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

Form 10-Q

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

For the quarterly period ended March 31, 2017

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

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). Yes ☒ No ☐

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

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐ (Do not check if a smaller reporting company)	Smaller reporting company	☐
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

Number of shares outstanding of the issuer's Common Stock as of April 26, 2017: 99,118,911 shares

Agenus Inc.
Three Months Ended March 31, 2017
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Item 1. ***Financial Statements***

AGENUS INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(Unaudited)

	March 31, 2017	December 31, 2016
ASSETS		
Cash and cash equivalents	$ 113,863,956	$ 71,448,016
Short-term investments	9,960,187	4,988,751
Inventories	87,450	88,200
Accounts Receivable	6,774,982	11,352,022
Prepaid expenses	6,628,841	2,596,675
Other current assets	634,948	838,538
Total current assets	137,950,364	91,312,202
Property, plant and equipment, net of accumulated amortization and depreciation of $32,085,778 and $31,243,967 at March 31, 2017 and December 31, 2016, respectively	25,460,769	25,633,985
Goodwill	22,667,587	22,392,411
Acquired intangible assets, net of accumulated amortization of $3,780,707 and $3,193,092 at March 31, 2017 and December 31, 2016, respectively	15,907,296	16,364,726
Other long-term assets	1,282,662	1,282,662
Total assets	$ 203,268,678	$ 156,985,986
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current portion, long-term debt	$ 146,061	$ 146,061
Current portion, deferred revenue	2,610,722	2,610,719
Accounts payable	4,817,614	5,428,452
Accrued liabilities	22,466,764	27,874,703
Other current liabilities	6,313,167	4,791,265
Total current liabilities	36,354,328	40,851,200
Long-term debt, net of current portion	134,156,906	130,542,424
Deferred revenue, net of current portion	11,692,151	12,344,782
Contingent purchase price considerations	7,365,000	7,561,000
Other long-term liabilities	4,795,558	4,812,846
Commitments and contingencies		
STOCKHOLDERS' EQUITY (DEFICIT)		
Preferred stock, par value $0.01 per share; 5,000,000 shares authorized:		
Series A-1 convertible preferred stock; 31,620 shares designated, issued, and outstanding at March 31, 2017 and December 31, 2016; liquidation value of $32,470,942 at March 31, 2017	316	316
Common stock, par value $0.01 per share; 240,000,000 shares authorized; 98,702,552 and 87,794,933 shares issued at March 31, 2017 and December 31, 2016, respectively	987,026	877,949
Additional paid-in capital	933,222,206	866,854,348
Accumulated other comprehensive loss	(1,661,398)	(1,529,559)
Accumulated deficit	(923,643,415)	(905,329,320)
Total stockholders' equity (deficit)	8,904,735	(39,126,266)
Total liabilities and stockholders' equity (deficit)	$ 203,268,678	$ 156,985,986

See accompanying notes to unaudited condensed consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(Unaudited)

	Three Months Ended March 31, 2017	2016
Revenue:		
Service	$ —	$ 147,456
Research and development	26,955,843	5,811,420
Total revenues	26,955,843	5,958,876
Operating expenses:		
Research and development	(32,639,991)	(25,038,478)
General and administrative	(7,769,508)	(9,231,521)
Contingent purchase price consideration fair value adjustment	196,000	342,000
Operating loss	(13,257,656)	(27,969,123)
Other expense:		
Non-operating income	740,134	323,083
Interest expense, net	(4,585,657)	(4,132,463)
Net loss	(17,103,179)	(31,778,503)
Dividends on Series A-1 convertible preferred stock	(51,264)	(50,941)
Net loss attributable to common stockholders	$ (17,154,443)	$ (31,829,444)
Per common share data:		
Basic and diluted net loss attributable to common stockholders	$ (0.18)	$ (0.37)
Weighted average number of common shares outstanding:		
Basic and diluted	93,508,120	86,686,515
Other comprehensive (loss) income:		
Foreign currency translation (loss) gain	$ (131,839)	$ 539,396
Unrealized loss on investments	—	(765)
Other comprehensive (loss) gain	(131,839)	538,631
Comprehensive loss	$ (17,286,282)	$ (31,290,813)

See accompanying notes to unaudited condensed consolidated financial statements.

AGENUS INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(Unaudited)

	Three Months Ended March 31, 2017	2016
Cash flows from operating activities:		
Net loss	$ (17,103,179)	$ (31,778,503)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	1,527,748	1,244,417
Share-based compensation	2,377,164	4,762,477
Non-cash interest expense	4,403,836	3,954,998
Loss on disposal of assets	29,287	—
Gain on issuance of stock for settlement of milestone obligation	(14,063)	—
Change in fair value of contingent obligations	(196,000)	(342,000)
Changes in operating assets and liabilities:		
Accounts receivable	4,577,040	(369,445)
Prepaid expenses	(4,028,153)	(811,976)
Accounts payable	(1,076,393)	(2,263,635)
Deferred revenue	(652,631)	(1,537,574)
Accrued liabilities and other current liabilities	(3,947,380)	5,575,656
Other operating assets and liabilities	(728,288)	32,606
Net cash used in operating activities	(14,831,012)	(21,532,979)
Cash flows from investing activities:		
Proceeds from sale of plant and equipment	115,000	—
Purchases of plant and equipment	(417,002)	(1,536,948)
Purchases of held-to-maturity securities	(9,960,188)	(34,923,535)
Proceeds from securities held-to-maturity	5,000,000	—
Net cash used in investing activities	(5,262,190)	(36,460,483)
Cash flows from financing activities:		
Net proceeds from sale of equity	61,836,887	—
Proceeds from employee stock purchases and option exercises	304,003	437,074
Payment under a purchase agreement for in-process research and development	—	(1,000,000)
Payment of capital lease obligation	(66,861)	—
Net cash provided by (used in) financing activities	62,074,029	(562,926)
Effect of exchange rate changes on cash	435,113	184,081
Net increase (decrease) in cash and cash equivalents	42,415,940	(58,372,307)
Cash and cash equivalents, beginning of period	71,448,016	136,702,873
Cash and cash equivalents, end of period	$ 113,863,956	$ 78,330,566
Supplemental cash flow information:		
Cash paid for interest	$ 276,164	$ 276,164
Supplemental disclosures - non-cash activities:		
Purchases of plant and equipment in accounts payable and accrued liabilities	463,719	333,045
Issuance of common stock, $0.01 par value, issued in connection with the settlement of milestone obligation	1,485,937	—

See accompanying notes to unaudited condensed consolidated financial statements.

Note A - Business, Liquidity and Basis of Presentation

Agenus Inc. (including its subsidiaries, collectively referred to as "Agenus," the "Company," "we," "us," and "our") is a clinical stage immuno-oncology company focused on the discovery and development of therapies that engage the body's immune system to fight cancer. Our approach to cancer immunotherapy involves a diverse portfolio of antibody-based therapeutics, adjuvants and cancer vaccine platforms. We, in collaboration with our partners, are developing a number of immuno-modulatory antibodies against important nodes of immune regulation. These include antibodies targeting CTLA-4, GITR, OX40 and PD-1 that are in clinical development. Our discovery pipeline consists of a number of proprietary checkpoint modulating ("CPM") antibodies against innovative targets such as TIGIT and 4-1BB (also known as CD137). We believe that tailored combination therapies are essential to combat some of the most resistant cancers. Accordingly, our immune education strategy focuses on pursing antibodies as well as vaccine candidates in conjunction with adjuvants. We are developing a comprehensive immuno-oncology portfolio driven by the following platforms and programs, which we intend to utilize individually and in combination:

- our antibody discovery platforms, including our Retrocyte Display™, SECANT® yeast display, and phage display technologies designed to produce quality human antibodies;
- our antibody candidate programs, including our CPM programs;
- our vaccine programs, including Prophage™, AutoSynVax™ and PhosPhoSynVax™; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant ("QS-21 Stimulon").

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 cash, cash equivalents, and short-term investments at March 31, 2017 were $123.8 million, an increase of $47.4 million from December 31, 2016.

The following table outlines our quarter end cash, cash equivalents and short-term investments balances and the changes therein.

	Quarter Ended March 31, 2017
Cash, cash equivalents and short-term investments	$ 123.8
Increase in cash, cash equivalents and short-term investments	$ 47.4
Cash used in operating activities	$ (14.8)
Reported net loss	$ (17.3)

We have incurred significant losses since our inception. As of March 31, 2017, we had an accumulated deficit of $923.6 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 investments balances. We believe that, based on our current plans and activities, our cash, cash equivalents and short-term investments balance of $123.8 million as of March 31, 2017 will be sufficient to satisfy our liquidity requirements for more than one year from when these financial statements were issued. We expect to raise additional funds in advance of depleting our current funds. 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, if necessary.

