negotiating such agreement within **[**]** after receipt of written notice from Incyte as described in the first sentence of this Section 2.3(d) shall be deemed to constitute a waiver by Agenus of its right of first negotiation with respect to such Program Rights. If Agenus provided the Negotiation Notice within the ROFN Trigger Period, but Incyte and Agenus are unable to reach agreement during the Negotiation Period, Incyte may offer its Program Rights in the applicable Product to a Third Party; *provided, however*, that **[**]**.

2.4 **Section 365(n)**.

(a) All rights and licenses granted under or pursuant to any section of this Agreement, including all rights to sublicense, are, and shall otherwise be deemed to be, for purposes of Section 365(n) of Title 11 of the U.S. Code (the "**Bankruptcy Code**"), licenses of rights to "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code. The Parties shall retain and may fully exercise all of their respective rights and elections under the Bankruptcy Code. Each Party agrees that the other Party, to the extent that it is a licensee of such rights under this Agreement, shall retain and may fully exercise all of its rights and elections under the Bankruptcy Code, and that upon commencement of a bankruptcy proceeding by or against one Party under the Bankruptcy Code, the other Party shall be entitled to a complete duplicate of or complete access to (as such other Party deems appropriate), any such intellectual property and all embodiments of such intellectual property, *provided* that such other Party continues to fulfill its obligations as specified herein in full. Such intellectual property and all embodiments thereof shall be promptly delivered to the other Party (i) upon any such commencement of a bankruptcy proceeding upon written request therefor by the other Party, unless the Party subject to such bankruptcy proceeding elects to continue to perform all of its obligations under this Agreement or (ii) if not delivered under (i) above, upon the rejection of this Agreement by or on behalf of the Party subject to such bankruptcy proceeding, upon written

request therefor by the other Party. The foregoing is without prejudice to any rights that either Party may have arising under the Bankruptcy Code or other applicable law.

(b) Nothing in this Section 2.4 shall be deemed any admission that this Agreement is an executory contract or that this Agreement or any obligation hereunder is otherwise subject to rejection or disavowal in the bankruptcy, liquidation, reorganization, receivership, assignment for the benefit of creditors, administration, insolvency, or similar proceeding or circumstance (an "**Insolvency Proceeding**") of any Party, nor any admission that upon any such proceeding or circumstance involving a Party, or upon any such rejection or disavowal by a Party, the other Party (or any sublicensee thereof) would lose or not be able to enforce or benefit from any right hereunder (or under any applicable sublicense.

(c) Each of the Parties agrees and acknowledges, as a licensor of intellectual property under this Agreement, in entering this Agreement and granting the rights it respectively grants under this Agreement, and in its efforts to protect its own valuable intellectual property, it has relied on the particular skills and business qualities of the other Party as recipient of such rights. Such skills and business qualities include the expected future innovation of the other Party, and the particular market segments addressed by the other Party in its business. Each of the Parties further agrees and acknowledges that upon the occurrence of any Insolvency Proceeding, this Agreement is of the type described in Section 365(c)(1) and (e)(2) of the Bankruptcy Code, and under any other applicable Law, for such reasons.

2.5 **No Implied Licenses or Rights; Retained Rights**.

(a) **No Implied Licenses or Rights**. Except as expressly provided in Section 2.1 or elsewhere in this Agreement, all rights in and to the Agenus IP, and any other Patent Rights or Know-How of Agenus and its Affiliates, are hereby retained by Agenus and its Affiliates. Except as expressly provided in Section 2.2 or elsewhere in this Agreement, all rights in and to the Incyte IP, and any other Patent Rights or Know-How of Incyte and its Affiliates, are hereby retained by Incyte and its Affiliates. For the purposes of clarity, and notwithstanding any other provision of this Agreement, the licenses granted in Section 2.1 give Incyte no rights to utilize or exploit, (i) the Agenus IP, a Licensed Antibody or a Product outside of the Field, (ii) the Retrocyte Display Technology, Retrocyte Display Improvements, or any Patent Rights or Know-How Controlled by Agenus and its Affiliates Covering the foregoing, or (iii) Patent Rights or Know-How Controlled by Agenus and its Affiliates Covering a Vaccine (including the Prophage Series Vaccines), adjuvant (including the QS-21 Stimulon adjuvant) or heat shock protein technologies.

(b) **Retained Rights**. Notwithstanding the exclusive licenses granted to Incyte pursuant to Section 2.1, Agenus retains the right to practice under the Agenus IP (i) to exercise its rights and to perform (and to sublicense Third Parties to perform) its obligations under this Agreement and (ii) for all purposes outside of the Field, subject to the provisions of Section 2.7.

2.6 **LICR Agreement**. Incyte acknowledges and agrees that certain of the licenses hereunder are subject to the following terms and conditions of the LICR Agreement: (a) the reporting and record-keeping obligations with respect to sales of Products as provided in

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Sections 2.6 and 3.8 of the LICR Agreement, (b) indemnification under Section 5.4(a)(ii) of the LICR Agreement, and (iii) obligations of non-use of name as provided in Section 6.5 of the LICR Agreement. In the event of any conflict or inconsistency between any applicable provision of this Agreement and such provisions of the LICR Agreement, such provisions of the LICR Agreement shall prevail with respect to the relevant Agenus IP licensed to Agenus by LICR pursuant to the LICR Agreement, except to the extent such inconsistency results from a breach by Agenus of Section 10.6. For purposes of clarity, all financial obligations of Agenus under the LICR Agreement shall be the sole responsibility of Agenus.

2.7 **Non-Compete**.

(a) **[**]**, neither Agenus nor, subject to Section 12.3(b)(ii), its Affiliates shall Develop, Manufacture or Commercialize outside of the Field any Licensed Antibody or Product that is identified in, and is being Developed, Manufactured or Commercialized under, a Development Plan or Commercialization Plan hereunder.

(b) **[**]**, neither Incyte nor, subject to Section 12.3(b)(ii), its Affiliates shall Develop, Manufacture or Commercialize any Licensed Antibody or Product outside of the Field.

(c) **[**]**, neither Party nor, subject to Section 12.3(b)(ii), any of its Affiliates, shall independently, or with a Third Party, conduct Development of, Manufacture or Commercialize in the Territory any Antibody that Interacts with a Named Target (including, for clarity, any Licensed Antibody) or a Bullpen Target, or a therapeutic preparation containing such an Antibody, in the Field other than as part of the Program, except (i) if the prior written consent of the other Party has been obtained, (ii) in the case of a Party, for any Antibody that Interacts with a Bullpen Target that is the subject of a Discovery Project that the other Party has declined to include in the Program as an Assumed Project pursuant to Section 4.5(b)(ii), so long as such Antibody does not Interact with a Named Target or another Bullpen Target, (iii) each Party may conduct preclinical or other nonclinical research (including screening and comparative pharmacology) using an Antibody obtained from a Third Party or owned by a Third Party in order to help advance and position the efforts of the Parties in the Program, and (iv) each Party may screen any Antibody for purposes of determining that such Antibody does not Interact with a Named Target or a Bullpen Target. For clarity, if the JSC elects to remove a Target from the list of Bullpen Targets, any Antibody that Interacts with such Bullpen Target shall no longer be subject to this Section 2.7(c) but only if such Antibody does not Interact with a Named Target or another Bullpen Target.

(d) During the period beginning on the Effective Date and ending **[**]** thereafter or, if later, the expiration of the PD-1 Negotiation Period, neither Incyte nor, subject to Section 12.3(b)(ii), any of its Affiliates, shall independently, or with a Third Party, conduct Development of, Manufacture or Commercialize in the Territory any Antibody that Interacts with PD-1, or a therapeutic preparation containing such an Antibody, in the Field except (i) if the prior written consent of Agenus has been obtained, and (ii) Incyte may screen any Antibody for purposes of determining that such Antibody does not Interact with PD-1.

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(e) In the event either Party or its Affiliate acquires control (as "control" is defined in Section 1.2) of any Third Party, the activities of such Third Party shall not constitute a breach of this Agreement; *provided* that (i) no later than **[**]** following consummation of the transaction in which such Party or its Affiliate acquires control of such Third Party, the acquiring Party or Affiliate takes appropriate action, through presentation of the applicable product to the other Party pursuant to Section 4.5, divestiture of assets, or otherwise, to cause such Party to come into compliance with the terms of this Agreement; (ii) during such **[**]** period, the acquiring Party or Affiliate keeps such acquired Third Party's activities with respect to the Antibodies and therapeutic preparations that would otherwise breach Sections 2.7(a), 2.7(b), 2.7(c) or 2.7(d) separate from the Development, Manufacturing and Commercialization programs for Licensed Antibodies and Products, and ensures that no Confidential Information is utilized in such activities; and (iii) the acquiring Party continues to meet its other obligations hereunder.

(f) In the event that a Party undergoes a Change in Control, then the research, development, manufacture or commercialization in the Field in the Territory of an Antibody that Interacts with a Named Target or a Bullpen Target, or a therapeutic preparation containing such an Antibody, that, as of the date of such Change in Control is being researched, developed, manufactured or commercialized by the assignee or acquirer of such Party, or any Person which, immediately prior to such Change in Control, is an Affiliate of such assignee or acquirer, shall not constitute a breach of this Agreement; *provided* that (i) such assignee or acquirer or Affiliate keeps such research, development, manufacturing or commercialization program for such other Antibody, and any products containing such an Antibody, separate from the Development, Manufacture and Commercialization programs for Licensed Antibodies and Products, and ensures that no Confidential Information is utilized in such program; and (ii) the acquired or assigning Party continues to meet its obligations hereunder.

2.8 **PD-1 Negotiation Right**. In the event that Agenus desires to commence negotiations with a Third Party with respect to the grant of commercialization rights in the Field for PD-1 Antibodies in North America and/or the European Union (the "**PD-1 Territory**") at any time during the period beginning on the Effective Date and ending **[**]** thereafter or if, during such period, Agenus desires to continue such negotiations which were begun on or after the Execution Date but before the Effective Date, Agenus shall promptly notify Incyte of its intent to enter into such a transaction. Within **[**]** after receipt of such notice (the "**PD-1 Trigger Period**"), Incyte shall notify Agenus in writing either that (i) Incyte is interested in negotiating an agreement with respect to such PD-1 Antibodies in the Field in all or a portion of the PD-1 Territory (the "**PD-1 Negotiation Notice**") or (ii) Incyte has no interest and therefore waives its right of first negotiation. If Incyte notifies Agenus in writing within the PD-1 Trigger Period that Incyte desires to negotiate an agreement, the Parties shall negotiate in good faith for up to **[**]** from the date of such notification (the "**PD-1 Negotiation Period**"), or such longer period as agreed between the Parties, regarding the terms pursuant to which the Parties would enter into a transaction with respect to such PD-1 Antibodies in the Field in the PD-1 Territory. Failure by Incyte to give written notice of its interest or lack of interest in negotiating such agreement within the PD-1 Trigger Period in all or a portion of the PD-1 Territory shall be deemed to constitute a waiver by Incyte of its right of first negotiation. If Incyte provided the PD-1 Negotiation Notice within the PD-1 Trigger Period, but Incyte and Agenus are unable to reach

agreement during the PD-1 Negotiation Period, Agenus may offer the PD-1 Antibody rights in the Field in the PD-1 Territory to a Third Party; *provided, however*, that **[**]** .

ARTICLE III: GOVERNANCE

3.1 **Joint Steering Committee**.

(c) **Establishment**. The Parties shall establish a joint steering committee ("**JSC**") within thirty (30) days after the Effective Date that will have the responsibility for the overall coordination and oversight of the Development, Manufacture and Commercialization of Licensed Antibodies and Products under this Agreement. As soon as practicable following the Effective Date (but in no event more than thirty (30) days following the Effective Date), each Party shall designate its initial three (3) representatives on the JSC. Each Party's representatives and any substitute for a representative shall be bound by the obligations of confidentiality set forth in Article XI. A representative from Incyte shall act as the chairperson of the JSC; *provided, however*, that following consummation of a Change in Control of Incyte, a representative from Agenus shall act as the chairperson of the JSC. The chairperson shall not have any greater authority than any other representative on the JSC, but shall be responsible for the following activities: (i) calling meetings of the JSC; (ii) preparing and issuing minutes of each such meeting within thirty (30) days thereafter; (iii) ensuring that any decision-making delegated to the JSC is carried out in accordance with Section 3.5; and (iv) preparing and circulating an agenda for the upcoming meeting; *provided* that the chairperson shall include any agenda items proposed by the other Party. Each Party shall be free to change its representatives on notice to the other Party or to send a substitute representative to any JSC meeting; *provided, however*, that each Party shall ensure that at all times during the existence of the JSC, its representatives on the JSC are appropriate in terms of expertise and seniority for the then-current stage of Development or Commercialization of the Products.

(d) **Responsibilities**. The JSC shall have responsibility for: (i) overseeing the initial transfer of information and designated activities between the Parties relating to the Development of Licensed Antibodies and Products; (ii) providing general oversight over the Development of Licensed Antibodies and Products, including the periodic review and approval of the Development Plans (and any material updates, amendments and modifications thereto) and the review and evaluation of the progress under the Development Plans; (iii) reviewing, amending and, subject to Sections 4.1(c) and 4.4(b), approving the Development budget for each Project; (iv) selecting Indications for Development of Products in the Field; (v) determining which of the Parties will be responsible for Regulatory Interactions with respect to a Product; (vi) reviewing the regulatory approach and filing strategy with respect to seeking and obtaining Regulatory Approval of Products in the Field in the Territory; (vii) determining which of the Parties will be responsible for selecting and monitoring the Manufacturing vendors and otherwise being responsible for Manufacturing activities with respect to Products; (viii) managing the list of Bullpen Targets, including adding and removing Targets from such list; (ix) discussing potential Discovery Projects; (x) developing a Publication plan for each Project and approving all Publications; (xi) providing general oversight over the Commercialization of Products, including the periodic review and approval of the Commercialization Plans for the Profit-Share Products (and any material updates, amendments and modifications thereto); (xii)

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reviewing, amending and, subject to Section 5.1(b), approving the Commercialization budget for Profit-Share Products; and (xiii) performing such other functions as expressly set forth in this Agreement or appropriate to further the purposes of this Agreement, as mutually agreed upon by the Parties in writing.

3.2 **Project Management Teams; Other Subcommittees**. The JSC shall establish one or more project management teams (each, a "**Project Management Team**") with one such Project Management Team being established for each Project unless otherwise agreed by the JSC (and, for clarity, the JSC may instead determine that there should be a single Project Management Team for the Program, or different Project Management Teams for early stage vs. late stage Development activities for all Projects, or any other approach approved by the JSC). The Project Management Teams shall have responsibility for coordinating, expediting and controlling the Development of Products to obtain Regulatory Approvals. Each Project Management Team will, with respect to the applicable Project (unless otherwise agreed by the JSC), (a) develop and recommend to the JSC updates to the Development Plan (including annual Development budgets), (b) facilitate the flow of information with respect to Development work being conducted for each Product in the Territory, and (c) discuss and cooperate regarding the conduct of such Development work. The JSC may establish and disband such other subcommittees as deemed necessary by the JSC (each, a "**Subcommittee**"). Each Project Management Team and Subcommittee shall consist of the same number of representatives designated by each Party, which number shall be mutually agreed by the Parties. For the avoidance of doubt, either Party may designate the same representatives to serve on multiple or all Project Management Teams or Subcommittees or on the JSC and any Project Management Team or Subcommittee. Each Party shall be free to change its representatives on notice to the other or to send a substitute representative to any Project Management Team or Subcommittee meeting; *provided, however*, that each Party shall ensure that at all times during the existence of any Project Management Team or Subcommittee, its representatives on such Project Management Team or Subcommittee are appropriate in terms of expertise and seniority for the then-current stage of Development of the applicable Products in the Field in the Territory. Each Party's representatives and any substitute for a representative shall be bound by the obligations of confidentiality set forth in Article XI. No Project Management Team or Subcommittee shall have the authority to bind the Parties hereunder and each Project Management Team or Subcommittee shall report to, and any decisions shall be made by, the JSC.

3.3 **Committee Meetings**. The JSC and each of the Project Management Teams and Subcommittees shall each hold at least one (1) meeting per Calendar Quarter at such times during such Calendar Quarter as the chairperson elects to do so. Except where a Party fails to appoint a member or members to the JSC or the Project Management Teams or Subcommittees or fails to participate in meetings of the JSC or the Project Management Teams or Subcommittees pursuant to Section 3.6, meetings of the JSC and the Project Management Teams or Subcommittees, respectively, shall be effective only if at least one (1) representative of each Party is present or participating. The JSC and each Project Management Team or Subcommittee may meet either (a) in person at either Party's facilities in the United States or at such locations as the Parties may otherwise agree or (b) by audio or video teleconference; *provided* that no less than one (1) JSC meeting during each Calendar Year shall be conducted in person. Other

representatives of each Party involved with the relevant Products may attend meetings as non-voting participants, subject to the confidentiality provisions set forth in Article XI. Additional meetings of the JSC, Project Management Teams or Subcommittees may also be held with the consent of each Party, and neither Party shall unreasonably withhold its consent to hold such additional meetings, or as required under this Agreement. Each Party shall be responsible for all of its own expenses incurred in connection with participating in all such meetings, and such expenses shall not be Development Costs or Allowable Expenses hereunder.

3.4 **Authority**. The JSC, each Project Management Team and any Subcommittee shall have only the powers assigned expressly to it in this Article III and elsewhere in this Agreement, and shall not have any power to amend, modify or waive compliance with this Agreement. In furtherance thereof, each Party shall retain the rights, powers and discretion granted to it under this Agreement and no such rights, powers or discretion shall be delegated or vested in the JSC or any Project Management Team or Subcommittee unless such delegation or vesting of rights is expressly provided for in this Agreement or the Parties expressly so agree in writing.

3.5 **Decisions**.

(a) **Initial Dispute Resolution Procedures**. Subject to the provisions of this Section 3.5, actions to be taken by the JSC and each of the Project Management Teams or Subcommittees shall be taken only following a unanimous vote, with each Party (through its representatives) having one (1) vote. If any Project Management Team or Subcommittee fails to reach consensus on a matter before it for decision for a period in excess of thirty (30) days, either Party shall have the right to refer the matter to the JSC.

(b) **Final Decision-Making**. If the JSC fails to reach unanimous agreement on a matter properly before it (in accordance with this Article III) for decision for a period in excess of thirty (30) days, the JSC representatives appointed by Incyte shall have the deciding vote; *provided, however*, that after the consummation of a Change in Control of Incyte, Agenus shall have the deciding vote with respect to all matters subject to approval by the JSC relating to the Profit-Share Projects. The Party that does not have the deciding vote shall have the right to appeal any such decision of the JSC to the Executive Officers for resolution pursuant to Section 12.2.

(c) **Limits on Decision-Making**. Notwithstanding the foregoing, a Party shall not exercise its right to finally resolve a dispute pursuant to Section 3.5(b): (i) in a manner that expands such Party's rights or excuses such Party from any of its obligations specifically enumerated under this Agreement; (ii) in a manner that negates any consent rights or other rights specifically allocated to the other Party under this Agreement; (iii) in a manner that imposes additional Development Costs or Allowable Expenses on the other Party which would not be reimbursed hereunder by the resolving Party, except as expressly provided in Sections 4.1(c), 4.4(b) or 5.1(b); (iv) to resolve any dispute regarding whether a milestone event set forth herein has been achieved; (v) to designate or undesignate a Target as a Bullpen Target; (vi) to determine whether an Antibody that binds specifically with more than one Target shall not be deemed to Interact with whichever such Target it binds to with greatest affinity; or (vii) in a manner that

would require a Party to perform any act that it reasonably believes to be inconsistent with any Law or any approval, order, policy or guidelines of a Regulatory Authority.

3.6 **Committee Membership**.

(g) **Appointment is a Right**. The appointment of members of the JSC and any Project Management Team or Subcommittees is a right of each Party and not an obligation and shall not be a "deliverable" as referenced in any existing authoritative accounting literature. Each Party shall be free to determine not to appoint members to the JSC or any Project Management Team or Subcommittee.

(h) **Consequence of Non-Appointment**. If a Party does not appoint members of the JSC or any Project Management Team or Subcommittee, it shall not be a breach of this Agreement, nor shall any consideration be required to be returned, and unless and until such members are appointed, the Party that has made the requisite appointments may unilaterally discharge the roles of the JSC or any Project Management Team or Subcommittee for which members were not appointed, *provided* that neither Party shall unilaterally discharge the roles of the JSC or any Project Management Team or Subcommittee as permitted under this Section 3.6(b) unless the other Party has not appointed any members within thirty (30) days after the first Party has completed its appointment of its members.

3.7 **Future Adjustments in Governance**. The Parties may at any time by mutual written agreement create or delete governance committees or subcommittees or make other modifications to the governance structures contemplated by this Agreement in order to promote the efficient operation of the Program.

ARTICLE IV: DEVELOPMENT

4.1 **Conduct of Development Activities**.

(e) **Generally**. Each Party shall use Commercially Reasonable Efforts to Develop and obtain Regulatory Approvals for Products in the Field and in the Territory as soon as practicable, all in accordance with the Development Plan for such Products. Without limiting the foregoing, the Parties shall use Commercially Reasonable Efforts to Develop at least **[**]** Licensed Antibody or Product arising out of each Project until the first BLA for a Product arising out of such Project has been filed. Without limiting the foregoing, the Parties shall also use Commercially Reasonable Efforts to cause the first IND for a Profit-Share Product or a Product containing a TIM-3 Antibody to be filed on or before **[**]**. The Parties agree to cooperate with each other in carrying out the Development Plan for each Product. Neither Party shall be required to undertake activities in furtherance of the Development Plan if the other Party is not meeting its funding, technology transfer or other commitments set forth in this Agreement that are reasonably necessary to have been performed in order for the such first Party to perform the relevant activities under the Development Plan.

(f) **Development Plans**. The Development activities with respect to each Project shall be conducted by the Parties under a development plan and associated budget (each, a "**Development Plan**") that will describe the proposed overall program of Development for

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each Product therein, including preclinical studies, toxicology, formulation, Clinical Trials and regulatory plans and other key elements necessary to obtain Regulatory Approvals for such Product. For each Project, the Development Plan shall encompass: (i) with respect to Products for which an IND filing has not occurred, a rolling one (1) Calendar Year period; and (ii) with respect to Products which an IND filing has occurred, a rolling three (3) Calendar Year period. Each Development Plan shall include a summary of estimated Development Costs expected during the Development process during the applicable time period and a detailed description of and budget for all Development activities proposed for each Calendar Year for each Product.

(g) **Initial and Updated Development Plan**. The JSC shall use reasonable efforts to agree upon an initial high-level Development Plan for each Project for the period beginning on the Effective Date and ending on December 31, 2015 within one hundred twenty (120) days of the Effective Date, *provided* that until such Development Plan has been adopted by the JSC, the Parties will work in good faith on the commencement of activities for each Project in accordance with the preliminary action plan and associated budget set forth in Schedule 4.1 and any Development costs incurred thereunder shall be considered Development Costs hereunder. Each Development Plan shall be updated at least annually by Incyte, in consultation with Agenus, and in each case submitted to the JSC for review and approval not later than October 31 of each Calendar Year during the Term. Each such updated Development Plan shall include, with respect to the relevant Project, and the Products therein, to the extent possible, (i) an outline of an overall Development plan for each Product that sets forth all major Development tasks remaining to be accomplished prior to submission of filings for Regulatory Approvals to the extent such tasks are known or can reasonably be ascertained, (ii) a detailed description of, and allocation of responsibility for, all proposed Development activities for the time period applicable to each such Product, and (iii) a detailed financial forecast containing a committed budget for the next Calendar Year and, solely for Products for which an IND has been filed, good faith estimates of the budget for the following two (2) Calendar Years. The members of each Project Management Team, on a Project-by-Project basis, shall actively consult with one another throughout the Term so as to adjust the specific work performed under the applicable Development Plan to conform to evolving developments in technology and the results of the Development work performed; *provided, however*, that, while minor adjustments to such Development Plan that do not result in budgeted funding exceeding **[**]** of the then-total amount budgeted in any Calendar Year for such Project may be made from time to time upon approval of the applicable Project Management Team, significant changes in the scope or direction of the work and any changes in budgeted funding exceeding **[**]** of the then-total amount budgeted in any Calendar Year for such Project must be approved by the JSC, in the absence of which approval the most recently approved Development Plan and budget shall remain in effect. Notwithstanding the foregoing, if the JSC does not approve the budget increase and such increase is (1) associated with an activity for which one of the Parties has primary responsibility as described in Section 4.1(d) below, the Party responsible for such activity may fund such activity itself and such expenditure shall not be a Development Cost or Allowable Expense, as applicable, hereunder, or (2) subject to clause (1), associated with an activity for which Agenus has primary responsibility as described in Section 4.1(d) below, Incyte may, in its sole discretion, fund such activity and such expenditure shall be considered an Allowable Expense if such expenditure relates to a Profit-Share Product or a Profit-Share Project but will only be included

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in the calculation of Profit-or-Loss under Section 7.3 after the First Commercial Sale in any country of such Profit-Share Product (or the first Profit-Share Product under such Profit-Share Project), or may be credited against any amounts payable by Incyte to Agenus pursuant to Section 7.6 with respect to the relevant Royalty-Bearing Product if such expenditure relates to such Royalty-Bearing Product or the relevant Royalty-Bearing Project; *provided, however*, that any such credit, together with any other offsets against royalties provided under this Agreement, shall not reduce the royalties payable to Agenus in any Calendar Quarter, as applicable, by more than **[**]** with any such credits not applied in any Calendar Quarter due to the foregoing limit to be carried forward to future Calendar Quarters).

(h) **Execution and Performance**. The Development Plan for each Project shall allocate between the Parties responsibility for each of the activities described therein. Each Party may subcontract portions of the activities allocated to it under a Development Plan to a Permitted Subcontractor, *provided* that (i) the subcontracting Party shall be responsible for the performance of its Permitted Subcontractors, and (ii) the subcontracting Party shall use reasonable efforts to have all Inventions discovered, made or conceived by each Permitted Subcontractor in the course of the performance of such activities assigned to the subcontracting Party in a manner consistent with Section 6.1 below and licensed to the other Party pursuant to Article II above. The Parties shall use, and shall cause their Permitted Subcontractors to use, Commercially Reasonable Efforts to conduct the activities described in each Development Plan and in so doing shall prepare and maintain proper records, including laboratory notebooks prepared and maintained in accordance with commercial scientific practice, detailing such activities. The Parties acknowledge and agree that each Development Plan shall presumptively allocate primary responsibility for (x) Antibody discovery, Antibody engineering, preclinical development and IND preparation to Agenus, (y) Clinical Trials, Medical Affairs Activities and Commercialization to Incyte, and (z) Manufacturing, including vendor selection and oversight, to Agenus unless and until the JSC determines, acting in good faith, that such allocation of responsibility would have a material adverse effect on the applicable Project. Notwithstanding the foregoing allocations of responsibility: (A) the Project Management Team will coordinate and supervise activities under each Development Plan, including ensuring that each Party is optimizing its allocation of resources in order to achieve success in the areas in which it is allocated primary responsibility and (B) all INDs shall be submitted by Incyte (or by Agenus on behalf of Incyte) unless the JSC allocates such responsibility to Agenus.

4.2 **Development Reports**. Each Project Management Team shall provide the JSC with a written report at least once each Calendar Quarter summarizing in reasonable detail the Parties' and their respective Affiliates' activities and progress related to the Development of Licensed Antibodies and Products in the Field in the Territory, including information concerning the conduct of non-clinical activities and Clinical Trials, applications for and securing of Regulatory Approvals, Medical Affairs Activities, and any future planned Development activities.

4.3 **Abandoned Development**. If, on a Project-by-Project basis, at any point in time prior to First Commercial Sale of a Product arising out of such Project, (i) no Development activities conducted in good faith with the intention of advancing at least one Product arising out

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of such Project (and not for the sole purpose of preserving rights hereunder), have occurred by any Party, its Affiliate or any licensee or sublicensee during at least the preceding **[**]**, (ii) no significant constraints on such Development imposed by a Regulatory Authority or a Force Majeure Event have been in effect at any time during such period, and (iii) Agenus has complied with its obligations under the relevant Development Plan during such time period, then Incyte shall be deemed to have abandoned Development of such Project ("**Abandoned Development**"). If Agenus reasonably concludes that Incyte has Abandoned Development, then Agenus shall deliver written notice to Incyte setting out the basis for Agenus' conclusion. If Incyte disagrees with Agenus' conclusion that Incyte has Abandoned Development, then the JSC will meet within thirty (30) days to discuss the disagreement. If the JSC cannot agree after such discussion, then the terms of Section 12.2 shall apply to resolve the dispute. If Incyte agrees, or the JSC or the dispute resolution mechanism of Section 12.2 concludes, that Incyte has Abandoned Development with respect to any Project, and (y) if Incyte has not previously been properly deemed to have Abandoned Development with respect to such Project, then within **[**]** thereafter, Incyte may either (1) **[**]**; *provided*, that, if Incyte fails to take such actions within such **[**]** period, then Agenus shall have the right to terminate this Agreement with respect to such Project in accordance with Section 8.2(d), or (2) provide Agenus with written notice that it chooses not to provide **[**]**, in which case Agenus shall have the right to terminate this Agreement with respect to such Project in accordance with Section 8.2(d).

4.4 **Co-Development Option**. On a Royalty-Bearing Product-by-Royalty-Bearing Product basis, Agenus shall have the option to co-fund Development of such Royalty-Bearing Product (the "**Co-Development Option**") as follows:

(d) Within **[**]** prior to the anticipated Initiation of the first Pivotal Clinical Trial of a Royalty-Bearing Product, Incyte shall notify Agenus of such anticipated initiation and shall provide Agenus with the following information: all material pre-clinical and clinical data and related analysis and regulatory information submitted to any Regulatory Authorities (to the extent such data and information was not provided by or on behalf of Agenus), and an update to the then-current Development Plan and associated budget (including an estimate of the overall costs of each Clinical Trial, annualized over the course of such Clinical Trial) with respect to such Royalty-Bearing Product (collectively, the "**Triggering Information**"). Agenus shall have the option to co-fund further Development of such Royalty-Bearing Product, exercisable by providing Incyte written notice within **[**]** after receipt of such information, in which case Agenus shall co-fund thirty percent (30%) of the Development Costs for such Royalty-Bearing Product incurred after the date on which such Pivotal Clinical Trial is Initiated.

(e) If Agenus timely exercises the Co-Development Option, then, within **[**]** following the end of each Calendar Quarter, Incyte shall prepare and deliver to Agenus a quarterly report detailing its Development Costs incurred during such period with respect to such Co-Developed Product and Agenus shall prepare and deliver to Incyte a quarterly report detailing its Development Costs incurred during such period with respect to such Co-Developed Product. Each Party shall submit any supporting information reasonably requested by the other Party related to such Development Costs included in its report within **[**]** after its receipt of such request. Incyte shall issue an invoice to Agenus so that Agenus shall have paid thirty percent

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(30%) of the aggregate Development Costs identified in such quarterly reports (the "**Co-Development Quarterly Payment**"); *provided* that such invoiced amount, together with all other Development Costs invoiced to Agenus for Development activities conducted by the Parties and their respective Affiliates during such Calendar Year, does not exceed o**[**]** of the total Development Costs budgeted in the Development Plan (except to the extent such excess is approved by the JSC pursuant to Section 4.1(c) hereof). Agenus shall pay all amounts payable under any such invoice within forty-five (45) days after its receipt of such invoice, subject to this Section 4.4(b).

(f) If Agenus exercises its Co-Development Option with respect to a Royalty-Bearing Product and pays all reasonably undisputed Co-Development Quarterly Payments, the royalty rate in Section 7.6(a)(iii) (the "**Co-Development Royalty**") shall apply on annual Net Sales of such Co-Developed Product.

(g) Agenus may, at any time upon **[**]** prior written notice to Incyte (or **[**]** prior written notice following consummation of a Change in Control of Incyte), elect to cease funding its portion of Development Costs with respect to a Co-Developed Product. In such an event, (i) such Product shall no longer be considered a Co-Developed Product and (ii) Incyte shall be obligated to pay the Co-Development Royalty on Net Sales of such Product, if any, only until such time as Agenus has received Incremental Royalties equal to **[**]** of the total amount of Development Costs paid by Agenus with respect to the Development of such Product after the exercise of the Co-Development Option under Section 4.4(b), after which time the royalty rate in Section 7.6(a)(i) shall apply.

4.5 **Addition of Projects to Program**.

(i) On an ongoing basis during the Discovery Period, either Party may provide notice to the other Party of its interest in collaborating on a Discovery Project, which notice shall include the identity of the Bullpen Target proposed to be pursued (the "**Discovery Target**"), a reasonably detailed description of the scientific and clinical rationale for such project, all material pre-clinical and clinical data related to Antibodies arising out of such proposed Discovery Project (if any), and a draft research and development plan and budget for the conduct of such Discovery Project. Interactions between the Parties regarding the identification, presentation, review and discussion of Discovery Projects and the selection of Discovery Projects for inclusion in the Program as Assumed Projects, shall be conducted by, or coordinated through, the JSC.

(j) Within **[**]** of receipt of such notice, the Party receiving such proposal shall provide written notice to the proposing Party of:

(i) its interest in including such Discovery Project in the Program, at which time (A) such Discovery Project shall immediately become an Assumed Project for purposes of this Agreement; (B) Agenus shall stipulate whether such Assumed Project will be a Profit-Share Project or Royalty-Bearing Project for purposes of this Agreement; (C) the JSC shall prepare a Development Plan and budget for such Assumed Project, based as appropriate on the research and development plan and budget included by the

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proposing Party in its notice and (D) the Bullpen Target to which such Discovery Project is directed shall cease to be a Bullpen Target and shall immediately become a Named Target for purposes of this Agreement;

(ii) its lack of interest in including such Discovery Project in the Program, in which case the non-proposing Party shall irrevocably waive any development, manufacturing and commercialization rights to such Discovery Project, and the proposing Party shall be free to develop, manufacture and commercialize the Antibodies and products arising out of such Discovery Project, itself or with its Affiliates or Third Parties, without any further obligation (financial or otherwise) to the other Party; or

(iii) where Agenus is the proposing Party, Incyte may indicate its interest in extending the period of time for making a decision regarding the inclusion of such Discovery Project in the Program (the "**Discovery Option**"), in which case:

(A) Incyte shall reimburse Agenus for **[**]** of the Development Costs incurred by Agenus and its Affiliates in the conduct of such Discovery Project in accordance with the research and development plan and budget previously presented (and updated by Agenus no later than October 31 of each Calendar Year thereafter, which updated plan and budget shall be consistent with the level of detail required for the Development Plans and Development budgets hereunder), within **[**]** following receipt by Incyte of an invoice therefor (invoiced on a quarterly basis), but only to the extent that such invoiced amount, together with all other Development Costs reimbursed by Incyte for Development activities conducted by Agenus and its Affiliates during such Calendar Year, does not exceed **[**]** of **[**]** of the total Development Costs budgeted in the research and development plan for the relevant Discovery Project;

(B) the Discovery Option may be exercised by Incyte upon written notice to Agenus, delivered at any time during the period beginning **[**]** following Incyte's receipt of notice that the first IND for a product arising out of such Discovery Project has been filed, and ending **[**]** following Incyte's receipt of notice that the first Phase 2 Clinical Trial of a product arising out of such Discovery Project has been Completed and receipt of the relevant data and analysis (the period extending through the earlier of such end date or the date on which Incyte exercises or terminates the Discovery Option, the "**Option Period**");

(C) from time to time during the Option Period, Incyte may reasonably request (*provided* that a request no more frequent than semi-annually shall not be considered unreasonable), and Agenus shall promptly provide Incyte, all material pre-clinical and clinical data and related analysis and regulatory information submitted to any Regulatory Authorities with respect to such product;

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(D) Incyte may, at any time upon written notice to Agenus, (1) exercise the Discovery Option to include such Discovery Project in the Program, whereupon the provisions of Section 4.5(b)(i) shall apply (and, Agenus shall have the right to exercise the Co-Development Option for such product at the time set forth in Section 4.4), or (2) indicate its lack of interest in including such Discovery Project in the Program, whereupon the provisions of Section 4.5(b)(ii) and 4.5(b)(iii)(G) shall apply;

(E) upon timely exercise of the Discovery Option by Incyte, Incyte shall pay to Agenus, no later than **[**]** following delivery of the notice under which the Discovery Option is exercised, a license fee in the amount set forth in the table below based on the stage of development of the most advanced product arising out of such Discovery Project at the time the Discovery Option is exercised:

Stage of Development of the Product Arising Out of the Discovery Project	**License Fee**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**

(F) If Incyte timely exercises the Discovery Option, and Agenus stipulates that such Discovery Project shall be a Royalty-Bearing Project, Incyte shall reimburse Agenus for fifty percent (50%) of the Development Costs incurred by Agenus and its Affiliates in the conduct of such Discovery Project (*i.e.*, with the result that Incyte would reimburse Agenus for one hundred percent (100%) of the Development Costs incurred by Agenus with respect thereto but only to the extent that such amount, together with all other Development Costs reimbursed by Incyte pursuant to Section 4.5(b)(iii)(A), does not exceed **[**]** of the total Development Costs budgeted in the research and development plan for the applicable Discovery Project) within **[**]** following delivery of the notice under which the Discovery Option is exercised. In addition, (1) if Incyte exercises the Discovery Option prior to the Completion of the first Phase 2 Clinical Trial for the product arising out of such Discovery Project and Agenus stipulates that such Discovery Project shall be a Royalty-Bearing Project, then Agenus shall be entitled to receive the royalty set forth in Section 7.6(a)(i) on Net Sales of all Products arising out of such Royalty-Bearing Project, and (2) if Incyte exercises the Discovery Option on or after Completion of the first Phase 2 Clinical Trial for the product arising out of such Discovery Project and Agenus stipulates that such Discovery Project shall be a Royalty-Bearing Project, then such product shall be considered an "**Option Product**" hereunder and Agenus shall be entitled to receive the royalty set forth in Section 7.6(a)(iv) on Net Sales of such Option Product; and

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(G) If Incyte does not exercise the Discovery Option, prior to the expiration of the Discovery Period or otherwise notifies Agenus of its lack of interest in including such Discovery Project in the Program, then, during the **[**]** period following the earlier of the expiration of the Discovery Period or delivery of such notice, Incyte and, subject to Section 12.3(b)(ii), its Affiliates shall not, independently, or with a Third Party, Develop, Manufacture or Commercialize in the Field in the Territory any Antibody that Interacts with the applicable Discovery Target, or any product containing such an Antibody.

(k) Notwithstanding anything contained in this Section 4.5 to the contrary, during each Calendar Year of the Discovery Period beginning with the Calendar Year commencing on January 1, 2016, the Parties shall consider in good faith the selection of at least **[**]** Discovery Projects for inclusion in the Program as Assumed Projects absent a compelling scientific or business reason to the contrary.

4.6 **Conversion of Profit-Share Product**. Agenus may, at any time **[**]** prior written notice to Incyte (or **[**]** prior written notice following consummation of a Change in Control of Incyte), elect to cease funding its share of Profit-or-Loss with respect to a Profit-Share Product and to convert the Program as to which such Profit-Share Product relates from a Profit-Share Program to a Royalty-Bearing Program effective as the end of the applicable notice period. In such an event, such Profit-Share Product shall become a Converted Product as of the end of the applicable notice period, and the royalty rate in Section 7.6(a)(v) shall apply on annual Net Sales of such Converted Product only until such time as Agenus has received Incremental Royalties equal to **[**]** of the total amount, if any, of any aggregate cumulative negative amount of Profit-or-Loss (*e.g.*, losses) incurred by Agenus with respect to the Converted Product under Section 7.3, after which time the royalty rate set forth in Section 7.6(a)(i) shall apply.

4.7 **Regulatory Matters**.