The accompanying unaudited interim condensed consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") for interim financial information and with the instructions to Article 10 of Regulation S-X. Accordingly, they do not include all of the information and footnotes required by U.S. GAAP for complete annual consolidated financial statements. In the opinion of our management, the condensed consolidated financial statements include all normal and recurring adjustments considered necessary for a fair presentation of our financial position and operating results. All significant intercompany transactions and accounts have been eliminated in consolidation. Operating results for the three months ended March 31, 2017, are not necessarily indicative of the results that may be expected for the year ending December 31, 2017. For

further information, refer to our consolidated financial statements and footnotes thereto included in our Annual Report on Form 10-K for the year ended December 31, 2016 filed with the Securities and Exchange Commission (the "SEC") on March 16, 2017.

The preparation of consolidated financial statements in conformity with U.S. GAAP requires management 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. Management bases its estimates on historical experience and on various assumptions that are believed to be reasonable under the circumstances. Actual results could differ materially from those estimates.

For our foreign subsidiaries the local currency is the functional currency. Assets and liabilities of our foreign subsidiaries are translated into U.S. dollars using rates in effect at the balance sheet date while revenues and expenses are translated into U.S. dollars using average exchange rates during the period. The cumulative translation adjustment resulting from changes in exchange rates are included in the consolidated balance sheets as a component of accumulated other comprehensive loss in total stockholders' equity (deficit).

Note B - Net Loss Per Share

Basic net 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, or "DDCP"). 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 DDCP) 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 March 31, 2017 and 2016, as they would be anti-dilutive:

	Three Months Ended March 31,	
	2017	2016
Warrants	4,351,450	4,351,450
Stock options	14,940,852	9,474,652
Nonvested shares	2,605,674	1,934,951
Convertible preferred stock	333,333	333,333

Note C - Investments

Cash equivalents and short-term investments consisted of the following as of March 31, 2017 and December 31, 2016 (in thousands):

	March 31, 2017		December 31, 2016	
	Cost	Estimated Fair Value	Cost	Estimated Fair Value
Institutional money market funds	$ 96,809	$ 96,809	$ 38,913	$ 38,913
U.S. Treasury Bills	24,937	24,937	14,978	14,978
Total	$ 121,746	$ 121,746	$ 53,891	$ 53,891

For the three months ended March 31, 2017, we received proceeds of approximately $5.0 million from the maturity of U.S. Treasury Bills classified as short-term investments. As a result of the short-term nature of our investments, there were minimal unrealized holding gains or losses for the three months ended March 31, 2017 and 2016.

Of the investments listed above, $111.8 million and $48.9 million have been classified as cash equivalents and $10.0 million and $5.0 million as short-term investments on our condensed consolidated balance sheets as of March 31, 2017 and December 31, 2016, respectively.

Note D - Goodwill and Acquired Intangible Assets

The following table sets forth the changes in the carrying amount of goodwill for the three months ended March 31, 2017 (in thousands):

Balance, December 31, 2016	$	22,392
Foreign currency translation adjustment		276
Balance, March 31, 2017	$	22,668

Acquired intangible assets consisted of the following as of March 31, 2017 and December 31, 2016 (in thousands):

	As of March 31, 2017			
	Amortization period (years)	Gross carrying amount	Accumulated amortization	Net carrying amount
Intellectual property	7-15 years	$ 16,436	$ (2,868)	$ 13,568
Trademarks	4.5 years	806	(562)	244
Other	2-6 years	566	(351)	215
In-process research and development	Indefinite	1,880	—	1,880
Total		$ 19,688	$ (3,781)	$ 15,907

	As of December 31, 2016			
	Amortization period (years)	Gross carrying amount	Accumulated amortization	Net carrying amount
Intellectual property	7-15 years	$ 16,358	$ (2,384)	$ 13,973
Trademarks	4.5 years	791	(505)	286
Other	2-6 years	563	(303)	260
In-process research and development	Indefinite	1,846	—	1,846
Total		$ 19,558	$ (3,193)	$ 16,365

The weighted average amortization period of our finite-lived intangible assets is 9 years. Amortization expense related to acquired intangibles is estimated at $1.6 million for the remainder of 2017, $2.0 million for the year ending December 31, 2018, $1.9 million for the year ending December 31, 2019 and $1.9 million for each of the years ending December 31, 2020 and 2021.

Note E - Debt

Debt obligations consisted of the following as of March 31, 2017 and December 31, 2016(in thousands):

Debt instrument	Principal at March 31, 2017	Non-cash Interest	Unamortized Debt Issuance Costs	Unamortized Debt Discount	Balance at March 31, 2017
Current Portion:					
Debentures	$ 146	$ —	$ —	$ —	$ 146
Long-term Portion:					
2015 Subordinated Notes	14,000	—	—	(1,764)	12,236
Note Purchase Agreement	100,000	23,451	(1,312)	(217)	121,922
Total long-term	$ 114,000	$ 23,451	$ (1,312)	$ (1,981)	$ 134,157
Total	$ 114,146	$ 23,451	$ (1,312)	$ (1,981)	$ 134,303

Debt instrument	Principal at December 31, 2016	Non-cash Interest	Unamortized Debt Issuance Costs	Unamortized Debt Discount	Balance at December 31, 2016
Current Portion:					
Debentures	$ 146	$ —	$ —	$ —	$ 146
Long-term Portion:					
2015 Subordinated Notes	14,000	—	—	(1,311)	12,689
Note Purchase Agreement	100,000	19,421	(1,345)	(222)	117,853
Total long-term	$ 114,000	$ 19,421	$ (1,345)	$ (1,533)	$ 130,542
Total	$ 114,146	$ 19,421	$ (1,345)	$ (1,533)	$ 130,688

In June 2016, we executed a capital lease agreement that expires in June 2020 for equipment with a carrying value of approximately $0.9 million, which is included in property, plant and equipment, net on our condensed consolidated balance sheets as of March 31, 2017. Under the terms of the capital lease agreement, we will remit payments to the lessor of $216,000 for the remainder of 2017, $288,000 for each of the years 2018 through 2019 and $144,000 for the year ending December 31, 2020. As of March 31, 2017, our remaining obligations under the capital lease agreement are approximately $0.8 million, of which $290,000 and $530,000 are classified as other current and other long-term liabilities, respectively, on our condensed consolidated balance sheets.

In March 2017, we and the holders of our subordinated notes issued in February 2015 (the “2015 Subordinated Notes”) entered into an Amendment to Notes and Warrants, pursuant to which the parties (i) extended the term of the 2013 Warrants by two years from April 15, 2017 to April 15, 2019 and (ii) extended the maturity date of the 2015 Notes by two years from February 20, 2018 to February 20, 2020. This resulted in an additional debt discount of $0.7 million, which will be amortized using the effective interest method over three years, the expected life of the 2015 Subordinated Notes. The 2013 Warrants and 2015 Subordinated Notes are otherwise unchanged.

Note F - Accrued and Other Current Liabilities

Accrued liabilities consisted of the following as of March 31, 2017 and December 31, 2016 (in thousands):

	March 31, 2017	December 31, 2016
Payroll	$ 3,116	$ 6,504
Professional fees	2,773	2,373
Contract manufacturing costs	8,252	10,492
Research services	6,388	5,639
Leasehold improvements	259	1,280
Other	1,679	1,587
Total	$ 22,467	$ 27,875

Other current liabilities consisted of the following as of March 31, 2017 and December 31, 2016 (in thousands):

	March 31, 2017	December 31, 2016
Current portion of deferred purchase price	$ 4,000	$ 3,948
Liability-classified stock awards	1,982	511
Other	332	333
Total	$ 6,314	$ 4,792

Note G - Fair Value Measurements

We measure our cash equivalents and short-term investments and contingent purchase price considerations at fair value. Our cash equivalents and short-term investments are comprised solely of U.S. Treasury Bills that are valued using quoted market prices with no valuation adjustments applied. Accordingly, these securities are categorized as Level 1 assets.

The fair values of our contingent purchase price considerations, $7.4 million, are based on significant inputs not observable in the market, which require it to be reported as Level 3 liabilities within the fair value hierarchy. The valuation of these liabilities use assumptions we believe would be made by a market participant and are based on estimates from a Monte Carlo simulation of our market capitalization and share price, and other factors impacting the probability of triggering the milestone payments. Market capitalization and share price were evolved using a geometric brownian motion, calculated daily for the life of the contingent purchase price considerations.

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

Description	March 31, 2017	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	$ 14,977	$ 14,977	$ —	$ —
Short-term investments	9,959	9,959	—	—
Total	$ 24,936	$ 24,936	$ —	$ —
Liabilities:				
Contingent purchase price considerations	$ 7,365	$ —	$ —	$ 7,365
Total	$ 7,365	$ —	$ —	$ 7,365

Description	December 31, 2016	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)
Assets:				
Cash equivalents	$ 9,990	$ 9,990	$ —	$ —
Short-term investments	4,988	4,988	—	—
Total	$ 14,978	$ 14,978	$ —	$ —
Liabilities:				
Contingent purchase price consideration	$ 7,561	$ —	$ —	$ 7,561
Total	$ 7,561	$ —	$ —	$ 7,561

The following table presents our liabilities measured at fair value using significant unobservable inputs (Level 3), as of March 31, 2017 (in thousands):

Balance, December 31, 2016	$ 7,561
Change in fair value of contingent purchase price considerations during the period	(196)
Balance, March 31, 2017	$ 7,365

The estimated fair values of all of our financial instruments, excluding our outstanding debt, approximate their carrying amounts in our condensed consolidated balance sheets.

The fair value of our outstanding debt balance at March 31, 2017 and December 31, 2016 was $132.7 million and $129.2 million, respectively, based on the Level 2 valuation hierarchy of the fair value measurements standard using a present value methodology that was derived by evaluating the nature and terms of each note and considering the prevailing economic and market conditions at the balance sheet date. The principal amount of our outstanding debt balance at both March 31, 2017 and December 31, 2016 was $114.1 million.

Note H - Collaboration Agreement

On February 14, 2017, we amended our License, Development and Commercialization Agreement, dated January 9, 2015, with Incyte Corporation ("Incyte") by entering into a First Amendment to License, Development and Commercialization Agreement (the "Amendment"). Pursuant to the terms of the Amendment, the GITR and OX40 programs immediately converted from profit-share programs to royalty-bearing programs and we became eligible to receive a flat 15% royalty on global net sales should any candidates from either of these two programs be approved. Incyte is now responsible for global development and commercialization and all associated costs for these programs. In addition, the profit-share programs relating to the two undisclosed targets were removed from the collaboration, with one reverting to Incyte and one to us. Should any of those programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. The terms for the remaining three royalty-bearing programs targeting TIM-3, LAG-3 and one undisclosed target remain unchanged, with Incyte being responsible for global development and commercialization and all associated costs. The Amendment gives Incyte exclusive rights and all decision-making authority for manufacturing, development, and commercialization with respect to all royalty-bearing programs.

In connection with the Amendment, Incyte paid us $20.0 million in accelerated milestones related to the clinical development of the antibody candidates targeting GITR and OX40. We are now eligible to receive up to an additional $510.0 million in future potential development, regulatory and commercial milestones across all programs in the collaboration. The Company recognized the $20.0 million received as revenue during the three months ended March 31, 2017.

On February 14, 2017, we also entered into a Stock Purchase Agreement (the "Stock Purchase Agreement") with Incyte, pursuant to which Incyte purchased 10 million shares of our common stock (the "Shares") at a purchase price of $6.00 per share. Immediately following the transaction, Incyte owned approximately 18.1% of our outstanding shares. Under the Stock Purchase Agreement, Incyte agreed not to dispose of any of the Shares for a period of 12 months and to vote the Shares in accordance with the recommendations of the Agenus board of directors in connection with certain equity incentive plan or compensation matters for a period of 18 months, and we agreed to certain registration rights with respect to the Shares. Under the Amendment, the parties also revised the existing standstill provision to permit Incyte's acquisition of the Shares, but Incyte is precluded from acquiring any additional shares of our voting stock until December 31, 2019.

Note I - Share-based Compensation Plans

We primarily use the Black-Scholes option pricing model to value stock options granted to employees and non-employees, including stock options granted to members of our Board of Directors. All stock options have 10-year terms and generally vest ratably over a 3 or 4-year period. A non-cash charge to operations for the stock options granted to non-employees that have 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.

A summary of option activity for the three months ended March 31, 2017 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2016	11,693,400	$ 4.51		
Granted	3,504,682	3.78		
Exercised	(33,715)	3.15		
Forfeited	(171,373)	5.45		
Expired	(52,142)	6.47		
Outstanding at March 31, 2017	14,940,852	$ 4.33	7.88	$ 2,274,218
Vested or expected to vest at March 31, 2017	14,940,852	$ 4.33	7.88	$ 2,274,218
Exercisable at March 31, 2017	7,184,446	$ 4.50	6.30	$ 2,134,535

The weighted average grant-date fair values of stock options granted during the three months ended March 31, 2017 and 2016 were $1.90 and $1.83, respectively.

As of March 31, 2017, $15.8 million of total unrecognized compensation cost related to stock options granted to employees and directors is expected to be recognized over a weighted average period of 2.7 years.

As of March 31, 2017, 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 $1.1 million. 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 the three months ended March 31, 2017 is presented below:

	Nonvested Shares	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2016	1,942,476	$ 6.45
Granted	700,050	3.77
Vested	(6,250)	4.24
Forfeited	(30,602)	8.78
Outstanding at March 31, 2017	2,605,674	$ 5.71

As of March 31, 2017, there was approximately $8.9 million of unrecognized share-based compensation expense related to these nonvested shares awarded to employees which pertained primarily to performance based awards for which, if all milestones are achieved, will be recognized over a 1.9 year period. The total intrinsic value of shares vested during the three months ended March 31, 2017, was $26,000.

During the three months ended March 31, 2017, 56,627 shares were issued under the 2009 Employee Stock Purchase Plan, 6,250 shares were issued as a result of the vesting of nonvested stock and 33,715 shares were issued as a result of stock option exercises.

The impact on our results of operations from share-based compensation for the three months ended March 31, 2017 and 2016, was as follows (in thousands):

	Three Months Ended March 31,	
	2017	2016
Research and development	$ 1,127	$ 2,290
General and administrative	1,250	2,472
Total share-based compensation expense	$ 2,377	$ 4,762

Note J - Benefit Plans

We maintain a multiple employer benefit plan that covers certain international employees. The annual measurement date for this plan is December 31. Benefits are based upon years of service and compensation.

For the three months ended March 31, 2017 and 2016, we contributed approximately $42,000 and $39,000, respectively, to our international multiple employer benefit plan. For the remainder of the year ending December 31, 2017, we expect to contribute approximately $134,000 to our international multiple employer benefit plan.

Note K - Recent Accounting Pronouncements

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. In March 2016, the FASB issued an amendment to the standard, ASU 2016-8, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net) (“ASU 2016-08”), which clarifies the implementation guidance on principal versus agent considerations. In April 2016, the FASB issued an additional amendment to the standard, ASU 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing (“ASU 2016-10”), which clarifies the guidance on identifying performance obligations and the implementation guidance on licensing. In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date by one year to December 15, 2017 for annual reporting periods beginning after that date, including interim periods within those periods. The FASB also approved permitting early adoption of the standard, but not before the original effective date of December 15, 2016. ASU 2014-09 is effective for interim and annual periods beginning after December 15, 2017. Two adoption methods are permitted: retrospectively to all prior reporting periods presented, with certain practical expedients permitted; or retrospectively with the cumulative effect of initially adopting the ASU recognized at the date of initial application. The Company has not yet determined which method will be used. We are currently evaluating the potential impact that ASU 2014-09 may have on our financial position and results of operations. To date, the Company’s sources of collaboration and other revenue have primarily been collaboration agreements. The most significant differences between Topic 606 and previous guidance for license and collaboration revenue are: (i) allocating consideration to performance obligations; and (ii) estimating and determining the timing of recognition of variable consideration received from licensees, including up-front license payments, contingent milestones and royalties. Revenues from contingent milestone payments may be recognized earlier under Topic 606 than under Topic 605, based on an assessment of the probability of a significant reversal of such milestone revenue at each reporting date. This assessment may result in recognizing milestone revenue before the milestone event has been achieved. Under previous guidance, milestone revenue was typically recognized when the milestone event was achieved.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) (“ASU 2016-2”) which supersedes Topic 840, Leases. ASU 2016-02 requires lessees to recognize a right-of-use asset and a lease liability on their balance sheets for all leases with terms greater than twelve months. Based on certain criteria, leases will be classified as either financing or operating, with classification affecting the pattern of expense recognition in the income statement. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expense for such leases generally on a straight-line basis over the lease term. ASU 2016-2 is effective for fiscal years beginning after December 15, 2018, and interim periods within those years, with early adoption permitted. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients primarily focused on leases that commenced before the effective date of Topic 842, including continuing to account for leases that commence before the effective date in accordance with previous guidance, unless the lease is modified. Footnote 15 provides details on our current lease arrangements. While we continue to evaluate the provisions of ASC 842 to determine how it will be affected, the primary effect of adopting the new standard will be to record assets and obligations for current operating leases. Upon adoption, based on leases in place as of December 31, 2016, the we expect to recognize assets and liabilities of approximately $13.8 million related to our

operating leases. The adoption of ASC 842 is not expected to have a material impact on the Company's results of operations or cash flows.

In March 2016, the FASB issued ASU 2016-09, Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, ("ASU 2016-09"). ASU 2016-09 provides for the simplification of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 applies to all entities and is effective for the annual effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. We adopted ASU 2016-09 on January 1, 2017, and recorded a cumulative adjustment of $1.2 million in retained earnings to reflect the retrospective change in awards expected to vest.