(a) **Responsibility**. Incyte will control all Regulatory Interactions with respect to each Product in accordance with the applicable Development Plan unless the JSC allocates such responsibility to Agenus (in which case references to Incyte in this Section 4.7 shall be deemed to refer to Agenus and vice versa). To facilitate the filing of an IND for each Product, the Project Management Team for the applicable Project shall agree upon an appropriate plan for transferring Regulatory Documentation from Agenus to Incyte, with Agenus' approval to any plan not to be unreasonably withheld. Agenus shall use Commercially Reasonable Efforts to transfer Regulatory Documentation in accordance with such plan. Incyte shall keep Agenus reasonably informed in connection with the preparation of all Regulatory Documentation, Regulatory Authority review of Regulatory Documentation, and Regulatory Approvals, annual reports, annual re-assessments, and variations and labeling, in each case with respect to such Product; *provided* that Incyte shall have the right to redact any information to the extent not related to such Product. Incyte shall respond within a reasonable time frame to all reasonable inquiries by Agenus with respect to any information provided pursuant to this Section 4.7(a). Any information disclosed pursuant to this Section 4.7(a) shall be the Confidential Information of Incyte, unless such information is already the Confidential Information of Agenus. Each Party

shall use Commercially Reasonable Efforts to conduct the activities described in this Section 4.7 for which such Party is responsible.

(b) **Regulatory Meetings and Correspondence**. Agenus shall have the right to have a senior, experienced employee reasonably acceptable to Incyte who is bound by the obligations of confidentiality set forth in Article XI, attend as an observer in material or scheduled face-to-face meetings, video conferences and any teleconferences, involving participation of personnel beyond regulatory experts, with the FDA, EMA, and MHLW, and shall be provided with advance access to Incyte's material documentation prepared for such meetings. Prior to submission of material correspondence to the applicable Regulatory Authority, Incyte shall, sufficiently in advance for Agenus to review and comment, provide Agenus any material correspondence with the FDA, EMA and MHLW related to such meetings. Incyte shall also provide Agenus with copies of any material correspondence with the FDA, EMA, and MHLW relating to Development of, or the process of obtaining Regulatory Approval for, Products, and respond within a reasonable time frame to all reasonable inquiries by Agenus with respect thereto.

(c) **Global Safety Database**. Following the Initiation of the first Phase 1 Clinical Trial of each Product, Incyte shall establish, hold and maintain a global safety database for such Product (each, a "**Global Safety Database**") into which it shall enter information on all serious adverse events and suspected reactions concerning the Product occurring anywhere in the world and reported to either of the Parties. Such database shall comply in all material respects with all Laws reasonably applicable to pharmacovigilance anywhere where the Products are being Developed or Commercialized.

4.8 **Manufacture and Supply**. Agenus shall have responsibility for selecting and monitoring the Manufacturing vendors, and for otherwise being responsible for Manufacturing activities, with respect to each Product in the Field and in the Territory in accordance with the applicable Development Plan. At any time that the JSC determines, acting in good faith, that some or all Manufacturing responsibilities for a particular Project should be transferred from Agenus to Incyte because the failure to transfer such responsibilities would be reasonably likely to have a material adverse effect on such Project, the Project Management Team for the applicable Project shall agree upon an appropriate plan for transferring the applicable Manufacturing activities, and all related Know-How, to Incyte with Agenus having the right to approve any plan involving its activities, such approval not to be unreasonably withheld, conditioned or delayed. Agenus shall use Commercially Reasonable Efforts to transfer any such Manufacturing activities and related Know-How in accordance with such plan. Any such transfer shall be considered a Development Cost or Allowable Expense. The Party responsible for Manufacturing shall keep the other Party reasonably informed, through the JSC, in connection with the performance of all Manufacturing activities for Products in the Field. The responsible Party shall respond within a reasonable time frame to all reasonable inquiries by the other Party with respect to any information provided pursuant to this Section 4.8. Any information disclosed pursuant to this Section 4.8 shall be the Confidential Information of the responsible Party, unless such information is already the Confidential Information of the other

Party. Each Party shall use Commercially Reasonable Efforts to conduct the activities described in this Section 4.8 for which such Party is responsible.

4.9 **Medical Affairs Activities**. Incyte shall oversee, monitor and coordinate all Medical Affairs Activities with respect to Products in the Field in the Territory which, with respect to any Co-Developed Product, shall be in accordance with the applicable Development Plan, or, with respect to any Profit-Share Product, shall be in accordance with the applicable Development Plan or Commercialization Plan, as applicable. Incyte shall keep Agenus reasonably informed in connection with the performance of all Medical Affairs Activities for Co-Developed Products and Profit-Share Product in the Field. Incyte shall respond within a reasonable time frame to all reasonable inquiries by Agenus with respect to any information provided pursuant to this Section 4.9. Unless already the Confidential Information of Agenus, any information disclosed pursuant to this Section 4.9 shall be the Confidential Information of Incyte. Incyte shall use Commercially Reasonable Efforts to conduct the activities described in this Section 4.9.

ARTICLE V: COMMERCIALIZATION

5.1 **Conduct of Commercialization Activities**.

(d) **Generally**. During the Term, and subject to Sections 5.1(b) and 5.4, Incyte shall have the sole right, and shall use Commercially Reasonable Efforts, to Commercialize Products in the Territory for use in the Field. Such right includes the right to make all business decisions regarding the design, sale, pricing, and promotion of Products in the Field in the Territory, and approve all materials used in the promotion of Products in the Field in the Territory, including product packaging, materials used in Detailing, product messaging and content used in the promotion of such Products. Incyte shall use Commercially Reasonable Efforts to seek Commercialization of Products in **[**]**, and shall use Commercially Reasonable Efforts to Commercialize Products in the Field in the Territory promptly after receipt of Regulatory Approval therefor.

(e) **Commercialization Plans**. Incyte shall conduct its Commercialization activities with respect to any Profit-Share Product under a rolling three (3) year commercialization plan and associated budget (each, a "**Commercialization Plan**") that will describe the proposed overall program of Commercialization of such Product in the Field. An initial Commercialization Plan for each Profit-Share Product shall be prepared no later than the earlier of the Initiation of the second Phase 2 Clinical Trial of such Product or the Initiation of the first Phase 3 Clinical Trial of such Product. Each Commercialization Plan shall be updated annually by Incyte, in consultation with Agenus, and submitted to the JSC for review and approval not later than October 31 of each Calendar Year during the Term. Each such updated Commercialization Plan shall include (i) an overall Commercialization plan for the applicable Profit-Share Product that sets forth all major Commercialization tasks remaining to be accomplished prior to First Commercial Sale, (ii) a detailed description for the Commercialization activities proposed for the following three (3) Calendar Years, and (iii) a detailed, rolling three (3) year financial forecast containing a good faith estimated revenue forecast and a committed budget for the first Calendar Year and good faith estimates of the

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budget for the following two (2) Calendar Years. While minor adjustments to the Commercialization Plan may be made from time to time in Incyte's discretion, any changes in budgeted funding exceeding **[**]** of the then-total amount budgeted in any Calendar Year for such Profit-Share Product must be approved by the JSC, in the absence of which approval the most recently approved Commercialization Plan and budget shall remain in effect. Notwithstanding the foregoing, if the JSC does not approve the budget increase, and (1) such increase is for an activity to be conducted by Agenus for a Co-Promotion Product, Incyte may, in its sole discretion, fund such activity and such expenditure shall be an Allowable Expense hereunder, or (2) subject to clause (1), Incyte may fund such amounts itself, and such expenditures shall not be an Allowable Expense hereunder.

(f) **Execution and Performance**. Incyte may subcontract portions of its Commercialization activities to a Permitted Subcontractor, *provided* that (i) Incyte shall not subcontract to a Third Party any Detailing activities for a Profit-Share Product as to which Agenus US has exercised its Co-Promotion Option without first offering Agenus US the right to perform such activities; (ii) Incyte shall be responsible for the performance of its Permitted Subcontractors and (iii) Incyte shall use reasonable efforts to have all Inventions discovered, made or conceived by each Permitted Subcontractor in the course of the performance of such activities assigned to Incyte in a manner consistent with Section 6.1 below and licensed to Agenus, if applicable, pursuant to Article II above. Incyte shall use, and shall cause its Permitted Subcontractors to use, Commercially Reasonable Efforts to conduct the activities described in each Commercialization Plan.

(g) **Trademarks**. Incyte shall select its own trademarks under which it will market Products (*provided* that no such trademark shall contain the word "4-Antibody" or "Agenus") and shall own such trademarks. Incyte shall use, in connection with all packaging, literature, labels and other printed matters, to the extent permitted by Law, an expression to the effect that the Products were developed under license from Agenus, together with the Agenus logo.

5.2 **Commercialization Reports**. Incyte shall at the JSC meetings, provide a reasonably detailed report on Incyte's activities and progress related to the Commercialization of Products in the Field in the Territory, including information concerning any future planned Commercialization activities.

5.3 **Abandoned Commercialization**. If, on a Project-by-Project basis, at any point in time after the First Commercial Sale of a Product arising out of such Project, Incyte, itself or through its Affiliates, licensees, sublicensees, Agenus, Permitted Subcontractors or Third Party distributors, has not conducted any Commercialization activities for at least **[**]** arising out of such Project in at least **[**]** for a period of at least the preceding **[**]** and during that period: (i) Incyte has not reasonably determined that Commercialization in at least **[**]** is likely to reduce the overall commercial viability of any such Products in the Field in the Territory; (ii) no significant constraints on such Commercialization imposed by a Regulatory Authority have been in effect in **[**]** and no significant constraints on any such Products imposed by a Regulatory Authority in any jurisdiction in the Territory have been in effect with respect to any such

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Products which constraint(s) Incyte reasonably believes is likely to reduce the overall commercial viability of any such Products in the Field in the Territory, which may include a regulatory hold or recall; (iii) no Force Majeure Event has been in effect which affect the Commercialization of such Products in or for **[**]**; (iv) Incyte, itself or through its Affiliates or licensees or sublicensees, is not actively seeking Regulatory Approval, or pricing and reimbursement approval, in **[**]**; and (v) if any such Products are Co-Promotion Products, Agenus has complied with its Co-Promotion obligations during such time period; then Incyte shall be deemed to have abandoned Commercialization of such Products ("**Abandoned Commercialization**"). If Agenus reasonably concludes that Incyte has Abandoned Commercialization, then Agenus shall deliver written notice to Incyte setting out the basis for Agenus' conclusion. If Incyte disagrees with Agenus' conclusion that Incyte has Abandoned Commercialization, then the JSC will meet within thirty (30) days to discuss the disagreement. If the JSC cannot agree after such discussion, then the terms of Section 12.2 shall apply to resolve the dispute. If Incyte agrees, or the JSC or the dispute resolution mechanism of Section 12.2 concludes, that Incyte has Abandoned Commercialization with respect to any Product, and (y) if Incyte has not previously been properly deemed to have Abandoned Commercialization with respect to such Project, then within **[**]** thereafter, Incyte may either (1) **[**]**; *provided* that if Incyte fails to take such actions within such **[**]** period, then Agenus shall have the right to terminate this Agreement with respect to such Project in accordance with Section 8.2(d), or (2) provide Agenus with written notice that it chooses not to provide **[**]**, in which case Agenus shall have the right to terminate this Agreement with respect to such Project in accordance with Section 8.2(d).

5.4 **Co-Promotion Option**.

(l) **Co-Promotion Option**. On a Profit-Share Product, by Profit-Share Product basis, Agenus US shall have the option to Co-Promote such Profit-Share Product in the United States on the terms and conditions set forth in this Section 5.4 (each, a "**Co-Promotion Option**"). Incyte shall notify Agenus US at least **[**]** prior to the anticipated filing date of the first BLA for such Profit-Share Product in the United States and shall provide Agenus US with the following information: Incyte's then-current promotional plan with respect to such Profit-Share Product, which plan shall include: (i) a description of the short- and long-term vision for such Profit-Share Product and its product positioning; (ii) a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis; (iii) a summary of the minimum level of sales efforts to be dedicated to the promotion of the Profit-Share Product, including the anticipated number of Details and targets of such Details; and (iii) a good faith estimated budget for the Detailing activities for such Profit-Share Product in each of the first **[**]** periods after First Commercial Sale of such Profit-Share Product in the U.S. Agenus US may exercise its Co-Promotion Option by providing Incyte written notice at any time after receipt of Incyte's notice and not later than **[**]** prior to the anticipated First Commercial Sale of such Profit-Share Product in the United States.

(m) **Effects of Exercise of Co-Promotion Option**. If Agenus US exercises its Co-Promotion Option with respect to a Profit-Share Product, the Parties shall in good faith negotiate the terms of a written agreement setting forth Agenus' rights and responsibilities with

respect to Detailing such Profit-Share Product in the United States (such agreement, the relevant "**Co-Promotion Agreement**"), which agreement would include the following provisions:

(i) The Parties shall, no later than **[**]** prior to the anticipated First Commercial Sale of such Profit-Share Product in the United States, set out the number of FTE sales representatives Detailing such Profit-Share Product in the United States. Absent a decision of the JSC to the contrary, in no event shall Agenus US be responsible for a number of FTE sales representatives Detailing such Profit-Share Product which exceeds **[**]** of the total FTEs for such Profit-Share Product in the United States.

(ii) All Includable Sales Force Costs and Indirect Selling Expenses incurred by Agenus US in conducting Co-Promotion activities in accordance with the Co-Promotion Agreement shall be Allowable Expenses hereunder.

(iii) The Parties shall establish a joint U.S. Commercialization Committee ("**UCC**") to oversee the Detailing of the relevant Profit-Share Product in the United States. Agenus US shall be entitled to have one (1) representative sit on the UCC or any group carrying out the UCC's function after the Effective Date but prior to the UCC's establishment. The UCC shall have responsibility for general oversight of all promotion and Detailing activities with respect to such Profit-Share Product in the United States. The UCC (or any group carrying out the UCC's function after the exercise of the Co-Promotion Option but prior to the UCC's establishment) will meet quarterly or more frequently as agreed by the Parties. The term of the UCC will be determined by the Parties. Incyte shall have the right to make the final decision with respect to all matters within the purview of the UCC related to Commercialization of the relevant Profit-Share Product.

(iv) Agenus US's sales representatives will be included in training programs with respect to the applicable Profit-Share Product that Incyte provides to its own sales representatives Detailing such Profit-Share Product. All FTE Costs and reasonable Out-of-Pocket Costs of each Party associated with such training shall be considered Allowable Expenses.

(v) Agenus US's sales representatives shall be provided with the same promotional materials, including literature and samples, as Incyte provides to its own similarly-situated representatives, with the costs for such materials considered Allowable Expenses.

(vi) Agenus US shall comply with all applicable Laws, with Incyte's Commercialization compliance program and other compliance related practices and procedures.

(vii) The circumstances under which such Co-Promotion Agreement may be terminated.

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(n) **Additional Activities**. Incyte shall consider in good faith requests by Agenus US for involvement in marketing and other Commercialization activities for Profit-Share Products in the United States, including the participation of a single employee of Agenus US on any brand team or similar body established by Incyte with responsibility for the overall Commercialization of a Product. The costs incurred by Agenus US in connection with the participation of its employee on a brand team or similar body shall not be considered an Allowable Expense hereunder.

ARTICLE VI: INTELLECTUAL PROPERTY

6.1 **Inventions**.

(c) **Ownership**. Except as expressly set forth herein, as between the Parties each Party shall solely own any Invention and other Know-How that is made, conceived or otherwise discovered solely by employees, independent contractors or agents of such Party or its Affiliates, and all Patent Rights therein. Incyte shall own any and all Inventions and other Know-How that: (x) are made, conceived or otherwise discovered solely by employees, independent contractors or agents of Incyte or its Affiliates under or in the performance of this Agreement that do not constitute a Retrocyte Display Improvement ("**Incyte Program Inventions**") or (y) subject to the next sentence, are made, conceived or otherwise discovered by employees, independent contractors or agents of either Party or their respective Affiliates under or in the performance of this Agreement that relate solely to any compound, Antibody, active ingredient or product that is owned or controlled by Incyte or any of its Affiliates (for clarity, other than a Licensed Antibody or Product) (the Inventions and Know-How in clause (y), and any Patent Rights therein, the "**Incyte Other Inventions**"). Agenus, on behalf of itself and its Affiliates, agrees to assign and hereby does assign to Incyte all right, title and interest in and to any Incyte Other Inventions knowingly made, conceived or otherwise discovered by employees, independent contractors or agents of Agenus or its Affiliates under or in the performance of this Agreement. Agenus shall own any and all Inventions and other Know-How that (i) are made, conceived or otherwise discovered solely by employees, independent contractors or agents of Agenus or its Affiliates under or in the performance of this Agreement that do not constitute a Retrocyte Display Improvement or an Incyte Other Invention or (ii) subject to the next sentence, are made, conceived or otherwise discovered by employees, independent contractors or agents of either Party or their respective Affiliates under or in the performance of this Agreement that constitute a Retrocyte Display Improvement. Incyte, on behalf of itself and its Affiliates, agrees to assign and hereby does assign to Agenus all right, title and interest in and to any Retrocyte Display Improvements knowingly made, conceived or otherwise discovered by employees, independent contractors or agents of Incyte or its Affiliates under or in the performance of this Agreement. The Parties shall jointly own any and all Inventions and other Know-How that are made, conceived, authored or otherwise discovered by employees, independent contractors or agents of both Agenus or its Affiliates and Incyte or its Affiliates that (i) do not constitute a Retrocyte Display Improvement or an Incyte Other Invention and (ii) would be deemed to be jointly conceived, invented or authored, or otherwise jointly owned, by the Parties under the laws of the United States or applicable foreign jurisdiction ("**Joint Inventions**"). Each Party shall own an equal, undivided interest in each Joint Invention and all Patent Rights therein ("**Joint Patent Rights**"). Agenus' interest in the Joint Patent Rights are included in the Agenus Patent

Rights and are licensed exclusively to Incyte pursuant to, and subject to the limitations set forth in, Section 2.1. In the event that a jurisdiction requires consent of co-owners for one co-owner to grant license rights under or otherwise exploit a Joint Invention, each Party hereby grants, subject to the terms of the exclusive licenses granted hereunder, to the other Party a sublicenseable right and license to exploit such Joint Invention without a requirement of accounting other than as set forth in this Agreement.

(d) **Inventorship.** The determination of inventorship shall be made in accordance with U.S. patent Laws. The Parties shall attempt in good faith to resolve any disputes regarding ownership of Inventions, and all Patent Rights and any other Intellectual Property Rights therein. In the event the Parties are unable to resolve such dispute within thirty (30) days after receipt of notice of the dispute, such dispute will be resolved by independent patent counsel not engaged or regularly employed in the past two (2) years by either Party and reasonably acceptable to both Parties. The decision of such independent patent counsel will be binding on the Parties. Expenses of such patent counsel will be shared equally by the Parties.

(e) **Assignments**. Each Party shall require its Affiliates, and all of its or its Affiliates' employees, and shall use reasonable efforts to have each of its Permitted Subcontractors and agents, to assign all of its or their right, title and interest in or to any Inventions to such Party or its Affiliate, and such Party shall, and shall require its Affiliates to, assign all (or, with respect to Joint Inventions and Joint Patent Rights, the relevant portion) of its or their right, title and interest in or to any Inventions to the other Party, as is necessary to vest all (or, with respect to Joint Inventions and Joint Patent Rights, a joint) right, title and interest in such Inventions as set forth in Sections 2.1 and 6.1(a). Each Party shall, and shall cause its Affiliates and all of its or its Affiliates' employees, and shall use reasonable efforts to have each of its Permitted Subcontractors and agents, to cooperate and take all additional actions and to execute such agreements, instruments and documents as may be reasonably required to perfect such Party's right title and interest in and to Inventions and any Patent Rights therein.