In January 2017, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business ("ASU 2017-01"), which provides guidance regarding the definition of a business, with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. ASU 2017-01 is effective for the Company in the first quarter of 2018, with early adoption permitted, and prospective application required. We will apply the provisions of ASU 2017-01 to any relevant transactions no later than the first quarter of 2018 and may consider earlier adoption for relevant transactions which occur in 2017.

No other new accounting pronouncement issued or effective during the three months ended March 31, 2017 had or is expected to have a material impact on our consolidated financial statements or disclosures.

Item 2. ***Management's Discussion and Analysis of Financial Condition and Results of Operations***

Forward Looking Statements

This Quarterly Report on Form 10-Q and other written and oral statements we make 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 (the "Exchange Act"). 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 current expectations and involve inherent risks and uncertainties, including factors that could delay, divert or change any of them, and could cause actual outcomes to differ materially from current expectations. These statements are likely to relate to, among other things, our business strategy, our research and development, our product development efforts, our ability to commercialize our product candidates, the activities of our licensees, our prospects for initiating partnerships or collaborations, the timing of the introduction of products, the effect of new accounting pronouncements, uncertainty regarding our future operating results and our profitability, anticipated sources of funds as well as our plans, objectives, expectations, and intentions.

We have included more detailed descriptions of these risks and uncertainties and other risks and uncertainties applicable to our business that we believe could cause actual results to differ materially from any forward-looking statements in Part II-Item 1A "Risk Factors" of this Quarterly Report on Form 10-Q. We encourage you to read those descriptions carefully. 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. 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.

Overview

We are a clinical-stage immuno-oncology ("I-O") company focused on the discovery and development of therapies that engage the body's immune system to fight cancer. Our approach to cancer immunotherapy involves a diverse portfolio consisting of antibody-based therapeutics, adjuvants and cancer vaccine platforms. We, in collaboration with our partners, are developing a number of immuno-modulatory antibodies against important nodes of immune regulation. These include antibodies targeting CTLA-4, GITR, OX40, and PD-1 that are in clinical development. Our discovery pipeline includes a number of proprietary checkpoint modulating ("CPM") antibodies against innovative targets such as TIGIT and 4-1BB (also known as CD137). We believe that tailored combination therapies are essential to combat some of the most resistant cancers. Accordingly, our immune education strategy focuses on pursuing antibodies as well as vaccine candidates in conjunction with adjuvants.

We are developing a comprehensive I-O portfolio driven by the following platforms and programs, which we intend to utilize individually and in combination:

- our antibody discovery platforms, including our Retrocyte Display™, SECANT® yeast display, and phage display technologies designed to produce quality human antibodies;
- our antibody candidate programs, including our CPM programs;
- our vaccine programs, including Prophage™, AutoSynVax™ and PhosPhoSynVax™ ; and
- our saponin-based vaccine adjuvants, principally our QS-21 Stimulon® adjuvant, or QS-21 Stimulon.

We also have our own good manufacturing practices manufacturing facility with the capacity to support early phase clinical programs.

We assess development, commercialization and partnering strategies for each of our product candidates periodically based on several factors, including pre-clinical and clinical trial results, competitive positioning and funding requirements and resources. We are currently collaborating with companies such as Incyte Corporation ("Incyte"), Merck Sharpe & Dohme and Recepta Biopharma SA ("Recepta"). Through these alliances, as well as our own internal programs, we currently have more than 10 antibody programs, including our anti-CTLA-4 (partnered with Recepta for certain South America territories) and anti-GITR and anti-OX40 (both partnered with Incyte) antibody programs that each commenced clinical trials during 2016, and our anti-PD-1 antibody that recently entered the clinic. In February 2017, we amended our collaboration agreement with Incyte to, among other things, convert the GITR and OX40 programs from profit-share to royalty-bearing programs. We are now eligible to receive royalties on global net sales at a

flat 15% rate for each of these programs. There are now no more profit-share programs under the collaboration, and we are eligible to receive up to a total of $510.0 million in future potential development, regulatory and commercial milestones across all programs in the collaboration. Pursuant to the amended agreement, we received accelerated milestone payments of $20.0 million from Incyte related to the clinical development of an anti-GITR agonist and an anti-OX40 agonist. Concurrent with the execution of the amendment, we and Incyte also entered into a separate stock purchase agreement whereby Incyte purchased an additional 10 million shares of our common stock at $6.00 per share, resulting in additional proceeds of $60.0 million to us.

In addition to our antibody platforms and CPM programs, we are also advancing a series of vaccine programs to treat cancer. In January 2017, we announced a clinical trial collaboration with the National Cancer Institute ("NCI"), which is a double-blind, randomized controlled Phase 2 trial that will evaluate the effect of our autologous vaccine candidate, Prophage, in combination with pembrolizumab (Keytruda®, Merck & Co., Inc. ("Merck")) in patients with ndGBM. Under this collaboration, we are suppling Prophage, Merck is providing pembrolizumab and the NCI and Brain Tumor Trials Collaborative ("BTTC") member sites are recruiting patients and conducting the trial. We also initiated our first clinical trial for our synthetic vaccine candidate, AutoSynVax ("ASV") earlier this year.

Our QS-21 Stimulon adjuvant is partnered with GlaxoSmithKline ("GSK") and is a key component in multiple GSK vaccine programs that target prophylactic or therapeutic impact in a variety of infectious diseases and cancer. These programs are in various stages, with the most advanced being GSK's shingles and malaria programs, which GSK first announced positive Phase 3 results for in December 2014 and October 2013, respectively. In 2015, we monetized a portion of the future royalties we are contractually entitled to receive from GSK from sales of its shingles and malaria vaccines through a Note Purchase Agreement ("NPA") and received net proceeds of approximately $78.2 million. In 2016, GSK filed for approval of its shingles vaccine candidate in the United States, European Union and Canada, and in 2017 it filed for approval in Japan. Assuming regulatory approval, the first products containing QS-21 Stimulon are anticipated to be launched by GSK in 2018. We do not incur clinical development costs for products partnered with GSK.

Our business activities include 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.

Historical Results of Operations

Three months ended March 31, 2017 compared to the three months ended March 31, 2016

Revenue: We recognized revenue of approximately $27.0 million and $6.0 million during the three months ended March 31, 2017 and 2016, respectively. Revenues primarily included fees earned under our license agreements, including $20.0 million for the three months ended March 31, 2017 related to the acceleration of milestone payments, and $6.3 million and $4.1 million for the three months ended March 31, 2017 and 2016, respectively, related to the reimbursement of development costs under our License, Development and Commercialization Agreement, dated January 9, 2015, with Incyte. During the three months ended March 31, 2017 and 2016, we recorded revenue of $0.7 million and $1.5 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 30% to $32.6 million for the three months ended March 31, 2017 from $25.0 million for the three months ended March 31, 2016. Increased expenses in 2017 include a $3.5 million increase in third-party services and other expenses related primarily to the advancement of our CPM programs, and a $2.9 million increase related to milestones and license fees.

General and administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses decreased 16% to $7.8 million for the three months ended March 31, 2017 from $9.2 million for the three months March 31, 2016. Decreased general and administrative expenses in 2017 primarily relate to a $1.3 million decrease in share-based compensation expense due to the recognition of a performance grant during the quarter ended March 31, 2016.

Contingent purchase price consideration fair value adjustment: Contingent purchase price consideration fair value adjustment represents the change in the fair value of our purchase price considerations during the period. The fair value of our contingent purchase price considerations is based on estimates from a Monte Carlo simulation of our market capitalization and share price.

Non-operating income: Non-operating income increased for the three months ended March 31, 2017 compared to the three months ended March 31, 2016 due to an increase in our foreign currency gain.

Interest expense, net: Interest expense, net increased to approximately $4.6 million for the three months ended March 31, 2017 from $4.1 million for the three months ended March 31, 2016 due to the compounding of interest on our debt under our Note Purchase Agreement.

Research and Development Programs

For the three months ended March 31, 2017, our research and development programs consisted largely of our antibody programs as indicated in the following table (in thousands).

Research and Development Program	Product	Three Months Ended March 31, 2017	Year Ended December 31, 2016	2015	2014	Prior to 2014	Total
Heat shock proteins for cancer	Prophage Vaccines	$ 4,611	$ 8,202	$ 5,508	$ 6,153	$ 303,528	$ 328,002
Antibody programs*		25,288	83,919	63,290	13,422	—	185,919
Heat shock proteins for infectious diseases	HerpV	19	11	293	2,443	30,309	33,075
Vaccine adjuvant	QS-21 Stimulon	8	77	142	321	13,336	13,884
Other research and development programs		2,714	2,761	1,211	10	33,556	40,252
Total research and development expenses		$ 32,640	$ 94,970	$ 70,444	$ 22,349	$ 380,729	$ 601,132

* Prior to 2014, costs were incurred by Agenus Switzerland Inc. (formerly known as 4-Antibody AG), a company 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 early stage, and because further development of HSP-based vaccines is dependent clinical trial results, 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. Active programs involving QS-21 Stimulon depend on our licensee successfully completing clinical trials, successfully manufacturing QS-21 Stimulon to meet demand, obtaining regulatory approvals and successfully commercializing product candidates containing QS-21 Stimulon.

Liquidity and Capital Resources

We have incurred annual operating losses since inception, and we had an accumulated deficit of $923.6 million as of March 31, 2017. We expect to incur significant losses over the next several years as we continue to develop our technologies and product candidates, manage our regulatory processes, initiate and continue clinical trials, and prepare for potential commercialization of products. To date, we have financed our operations primarily through the sale of equity and debt securities, and interest income earned on cash, cash equivalents, and short-term investment balances. From our inception through March 31, 2017, we have raised aggregate net proceeds of approximately $904.5 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.

We maintain an effective registration statement (the “Shelf Registration Statement”), which originally covered the offering of up to $150.0 million of common stock, preferred stock, warrants, debt securities and units. As of March 31, 2017, $66.2 million remained available under the Shelf Registration Statement. The Shelf Registration Statement also includes a prospectus covering the offer, 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 (the “Sales Agreement”) entered into with MLV & Co. LLC (the “Sales Agent”). Pursuant to the Sales Agreement, sales will be made only upon instructions by us to the Sales Agent. As of March 31, 2017, we had 9.1 million shares available for sale under the Sales Agreement.

As of March 31, 2017, we had debt outstanding of $114.1 million in principal, and $23.5 million in accrued interest. In February 2015, we issued subordinated notes in the aggregate principal amount of $14.0 million with annual interest at 8% (the "2015 Subordinated Notes"). The 2015 Subordinated Notes are due in February 2020. We and our wholly-owned subsidiary Antigenics LLC ("Antigenics") entered into the NPA with certain purchasers pursuant to which Antigenics issued, and we guaranteed, limited recourse notes in the aggregate principal amount of $100.0 million, with an option to issue an additional $15.0 million principal amount of limited recourse notes. The limited recourse notes are due on the earlier of (i) the 10th anniversary of the first commercial sale of GSK's shingles or malaria vaccines and (ii) September 8, 2030.

Our cash, cash equivalents, and short-term investments at March 31, 2017 were $123.8 million, an increase of $47.4 million from December 31, 2016. We believe that, based on our current plans and activities, our cash, cash equivalents, and short-term investments of $123.8 million as of March 31, 2017 will be sufficient to satisfy our liquidity requirements through the first half of 2018. 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, if necessary.

We expect to attempt to raise additional funds in advance of depleting our current funds. We may attempt to raise funds by: (1) pursuing collaboration, 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 antibody discovery platforms, antibody programs, HSP-based vaccines, and vaccines containing QS-21 Stimulon under development by our licensees. Our long-term success will also depend on the successful identification, development and commercialization of other potential 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 clinical trial and regulatory efforts and continuing our other research and development programs. Since inception, we have entered into various agreements with contract manufacturers, institutions, and clinical research organizations (collectively "third party providers") to perform pre-clinical activities and to conduct and monitor our clinical studies and trials. Under these agreements, subject to the enrollment of patients and performance by the applicable third party provider, we have estimated our total payments to be $141.8 million over the term of the related activities. Through March 31, 2017, we have expensed $104.2 million as research and development expenses and $97.5 million has been paid under these agreements. The timing of expense recognition and future payments related to these agreements is subject to the enrollment of patients and performance by the applicable third party provider. We have also entered into sponsored research agreements related to our product candidates that required payments of $8.6 million, of which $7.4 million have been paid as of March 31, 2017. We plan to enter into additional agreements with third party providers as well as sponsored research agreements, and we anticipate significant additional expenditures will be required to initiate and advance our various programs.

Part of our strategy is to develop and commercialize some of our product candidates by continuing our existing collaboration arrangements with academic and collaboration partners and licensees and by entering into new collaborations. As a result of our collaboration agreements, we will not completely control the efforts to attempt to bring those product candidates to market. For example, our collaboration with Incyte for the development, manufacture and commercialization of antibodies against certain targets is managed by a joint steering committee with equal representation from Agenus and Incyte.

Net cash used in operating activities for the three months ended March 31, 2017 and 2016 was $14.8 million and $21.5 million, respectively. Subject to regulatory submission and approval, the first products containing QS-21 Stimulon are anticipated to be launched in 2018. We are generally entitled to royalties on sales by GSK of vaccines using QS-21 Stimulon for at least ten years after commercial launch, with some exceptions. In September 2015, we entered into the NPA and partially monetized the potential royalties we are entitled to receive from GSK. Our future ability to generate cash from operations will depend on achieving regulatory approval and market acceptance of our product candidates, achieving benchmarks as defined in existing collaboration agreements, and our ability to enter into new collaborations. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Forward Looking Statements" in Part I, Item 2 of this Quarterly Report on Form 10-Q and the risks highlighted under Part II, Item 1A. "Risk Factors" of this Quarterly Report on Form 10-Q.

Off-Balance Sheet Arrangements

We did not have any off-balance sheet arrangements as of March 31, 2017.

Recent Accounting Pronouncements

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. In March 2016, the FASB issued an amendment to the standard, ASU 2016-8, Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net) ("ASU 2016-08"), which clarifies the implementation guidance on principal versus agent considerations. In April 2016, the FASB issued an additional amendment to the standard, ASU 2016-10, Revenue from Contracts with Customers (Topic 606): Identifying Performance Obligations and Licensing ("ASU 2016-10"), which clarifies the guidance on identifying performance obligations and the implementation guidance on licensing. In August 2015, the FASB issued ASU No. 2015-14, which defers the effective date by one year to December 15, 2017 for annual reporting periods beginning after that date, including interim periods within those periods. The FASB also approved permitting early adoption of the standard, but not before the original effective date of December 15, 2016. ASU 2014-09 is effective for interim and annual periods beginning after December 15, 2017. Two adoption methods are permitted: retrospectively to all prior reporting periods presented, with certain practical expedients permitted; or retrospectively with the cumulative effect of initially adopting the ASU recognized at the date of initial application. The Company has not yet determined which method will be used. We are currently evaluating the potential impact that ASU 2014-09 may have on our financial position and results of operations. To date, the Company's sources of collaboration and other revenue have primarily been collaboration agreements. The most significant differences between Topic 606 and previous guidance for license and collaboration revenue are: (i) allocating consideration to performance obligations; and (ii) estimating and determining the timing of recognition of variable consideration received from licensees, including up-front license payments, contingent milestones and royalties. Revenues from contingent milestone payments may be recognized earlier under Topic 606 than under Topic 605, based on an assessment of the probability of a significant reversal of such milestone revenue at each reporting date. This assessment may result in recognizing milestone revenue before the milestone event has been achieved. Under previous guidance, milestone revenue was typically recognized when the milestone event was achieved.

In February 2016, the FASB issued ASU 2016-02, Leases (Topic 842) ("ASU 2016-2") which supersedes Topic 840, Leases. ASU 2016-02 requires lessees to recognize a right-of-use asset and a lease liability on their balance sheets for all leases with terms greater than twelve months. Based on certain criteria, leases will be classified as either financing or operating, with classification affecting the pattern of expense recognition in the income statement. For leases with a term of 12 months or less, a lessee is permitted to make an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities. If a lessee makes this election, it should recognize lease expense for such leases generally on a straight-line basis over the lease term. ASU 2016-2 is effective for fiscal years beginning after December 15, 2018, and interim periods within those years, with early adoption permitted. In transition, lessees and lessors are required to recognize and measure leases at the beginning of the earliest period presented using a modified retrospective approach. The modified retrospective approach includes a number of optional practical expedients primarily focused on leases that commenced before the effective date of Topic 842, including continuing to account for leases that commence before the effective date in accordance with previous guidance, unless the lease is modified. Footnote 15 provides details on our current lease arrangements. While we continue to evaluate the provisions of ASC 842 to determine how it will be affected, the primary effect of adopting the new standard will be to record assets and obligations for current operating leases. Upon adoption, based on leases in place as of December 31, 2016, the we expect to recognize assets and liabilities of approximately $13.8 million related to our operating leases. The adoption of ASC 842 is not expected to have a material impact on the Company's results of operations or cash flows.

In March 2016, the FASB issued ASU 2016-09, Compensation – Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, ("ASU 2016-09"). ASU 2016-09 provides for the simplification of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, and classification on the statement of cash flows. ASU 2016-09 applies to all entities and is effective for the annual effective for annual periods beginning after December 15, 2016, and interim periods within those annual periods. We adopted ASU 2016-09 on January 1, 2017, and recorded a cumulative adjustment of $1.2 million in retained earnings to reflect the retrospective change in awards expected to vest.

In January 2017, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business ("ASU 2017-01"), which provides guidance regarding the definition of a business, with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. ASU 2017-01 is effective for the Company in the first quarter of 2018, with early adoption permitted, and prospective application required.

No other new accounting pronouncement issued or effective during the three months ended March 31, 2017 had or is expected to have a material impact on our consolidated financial statements or disclosures.