(f) **Cooperation**. Each Party hereby agrees: (a) to use reasonable efforts to make its employees, agents and consultants, reasonably available to the other Party (or to the other Party's authorized attorneys, agents or representatives), to the extent reasonably necessary to enable such Party to undertake Prosecution of Patent Rights as contemplated by this Agreement; (b) to cooperate, if necessary and appropriate, with the other Party in gaining Patent Term Extensions wherever applicable to Patent Rights that are subject to this Agreement, in accordance with Section 6.6; and (c) to endeavor in good faith to coordinate its efforts with the other Party to minimize or avoid interference with the Prosecution of the other Party's Patent Rights that are subject to this Agreement. For the avoidance of doubt, each Party agrees that it shall use reasonable efforts to cause its employees, agents and consultants to provide any and all information required for the other Party to comply with its relevant duties of disclosure as required by applicable Law in the United States or any other jurisdiction.

(g) **Joint Research Agreement**. The Parties acknowledge and agree that this Agreement is a "joint research agreement" as defined in the America Invents Act, 35 U.S.C. §§100(h) and 102(c). Notwithstanding anything to the contrary in this Article VI, the Parties will

use reasonable efforts to cooperate and coordinate their activities with respect to any submissions, filings or other activities in support thereof.

6.2 **Prosecution of Patent Rights**.

(h) Subject to Sections 6.2(c) and 6.2(d), (i) Agenus shall have the sole right to Prosecute all Agenus Platform Patent Rights and the first right to Prosecute all Agenus Patent Rights, and (ii) Incyte shall have the first right to Prosecute all Incyte Program Patent Rights and Joint Patent Rights and the sole right to Prosecute all Incyte IP, including Patent Rights resulting from Incyte Other Inventions, that is not an Incyte Program Patent Right or Joint Patent Right.

(i) With respect to the Agenus Patent Rights, Incyte Program Patent Rights and Joint Patent Rights, the Party responsible for Prosecution shall consult with and keep the other Party fully informed of important issues relating to the Prosecution of such Patent Rights, and shall furnish to the other Party copies of documents relevant to such Prosecution in sufficient time prior to the filing of such document to allow for review and comment by the other Party and, to the extent possible in the reasonable exercise of its discretion, the Party responsible for Prosecution shall incorporate all of such comments.

(j) If Agenus elects not to Prosecute any Agenus Patent Rights (whether worldwide or with respect to any particular country), including electing not to file a patent application with respect thereto or to allow any such Agenus Patent Rights to lapse or become abandoned or unenforceable, then Agenus shall promptly notify Incyte in writing (which such notice shall be at least sixty (60) days prior to the lapse or abandonment of any such Agenus Patent Rights). Thereafter, Incyte may, but is not required to, at its sole expense and in its sole discretion, Prosecute such Agenus Patent Rights through counsel of its choosing. In the event that Incyte undertakes such Prosecution, Agenus shall provide Incyte all reasonable assistance and cooperation in relation thereto, including as specified in Section 6.1(d) above and including providing any necessary powers of attorney and executing any other required documents or instruments.

(k) If Incyte elects not to Prosecute any Incyte Program Patent Rights or Joint Patent Rights (whether worldwide or with respect to any particular country), including electing not to file a patent application with respect thereto or to allow any such Incyte Program Patent Rights or Joint Patent Rights to lapse or become abandoned or unenforceable, then Incyte shall promptly notify Agenus in writing (which such notice shall be at least sixty (60) days prior to the lapse or abandonment of any such Joint Patent Rights). Thereafter, Agenus may, but is not required to, at its sole expense and in its sole discretion, Prosecute such Incyte Program Patent Rights or Joint Patent Rights through counsel of its choosing. In the event that Agenus undertakes such Prosecution, Incyte shall provide Agenus all reasonable assistance and cooperation in relation thereto, including as specified in Section 6.1(d) above and including providing any necessary powers of attorney and executing any other required documents or instruments.

6.3 **Third Party Infringement**.

(o) **Notice**. Each Party shall promptly report in writing to the other Party during the Term any (i) known or suspected infringement of an Agenus Patent Right, Incyte Program Patent Right or Joint Patent Right ("**Licensed IP Infringement**") Covering a Licensed Antibody or a Product for use in the Field anywhere in the Territory, including any certification regarding any Agenus Patent Right, Incyte Program Patent Right or Joint Patent Right Covering such Product that such Party receives pursuant to 21 U.S.C. §§355(b)(2)(A)(iv), 21 U.S.C. §§355(j)(2)(A)(vii)(IV) or such similar laws as may exist in jurisdictions other than the United States (a "**Paragraph IV Notice**") or pursuant to 42 U.S.C. §262(l) or such similar laws as may exist in jurisdictions other than the United States (a "**Biosimilar Notice**") (which Paragraph IV Notice or Biosimilar Notice shall be provided to the other Party within five (5) Business Days after receipt thereof), or (ii) known or suspected unauthorized use or misappropriation of Agenus Know-How or Incyte Know-How in the Field of which such Party becomes aware. Each Party shall provide the other Party with all available evidence supporting such infringement, suspected infringement, unauthorized use or misappropriation or suspected unauthorized use or misappropriation.

(p) **Infringement Action**.

(i) Agenus Patent Rights.

(A) Agenus shall have the initial right, but not the obligation, to initiate a suit or take other appropriate action that it believes is reasonably required to protect the Agenus Know-How and Agenus Patent Rights, excluding the Joint Know-How and Joint Patent Rights.

(B) To the extent that any Licensed IP Infringement pertains to Agenus Patent Rights Covering a Product in the Territory:

(1) Agenus shall give Incyte advance notice of its intent to file or not file any such suit or take or not take any such action and the reasons therefor.

(2) If Agenus does not file such suit or take such action within the shorter of (y) **[**]** after Agenus becomes aware of such Licensed IP Infringement (or **[**]** after Agenus receives the relevant Paragraph IV Notice) or, with respect to a Biosimilar Notice, such longer period of time in accordance with 42 U.S.C. §262(l)(6)), or (z) such shorter period of time to avoid loss of material enforcement rights or remedies, then, subject to Section 6.5, Incyte shall have the right, but not the obligation, to initiate a suit or take other appropriate action to protect the Agenus Patent Rights against such Licensed IP Infringement.

(3) If the relevant Product to which such Licensed IP Infringement pertains is a Profit-Share Product, all costs and expenses incurred by either Party with respect to any enforcement action pursuant to this subsection (B) shall be a Patent and Trademark Cost; otherwise all

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costs and expenses incurred by either Party with respect to any enforcement action pursuant to this subsection (B) shall be borne by the Party conducting the enforcement action.

(ii) Incyte Program Patent Rights and Joint Patent Rights.

(A) Incyte shall have the initial right, but not the obligation, to initiate a suit or take other appropriate action that it believes is reasonably required to protect the Incyte Program Know-How and Incyte Program Patent Rights, including the Joint Know-How and Joint Patent Rights.

(B) To the extent that any Licensed IP Infringement pertains to Incyte Program Patent Rights or Joint Patent Rights Covering a Product in the Territory:

(1) Incyte shall give Agenus advance notice of its intent to file or not file any such suit or take or not take any such action and the reasons therefor.

(2) If Incyte does not file such suit or take such action within the shorter of (y) **[**]** after Incyte becomes aware of such Licensed IP Infringement (or **[**]** after Incyte receives the relevant Paragraph IV Notice) or, with respect to a Biosimilar Notice, such longer period of time in accordance with 42 U.S.C. §262(l)(6)), or (z) such shorter period of time to avoid loss of material enforcement rights or remedies, then, subject to Section 6.5, Agenus shall have the right, but not the obligation, to initiate a suit or take other appropriate action to protect such Incyte Program Patent Rights or Joint Patent Rights against such Licensed IP Infringement.

(3) If the relevant Product to which such Licensed IP Infringement pertains is a Profit-Share Product, all costs and expenses incurred by either Party with respect to any enforcement action pursuant to this subsection (B) shall be a Patent and Trademark Cost; otherwise all costs and expenses incurred by either Party with respect to any enforcement action pursuant to this subsection (B) shall be borne by the Party conducting the enforcement action.

(q) **Conduct of Action**. The Party initiating suit shall have the sole and exclusive right to select counsel for any suit initiated by it under Section 6.3(b). If required under applicable Law in order for such Party to initiate and/or maintain such suit, the other Party shall join as a party to the suit. If requested by the Party initiating suit, the other Party shall provide reasonable assistance to the Party initiating suit in connection therewith. The other Party shall have the right to participate and be represented in any suit described in Section 6.3(b) by its own counsel at its own expense. The Party initiating suit as provided in Section 6.3(b) shall (i) keep the other Party promptly informed, (ii) from time to time consult with the other Party

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regarding the status of any such suit or action, (iii) provide the other Party with copies of all material documents (*e.g.*, complaints, answers, counterclaims, material motions, orders of the court, memoranda of law and legal briefs, interrogatory responses, depositions, material pre-trial filings, expert reports, affidavits filed in court, transcripts of hearings and trial testimony, trial exhibits and notices of appeal) filed in, or otherwise relating to, such suit or action, and (iv) cannot, without such other Party's consent, settle such suit in any manner which would (A) have an adverse effect on such other Party's Patent Rights or such other Party's Program Rights hereunder or (B) be an admission of liability on behalf of such other Party (*provided*, *however*, that the Party initiating such suit may settle such suit without such consent if such settlement involves only the receipt of money from, or the payment of money to, such Third Party and the Party initiating such suit makes all such payments to such Third Party).

(r) **Recoveries**. To the extent that any such suit or action pertains to any Product, any recovery obtained as a result of any proceeding described in Section 6.3(b) or from any counterclaim or similar claim asserted in a proceeding described in Section 6.4, by settlement or otherwise, shall be applied in the following order of priority:

(i) first, the Parties shall be reimbursed for all Out-of-Pocket Costs incurred by them in connection with such proceeding, which reimbursement (A) if the relevant Product to which the relevant Licensed IP Infringement pertains is a Profit-Share Product or Co-Developed Product, shall be made in proportion to their respective obligations to fund Patent and Trademark Costs for such Product, and (B) otherwise shall be made to reimburse each Party in full or, if such recovery is not sufficient, *pro rata* in proportion to such Out-of-Pocket Costs borne by each; and

(ii) second any remainder shall be paid to Incyte, and shall be considered Net Sales of such Product in the relevant country, subject to (A) if the relevant Product to which the relevant Licensed IP Infringement pertains is a Profit-Share Product, the calculation of Profit-or-Loss pursuant to Section 7.3 with respect to such Profit-Share Product, or (B) if the relevant Product to which the relevant Licensed IP Infringement pertains is a Royalty Bearing Product, the payment of the relevant royalty to Agenus pursuant to Section 7.6.

6.4 **Claimed Infringement**. In the event that a Third Party at any time provides written notice of a claim to, or brings an action, suit or proceeding against, a Party, or an Affiliate or permitted sublicensee, claiming infringement of such Third Party's Patent Rights or unauthorized use or misappropriation of such Third Party's Know-How, based upon an assertion or claim arising out of the research, Development, Manufacture, Commercialization or other use of a Product in the Field by such Party (a "**Third Party Infringement Claim**"), such Party shall promptly notify the other Party of the claim or the commencement of such action, suit or proceeding, enclosing a copy of the claim and/or all papers served. Subject to Section 6.5, the Party or its Affiliate or permitted sublicensee against which such Third Party Infringement Claim is brought shall have the sole right, but not the obligation, to defend such Third Party Infringement Claim. In any event, the Parties shall reasonably assist one another and cooperate in any such litigation. All FTE Costs and Out-of-Pocket Costs incurred by the Parties in

connection with the defense of a Third Party Infringement Claim, and any Losses payable by either Party as a result thereof, (a) shall be Patent and Trademark Costs hereunder if the relevant Product to which such Third Party Infringement Claim pertains is a Profit-Share Product, and (B) otherwise shall be borne by the Party that is primarily responsible for the activity that is the subject of the Third Party Infringement Claim.

6.5 **Patent Invalidity Claim**. If a Third Party at any time asserts a claim that any Agenus Patent Right, Incyte Program Patent Right or Joint Patent Right Covering a Product is invalid or otherwise unenforceable (an "**Invalidity Claim**"), whether as a defense in an infringement action brought by Agenus or Incyte pursuant to Section 6.3(b), in a declaratory judgment action or in a Third Party Infringement Claim brought against Agenus or Incyte, the Party Controlling such Patent Right (or Incyte with respect to any Joint Patent Right) shall have the first right, but not the obligation, to defend such Invalidity Claim and the other Party shall cooperate with the Party Controlling such Patent Right in preparing and formulating a response to such Invalidity Claim. If Agenus does not defend an Invalidity Claim brought against an Agenus Patent Right or Incyte does not defend an Invalidity Claim brought against an Incyte Program Patent Right or Joint Patent Right, the other Party may defend such Invalidity Claim and the coordination provisions of Section 6.3(b) shall apply to such Invalidity Claim, *mutatis mutandis* as they apply to Licensed IP Infringement suits. Neither Party shall, without the consent of the other Party, settle or compromise any Invalidity Claim in any manner which would (a) have an adverse effect on such other Party's Patent Rights or such other Party's Program Rights hereunder or (b) be an admission of liability on behalf of such other Party (*provided*, *however*, that the Party initiating such suit may settle such suit without such consent if such settlement involves only the receipt of money from, or the payment of money to, such Third Party and the Party initiating such suit makes all such payments to such Third Party). To the extent such Invalidity Claim is raised as a defense in an infringement action brought by Agenus or Incyte pursuant to Section 6.3(b), the expense provisions of Section 6.3 shall apply and counsel to the Party controlling the infringement action shall act as the ministerial liaison with the court. To the extent such Invalidity Claim is raised in a Third Party Infringement Claim brought against a Party, the expense provisions of Section 6.4 shall apply with respect thereto and the Party against whom the Invalidity Claim is brought shall act as the ministerial liaison with the court.

6.6 **Patent Term Extensions**. Incyte shall have the sole authority to obtain Patent Term Extensions for Patent Rights Covering a Product; *provided*, *however*, that Incyte shall reasonably consider any input from Agenus with respect to the extension of any Agenus Patent Rights. Agenus shall, as applicable, file all documentation and take all other actions to obtain such Patent Term Extensions.

6.7 **Patent Marking.** Incyte shall comply with all applicable patent marking statutes in any country in which Products Covered by Agenus Patent Rights or Joint Patent Rights are sold.

ARTICLE VII: FINANCIAL PROVISIONS

7.1 **License Fee**. In consideration for the rights, licenses and sublicenses granted to Incyte by Agenus under Section 2.1 with respect to the four (4) Projects included in the Program as of the Effective Date, Incyte shall make to Agenus a nonrefundable, non-creditable payment of ten million Dollars ($10,000,000) within ten (10) days after the Effective Date. The foregoing license fee shall be deemed to be allocated among each of the four (4) Projects included in the Program in the manner set forth in Schedule 7.1.

7.2 **Project Access Fee**. In consideration for access to Discovery Projects during the Discovery Period, Incyte shall make to Agenus a non-refundable, non-creditable payment of fifteen million Dollars ($15,000,000) within ten (10) days after the Effective Date.

7.3 **Sharing of Profit-or-Loss**.

(a) Subject to Sections 4.1(c) and 5.1(b), Profit-or-Loss shall be allocated fifty percent (50%) to each of Incyte and Agenus, such that Incyte and Agenus shall each share fifty percent (50%) of Profit-or-Loss with respect to each Profit-Share Product until the Development and Commercialization of such Profit-Share Product is permanently discontinued.

(b) From and after the Effective Date, the Parties shall conduct a quarterly reconciliation of Profit-or-Loss as follows, on a Profit-Share Product-by-Profit-Share Product basis:

(i) Within **[**]** after the end of each Calendar Quarter, each Party shall submit to the other Party a preliminary written report setting forth the following information, estimated where necessary:

(A) actual revenues and expenses included in Profit-or-Loss for such Product for the first two (2) months of such Calendar Quarter, including, as applicable:

(1) all sales in units and in Net Sales value of such Profit-Share Product in the Territory made by Incyte and Incyte Related Parties during such two (2) month period, together with an accounting of the itemized deductions from gross invoice price to Net Sales;

(2) all Profit-Share Product Proceeds for such Profit-Share Product received from Third Parties in the Territory during such two (2) month period; and

(3) the relevant Allowable Expenses incurred by each Party or its Affiliates with respect to such Profit-Share Product during such two (2) month period; and

(B) good faith estimate of revenues and expenses included in Profit-or-Loss for such Product for the last month of such Calendar Quarter, for financial reporting purposes.

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(ii) Within **[**]** after the end of each Calendar Quarter, each Party shall submit to the other Party a final written report setting forth, as applicable:

(A) all sales in units and in Net Sales value of such Profit-Share Product in the Territory made by Incyte and Incyte Related Parties during such Calendar Quarter, together with an accounting of the itemized deductions from gross invoice price to Net Sales;

(B) all Profit-Share Product Proceeds for such Profit-Share Product received from Third Parties in the Territory during such Calendar Quarter, and

(C) the relevant Allowable Expenses incurred by such Party or its Affiliates with respect to such Profit-Share Product during such Calendar Quarter.

(c) Within **[**]** after the receipt of the report pursuant to subparagraph (b) above, Incyte shall submit to Agenus a written reconciliation report setting forth in reasonable detail the calculation of Profit-or-Loss, the amount of any taxes required to be withheld and the calculation of the net amount owed by Incyte to Agenus, or by Agenus to Incyte, as the case may be, in order to ensure the sharing of Profit-or-Loss set forth in this Section 7.3 and the proper allocation of withholding taxes pursuant to Section 7.9. The net amount payable with respect to Profit-or-Loss, after appropriate adjustment for any withholding taxes, shall be paid by Incyte or by Agenus (or the appropriate Affiliate), as the case may be, within **[**]** following receipt of invoice for such amount.

(d) In addition to providing the information set forth in subsection (b) above, each Party and its Affiliates, as the case may be, shall provide reasonable supporting documentation of Allowable Expenses included in the calculation of Profit-or-Loss in a manner determined by the JSC.

7.4 **Reimbursement of Development Costs**. Subject to Sections 4.1(c), Incyte shall reimburse Agenus for all Development Costs incurred by Agenus and its Affiliates (a) with respect to each Royalty-Bearing Product in accordance with the relevant Development Plan and (b) constituting Patent and Trademark Costs pertaining to Bullpen Targets as provided in Section 1.103, in each case within **[**]** following receipt by Incyte of an invoice therefor, but only to the extent that such invoiced amount, together with all other Development Costs reimbursed by Incyte for Development activities conducted by Agenus and its Affiliates during such Calendar Year, does not exceed **[**]** of the total Development Costs budgeted in the Development Plan for the relevant Royalty-Bearing Product (except to the extent such excess is approved pursuant to Section 4.1(c) hereof).

7.5 **Milestone Payments**. Incyte shall make the following non-refundable, non-creditable milestone payments to Agenus upon the achievement of each of the following milestones by Incyte or an Incyte Related Party:

(a) **Profit-Share Products**.

(i) The milestone payments and events for the Profit-Share Products are:

Milestone Event	Payment
[**]	**[**]**
[**]	**[**]**

(ii) On a Profit-Share Product-by-Profit-Share Product basis **[**]** .

(iii) For clarity, none of the milestone payments set forth in this Section 7.5(a) shall be an Allowable Expense hereunder.

(b) **Royalty-Bearing Products.**

(i) The milestone payments and events for the Royalty-Bearing Products are:

Milestone Event	Payment
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**

(ii) **[**]**:

[**]	[**]
[**]	**[**]**
[**]	**[**]**

(iii) More than one of the **[**]** milestone payments set forth**[**]** may be earned concurrently based on **[**]**. By way of example and not limitation, **[**]**, then Incyte shall pay Agenus the milestone payments set forth in both Sections 7.5(b)(i)**[**]** and 7.5(b)(i)**[**]** (total **[**]**).

(iv) With respect to any Royalty-Bearing Product which had been a Profit-Share Product prior to Agenus' exercise of its rights pursuant to Section 4.6, only those Milestone Events which are triggered by such Royalty-Bearing Product after the **[**]**

period (or **[**]** period in the event of a Change in Control, as applicable) described in Section 4.6 shall be payable pursuant to this Section 7.5(b).

(c) **Milestone Payments**. Incyte shall notify Agenus of the achievement of each of the foregoing milestones within **[**]** after each such achievement. Any milestone payments shall be reflected on an invoice provided to Incyte by Agenus, and any such invoices shall be due and payable by Incyte within **[**]** after the date the invoice is received.

7.6 **Royalties**.

(a) **Royalty Rates**.

(i) **Royalty-Bearing Products**. Except with respect to Co-Developed Products, Combination Products, Option Products and Converted Products, Incyte shall pay to Agenus royalties on Net Sales of each Royalty-Bearing Product, on a Royalty-Bearing Product-by-Royalty-Bearing Product basis, in each Calendar Year as follows:

Annual Net Sales of the Relevant Royalty-Bearing Product	Royalty Rate
The portion less than or equal to **[**]**	6%
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]**	12%

(ii) **Combination Products**. With respect to Combination Products (other than Co-Developed Products), Incyte shall pay to Agenus royalties on Net Sales of each Combination Product, on a Combination Product-by-Combination Product basis, in each Calendar Year as follows:

Annual Net Sales of the Relevant Combination Product	Royalty Rate
The portion less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]**	**[**]**

(iii) **Co-Developed Products**. With respect to Co-Developed Products, Incyte shall pay to Agenus royalties on Net Sales of each such Co-Developed Product, on a Co-Developed Product-by-Co-Developed Product basis, in each Calendar Year as follows:

Annual Net Sales of the Relevant Co-Developed Product	Royalty Rate
The portion less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]**	**[**]**

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(iv) **Option Products**. Incyte shall pay to Agenus royalties on Net Sales of each Option Product, on an Option Product-by-Option Product basis, in each Calendar Year as follows:

Annual Net Sales of the Relevant Option Product	Royalty Rate
The portion less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]** and less than or equal to **[**]**	**[**]**
The portion greater than **[**]**	**[**]**

(v) **Converted Products**. With respect to Converted Products, Incyte shall pay to Agenus royalties on Net Sales of each such Converted Product, on a Converted Product-by-Converted Product basis, at the rates set forth in Section 7.6(a)(iii) until such time as is provided in Section 4.6, and thereafter at the rates set forth in Section 7.6(a)(i).

(b) **Royalty Term**.

(i) Royalties payable under this Section 7.6 shall be paid by Incyte on a Royalty-Bearing Product-by-Royalty-Bearing Product and country-by-country basis from the date of First Commercial Sale of such Royalty-Bearing Product in the relevant country for a period which is the longest of: (A) the date on which all Agenus Patent Rights, Incyte Program Patent Rights and Joint Patent Rights containing a Valid Claim Covering the Manufacture, Commercialization or other use of such Royalty-Bearing Product in the country of sale have expired; (B) the expiration of Regulatory Exclusivity for such Royalty-Bearing Product in such country; and (C) **[**]** following the date of First Commercial Sale of such Royalty-Bearing Product in such country (each such term with respect to a Royalty-Bearing Product and a country, a "**Royalty Term**").

(ii) Notwithstanding anything to the contrary herein, in the event that, with respect to a Royalty-Bearing Product in a country, (A) the Royalty Term for such Royalty-Bearing Product in such country continues solely due to Section 7.6(b)(i)(C), or (B) Generic Competition exists with respect to such Royalty-Bearing Product in the Field in such country in a Calendar Quarter, then the royalty rates in such country for such Royalty-Bearing Product will thereafter be reduced to **[**]** of the applicable rate in Section 7.6(a).

(c) **Stacking**. Agenus shall be responsible for payment of all amounts due to Third Parties under the LICR Agreement and any other agreement with a Third Party in effect as of the Effective Date to which Agenus or any of its Affiliates is a party or by which any of them is bound. If Incyte (i) determines in good faith that, in order to avoid infringement of any Patent Right not licensed hereunder, it is reasonably necessary to obtain a license after the Effective Date from a Third Party under Patent Rights Controlled by the Third Party Covering the composition or method of use of a Licensed Antibody in order to Commercialize a Product in the Field in a country in the Territory and to pay a royalty under such license (including in

connection with the settlement of a patent infringement claim); or (ii) shall be subject to a final court or other binding order or ruling requiring any payments, including the payment of a royalty to a Third Party patent holder in respect of the Development, Manufacture or Commercialization of a Product in the Field in a country in the Territory, then (A) in the case of Profit-Share Products, the royalties or other consideration payable to such Third Party shall be Patent and Trademark Costs after the First Commercial Sale in any country in the Territory of the applicable Product, and (B) in the case of Royalty-Bearing Products, the amount of Incyte's royalty payments under Section 7.6(a) (subject to Section 7.6(b)) with respect to Net Sales for such Royalty-Bearing Product in such country in any Calendar Quarter shall be reduced by**[**]** of the royalties actually paid by Incyte to such Third Party that are reasonably and appropriately allocable to such Royalty-Bearing Product in the Field in the Territory during such Calendar Quarter; *provided, however*, that in no event shall the aggregate deductions under this Section 7.6(c) reduce any royalty payment made to Agenus in respect of Net Sales of such Royalty-Bearing Product pursuant to Section 7.6(a) (but subject to Section 7.6(b)) in any Calendar Quarter to an amount that represents less than the greater of (x) **[**]** of the royalty otherwise payable in such Calendar Quarter or (y) **[**]** of Net Sales of the applicable Royalty-Bearing Product during such Calendar Quarter (with any such deductions not applied in any Calendar Quarter due to the foregoing limit to be carried forward to future Calendar Quarters).

(d) **Licenses**. Upon the expiration of the Royalty Term with respect to a Royalty-Bearing Product in a country, the licenses granted by Agenus to Incyte pursuant to Section 2.1 shall be deemed to be non-exclusive, fully paid-up, irrevocable and perpetual with respect to such Royalty-Bearing Product in such country.

(e) **No Multiple Royalties**. Only one royalty shall be due with respect to each sale of a Royalty-Bearing Product.

7.7 **Royalty Reports; Payments**. Incyte shall deliver to Agenus, within **[**]** after the end of each Calendar Quarter, a royalty report for such Calendar Quarter, together with the required payments pursuant to Section 7.6. Such reports shall indicate, on a country-by-country basis, gross sales and all deductions taken from gross sales to reach Net Sales, the Net Sales and the calculation of royalties from Net Sales with respect thereto, each determined in accordance with this Agreement, with respect to sales of Royalty-Bearing Products. All payments due to Agenus pursuant to this Agreement shall be made in U.S. Dollars by wire transfer in immediately available funds to an account designated in advance by Agenus.

7.8 **Audits**. For a period of **[**]** next following each Calendar Year, each Party shall keep, and shall cause its Affiliates to keep, full, true and accurate books and records containing all particulars relevant to the calculation of Development Costs, Profit-or-Loss, and Net Sales (including, with respect to Net Sales, the relevant statements obtained from its permitted sublicensees) in sufficient detail to enable the other Party to verify the amounts payable by or to it under this Agreement. Each Party shall have the right, not more than once during any Calendar Year and at its own expense, to have the books and records of the other Party and its Affiliates, as applicable, audited by an independent certified public accounting firm that is one of the six (6) largest, by revenue, accounting firms in the United States and is mutually acceptable

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to both Parties. Audits under this Section 7.8 shall be conducted at the principal place of business of the financial personnel with responsibility for preparing and maintaining such records, during normal business hours, upon at least **[**]** prior written notice, and for the sole purpose of verifying amounts payable by or to such Party under this Agreement. All information and data reviewed in any audit conducted under this Section 7.8 shall be used only for the purpose of verifying amounts payable by or to a Party under this Agreement and shall be treated as Confidential Information of the audited Party subject to the terms of this Agreement. The auditing Party shall cause its accounting firm to enter into a reasonably acceptable confidentiality agreement with the audited Party and its Affiliates, as applicable. The accounting firm shall disclose to the auditing Party only whether the calculation of Development Costs, Profit-or-Loss or royalties are correct or incorrect and the specific details concerning any discrepancies. If the audit demonstrates that the payments owed under this Agreement have been understated, the audited Party shall pay the balance to the auditing Party, which shall be paid together with interest in accordance with Section 7.11. Further, if the amount of the understatement is greater than **[**]** of the amount owed to the auditing Party with respect to the audited period, then the audited Party shall reimburse the auditing Party for the reasonable out-of-pocket cost of the audit. If the audit demonstrates that the payments owed under this Agreement have been overstated, the audited Party shall be entitled to credit such amount against payments due to the auditing Party All payments owed by or to a Party under this Section 7.8 shall be made within **[**]** after the results of the audit are delivered to the Parties.

7.9 **Tax Matters**. The royalties, milestones, profit-share payments and other amounts payable by a Party (the "**Payor**") to the other Party (the "**Payee**") pursuant to this Agreement (each a "**Payment**") shall be made without deduction or withholding for taxes except to the extent that any such deduction or withholding is required by Law in effect at the time of the Payment. In the event that the Payor is required by applicable Law to deduct, withhold and pay over (collectively, "**Withhold**") any tax (a "**Withholding Tax**") from or in respect of such Payment, the Payor shall (a) notify the Payee of such requirement promptly upon first becoming aware thereof, (b) Withhold the full amount of such Withholding Tax to the relevant taxing authority as and when due and (c) pay the net after-Withholding Tax amount of such Payment to the Payee, together with documentation confirming the amount and fact of the associated Withholding. The amount of Withholding Tax required to be Withheld in respect of a Payment shall be (i) determined in the good-faith discretion of the Payor, with due regard to any valid documentation previously provided to the Payor by or for the benefit of the Payee, in form and substance reasonably satisfactory to the Payor, that supports a reduced rate of Withholding Tax in respect of the Payment, and (ii) treated for all purposes of this Agreement as having been duly and timely paid by the Payor to or for the benefit of the Payee. The Parties agree to cooperate in good faith to permit a Payee to recover any excess Withhold Tax previously Withheld. On the date of execution of this Agreement, each Party will deliver to the other an accurate and complete Internal Revenue Service Form W-9.

7.10 **Currency Exchange**. All payments to be made by a Party to the other Party shall be made in Dollars. In the case of sales of Products outside the United States, royalty and profit-share payments shall be converted to Dollars using the average of the daily foreign exchange

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rates as published by *The Wall Street Journal, Eastern Edition* for the Calendar Quarter in which such payments occurred.

7.11 **Late Payments**. Without limiting any other rights or remedies available to a Party hereunder, if the paying Party does not pay any amount due on or before the due date, the paying Party shall pay to such Party interest on any such amounts from and after the date such payments are due under this Agreement at a rate per annum equal to the then current "prime rate" in effect published in *The Wall Street Journal*, *Eastern Edition*, plus **[**]** or the maximum applicable legal rate, if less, calculated on the total number of days payment is delinquent; *provided* that with respect to any disputed payments, no interest payment shall be due until such dispute is resolved and the interest which shall be payable thereon shall be based on the finally-resolved amount of such payment, calculated from the original date on which the disputed payment was due through the date on which payment is actually made.

7.12 **General Payment Provisions**. Notwithstanding anything to the contrary in this Agreement, (a) there shall be no double-counting of expenses or revenue within, between or among the definition of Profit-or-Loss, Development Costs and any components thereof, and (b) Profit-or-Loss, Development Costs and any components thereof shall be determined from the books and records of the applicable Party and its Affiliates maintained in accordance with Accounting Standards.

ARTICLE VIII: TERM AND TERMINATION

8.1 **Agreement Term**. The term of this Agreement shall commence on the Effective Date and shall continue for so long (a) as any Product is being Developed or Commercialized or (b) the Discovery Period or any Option Period remains in effect, unless terminated early in accordance with Section 8.2 (the "**Term**"); *provided, however*, that Article XIII shall be effective as of the Execution Date. Notwithstanding the above, if there are any ongoing disputes at the end of the Term as set forth above, this Agreement shall remain in full force and effect until all such disputes are resolved.

8.2 **Termination**.

(e) **Termination for Convenience**. At any time after the first (1st) anniversary of the Effective Date, Incyte may elect to terminate this Agreement in its entirety, or as to one or more Projects, by providing twelve (12) months' prior written notice to Agenus; *provided* that at any time after such notice by Incyte, Agenus may accelerate the effective date of such termination by providing thirty (30) days' prior written notice to Incyte of such accelerated effective date.

(f) **Termination for Material Breach**. If either Party (the "**Non-Breaching Party**") believes that the other Party (the "**Breaching Party**") is in material breach of this Agreement, then the Non-Breaching Party may deliver notice of such breach to the Breaching Party. If the Breaching Party fails to cure such breach, or to initiate such steps as would be considered reasonable to effectively cure such breach (and thereafter diligently pursues such cure), within [**] after receipt of such notice of breach (or [**] in the case of non-payment of any amounts due hereunder), the Non-Breaching Party may terminate this Agreement upon

written notice to the Breaching Party. Notwithstanding the foregoing, if a Party disputes the termination, then Section 8.2(f) shall apply.

(g) **Termination if Incyte Challenges Agenus IP**. Except in connection with any infringement action brought by Agenus or any of its licensors, Affiliates or sublicensees against Incyte or any Incyte Related Party, if Incyte or any Incyte Related Party, directly or indirectly, (i) initiates or requests an interference, opposition or similar proceeding with respect to any Agenus Patent Right; (ii) makes, files or maintains any claim, demand, lawsuit, or cause of action to challenge the validity or enforceability of any Agenus Patent Right; or (iii) opposes any extension of, or the grant of a supplementary protection certificate with respect to, any Agenus Patent Right, Agenus shall have the right to terminate this Agreement upon **[**]** prior written notice to Incyte, if Incyte or the Incyte Related Party, as applicable, has not withdrawn such action before the end of such notice period.

(h) **Termination for Abandoned Development or Commercialization**. If Incyte has Abandoned Development or Abandoned Commercialization, as applicable, Agenus may elect to terminate this Agreement as to the relevant Project (as provided in Section 4.3 or 5.3) by providing Incyte written notice of such termination, such termination to be effective immediately upon written notice to Incyte. Notwithstanding the foregoing, if Incyte disputes the termination, then Section 8.2(f) shall apply.

(i) **Termination for Competing Program Following Change in Control**.

(iv) In the event that Incyte undergoes a Change in Control, and the acquirer of Incyte, or any Person which, immediately prior to such Change in Control, is an Affiliate of such acquirer, is engaged in the research, development, manufacture or commercialization in the Field in the Territory of a compound or Antibody that Interacts with a Profit-Share Target(s) or a Target of a Co-Developed Product, or a therapeutic preparation containing such a compound or Antibody, as of the date of such Change in Control, then Agenus may elect to terminate this Agreement as to the applicable Profit Share Product or Co-Developed Product only, immediately upon written notice to Incyte.

(v) In the event that Agenus undergoes a Change in Control, and the acquirer of Agenus, or any Person which, immediately prior to such Change in Control, is an Affiliate of such acquirer, is engaged in the research, development, manufacture or commercialization in the Field in the Territory of a compound or Antibody that Interacts with a Profit-Share Target(s) or a Target of a Co-Developed Product, or a therapeutic preparation containing such a compound or Antibody, as of the date of such Change in Control, then Incyte may elect to terminate this Agreement as to the applicable Profit-Share Product or Co-Developed Product only, immediately upon written notice to Agenus.

(j) **Termination Disputes**. If a Party gives notice of termination under Section 8.2(b), if the Parties dispute whether Incyte has Abandoned Development or Abandoned Commercialization in accordance with Section 4.3 or 5.3, as applicable, or Agenus gives notice of termination under Section 8.2(c), 8.2(d) or 8.2(e)(i), or Incyte gives notice of termination

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under Section 8.2(e)(ii), and the other Party disputes whether such notice was proper, then the issue of whether or not the relevant Party breached this Agreement, Incyte has Abandoned Development or Abandoned Commercialization, or notice was properly given pursuant to Section 8.2(c), 8.2(d) or 8.2(e) shall be resolved in accordance with Section 12.2, and the Agreement shall remain in full force and effect until such dispute is resolved. All cure periods shall be tolled during such dispute resolution process. If, as a result of such dispute resolution process it is determined that the notice of termination was proper, then the Breaching Party, or Incyte, as applicable, shall be entitled to the remainder of the relevant cure period and such termination shall only be effective if the relevant breach, Abandoned Development, Abandoned Commercialization is not cured or otherwise addressed in accordance with this Agreement during such period. On the other hand, if, as a result of the dispute resolution process, it is determined that the notice of termination was improper, then no termination shall have occurred or shall occur as a result of such notice and this Agreement shall remain in full force and effect.

8.3 **Effects Of Termination**.

(d) Upon termination of this Agreement, with respect to a particular Project or in its entirety, by Incyte pursuant to Section 8.2(a) or by Agenus pursuant to Sections 8.2(b), 8.2(c), 8.2(d) or 8.2(e)(i), the following provisions shall apply solely with respect to each Terminated Project, where "**Terminated Project**" means each terminated Project (or, if this Agreement is terminated in its entirety, each Project) and "**Terminated Product**" means a Product or Licensed Antibody arising from the relevant Terminated Project; *provided, however*, that any reference to "Terminated Product" shall exclude, and no rights are granted to Agenus with respect to, any compound, Antibody or active ingredient that is owned or controlled by Incyte or any of its Affiliates or a Third Party (which is not, for clarity, a Licensed Antibody or Product (other than a Combination Product)):

(iii) all licenses granted by Agenus to Incyte under Section 2.1 shall terminate and Incyte shall not have any rights to use or exercise any rights under the Agenus IP;

(iv) Incyte hereby grants to Agenus, from and after such termination, an exclusive, worldwide, royalty-bearing (per Section 8.3(a)(xi) below) license, with the right to grant sublicenses, (A) under the Incyte IP as of the date of such termination, solely to the extent that such licenses are necessary to Develop, Manufacture or Commercialize the Terminated Products in the Field in the Territory, and (B) the license granted to Agenus under the Incyte Program Patent Rights and the Incyte Program Know-How pursuant to Section 2.2(b) shall survive;

(v) the provisions of Article VI (other than Section 6.1) shall be terminated; *provided* that, as between the Parties, the rights and obligations of the Parties to Prosecute and enforce the Incyte Program Patent Rights and Joint Patent Rights that solely Cover the Terminated Product(s) shall be reversed, and, as necessary for Agenus to then exercise its first right to prosecute and enforce such Incyte Program Patent Rights and Joint Patent Rights, Incyte shall transition Prosecution and enforcement responsibilities to Agenus with respect to such Incyte Program Patent Rights and Joint

Patent Rights, including execution of such documents as may be necessary to effect such transition;

(vi) Incyte shall promptly transfer and assign to Agenus all of Incyte's and its Affiliates' rights, title and interests in and to any trademark(s) (but not any Incyte house marks or any trademark containing the word "Incyte" owned by Incyte and used for the Products in the Field in the Territory) owned by Incyte and used for the Terminated Products in the Field in the Territory;

(vii) Incyte shall provide to Agenus a fair and accurate summary report of the status of the Development and Commercialization of the Terminated Products in the Field in each country in the Territory through the effective date of termination within **[**]** after such termination;

(viii) to the extent permitted by applicable Law, Incyte shall transfer to Agenus, solely for the Development, Manufacture and Commercialization of the Terminated Products in the Field in the Territory, Incyte's entire right, title, and interest in and to all preclinical and clinical data, and all other supporting data, including pharmacology, toxicology, chemistry and biology data, and documented technical and other information or materials to the extent related to the Development, Manufacture and Commercialization of the Terminated Products in the Field in the Territory; *provided* that Incyte may retain a single copy of such items for its records or such additional copies as required by applicable Law;

(ix) to the extent permitted by applicable Law, Incyte shall transfer to Agenus all Regulatory Documentation, Regulatory Approvals (including reimbursement and pricing approvals), the Global Safety Database, records of all Regulatory Interactions, in each case to the extent related to the Terminated Products in the Field in the Territory, that Incyte Controls as of the effective date of such termination. If Incyte is restricted under applicable Law from transferring ownership of any of the foregoing items to Agenus, Incyte shall grant, and hereby does grant, to Agenus (or its designee) a right of reference or use to such item. Incyte shall take all permitted actions reasonably necessary to effect such transfer or grant of right of reference or use to Agenus;

(x) to the extent reasonably requested by Agenus, Incyte shall transfer to Agenus any license agreements or other contracts between Incyte and any Third Party that are specific to the Terminated Products in the Field in the Territory (including, as applicable, Clinical Trial and Manufacturing agreements), to the extent such agreements are in effect as of the effective date of termination and such assignment or transfer is permitted at no cost or expense to Incyte, and to facilitate introductions of Agenus to the applicable Permitted Subcontractors, licensors, Manufacturing vendors, Clinical Trial sites, Clinical Trial investigators and the like;

(xi) Agenus shall have the right to purchase from Incyte all of the inventory of the Terminated Products in the Field in the Territory held by Incyte as of the effective date of termination at a price equal to Incyte's Manufacturing Cost, determined

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in accordance with Accounting Standards, but only if the following conditions are met as of the date of supply: (i) any such Products meet the applicable release specifications; and (ii) the continued use of such Products does not cause objectively valid safety concerns for which Agenus is not willing to indemnify Incyte (unless, pursuant to this Agreement or any manufacturing or supply (or similar) agreement between or among the Parties or their Affiliates, Incyte (or its Affiliate) was obligated to indemnify Agenus or its Affiliates with respect to the Manufacture of the relevant units of such Product). Agenus shall notify Incyte within **[**]** after the effective date of termination whether Agenus elects to exercise such right;

(xii) to the extent permitted by applicable Law, Incyte shall transfer to Agenus all promotional materials, customer data, competitive intelligence data, market research and other materials, information or data to the extent related to the Commercialization of the Terminated Products in the Field in the Territory that are Controlled by Incyte as of the effective date of such termination, to the extent necessary or reasonably useful for the Commercialization of such Products;

(xiii) Agenus shall pay to Incyte, on a Terminated Product-by-Terminated Product basis, royalties on Net Sales of each Terminated Product by or under the authority of Agenus, its Affiliates or licensees or sublicensees as specified in the following chart in accordance with the same schedule and other terms and conditions as Incyte would have otherwise been obligated to pay royalties to Agenus for Royalty-Bearing Products under Article VII, *mutatis mutandis*:

Stage of Development of the Relevant Terminated Product as of the Effective Date of Termination	**Royalty Rate**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**
[**]	**[**]**

(xiv) for clarity, Sections 8.3(c), (d), (e) and (f) shall apply.