Item 3. ***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 subsidiaries and are denominated in local currency. Approximately 20% and 39% of our cash used in operations for the three months ended March 31, 2017 and the year ended December 31, 2016, respectively, was from our foreign subsidiaries. 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 Swiss Franc and British Pound, in large part due to our wholly-owned subsidiaries, 4-Antibody AG, a company with operations in Switzerland, and Agenus UK Limited, with operations in England. There has been no material change to our interest rate exposure and our approach toward interest rate and foreign currency exchange rate exposures, as described in our Annual Report on Form 10-K for the year ended December 31, 2016.

We had cash, cash equivalents and short-term investments at March 31, 2017 of $123.8 million, which are exposed to the impact of interest rate changes, and our interest income fluctuates as interest rates change. Additionally, in the normal course of business, we are exposed to fluctuations in interest rates as we seek debt financing and invest excess cash. Due to the short-term nature of our investments in money market funds and U.S. Treasury Bills, our carrying value approximates the fair value of these investments at March 31, 2017.

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 4. ***Controls and Procedures***

Evaluation of Disclosure Controls and Procedures

Under the supervision and with the participation of our management, including our Principal 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) and Rule 15d-15(e) promulgated under the Exchange Act. Based on this evaluation, our Principal Executive Officer and our Principal Financial Officer concluded that, as of the end of the period covered by this Quarterly Report on Form 10-Q, our disclosure controls and procedures were effective and were designed to ensure that information we are required to disclose in the reports that we file or submit under the Exchange Act is accumulated and communicated to management, including our Principal Executive Officer and Principal Financial Officer, as appropriate, to allow timely decisions regarding required disclosure, and is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission’s rules and forms. It should be noted that any system of controls is designed to provide reasonable, but not absolute, assurances that the system will achieve its stated goals under all reasonably foreseeable circumstances. Our Principal Executive Officer and Principal Financial Officer have each concluded that our disclosure controls and procedures as of the end of the period covered by this report are effective at a level that provides such reasonable assurances.

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 three months ended March 31, 2017 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II - OTHER INFORMATION

Item 1A. ***Risk Factors***

Our future operating results could differ materially from the results described in this Quarterly Report on Form 10-Q 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. These risk factors restate and supersede the risk factors set forth under the heading "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2016.

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 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Forward Looking Statements" in Part I, Item 2 of this Quarterly Report on Form 10-Q. 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, 2016, 2015, and 2014, were $127.2 million, $87.9 million, and $42.5 million, respectively. During the three months ended March 31, 2017, we generated a net loss of $17.1 million. We expect to incur additional losses over the next several years as we continue to research and develop 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 collaboration partners, as well as the likelihood and timing of new strategic licensing and partnering relationships and/or successful development and commercialization of product candidates, including through our antibody programs and platforms, our vaccine programs, and our saponin-based vaccine adjuvants.

On March 31, 2017, we had $123.8 million in cash, cash equivalents, and short-term investments. We believe that, based on our current plans and activities, our working capital resources as of March 31, 2017 will be sufficient to satisfy our liquidity requirements through the first half of 2018. We expect to attempt to secure additional funds before our current funds are depleted, although additional funding may not be available on favorable terms, or at all.

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 collaboration partners or from other sources. Additional financing may not be available on favorable terms, or at all. If we are unable to raise additional funds when we need them 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 and our partners pursue;
- our and our partners' ability to successfully develop, manufacture, and commercialize product candidates;
- the scope, progress, results and costs of researching and developing our product candidates and conducting pre-clinical and clinical trials;
- 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 future products, if any, could also be adversely impacted, thereby limiting our potential revenue. In addition, any negative impacts from any deterioration in the credit markets on our collaboration partners could limit potential revenue from our product candidates.

Our and our subsidiaries' obligations related to our monetization of royalties payable to us by GlaxoSmithKline ("GSK"), in respect of its shingles vaccine, HZ/su, along with our 2015 Subordinated Notes, could materially and adversely affect our liquidity.

In September 2015, we and our wholly-owned subsidiary, Antigenics LLC ("Antigenics"), entered into an Note Purchase Agreement ("NPA") with Oberland Capital SA Zermatt LLC ("Oberland"), as collateral agent, an affiliate of Oberland as the lead purchaser and certain other purchasers, pursuant to which Antigenics issued $100.0 million aggregate principal amount of limited recourse notes (the "Notes") to the purchasers. Antigenics has the option to issue an additional $15.0 million aggregate principal amount of Notes (the "Additional Notes") to the purchasers within 15 days after approval of GSK's shingles vaccine, HZ/su, by the Food and Drug Administration ("FDA"), provided such approval occurs on or before June 30, 2018. The Notes accrue interest at a rate of 13.5% per annum, compounded quarterly, from and after September 8, 2015 (the "Closing Date"). Principal and interest payments are due on each of March 15, June 15, September 15 and December 15, and shall be made solely from the royalties paid from GSK to Antigenics on sales of GSK's shingles and malaria vaccines. GSK will send all royalty payments to a segregated bank account, and to the extent there are insufficient royalties deposited into the account to fund a quarterly interest payment, the interest will be capitalized and added to the aggregate principal balance of the loan. The final legal maturity date of the Notes is the earlier of (i) the 10th anniversary of the first commercial sale of GSK's shingles or malaria vaccines and (ii) September 8, 2030 (the "Maturity Date").

On September 8, 2018, each purchaser has the option to require Antigenics to repurchase up to 15% of the Notes issued to such purchaser on the Closing Date (the "Put Notes") at a purchase price equal to the principal amount thereof plus accrued and unpaid interest thereon (the "Put Payment"). On the earlier of (i) September 8, 2027 and (ii) the Maturity Date, Antigenics is required to pay the purchasers an amount equal to the following (the "Make-Whole Payment"): $100.0 million (or $115.0 million if the Additional Notes are sold) minus the aggregate amount of all payments made in respect of the Notes (regardless of whether characterized as principal or interest at the time of payment), including the original principal amount of any repaid Put Notes.

The NPA specifies a number of events of default (some of which are subject to applicable cure periods), including (i) failure to cause royalty payments to be deposited into the segregated bank account, (ii) payment defaults, (iii) breaches of representations and warranties made at the time the Notes were, or the Additional Notes are, issued, (iv) covenant defaults, (v) a final and unappealable judgment against Antigenics for the payment of money in excess of $1.0 million, (vi) bankruptcy or insolvency defaults, (vii) the failure to maintain a first-priority perfected security interest in the collateral in favor of the collateral agent and (viii) the occurrence of a change of control of Agenus. Upon the occurrence of an event of default, subject to cure periods in certain circumstances and some limited exceptions, the collateral agent may declare the Notes immediately due and payable, in which case Antigenics would owe a payment equal to the following (the "Accelerated Default Payment"): the outstanding principal amount of the Notes, plus all accrued and unpaid interest thereon, plus a premium payment that would yield an aggregate internal rate of return ("IRR") for the purchasers as follows: (i) an IRR of 20% if the event of default occurs within 24 months of the Closing Date, (ii) an IRR of 17.5% if the event of default occurs after 24 months but within 48 months of the Closing Date, and (iii) an IRR of 15% if the event of default occurs more than 48 months after the Closing Date. Upon the occurrence and during the continuance of any event of default, interest on the Notes also increases by 2.5% per annum.

We are a party to the NPA as a guarantor of Antigenics, and we generally guarantee the Put Payment, the Make-Whole Payment and the Accelerated Default Payment. If we are obligated to make the Put Payment or the Make-Whole Payment, our liquidity would be materially and adversely affected. If we or Antigenics default on the Notes and we are obligated to pay the Accelerated Default Payment, our liquidity would be materially and adversely affected. Satisfaction of the Notes will depend upon the future sales of GSK's shingles and malaria vaccines, if approved, and, if we are obligated to make the Put Payment, the Make-Whole Payment or the Accelerated Default Payment, our future performance, which is subject to many factors, including the factors identified in this "Risk Factors" section and other factors beyond our control.

In February 2015, we exchanged senior subordinated promissory notes that we issued in 2013 for new senior subordinated promissory notes in the aggregate principal amount of $5.0 million with annual interest at 8%, and we issued an additional $9.0 million principal amount of such notes (the "2015 Subordinated Notes"). The 2015 Subordinated Notes were originally due February 2018, and in March 2017 we amended the 2015 Subordinate Notes to extend the maturity date to February 2020. The 2015 Subordinated Notes include default provisions that 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 2015 Subordinated Notes and the repayment of such indebtedness is accelerated, our liquidity could be materially and adversely affected.

If we do not have sufficient cash on hand to pay any of the Put Payment, the Make-Whole Payment or the Accelerated Default Payment when due, or to otherwise service our 2015 Subordinated Notes, 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 collaboration with Incyte to further develop, manufacture and commercialize antibodies against certain targets. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration could be significantly reduced, the development and/or commercialization of these antibodies may be terminated or substantially delayed, and our business could be adversely affected.