In the event of the termination of this Agreement with respect to a particular Project by Incyte under Section 8.2(a) or by Agenus under Section 8.2(d) or 8.2(e), this Agreement shall continue in full force and effect with respect to the Projects unaffected by such partial termination, and the provisions of this Section 8.3 shall apply solely with respect to the Project(s), and Product(s) arising out of the Project(s) that are affected by such partial termination.

(e) Upon termination of this Agreement by Incyte in accordance with Section 8.2(b) or Section 8.2(e)(ii):

(i) the licenses granted by Incyte to Agenus pursuant to Section 2.2 shall, at Incyte's discretion, terminate or survive;

(ii) the license granted by Agenus to Incyte pursuant to Section 2.1 shall remain in effect;

(iii) the rights and obligations of the Parties pursuant to Sections 6.2 and 6.3 shall remain in effect;

(iv) Incyte's obligations to pay to Agenus royalties due under Section 7.6 and milestones due under Section 7.5 shall survive; *provided, however*, solely in the case of a termination of this Agreement by Incyte in accordance with Section 8.2(b), Incyte shall have the right, exercisable by delivery of written notice to Agenus, to set off against and reduce the amount of any royalties due to Agenus under Section 7.6 by the amount of any and all unindemnified Losses that are actually incurred by Incyte arising directly out of the material breach of this Agreement that resulted in such termination, with any dispute over the amount of such Losses to be resolved in accordance with Section 12.2 hereof;

(v) at Incyte's discretion, any Profit-Share Product or any Co-Developed Product shall become a Royalty-Bearing Product on the terms set forth in Section 4.4(d), without application of any of the notice periods contained therein, and Agenus shall have no further obligation to fund any portion of Allowable Expenses incurred thereafter for such Profit-Share Product or Development Costs incurred thereafter for such Co-Developed Product;

(vi) to the extent reasonably requested by Incyte, Agenus shall transfer to Incyte any license agreements or other contracts between Agenus and any Third Party that are specific to Products in the Field in the Territory (including, as applicable, Manufacturing agreements, but excluding the LICR Agreement), to the extent such agreements are in effect as of the effective date of termination and such assignment or transfer is permitted at no cost or expense to Agenus, and to facilitate introductions of Incyte to the applicable Permitted Subcontractors, licensors, Manufacturing vendors, and the like;

(vii) Incyte shall have the right to purchase from Agenus all of the inventory of the Products in the Field in the Territory held by Agenus as of the effective date of termination at a price equal to Agenus' Manufacturing Cost, determined in accordance with Accounting Standards, but only if the following conditions are met as of the date of supply: (A) any such Products meet the applicable release specifications; and (B) the continued use of such Products does not cause objectively valid safety concerns for which Incyte is not willing to indemnify Agenus (unless, pursuant to this Agreement or any manufacturing or supply (or similar) agreement between or among the Parties or their Affiliates, Agenus (or its Affiliate) was obligated to indemnify Incyte or its Affiliates with respect to the Manufacture of the relevant units of such Product). Incyte shall notify

Agenus within six (6) months after the effective date of termination whether Incyte elects to exercise such right; and

(viii) for clarity, Sections 8.3(c), (d), (e) and (f) shall apply.

(f) During the **[**]** period following termination of this Agreement with respect to a Terminated Project, neither (i) the Breaching Party and, subject to Section 12.3(b)(ii), its Affiliates, in the case of termination pursuant to Section 8.2(b), nor (ii) Incyte and, subject to Section 12.3(b)(ii), its Affiliates, in the case of termination by Incyte under Section 8.2(a) or by Agenus under Sections 8.2(c), 8.2(d) or 8.2(e)(i), nor (iii) Agenus and subject to Section 12.3(b)(ii), its Affiliates, in the case of termination by Incyte pursuant to Section 8.2(e)(ii), shall independently, or with a Third Party, Develop (but each may research), Manufacture or Commercialize in the Field in the Territory any Antibody that Interacts with the Named Target or Bullpen Target to which such Terminated Project is directed, or any product containing such an Antibody.

(g) Termination of this Agreement shall be in addition to, and shall not prejudice, the Parties' remedies at law or in equity, including the Parties' ability to receive legal damages and/or equitable relief with respect to any breach of this Agreement, regardless of whether or not such breach was the reason for the termination.

(h) Expiration or termination of this Agreement for any reason shall not release either Party from any obligation or liability which, on the effective date of such expiration or termination, has already accrued to the other Party or which is attributable to a period prior to such expiration or termination.

(i) Articles I, VIII, IX, XI, XII and Sections 2.5, 6.1, 7.7, 7.8, 7.9, 7.10, 7.11 and 7.12 shall survive termination or expiration of this Agreement.

ARTICLE IX: INDEMNIFICATION; LIMITATION OF LIABILITY

9.1 **By Incyte**.

(k) Subject to Section 9.1(b), Incyte agrees, at Incyte's cost and expense, to defend, indemnify and hold harmless Agenus and its Affiliates, and their respective directors, officers, employees and agents (the "**Agenus Indemnified Parties**") from and against any losses, costs, damages, fees or expenses ("**Losses**") arising out of any Third Party claim to the extent relating to (i) any breach by Incyte of any of its representations, warranties or obligations pursuant to this Agreement; (ii) the negligence or willful misconduct of Incyte; and (iii) except as otherwise provided in Section 9.3, the Development, Manufacture, Commercialization, use, sale or other disposition by Incyte or Incyte Related Parties of any Licensed Antibody or Product.

(l) In the event of any such claim against any of the Agenus Indemnified Parties by any Third Party, Agenus shall promptly notify Incyte in writing of the claim. Subject to Section 9.1(c), Incyte shall have the right, exercisable by notice to Agenus within **[**]** after receipt of notice from Agenus of the claim, to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the claim (including the right to settle the

claim solely for monetary consideration) with counsel selected by Incyte and reasonably acceptable to Agenus. The Agenus Indemnified Parties shall cooperate with Incyte and may, at their option and expense, be separately represented in any such action or proceeding. Incyte shall not be liable for any litigation costs or expenses incurred by the Agenus Indemnified Parties without Incyte's prior written authorization. In addition, Incyte shall not be responsible for the indemnification or defense of any Agenus Indemnified Party to the extent arising from any negligent or intentional acts by any Agenus Indemnified Party or the breach by Agenus of any representation, obligation or warranty under this Agreement, or any claims compromised or settled without its prior written consent. Notwithstanding the foregoing, Incyte shall not settle a Third Party claim without the prior written consent of Agenus, if such settlement would impose any monetary obligation on Agenus or require Agenus to submit to an injunction.

(m) Notwithstanding anything to the contrary above, in the event of any such claim against the Agenus Indemnified Parties by a governmental or criminal action seeking an injunction against Agenus, Agenus shall have the right to control the defense, litigation, settlement, appeal or other disposition of the claim at Incyte's expense.

9.2 **By Agenus**.

(j) Subject to Section 9.2(b), Agenus agrees, at Agenus' cost and expense, to defend, indemnify and hold harmless Incyte and its Affiliates and their respective directors, officers, employees and agents (the "**Incyte Indemnified Parties**") from and against any Losses arising out of any Third Party claim to the extent relating to (i) any breach by Agenus of any of its representations, warranties or obligations pursuant to this Agreement, (ii) a claim that the entry into this Agreement or the grant of licenses to Incyte hereunder violates any oral or written contractual obligation to which Agenus is a party or by which it is bound, (iii) the negligence or willful misconduct of Agenus, or (iv) except as otherwise provided in Section 9.3, the Development, Manufacture, Commercialization, use, sale or other disposition by Agenus or its Affiliates of any Licensed Antibody or Product.

(k) In the event of any such claim against any of the Incyte Indemnified Parties by any Third Party, Incyte shall promptly notify Agenus in writing of the claim. Subject to Section 9.2(c), Agenus shall have the right, exercisable by notice to Incyte within **[**]** after receipt of notice from Incyte of the claim, to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the claim (including the right to settle the claim solely for monetary consideration) with counsel selected by Agenus and reasonably acceptable to Incyte. The Incyte Indemnified Parties shall cooperate with Agenus and may, at their option and expense, be separately represented in any such action or proceeding. Agenus shall not be liable for any litigation costs or expenses incurred by the Incyte Indemnified Parties without Agenus' prior written authorization. In addition, Agenus shall not be responsible for the indemnification or defense of any Incyte Indemnified Party to the extent arising from any negligent or intentional acts by any Incyte Indemnified Party, or the breach by Incyte of any representation, obligation or warranty under this Agreement, or any claims compromised or settled without its prior written consent. Notwithstanding the foregoing, Agenus shall not settle

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a Third Party claim without the prior written consent of Incyte, if such settlement would impose any monetary obligation on Incyte or require Incyte to submit to an injunction.

(l) Notwithstanding anything to the contrary above, in the event of any such claim against the Incyte Indemnified Parties by a governmental or criminal action seeking an injunction against Incyte, Incyte shall have the right to control the defense, litigation, settlement, appeal or other disposition of the claim at Agenus' expense.

9.3 **Shared Claims**. Any Losses arising out of any Third Party claim involving any actual or alleged death or bodily injury arising out of or resulting from the Development, Manufacture or Commercialization of any Profit-Share Product in the Field in the Territory, to the extent that such Losses exceed the amount (if any) covered by the applicable Party's product liability insurance ("**Excess Product Liability Costs**"), shall be shared equally by the Parties as a Product Liability Cost for purposes of calculating Profit-or-Loss, except to the extent such Losses arise out of any Third Party claim based on (a) a Party's breach of any of its representations, obligations or warranties under to this Agreement, or (b) the negligence or intentional act of a Party, its Affiliates, or their respective permitted sublicensees, or any of the respective officers, directors, employees and agents of each of the foregoing entities, in the performance of obligations or exercise of rights under this Agreement.

9.4 **Limitation of Liability**. EXCEPT WITH RESPECT TO A BREACH OF ARTICLE XI, OR A PARTY'S LIABILITY PURSUANT TO ARTICLE IX, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE OR OTHER INDIRECT OR REMOTE DAMAGES, OR, EXCEPT WITH RESPECT TO A BREACH OF SECTION 2.7 OR 8.3(c), FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.

9.5 **Joint and Several Liability.** Agenus US and 4-AB shall be jointly and severally liable for all obligations of Agenus, or either Agenus US or 4-AB, under this Agreement.

ARTICLE X: REPRESENTATIONS, WARRANTIES AND COVENANTS

10.1 **Representation Of Authority; Consents**. Agenus and Incyte each represents and warrants, and covenants, as applicable, to the other Party that:

(m) as of the Execution Date, it has full right, power and authority to enter into this Agreement;

(n) as of the Execution Date and, subject to receipt of HSR Clearance, as of the Effective Date, this Agreement has been duly executed by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally and by general

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equitable principles and public policy constraints (including those pertaining to limitations and/or exclusions of liability, competition Laws, penalties and jurisdictional issues including conflicts of Laws);

(o) except for HSR Clearance, as of the Execution Date, and except as otherwise contemplated in this Agreement, all necessary consents, approvals and authorizations of all government authorities and other persons required to be obtained by such Party in connection with the execution, delivery and performance of this Agreement have been and shall be obtained; and

(p) neither it nor any of its Affiliates has been debarred or is subject to debarment, and such Party covenants that neither it nor any of its Affiliates will use in any capacity, in connection with the Development, Manufacture or Commercialization of the Licensed Antibodies or Products in the Field, any Person who has been debarred pursuant to Section 306 of the United States Federal Food, Drug, and Cosmetic Act, or who is the subject of a conviction described in such section. Each Party shall inform the other Party in writing immediately upon learning that it or any Person who is performing services hereunder is debarred or is the subject of a conviction described in Section 306 of the United States Federal Food, Drug, and Cosmetic Act, or upon learning that any action is pending or threatened relating to the debarment or conviction of such Party or any of its Affiliates, or any Person used in any capacity by such Party or any of its Affiliates in connection with the Development, Manufacture or Commercialization of the Licensed Antibodies or Products in the Field.

10.2 **No Conflict**. Each Party represents and warrants to the other Party that, except as otherwise disclosed to the other Party in writing, the execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not conflict with or violate such Party's corporate organizational documents or any requirement of applicable Laws and (b) do not and shall not conflict with, violate or breach or constitute a default or require any consent under, any material oral or written contractual obligation of such Party including, in the case of Agenus, under the LICR Agreement. Each Party agrees that it shall not during the term of this Agreement grant any right, license, consent or privilege to any Third Party or otherwise undertake any action, either directly or indirectly, that would conflict with the rights granted to the other Party or interfere with any obligations of such Party set forth in this Agreement.

10.3 **Additional Agenus Representations and Warranties**. Agenus represents and warrants that, as of the Execution Date, except as previously disclosed to Incyte in writing, and covenants, as applicable, that:

(f) Exhibit A sets forth a true and complete list of the Agenus Patent Rights;

(g) Agenus is entitled to grant the rights, licenses and sublicenses granted to Incyte pursuant to Section 2.1 (including pursuant to the LICR Agreement) and no Third Party other than LICR and MSKCC retains rights under the LICR Agreement that would preclude Incyte from exercising the rights and licenses granted in this Agreement. Except for the LICR Agreement, there are no agreements or arrangements to which Agenus or any of its Affiliates is a

party relating to Licensed Antibodies or Agenus IP or Agenus Platform IP that would limit the rights granted to Incyte under this Agreement;

(h) Agenus and its Affiliates have and have enforced, and after the Effective Date or during the Term shall have, a policy of requiring all of their respective employees, officers, contractors and consultants to execute agreements requiring assignment to Agenus or its Affiliate, as applicable, of all inventions made during the course of and as a result of their association with Agenus or such Affiliate and requiring each such employee, officer, contractor and consultant to maintain as confidential all Confidential Information it receives during their performance of their obligations for Agenus or its Affiliate;

(i) to Agenus' knowledge, no Third Party (i) is infringing any Agenus Patent Rights or Agenus Platform Patent Rights Covering the Retrocyte Display Technology or has misappropriated any Agenus Know-How or Agenus Platform Know-How or (ii) has challenged the ownership, scope, duration, validity, enforceability, priority or right to use any Agenus Patent Rights or Agenus Platform Patent Rights Covering the Retrocyte Display Technology (including through the institution or written threat of institution of interference, post-grant review, *inter partes* review, reexamination, protest, opposition, nullity or similar invalidity proceedings before the U.S. Patent and Trademark Office or any analogous foreign entity) or any Agenus Know-How or Agenus Platform Know-How;

(j) neither Agenus nor its Affiliates has granted, and after the Execution Date and during the Term, neither Agenus nor its Affiliates will grant, any right, option, license or interest in or to any of the Agenus Patent Rights or Agenus Know-How that is in conflict with the rights or licenses granted to Incyte under this Agreement;

(k) other than pursuant to the LICR Agreement (an accurate and complete copy of which has been provided to Incyte), (i) none of the Agenus IP, the Agenus Platform Patent Rights Covering the Retrocyte Display Technology, or the Agenus Platform Know-How has been licensed or sublicensed from any Third Party, and (ii) there are no royalties or other payments that would be due to Third Parties on account of Development or Commercialization of Licensed Antibodies or Products hereunder as a result of any agreement entered into by Agenus or any of its Affiliates on or before the Execution Date;

(l) Agenus is not in default with respect to a material obligation under, and neither LICR nor MSKCC has claimed that Agenus nor, to the knowledge of Agenus, has grounds upon which to claim, that Agenus is in default with respect to a material obligation under, the LICR Agreement, except for defaults that would not have a material adverse effect on Incyte's Program Rights hereunder;

(m) all fees due to date that are required to maintain the Agenus Patent Rights and the Agenus Platform Patent Rights Covering the Retrocyte Display Technology have been paid in full and, to Agenus' knowledge, all issued claims of the Agenus Patent Rights and the Agenus Platform Patent Rights Covering the Retrocyte Display Technology are valid and enforceable;

(n) neither Agenus nor any of its Affiliates owns or is licensed under any Patent Rights or Know-How necessary to Develop, Manufacture or Commercialize any Product that are not included in the licenses granted hereunder to Incyte;

(o) neither Agenus nor any of its Affiliates has received any written communications of pending or threatened claims against it relating to infringement of any Intellectual Property Rights of any Third Party by means of the practice or use of the Agenus IP, the Agenus Platform Patent Rights Covering the Retrocyte Display Technology or the Agenus Platform Know-How, nor have any of them received any written communications alleging that Agenus or any of its Affiliates has violated, through the development, manufacture, use, import, offering for sale or sale of products containing Agenus IP, Agenus Platform Patent Rights Covering the Retrocyte Display Technology or Agenus Platform Know-How, or the Development, Manufacture or Commercialization of any Licensed Antibody or Product, any Intellectual Property Rights of any Third Party, nor to its knowledge, is there any reasonable basis for any such claim or allegation; and

(p) there is no legal claim, judgment or settlement against or owed by Agenus or its Affiliates, or any order, writ, injunction or decree of any Governmental Authority against Agenus or any of its Affiliates, in each case relating to any Product, the Agenus IP or the Agenus Platform Patent Rights Covering the Retrocyte Display Technology, or the Agenus Platform Know-How, or the transactions contemplated by this Agreement.

10.4 **Disclaimer of Warranty**. Nothing in this Agreement shall be construed as a representation made or warranty given by Agenus that Incyte will be successful in obtaining any Patent Rights, that any patents will issue based on pending applications or that any such pending applications or patents issued thereon will be valid. Nothing in this Agreement shall be construed as a representation made or warranty given by either Party that it will be successful in Developing or Commercializing any Licensed Antibody or Product. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL PATENT RIGHTS AND KNOW-HOW LICENSED PURSUANT TO THIS AGREEMENT SHALL BE PROVIDED ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES AND RENOUNCES ANY WARRANTY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

10.5 **Standstill**.

(a) Incyte agrees that, during the Initial Discovery Period, unless specifically invited in writing to do so by Agenus US, Incyte and each of its Affiliates will not in any manner, directly or indirectly:

(ix) effect, or seek, offer or propose to effect (whether publicly or otherwise) or cause or participate in, (A) any acquisition of (1) any Voting Stock of Agenus US or any securities that at such time are convertible or exchangeable into or exercisable for any Voting Stock of Agenus US (collectively, "**Voting Securities**"); (2) any direct or indirect rights or options to acquire any Voting Securities; or (3) any

assets or securities of Agenus US or any of its subsidiaries; (B) any merger, consolidation, tender or exchange offer, or other business combination involving Agenus US or an Affiliate thereof; (C) any restructuring, recapitalization, liquidation, dissolution or similar transaction with respect to Agenus US or an Affiliate thereof; (D) any "solicitation" of "proxies" (as such terms are defined or used in Regulation 14A under the Exchange Act) or consents with respect to any Voting Securities, any "election contest" (as such term is defined or used in Rule 14a-11 of the Exchange Act) with respect to Agenus US, or any demand for a copy of Agenus US's stock ledger, list of its stockholders, or other books and records; or (E) any action inconsistent with the terms of this Section 10.5;

(x) form, join, participate in or encourage the formation of any "group" (within the meaning of Section 13(d)(3) of the Exchange Act) with respect to any Voting Securities;

(xi) otherwise act, alone or in concert with others (including by providing financing for another party), to seek or offer to control or influence, in any manner, the management, Board of Directors or policies of Agenus US;

(xii) take any action that might force Agenus US to make a public announcement regarding any of the types of matters set forth in Section 10.5(a)(i);

(xiii) make (publicly or to Agenus US, or its directors, officers, employees, agents or security holders, directly or indirectly) any request or proposal to amend, waive or terminate any provision of this Section 10.5 or any inquiry or statement relating thereto; or

(xiv) instigate, encourage or assist any Third Party to do any of the foregoing.

(b) Notwithstanding the foregoing provisions of this Section 10.5, the restrictions set forth in this Section 10.5 shall terminate and be of no further force and effect if: (i) Agenus US publicly engages in a process designed for Agenus US to solicit offers relating to transactions which, if consummated, would result in a Change in Control of Agenus US; (ii) Agenus US enters into a definitive agreement with respect to, or publicly announces that it plans to enter into, a transaction involving all or a controlling portion of Agenus US's Voting Securities or all or substantially all of Agenus US's assets (whether by merger, consolidation, business combination, tender or exchange offer, recapitalization, restructuring, sale, equity issuance or otherwise; or (iii) a person of 13D Group not including Incyte commences or publicly announces its intent to commence a tender or exchange offer for a controlling portion of Agenus US's Voting Securities .

(c) Notwithstanding anything in the Section 10.5 to the contrary, Incyte and its Affiliates may acquire, through that certain Stock Purchase Agreement of even date herewith between Agenus US and Parent (the "**Stock Purchase Agreement**") or through open market purchases, an aggregate amount of Voting Securities that would represent less than fifteen

percent (15%) of the voting power represented by Agenus' Voting Stock, solely for the purposes of investment in the ordinary course of business (so long as any decision to make such acquisition is in compliance with United States securities laws). Nothing in this Section 10.5 shall restrict passive investments by any employee benefit plan of Incyte or its Affiliates so long as such investments are directed by independent trustees, administrators or employees who do not have Confidential Information of Agenus.

(d) This Section 10.5 shall not apply to any of the activities with respect to Licensed Antibodies or Products contemplated by this Agreement.

10.6 **Additional Covenants Regarding the LICR Agreement**. Agenus agrees that during the Term:

(a) Agenus shall use Commercially Reasonable Efforts to fulfill its obligations under the LICR Agreement to the extent that failure to do so would materially adversely affect Incyte or its rights hereunder;

(b) Agenus shall not enter into any subsequent agreement with any other party to the LICR Agreement that modifies or amends the LICR Agreement in any way that would materially adversely affect Incyte's rights or interest under this Agreement without Incyte's prior written consent, which shall not be unreasonably withheld, delayed or conditioned, and shall provide Incyte with a copy of any modification to or amendment of the LICR Agreement, regardless of whether Incyte's consent was required with respect thereto;

(c) Agenus shall not terminate the LICR Agreement in whole or in part without Incyte's prior written consent if such termination would materially adversely affect Incyte's rights hereunder;

(d) Agenus shall promptly furnish Incyte with copies of all communications received by Agenus from any other party to the LICR Agreement, as well as all material reports and other communications that Agenus furnishes to LICR or MSKCC under the LICR Agreement, in each case to the extent any such communications, or reports could reasonably affect the rights or obligations of Incyte under this Agreement. Agenus shall give Incyte, upon its request, a reasonable opportunity to review and comment upon such reports or communications before they are transmitted to any such other party and Agenus shall consider in good faith any reasonable comments timely provided by Incyte; and

(e) Agenus shall, within five (5) Business Days after Agenus' receipt thereof, furnish Incyte with copies of all notices received by Agenus relating to any alleged breach or default by Agenus under the LICR Agreement that could materially adversely affect Incyte and, if Agenus determines that it cannot or chooses not to cure or otherwise resolve any such alleged breach or default, Agenus shall so notify Incyte within five (5) Business Days of such determination.

ARTICLE XI: CONFIDENTIALITY

11.1 **Confidential Information**.

[**] = Portions of this exhibit have been omitted pursuant to a confidential treatment request. An unredacted version of this exhibit has been filed separately with the Commission.

(b) In connection with the performance of their respective obligations under this Agreement, each Party (the "**Disclosing Party**") may, itself or through or its Affiliates, disclose certain Confidential Information to the other Party (the "**Recipient**") or its Affiliates. During the Term and for a period of **[**]** thereafter, the Recipient shall maintain all Confidential Information of the Disclosing Party in strict confidence and shall not use such Confidential Information for any purpose, except that the Recipient may disclose or permit the disclosure of any such Confidential Information to its Affiliates and permitted sublicensees, or its or their respective directors, officers, employees, consultants, advisors and agents, and its Permitted Subcontractors, who in each case are obligated to maintain the confidential nature of such Confidential Information on terms no less stringent than those of this Article XI. In addition, the Recipient may use or disclose Confidential Information of the Disclosing Party (i) in exercising the Recipient's rights and licenses granted hereunder (including exercising these rights to discuss with Third Party sublicensing opportunities) or to fulfill its obligations and/or duties hereunder; *provided* that such disclosure is made to a Person who is obligated to confidentiality and non-use obligations no less rigorous than those of this Section 11.1 and (ii) subject to Section 11.1(c), in prosecuting or defending litigation, complying with applicable Law and/or submitting information to tax or other Governmental Authorities. Confidential Information of the Disclosing Party includes all "Confidential Information" (as defined in the Prior Confidentiality Agreement which remains Confidential Information on the Effective Date of this Agreement) disclosed by the Disclosing Party or its Affiliate to the Recipient or its Affiliate pursuant to the Prior Confidentiality Agreement.

(c) The obligations of confidentiality and non-use set forth above shall not apply to the extent that the Recipient can demonstrate that the relevant Confidential Information of the Disclosing Party: (i) was publicly known prior to the time of its disclosure under this Agreement other than through a breach by the Disclosing Party or its Affiliate of the Prior Confidentiality Agreement; (ii) became publicly known after the time of its disclosure under this Agreement other than through acts or omissions of the Recipient, its Affiliates, potential sublicensees or permitted sublicensees in violation of this Agreement; (iii) is or was disclosed to the Recipient or any of its Affiliates at any time, whether prior to or after the time of its disclosure under this Agreement or the Prior Confidentiality Agreement, by a Third Party having no fiduciary relationship with the Disclosing Party or any of its Affiliates and having no obligation of confidentiality with respect to such Confidential Information; (iv) is independently developed by the Recipient or any of its Affiliates without access to such Confidential Information as evidenced by written records; or (v) was known by Recipient or any of its Affiliates at the time of receipt from Disclosing Party or any of its Affiliates as documented by Recipient's or any of its Affiliate's records.

(d) In addition, the Recipient or any of its Affiliates may disclose Confidential Information of the Disclosing Party to the extent necessary to comply with applicable Laws or a court or administrative order; *provided* that the Recipient provides to the Disclosing Party prior written notice of such disclosure, to the extent reasonably possible, and that the Recipient takes all reasonable and lawful actions to obtain confidential treatment for such disclosure and, to the extent possible, to minimize the extent of such disclosure.

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(e) Notwithstanding the obligations in Section 11.1(a) and 11.1(c), a Party may disclose (and, in connection therewith, use) Confidential Information of the other Party, if such disclosure:

(i) is made to Governmental Authorities or other Regulatory Authorities in order to obtain Patent Rights or to gain or maintain approval (A) to conduct Clinical Trials with respect to products as provided hereunder or (B) to market products as provided hereunder, but such disclosure may be only to the extent reasonably necessary to obtain such Patent Rights or authorizations;

(ii) is made to its Affiliates, permitted sublicensees, agents, consultants, or other Third Parties (including service providers) for the Development, Manufacture or Commercialization of Licensed Antibodies and Products as provided hereunder, or in connection with an assignment of this Agreement, a licensing transaction related to products under this Agreement, a loan, financing or investment, or an acquisition, merger, consolidation or similar transaction (or for such Persons to determine their interest in performing such activities or entering into such transactions), in each case on the condition that any Third Parties to whom such disclosures are made agree to be bound by confidentiality and non-use obligations no less rigorous than those contained in this Agreement; or

(iii) consists entirely of Confidential Information previously approved by the Disclosing Party for disclosure by the Recipient.

(f) Each Recipient shall be responsible for any breach of the obligations of this Section 11.1 by any Person to whom such Recipient or its Affiliate disclosed the Disclosing Party's Confidential Information.

11.2 **Publicity; Attribution; Terms of this Agreement; Non-Use of Names**.

(q) The Parties shall issue a press release, in the form attached as Exhibit B, within one (1) Business Day after the Execution Date, to announce the execution of this Agreement and describe the material financial and operational terms of this Agreement. Except as required by judicial order or applicable Law, or as set forth below, neither Party shall make any public announcement concerning this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Party preparing any such public announcement shall provide the other Party with a draft thereof at least **[**]** prior to the date on which such Party would like to make the public announcement. Neither Party shall use the name, trademark, trade name or logo of the other Party, its employees, or of LICR, in any publicity or news release relating to this Agreement or its subject matter, without the prior express written permission of the other Party or, as applicable, LICR.

(r) Notwithstanding the terms of this Article XI, either Party shall be permitted to disclose the existence and terms of this Agreement to the extent required, based on the advice of such Party's legal counsel, to comply with applicable Laws, including the rules and regulations promulgated by the U.S. Securities and Exchange Commission ("**SEC**") or any other

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Governmental Authority. Notwithstanding the foregoing, before disclosing this Agreement or any of the terms hereof pursuant to this Section 11.2(b), the Parties will consult with one another on the terms of this Agreement for which confidential treatment will be sought in making any such disclosure. If a Party wishes to disclose this Agreement or any of the terms hereof in accordance with this Section 11.2(b), such Party agrees, at its own expense, to seek confidential treatment of the portions of this Agreement or such terms as may be reasonably requested by the other Party; *provided* that the disclosing Party shall always be entitled to comply with legal requirements, including the requirements of the SEC.

(s) Either Party may also disclose the existence and terms of this Agreement in confidence to its attorneys and advisors, and to potential acquirors (and their respective professional advisors), in connection with a potential merger, acquisition or reorganization and to existing and potential investors or lenders of such Party, as a part of their due diligence investigations, or to existing and potential sublicensees or to permitted sublicensees and assignees, or to any other Person described in Section 11.1(d)(ii), in each case under an agreement to keep the terms of this Agreement confidential under terms of confidentiality and non-use substantially no less rigorous than the terms contained in this Agreement and to use such information solely for the purpose permitted pursuant to this Section 11.2(c) or Section 11.1(d)(ii).

(t) For purposes of clarity, either Party may issue a press release or public announcement or make such other disclosure if the content of such press release, public announcement or disclosure has previously been made public other than through a breach of this Agreement by the issuing Party or its Affiliates.

11.3 **Publications**. Each Party and its Affiliates shall have the right to make disclosures pertaining to a Licensed Antibody or Product to Third Parties in Publications, consistent with the Publication plan approved by the JSC and with the prior approval of the JSC, in accordance with the following procedure: The publishing Party shall provide the non-publishing Party with an advance copy of the proposed Publication, and the other Party shall then have **[**]** prior to submission of any Publication in which to recommend any changes it reasonably believes are necessary to preserve any Patent Rights or Know-How belonging in whole or in part to the non-publishing Party. If the non-publishing Party informs the publishing Party that such Publication, in the non-publishing Party's reasonable judgment, could be expected to have a material adverse effect on any patentable invention owned by or licensed, in whole or in part, to the non-publishing Party (other than pursuant to a license granted under this Agreement), or on any Know-How which is Confidential Information of the non-publishing Party, the publishing Party shall delay or prevent such Publication as follows: (i) with respect to a patentable invention, such Publication shall be delayed sufficiently long (not to exceed sixty (60) days) to permit the timely preparation and filing of a patent application; and (ii) with respect to Know-How which is Confidential Information of such non-publishing Party, such Know-How shall be deleted from the Publication. Notwithstanding the foregoing, a Party shall be permitted to disclose information on sites such as clinicaltrials.gov in accordance with its normal business practices.

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11.4 **Return of Confidential Information**. Subject to Sections 8.3(a) or 8.3(b), upon the expiration or termination of this Agreement, upon request, the Receiving Party shall return to the Disclosing Party or destroy all Confidential Information received by the Receiving Party or any of its Affiliates from the Disclosing Party or any of its Affiliates (and all copies and reproductions thereof). In addition, the Receiving Party and its Affiliates shall destroy: (a) any notes, reports or other documents. prepared by the Receiving Party which contain Confidential Information of the Disclosing Party; and (b) any Confidential Information of the Disclosing Party (and all copies and reproductions thereof) which is in electronic form or cannot otherwise be returned to the Disclosing Party. Nothing in this Section 11.4 shall require the alteration, modification, deletion or destruction of archival tapes or other electronic back-up media made in the ordinary course of business; *provided* that the Receiving Party and its Affiliates shall continue to be bound by its obligations of confidentiality and other obligations under this Article XI with respect to any of the Disclosing Party's Confidential Information contained in such archival tapes or other electronic back-up media. Any requested destruction of the Disclosing Party's Confidential Information shall be certified in writing to the Disclosing Party by an authorized officer of the Receiving Party supervising such destruction. Notwithstanding the foregoing, (i) the Receiving Party and its Affiliates may retain one copy of the Disclosing Party's Confidential Information solely for the purpose of determining the Receiving Party's continuing obligations under this Article XI and (ii) the Receiving Party and its Affiliates may retain the Disclosing Party's Confidential Information and its own notes, reports and other documents to the extent reasonably required (x) to exercise the rights and licenses of the Receiving Party expressly surviving expiration or termination of this Agreement; (y) to perform the obligations of the Receiving Party expressly surviving expiration or termination of this Agreement; or (z) for regulatory or archival purposes. Notwithstanding the return or destruction of the Disclosing Party's Confidential Information, the Receiving Party shall continue to be bound by its obligations of confidentiality and other obligations under this Article XI.

ARTICLE XII: MISCELLANEOUS

12.1 **Governing Law**. This Agreement (and any claims or disputes arising out of or related thereto or to the transactions contemplated thereby or to the inducement of any Party to enter therein, whether for breach of contract, tortious conduct, or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by and construed in accordance with the laws of the State of New York, USA, including all matters of construction, validity and performance, in each case without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

12.2 **Dispute Resolution**. Matters before the JSC, Project Management Teams and Subcommittees shall be governed by the process specified in Section 3.5. Any controversy, claim or dispute arising out of or relating to this Agreement that is not subject to Section 3.5, shall be settled, if possible, through good faith negotiations between the Parties. If the Parties are unable to settle such dispute within **[**]**, such dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be resolved as follows:

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(a) The Executive Officers of both Parties shall meet to attempt to resolve such dispute. Such resolution, if any, of a referred issue shall be final and binding on the Parties. All negotiations pursuant to this Section 12.2(a) are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

(b) If the Executive Officers cannot resolve such dispute within **[**]** after either Party requests such a meeting in writing and such dispute does not relate to a scientific or budgetary matter over which the JSC has responsibility or a matter described in Section 3.5(c), then,

(xv) if the dispute relates to (A) whether a milestone event has been achieved, (B) whether Incyte has Abandoned Development or Abandoned Commercialization of a Product or Project, or (C) inventorship of a Patent Right, then the matter will be submitted to an expert for resolution in accordance with the procedures set forth in Schedule 12.2; and

(xvi) in all other cases, either Party may seek resolution of such dispute in a court of competent jurisdiction.

(c) Notwithstanding anything to the contrary in this Section, if either Party in its sole judgment believes that any such breach of this Agreement could cause it irreparable harm, such Party (i) will be entitled to seek equitable relief in order to avoid such irreparable harm, and (ii) will not be required to follow the procedures set forth in Section 12.2(a)-(b) with respect to seeking such relief.

12.3 **Assignment**.

(e) Neither Party may assign its rights and obligations under this Agreement without the prior written consent of the other Party, except that either Party may make such assignment without the prior written consent of the other Party to an Affiliate (so long as such Party shall remain jointly and severally liable with such Affiliate with respect to all obligations so assigned) or as set forth in Section 12.3(b)(i). Any request for consent to assignment shall not be unreasonably withheld or delayed. Any purported assignment in contravention of this Section 12.3 shall, at the option of the non-assigning Party, be null and void and of no effect. No assignment shall release either Party from responsibility for the performance of any accrued obligation of such Party hereunder. This Agreement shall be binding upon and enforceable against the successor to or any permitted assignee from either of the Parties.

(f) Each Party agrees that, notwithstanding any provisions of this Agreement to the contrary:

(i) Either Party may assign this Agreement, along with the rights and licenses granted to it hereunder and the obligations to which it is subject hereunder, to a Third Party in connection with a Change in Control, subject to Sections 2.7(f), 8.2(e) and 12.3(b)(ii).

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(ii) In the event that this Agreement is assigned by a Party in connection with a Change in Control or a Party otherwise undergoes a Change in Control, (A) the other Party shall not be entitled to any rights or access to Intellectual Property Rights of the assignee or acquirer of such Party, and (B) the assignee or acquirer (1) shall not be entitled to rights or access to Intellectual Property Rights of the other Party, and (2) shall not be bound by the provisions of Section 2.7(c), 2.7(d) or 8.3(c).

12.4 **Entire Agreement; Amendments**. This Agreement and the Exhibits referred to in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all previous arrangements with respect to the subject matter hereof, whether written or oral, including the Prior Confidentiality Agreement. Any amendment or modification to this Agreement shall be made in writing signed by both Parties.

12.5 **Notices**. All communications, notices, instructions and consents provided for herein or in connection herewith shall be made in writing and be sent to the address below and will be (a) given in person, (b) sent by registered or certified mail, return receipt requested, postage prepaid, or (c) sent by a reputable international overnight courier service. Any such communication, notice, instruction or consent will be deemed to have been delivered: (i) on receipt if given in person; (ii) three (3) Business Days after it is sent by registered or certified airmail, return receipt requested, postage prepaid within the same country as the recipient's address or five (5) Business Days after it is sent by registered or certified airmail, return receipt requested, postage prepaid from another country; or (iii) one (1) Business Day after it is sent via a reputable international overnight courier service.

Notices to Agenus shall be addressed to:

Agenus Inc.
3 Forbes Road
Lexington, Massachusetts 02421-7305, USA
Attention: General Counsel

with a copy to:

Choate, Hall & Stewart LLP
Two International Place
Boston, Massachusetts 02110, USA
Attention: Gerald E. Quirk, Esq.