In February 2017, we amended the terms of our collaboration agreement with Incyte to, among other things, convert the GITR and OX40 programs from profit-share programs, where we and Incyte shared all costs and profits on a 50:50 basis, to royalty-bearing programs, where Incyte funds 100% of the costs and we are eligible for potential milestones and royalties. In addition, the profit-share programs relating to two undisclosed targets were removed from the collaboration, with one reverting to Incyte and one to Agenus, each with a potential 15% royalty to the other party on any global net sales. The remaining three royalty-bearing programs in the collaboration targeting TIM-3, LAG-3 and one undisclosed target remain unchanged, and there are no more profit-share programs under the collaboration. For each program in the collaboration, we serve as the lead for pre-clinical development activities through the filing of an investigational new drug application (“IND”), and Incyte has exclusive rights and all decision-making authority for manufacturing, clinical development and commercialization. Accordingly, the timely and successful completion by Incyte of clinical development and commercialization activities will significantly affect the timing and amount of any royalties or milestones we may receive under the collaboration agreement. In addition, we recently announced that we are transferring manufacturing responsibilities to Incyte for antibodies under that collaboration. Any delays or weaknesses in this transfer process or the ability of Incyte to successfully manufacture could have an adverse impact on those programs. 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 antibodies under the collaboration could be delayed or terminated. There can be no assurance that any of the development, regulatory or sales milestones will be achieved, or that we will receive any future milestone or royalty payments under the collaboration agreement.

In addition, our collaboration with Incyte may be unsuccessful due to other factors, including, without limitation, the following:

- Incyte may terminate the agreement or any individual program for convenience upon 12 months’ notice;
- Incyte has control over the development of assets in the collaboration;
- 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 antibody 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 may need to raise additional capital and may need to identify and come to agreement with another collaboration partner to advance certain of our antibody 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 antibody product candidates under the collaboration.

Our antibody programs are in early stage development, and there is no guarantee that we will be successful in advancing antibody product candidates through clinical development.

Our antibody programs are currently in early stage development, and many of our antibody programs are pre-clinical. Even if our pre-clinical studies or our and/or our partners' Phase 1 trials produce positive results, they may not necessarily be predictive of the results of future clinical trials in humans. Many companies in the pharmaceutical, biopharmaceutical and biotechnology industries have suffered significant setbacks in clinical trials after achieving positive results in pre-clinical development or Phase 1 trials, 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 regulatory approval. If we fail to produce positive results in future clinical trials of antibodies, our business and financial prospects would be materially adversely affected.

We have undergone significant growth across multiple locations over the past few years, and are focusing on further enhancing core areas and capabilities as we move towards commercialization. In addition, we have consolidated certain sites while expanding others to focus on our core priorities and future needs. We may encounter difficulties in managing these growth and/or consolidation efforts, either of which could disrupt our operations.

Since our acquisition of 4-Antibody in January 1, 2014 we have nearly tripled our headcount, in part through various acquisitions and the expansion of our research and development activities both nationally and internationally. While we have recently embarked on consolidation efforts, we expect to continue increasing our headcount in certain core areas as we continue to build our development, manufacturing and commercialization capabilities and integrate our acquired technology platforms. To manage these organizational changes, 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.

As part of our efforts to optimize efficiency across our organization, we closed our Jena office in 2016 and consolidated these operations in the United Kingdom and Switzerland. We also recently announced a reduction in force in our Lexington, MA facility in line with our prioritization efforts, including certain members of management, and that we are closing down our office in Basel, Switzerland and will transfer our research and development assets and capabilities there to the United Kingdom. We are currently winding down our operation in Switzerland and expect to transfer all of the assets and capabilities by the end of 2017. If these transition efforts are delayed or unsuccessful, or if we identify management or operational gaps in connection with our changes, this could cause delays in discovery timelines and increased costs for certain of our internal and partnered programs, which also could have an adverse effect on our business, financial condition and results of operations.

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

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

GSK manages its product development process, and we cannot predict its requirements for QS-21 Stimulon in the future or to what extent, if any, it will develop and commercialize vaccines that use QS-21 Stimulon as an adjuvant. GSK may initiate or terminate programs containing QS-21 Stimulon at any time. In addition, even if GSK successfully completes clinical trials with vaccine candidates using QS-21 Stimulon or these vaccine candidates receive positive decisions from regulatory bodies, there is no guarantee that these products will ultimately obtain regulatory approval or, if so approved, will have a successful commercial launch or generate any future milestones or royalty payments. In September 2015, we entered into the NPA and monetized a portion of the potential royalties we are entitled to receive from GSK on future sales of its shingles and malaria vaccines, if any. All of the royalties that are payable to us from GSK on sales of these products candidates, if any, will be used entirely to satisfy our obligations to the purchasers of the Notes. However, there is no guarantee that GSK's shingles and malaria vaccines will be approved in any territories for which they seek regulatory approval. Even if GSK's shingles and/or malaria vaccines are approved, there is no guarantee that GSK will have a successful commercial launch of either product or generate any revenues from sales to help satisfy our obligations under the NPA. 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 synthetic Heat Shock Protein ("HSP") peptide-based platform is in early stage development, and there is no guarantee that a product candidate will progress from this platform.

In June 2014, we reported positive results from a Phase 2 trial with HerpV™, a vaccine candidate for genital herpes from our synthetic HSP peptide-based platform. While the HerpV Phase 2 trial met its formal endpoints, subjects were not followed long enough to determine whether 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. We do not expect to advance this program into a Phase 3 trial, but we have initiated our ASV synthetic cancer vaccine program based on our prior findings with this platform. We initiated our first clinical trial for our first AutoSynVax product candidate in April 2017; however, there is no guarantee that results of this trial or any potential future clinical trials will be positive. Furthermore, it is possible that research and discoveries by others will render any product candidate from this platform as obsolete or noncompetitive.

We may not be able to advance clinical development or commercialize our cancer vaccine candidates or realize any benefits from these programs.

The probability of future clinical development efforts leading to marketing approval and commercialization of Prophage vaccines is highly uncertain. Prophage vaccines have been in clinical development for over 16 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 vaccines have resulted in a marketing approval, except in Russia where commercialization of the approved product was unsuccessful. All of our currently planned trials involving Prophage are intended to be sponsored by third parties, and there is no guarantee that they will occur at all. In addition, while we believe Prophage vaccines may provide clinical benefit to some patients as a monotherapy and in combination with other therapies, there is no guarantee that, if completed, subsequent Prophage trials would yield useful translational and/or efficacy data.

Our current clinical trial plans with Prophage vaccines entails one government sponsored IND in which we provide support and product supply. For third-party sponsored trials, we lack the ability to control trial design, timelines, tumor tissue procurement and data availability. For example, we recently announced a clinical trial collaboration with the National Cancer Institute ("NCI"), whereby the NCI is conducting a double-blind, randomized controlled Phase 2 trial to evaluate the effect of Prophage vaccine in conjunction with Merck's pembrolizumab on the overall survival rate of patients with newly diagnosed glioblastoma ("ndGBM"). In addition, the Phase 2 trial of Prophage vaccine in combination with bevacizumab in patients with surgically resectable recurrent glioma that was being conducted under the sponsorship of the Alliance for Clinical Trials in Oncology, a cooperative group of the NCI and has recently closed. In addition, our other cancer vaccine programs (ASV and PSV) are in preclinical development and there is no guarantee that they will successfully advance in and through the clinic. 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. 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.

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 antibody programs will require substantial manufacturing development and investment to progress. We are currently progressing a portfolio of antibody programs that are at different stages of development. If these 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 December 2015, we secured our own antibody manufacturing capabilities with the purchase of a manufacturing pilot plant from XOMA Corporation ("XOMA"), and we expect this facility to supply us with antibody drug substance requirements through clinical proof-of-concept studies. We will also need to develop or secure later phase and/or commercial manufacturing capabilities for larger, registrational studies or any commercial supply requirements. For the programs for which we will produce our own drug substance, we will continue to rely on third parties for fill-finish services and other parts of the manufacturing process. These services include the storage and maintenance of our drug substance during all stages of the manufacturing process. While we maintain insurance to cover certain potential losses, there is no guarantee that our insurance coverage will be adequate. Furthermore, we currently rely on contract manufacturing organizations ("CMOs") and contract research organizations ("CROs") to support some of our existing antibody programs. Our dependence on external CMOs for the manufacture of certain antibodies results in intrinsic risks to our performance, timelines, and costs of our accelerated development plans, and which could divert resources away from our antibody programs and/or lead to delays in the development of our product candidates. In the event that our antibody programs require progressively larger production capabilities, our options for qualified CMOs may become more limited.