Notices to 4-AB shall be addressed to:

4-Antibody AG
Hochbergerstrasse 60C
CH-4057 Basel, Switzerland
Attention: Robert Burns, Managing Director

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with a copy to:

Agenus Inc.
3 Forbes Road
Lexington, Massachusetts 02421-7305, USA
Attention: General Counsel

Notices to Incyte shall be addressed to:

Incyte Europe Sarl
c/o Incyte Corporation
1801 Augustine Cut-Off
Wilmington, Delaware 19803, USA
Attention: General Counsel

with a copy to:

WilmerHale
60 State Street
Boston, Massachusetts 02109, USA
Attention: Steven D. Singer, Esq.

provided, *however*, that if either Party will have designated a different address by notice to the other Party in accordance with this Section 12.5, then to the last address so designated.

12.6 **Force Majeure**. No failure or omission by either Party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same shall arise from a Force Majeure Event; *provided* that the Party affected by such cause promptly notifies the other Party and uses diligent efforts to cure such failure or omission as soon as is practicable after the occurrence of one or more of the above mentioned causes.

12.7 **Compliance With Laws**. Each Party shall perform its obligations under this Agreement in compliance with all applicable Laws.

12.8 **Use Of Names, Logos Or Symbols**. Subject to Sections 5.1(d) and Article XI, no Party shall use the name, trademarks, trade names physical likeness, employee names or owner symbol of the other Party for any purpose, including private or public securities placements, without the prior written consent of the affected Party. Nothing contained in this Agreement, except Section 5.1(d) and Article XI, shall be construed as granting either Party any rights or license to use any of the other Party's trademarks, trade names or the names of any employees thereof, without separate, express written permission of the owner of such trademark, trade name or name.

12.9 **Independent Contractors**. It is understood and agreed that the relationship between the Parties is that of independent contractors and that nothing in this Agreement shall be

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construed to create a joint venture or any relationship of employment, agency or partnership between the Parties to this Agreement. Neither Party is authorized to make any representations, commitments or statements of any kind on behalf of the other Party or to take any action that would bind the other Party. Furthermore, none of the transactions contemplated by this Agreement shall be construed as a partnership for any tax purposes.

12.10 **No Implied Waivers; Rights Cumulative**. No failure on the part of Agenus or Incyte to exercise, and no delay by either Party in exercising, any right, power, remedy or privilege under this Agreement, or provided by statute or at law or in equity or otherwise, shall impair, prejudice or constitute a waiver of any such right, power, remedy or privilege by such Party or be construed as a waiver of any breach of this Agreement or as an acquiescence therein by such Party, nor shall any single or partial exercise of any such right, power, remedy or privilege by a Party preclude any other or further exercise thereof or the exercise of any other right, power, remedy or privilege.

12.11 **Severability**. If, under applicable Laws, any provision of this Agreement is invalid or unenforceable, or otherwise directly or indirectly affects the validity of any other material provision(s) of this Agreement (such invalid or unenforceable provision, a "**Severed Clause**"), this Agreement shall endure except for the Severed Clause. The Parties shall consult one another and use good faith efforts to agree upon a valid and enforceable provision that is a reasonable substitute for the Severed Clause in view of the intent of this Agreement.

12.12 **Execution In Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe™ Portable Document Format (.pdf) sent by electronic mail shall be deemed to be original signatures.

12.13 **No Third Party Beneficiaries**. No Person other than Incyte and Agenus (and their respective successors and permitted assignees) shall be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Agreement.

12.14 **Performance by Affiliates**. Either Party may use one or more of its Affiliates to perform its obligations and duties hereunder and Affiliates of a Party are expressly granted certain rights herein; *provided* that each such Affiliate shall be bound by the corresponding obligations of such Party and the Parties shall remain liable hereunder for the prompt payment and performance of all their respective obligations hereunder.

12.15 **Exhibits**. In the event of inconsistencies between this Agreement and any Exhibit hereto, the terms of this Agreement shall control.

12.16 **Parent Guarantee**. Parent hereby irrevocably and unconditionally guarantees all obligations and liabilities of Incyte arising under this Agreement, including the full and timely performance thereof. This guarantee is of payment and performance and not of collection. No release or extinguishment of Incyte's obligations or liabilities (other than in accordance with the

terms of this Agreement), whether by decree in any bankruptcy or similar proceeding or otherwise, shall affect the continuing validity and enforceability of this guarantee.

12.17 **Construction**. In construing this Agreement, unless expressly specified otherwise:

(a) references to Articles, Sections and Exhibits are to articles and sections of, and exhibits to, this Agreement;

(b) except where the context otherwise requires, use of either gender includes any other gender, and use of the singular includes the plural and vice versa;

(c) headings and titles are for convenience only and do not affect the interpretation of this Agreement;

(d) any list or examples following the word "including" shall be interpreted without limitation to the generality of the preceding words;

(e) except where the context otherwise requires, the word "or" is used in the inclusive sense;

(f) the terms "hereof", "hereto", "hereby", "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement;

(g) the term "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if";

(h) except where the context otherwise requires, "will" means "shall";

(i) references to an agreement or instrument mean such agreement or instrument as from time to time amended, modified or supplemented (subject to any restrictions on such amendments, supplements or modifications set forth herein);

(j) references to a Person are also to its successors, heirs and permitted assigns;

(k) except if Business Days are specified, "day" or "days" refers to calendar days;

(l) if a period of time is specified and dates from a given day or Business Day, or the day or Business Day of an act or event, it is to be calculated exclusive of that day or Business Day;

(m) "monthly" means on a calendar month basis;

(n) "quarter" or "quarterly" means on a Calendar Quarter basis;

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(o) "annual" or "annually" means on a Calendar Year basis;

(p) "year" means a three hundred sixty-five (365) day period unless Calendar Year is specified;

(q) references to a Law include any amendment or modification to such Law and any rules or regulations issued thereunder, whether such amendment or modification is made, or issuance of such rules or regulations occurs, before or, only with respect to events or developments occurring or actions taken or conditions existing after the date of such amendment, modification or issuance, after the Execution Date, but only to the extent such amendment or modification, to the extent it occurs after the date hereof, does not have a retroactive effect;

(r) all references to "Dollars" or "$" herein shall mean U.S. Dollars;

(s) when referring to notices to, review by, consultation with, or the prior written consent or agreement of Agenus, such notice, review, consultation, consent or agreement shall only be required as to Agenus US;

(t) any reference to Agenus shall mean either or both Agenus US or 4-AB, as the context may require;

(u) a capitalized term not defined herein but reflecting a different part of speech than a capitalized term which is defined herein shall be interpreted in a correlative manner;

(v) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); and

(w) each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions.

ARTICLE XIII: HSR

13.1 **HSR Filings**. Both Parties shall promptly file (and, in any event, within seven (7) Business Days after the Execution Date) the HSR Filings with the FTC and the DOJ pursuant to the HSR Act.

13.2 **Cooperation**.

(g) The Parties shall use Commercially Reasonable Efforts to promptly obtain HSR Clearance for the consummation of this Agreement and the Stock Purchase Agreement and the transactions contemplated hereby and thereby and shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ and shall comply promptly with any such inquiry or request; *provided,*

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however, that neither Party shall be required to consent to the divestiture or other disposition of any assets (including the assets of any Affiliate of either Party) or to consent to any other structural or conduct remedy, and each Party and its Affiliates shall have no obligation to contest or settle, administratively or in court, any ruling, order or other action of the FTC or DOJ or any Third Party respecting the transactions contemplated by this Agreement or the Stock Purchase Agreement.

(h) The Parties shall instruct their respective counsel to cooperate with each other and use Commercially Reasonable Efforts to facilitate and expedite the identification and resolution of any such issues and, consequently, the expiration of the applicable HSR Act waiting period. Each Party's counsel will undertake (i) to keep each other appropriately informed of communications from and to personnel of the reviewing antitrust authority, and (ii) to confer with each other regarding appropriate contacts with and responses to personnel of the FTC or DOJ. Incyte shall be responsible for any filing fees in connection with the HSR Filings.

13.3 **Termination Due to Passage of Time**. Notwithstanding any other provisions of this Agreement to the contrary, either Party may terminate this Agreement effective upon notice to the other Party if the HSR Clearance Date shall not have occurred on or before the date that is **[**]** after the Parties make their respective HSR Filings pursuant to Section 13.1. If this Agreement is so terminated pursuant to this Section 13.3, then this Agreement shall terminate in its entirety and, for clarity, the Prior Confidentiality Agreement shall remain in full force and effect notwithstanding any termination of this Agreement pursuant to this Section 13.3.

[*signature page follows*]

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IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date.

INCYTE EUROPE SARL

By: /s/ Laurent Chardonnet
Laurent Chardonnet
Managing Officer
Signed in Geneva, Switzerland on 9 January 2015

INCYTE CORPORATION
(solely with respect to Section 12.16)

By: /s/ Herve Hoppenot
Herve Hoppenot
President and Chief Executive Officer

AGENUS INC.

By: /s/ Garo H. Armen, Ph.D.
Garo H. Armen, Ph.D.
Chairman and Chief Executive Officer

4-ANTIBODY AG

By: /s/ Robert F. Burns, Ph.D.
Robert F. Burns, Ph.D.
Managing Director

By: /s/ Marc A. van Dijk, Ph.D.
Marc A. van Dijk, Ph.D.
Site Head – Basel and Chief Technology Officer

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EXHIBIT A
AGENUS PATENT RIGHTS

[**]

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EXHIBIT B
INITIAL PRESS RELEASE

[see attached]

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FOR IMMEDIATE RELEASE

Incyte and Agenus Announce Global Alliance to Develop Novel Immuno-Oncology Antibodies

- *Alliance to initially focus on four checkpoint modulator programs directed at GITR, OX40, TIM-3 and LAG-3*
- *Incyte to have access to Agenus' proprietary Retrocyte Display™ platform for the discovery of additional therapeutic antibodies*
- *Agenus to receive $60 million comprised of a $25 million technology and program access fee under the. collaboration plus $35 million equity investment in Agenus at $4.51/share*
- *Agenus eligible to receive up to $350 million in development, regulatory and commercial milestones across the four lead programs*

WILMINGTON, DE and LEXINGTON, MA - January 9, 2015 - Incyte Corporation (Nasdaq: INCY) and Agenus Inc. (Nasdaq: AGEN) today announced a global license, development and commercialization agreement focused on novel immuno-therapeutics using Agenus' proprietary Retrocyte Display ™ antibody discovery platform.

The alliance will initially focus on the development of checkpoint modulator antibodies directed against GITR, OX40, LAG-3 and TIM-3. Agenus and Incyte will share all costs and profits for the GITR and OX40 antibody programs on a 50:50 basis, with Agenus eligible for potential milestones; TIM-3 and LAG-3 are royalty-bearing programs to be funded by Incyte, with Agenus eligible for potential milestones and royalties. The first clinical trials are expected to be initiated in 2016.

"This alliance with Agenus adds therapeutic antibody capabilities to our proven small molecule discovery expertise, significantly expands the landscape of potential immuno-oncology targets available to us, and strengthens our ability to identify and advance novel therapeutic combinations," said Nerve Hoppenot, President and CEO of Incyte.

"Incyte's track record of success in oncology development and commercialization, together with our therapeutic antibody expertise and the commonality of our objectives, speak to the compelling strategic rationale for this alliance," said Garo H. Armen, Ph.D., Chairman and CEO of Agenus. "Our Retrocyte Display™ technology has produced high quality antibody candidates and offers significant advantages

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over competing technologies. With Incyte, we believe we have an ideal partner to help define the evolving treatment paradigm of cancer immunotherapies."

Under the terms of the agreements between the parties, Incyte will make upfront payments to Agenus totaling $25 million and invest $35 million by purchasing approximately 7.76 million newly issued shares of Agenus common stock at a price of $4.51 per share. In addition to the initial four target programs in the alliance, the parties have an option to jointly nominate and pursue additional targets within the framework of the multi-year collaboration. Terms also include:

- For each royalty-bearing product, Agenus will be eligible to receive up to $155 million in future contingent development, regulatory and commercialization milestones.
- Also for royalty-bearing products, Agenus will be eligible to receive tiered royalties on global net sales ranging from mid-single to low-double digit rates, and has reserved the right to elect to co-fund 30% of development costs for increased royalties.
- For products from any additional programs that the parties elect to bring into the collaboration, Agenus may opt to designate them as profit-share products.
- For each profit-share product, Agenus will be eligible to receive up to $20 million in future contingent development milestones.

Retrocyte Display ™ is a proprietary retroviral technology that enables a highly diverse library (>1x10^9) of human IgG molecules to be displayed on the surface of B-lineage cells. This innovative cell-displayed expression platform permits the rapid generation of fully human and humanized therapeutic antibodies with high affinity and target specificity.

The closing of the transaction is conditioned on the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act.

About Incyte

Incyte Corporation is a Wilmington, Delaware-based biopharmaceutical company focused on the discovery, development and commercialization of proprietary small molecule drugs, primarily for oncology. For additional information on Incyte, please visit the Company's website at www.incyte.com

About Agenus

Agenus is an immuno-oncology company developing a portfolio of checkpoint modulators (CPMs), heat shock protein peptide-based vaccines and adjuvants. Agenus' checkpoint modulator programs target GITR, OX40, CTLA-4, LAG-3, TIM-3 and PD-1. The company's proprietary discovery engine Retrocyte Display™ is used to generate fully human and humanized therapeutic antibody drug candidates. The Retrocyte Display™ platform uses a high-throughput approach incorporating IgG format human antibody libraries expressed in mammalian B-lineage cells. Agenus' heat shock protein-based vaccines for cancer and infectious disease have completed Phase 2 studies in glioblastoma multiforme, and in the treatment of herpes simplex viral infection. The company's QS-21 Stimulon® adjuvant platform is extensively partnered with GlaxoSmithKline and Janssen Sciences Ireland UC and includes several vaccine candidates in Phase 2, as well as shingles and malaria vaccines which have successfully completed Phase 3 clinical trials. For more information, please visit www.agenusbio.com, or connect with the company on Facebook, LinkedIn, Twitter and Google+.

Incyte Forward-Looking Statements

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Except for the historical information set forth herein, the matters set forth in this press release, including without limitation statements with respect to the initial focus of the alliance, the potential benefits of the alliance and the expectation that the first clinical trials under the alliance will be initiated in 2016, contain predictions and estimates and are forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are based on Incyte's current expectations and subject to risks and uncertainties that may cause actual results to differ materially, including the high degree of risk associated with drug development, results of further research and development, unanticipated delays, other market or economic factors and technological advances, regulatory approval of the transaction and other risks detailed from time to time in Incyte's filings with the Securities and Exchange Commission, including its Quarterly Report on Form 10-Q for the quarter ended September 30, 2014. Incyte disclaims any intent or obligation to update these forward-looking statements.

Agenus Forward-Looking Statements

This press release contains forward-looking statements that are made pursuant to the safe harbor provisions of the federal securities laws, including statements regarding the initial focus of the alliance between Agenus and Incyte, the potential benefits of the alliance and the expectation that the first clinical trials under the alliance will be initiated in 2016. These forward-looking statements are subject to risks and uncertainties that could cause actual results to differ materially from those projected. These risks and uncertainties include, among others, regulatory approval of the transaction, unanticipated delays and other market or economic factors, as well as the factors described under the Risk Factors section of our most recently filed Quarterly Report on Form 10-Q with the Securities and Exchange Commission. Agenus cautions investors not to place considerable reliance on the forward-looking statements contained in this release. These statements speak only as of the date of this press release, and Agenus undertakes no obligation to update or revise the statements, other than to the extent required by law. All forward-looking statements are expressly qualified in their entirety by this cautionary statement.

Incyte Contact:
Pamela M. Murphy
Vice President, Investor Relations & Corporate Communications

302/498 6944

Agenus Contact:
Media:
Brad Miles / BMC Communications
646/513-3125
bmiles@bmccommunications.com

Investors:
Andrea Rabney / Argot Partners
212/600-1902
andrea@argotpartners.com

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SCHEDULE 1.56
[**]

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SCHEDULE 4.1
PRELIMINARY ACTION PLAN

[see attached]

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SCHEDULE 7.1
ALLOCATION OF LICENSE FEE

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SCHEDULE 12.2
EXPERT DECISION

1. **Selection of Expert and Submission of Positions.** The Parties shall select and agree upon a mutually acceptable independent Third Party expert who is neutral, disinterested and impartial, and has experience relevant to the evaluation of biotechnology industry collaboration agreements (the "**Expert**"). If the Parties are unable to mutually agree upon an Expert within **[**]** following the initiation of these expert decision procedures, then upon request by either Party, the Expert shall be an arbitrator appointed by Judicial and Mediation Services ("**JAMS**"). Once the Expert has been selected, each Party shall within **[**]** following selection of the Expert provide the Expert and the other Party with a written report setting forth its position with respect to the substance of the dispute and may submit a revised or updated report and position to the Expert within **[**]** of receiving the other Party's report. If so requested by the Expert, each Party shall make oral submissions to the Expert based on such Party's written report, and each Party shall have the right to be present during any such oral submissions.

2. **JAMS Supervision.** In the event the Expert is a JAMS arbitrator selected by JAMS as provided in this Schedule 12.2, the matter shall be conducted as a binding arbitration in accordance with JAMS procedures, as modified by this Schedule 12.2 (including that the arbitrator shall adopt as his or her decision the position of one Party or the other, as described below). In such event, the arbitrator may retain a Third Party expert with experience relevant to the evaluation of biotechnology industry collaboration agreements to assist in rendering such decision, and the expenses of any such expert shall be shared by the Parties as costs of the arbitration as provided in this Schedule 12.2.

3. **Determination by the Expert.** The Expert shall, no later than **[**]** after the last submission of the written reports and, if any, oral submissions, select one of the Party's positions as his or her final decision, and shall not have the authority to modify either Party's position or render any substantive decision other than to so select the position of either Party as set forth in their respective written report (as initially submitted, or as revised in accordance with this Schedule 12.2, as applicable). The Parties agree that the decision of the Expert shall be the sole, exclusive and binding remedy between them regarding any such dispute referred to the Expert pursuant to Section 12.2 of this Agreement, and the Expert's decision shall become the decision of the Parties or, if applicable, the JSC on the matter.

4. **Location; Costs.** Unless otherwise mutually agreed upon by the Parties, the in-person portion (if any) of such proceedings shall be conducted in New York, New York. The Parties agree that they shall share equally the costs and fees of the Expert in connection with any proceeding under this Schedule 12.2, including the cost of the arbitration filing and hearing fees, the cost of any independent expert retained by the arbitrator and the cost of the arbitrator and administrative fees of JAMS, if applicable. Each Party shall bear its own costs and attorneys' and witnesses' fees and associated costs and expenses incurred in connection with any proceeding under this Schedule 12.2.

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EXHIBIT 21.1

SUBSIDIARIES OF AGENUS INC.

Antigenics Inc., a wholly owned subsidiary of Agenus Inc., is incorporated in Massachusetts.

Aronex Pharmaceuticals, Inc., a wholly owned subsidiary of Agenus Inc., is incorporated in Delaware.

Antigenics Therapeutics Limited, a wholly owned subsidiary of Agenus Inc., is organized under the laws of Ireland.

4-AntibodyAG, a joint stock company under the laws of Switzerland (as of February 12, 2014).

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
Agenus Inc.:

We consent to the incorporation by reference in the registration statements 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, 333-183067, 333-189926 and 333-195851) and on Form S-3 (Nos. 333-161277, 333-163221, 333-189534, 333-195852 and 333-199255) of Agenus Inc. (the Company) of our reports dated March 16, 2015, with respect to the consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2014 and 2013, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for each of the years in the three-year period ended December 31, 2014, and the effectiveness of internal control over financial reporting as of December 31, 2014, which reports appear in the December 31, 2014 annual report on Form 10-K of Agenus Inc. and subsidiaries.

Our report dated March 16, 2015 contains an explanatory paragraph that states the scope of management's assessment of the effectiveness of internal control over financial reporting excludes 4-Antibody AG, which was acquired by the Company in 2014 . Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of 4-Antibody AG as of December 31, 2014.

/s/ KPMG LLP

Boston, Massachusetts
March 16, 2015

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 16, 2015

/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 16, 2015

/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, 2014 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 16, 2015

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, 2014 and should not be considered filed as part of the Annual Report on Form 10-K.