The long-term success of the antibody pilot plant manufacturing facility and capabilities that we acquired from XOMA will depend, in part, on our ability to realize the anticipated synergies, business opportunities and growth prospects from combining our

manufacturing facilities in Lexington, MA with the antibody pilot plant manufacturing facility in Berkeley, CA. We may never realize these anticipated synergies, business opportunities and growth prospects. Assumptions underlying estimates of expected cost savings as a result of the acquisition of the antibody pilot plant manufacturing facility may be inaccurate. If any of these factors limit our ability to successfully manufacture antibodies to support our planned clinical trials, the expectations of future results of operations, including certain cost savings and synergies expected to result from the acquisition of XOMA's antibody pilot plant manufacturing facility, might not be met. In addition, we recently announced that we are transferring manufacturing responsibilities to Incyte for antibodies under that collaboration. Any delays or weaknesses in this transfer process or the ability of Incyte to successfully manufacture could have an adverse impact on those programs.

We currently manufacture our Prophage vaccines in our Lexington, MA facility. Manufacturing of the Prophage vaccines is complex, and various factors could cause delays or an inability to supply the vaccine. Deviations in the processes controlling manufacture or deficiencies in size or quality of source material could result in production failures. Specific vulnerabilities in the process may exist in tumor types in which quality or quantity of tissue is limited, such as recurrent GBM. 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 vaccines in addition to other product candidates in our current facility.

We have given our corporate QS-21 Stimulon licensee, GSK, manufacturing rights for QS-21 Stimulon for use in their product programs. If GSK or its third party CMO encounters problems with QS-21 Stimulon manufacturing, any of their programs containing QS-21 Stimulon could be delayed or terminated, and this could have an adverse effect on our potential license fees, milestone payments and royalties that we may otherwise receive from these programs and use to satisfy our obligations under the NPA. 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 product candidates is contingent, in part, upon our own, and our CMOs', 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, pre-clinical studies, clinical trials, and any future 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.

As mentioned above, reliance on third-party manufacturers entails risks to which we would not be subject if we manufactured all of our product candidates 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 current good manufacturing practices. 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 a product candidate. In addition, facilities are subject to on-going inspections and routine audits, and minor changes in manufacturing processes may require additional regulatory approvals and audits, either of which could cause us to incur significant additional costs, set-backs or delays and eventual loss of revenue.

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

We have research and development operations in Switzerland and the United Kingdom; however, we recently announced that we are closing our Switzerland office and transferring our capabilities there to the United Kingdom. We expect to pursue pathways to develop and commercialize our product candidates in both U.S. and 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 requirements to comply with various jurisdictional requirements such as data privacy regulations, 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 and domestic markets, including without limitation any resulting from the United Kingdom's withdrawal from the European Union or our current political regime, and limitations on the flexibility of our operations and costs imposed by local labor laws.

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

- develop safer or more effective therapeutic drugs or therapeutic vaccines and other products;
- 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;
- adversely affect our ability to recruit patients for our clinical trials;
- solidify partnerships or strategic acquisitions that may increase the competitive landscape;
- develop or commercialize their product candidates sooner than we commercialize our own, if ever; or
- implement more effective approaches to sales and marketing and capture some of our potential market share.

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

The CPM landscape is crowded with several competitors developing assets against a number of targets. Development plans are spread out across various indications and lines of therapy, either alone or in combination with other assets. Competitors range from small cap to large cap companies, with assets in preclinical or clinical stages of development. Therefore, the landscape is dynamic and constantly evolving. We and our partners have CPM antibody programs currently in clinical stage development targeting PD-1, CTLA-4, GITR and OX40. 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 targets as these programs, including, without limitation, the following: (1) Bristol-Myers Squibb (“BMS”) markets ipilimumab, an anti-CTLA-4 antibody, and nivolumab, an anti-PD-1 antibody, and is developing agonists to GITR and OX-40, (2) Merck has an approved anti-PD-1 antibody in the United States, and is developing an anti-GITR agonist, (3) Ono Pharmaceuticals has an approved anti-PD-1 antibody in Japan, (4) AstraZeneca/Medimmune has anti-CTLA-4, PD-1, PD-L1, GITR and OX40 targeting antibodies in development, (5) Pfizer has an approved anti-PD-L1 (with Merck KgA) as well as anti-PD-1, and anti-OX40 antibodies in clinical development, (6) Novartis has anti-PD-1, anti-PD-L1 and anti-GITR antibodies in clinical trials, and (7) Roche/Genentech has an approved anti-PD-L1 and an anti-OX40 antibody in clinical development. We are also aware of other competitors with PD-1/PD-L1 antibodies in clinical development, including Tesaro, Beigene, Regeneron, CureTech, Eli Lilly, Jiangsu HengRui Medicine, Shanghai Junshi and Macrogenics. We are also aware of competitors with preclinical antibodies against these targets. In addition, we are also aware of competitors with clinical stage antibodies against targets in our earlier stage programs such as TIM-3, LAG-3, 4-1BB, TIGIT and other undisclosed targets. These include, but are not limited to, BMS, Pfizer, Novartis, Merck, Roche, Tesaro and Regeneron. Additionally, we are also aware of competitors with assets against these targets that are in preclinical development. There is no guarantee that our antibody product candidates will be able to compete with our competitors’ antibody products and product candidates.

We are planning to develop our anti PD-1 antibody in second line cervical cancer. We are aware of exploratory, industry sponsored clinical trials that are underway in cervical cancer. Our competitors include, but are not restricted to, Merck (anti-PD-1), Ono Pharmaceuticals and BMS (anti-PD-1 alone or in combination with anti-CTLA-4 or anti-LAG-3), Advaxis (HPV targeting vaccine alone or in combination with AstraZeneca’s anti-PD-L1 antibody) and Lion Biotechnologies (autologous TILs). Additionally, we are also aware of other early stage clinical trials testing alternate CPM targets in cervical cancer patients. These include, but are not restricted to, PD-L1 + IDO (Roche), VISTA (Janssen), OX40 +/- 4-1BB (Pfizer) and PD-1 + IDO (BMS).

We have autologous vaccine programs in development including our Prophage vaccine in clinical development for GBM and our neo-antigen based AutoSynVax vaccine in clinical development. We are aware of many companies pursuing personalized cancer vaccines in preclinical or clinical development, including, without limitation, the following: Neon Therapeutics, Gritstone Oncology, Advaxis, BioNTech, Moderna and Merck, Nouscom, Immatics and Green Peptides.

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 temozolomide for treatment of patients with ndGBM and refractory astrocytoma. Other companies are developing vaccines for the treatment of patients with ndGBM, such as Green Cross Cell - formerly Innocell Corp (Immuncell-LC), ImmunoCellular Therapeutics (ICT-107), Northwest Biotherapeutics (DC-Vax), Mimivax Inc.

(SurVaxM), Annias Immunotherapeutics (CMV Vaccine) and Activartis Biotech (GBM-Vax). In addition, TVAX Biomedical, Stemline Therapeutics and Sumitomo Dainippon Pharma are developing immunotherapy candidates TVI-Brain-1, SL-701 and DSP-7888, respectively, for recurrent glioma. Other companies may begin development programs as well.

To the extent we develop our vaccines in other indications or in combination with other product candidates, such as available standard of care agents (Avastin®), or with CPMs, they could face additional competition in those indications or in those combinations. In addition, and prior to regulatory approval, if ever, our vaccines and 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 and infectious disease therapies continue to accelerate.

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, (1) oligonucleotides, under development by Pfizer, Idera, Colby, and Dynavax, (2) MF59, under development by Novartis, (3) IC31, under development by Intercell (now part of Valneva), and (4) MPL, under development by GSK. In the past, we have 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 to our ability to execute future partnering and licensing arrangements involving 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 developed or sold using QS-21 Stimulon.

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 future products, if any, incorporating this technology, either alone or with a third party.

Failure to realize the anticipated benefits or our strategic acquisitions and licensing transactions could adversely affect our business, operations and financial condition.

An important part of our business strategy has been to identify and advance a pipeline of product candidates by acquiring and in-licensing product candidates, technologies and businesses that we believe are a strategic fit with our existing business. Since we acquired Agenus Switzerland Inc., formerly known as 4-Antibody AG (“4-AB”), in February 2014, we have completed numerous additional strategic acquisitions and licensing transactions. The ultimate success of these strategic transactions entails numerous operational and financial risks, including:

- higher than expected development and integration costs;
- difficulty in combining the technologies, operations and personnel of acquired businesses with our technologies, operations and personnel;
- exposure to unknown liabilities;
- difficulty or inability to form a unified corporate culture across multiple office sites both nationally and internationally;
- inability to retain key employees of acquired businesses;
- disruption of our business and diversion of our management’s time and attention; and
- difficulty or inability to secure financing to fund development activities for such acquired or in-licensed product candidates, technologies or businesses.

We have limited resources to integrate acquired and in-licensed product candidates, technologies and businesses into our current infrastructure, and we may fail to realize the anticipated benefits of our strategic transactions. Any such failure could have an adverse effect on our business, operations and financial condition.

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 antibody programs depends in part on collaboration agreements such as our collaboration with Incyte. See "Risk Factors—Risks Related to Our Business—We are dependent upon our collaboration with Incyte to further develop, manufacture and commercialize antibodies against certain targets. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration could be significantly reduced, the development and/or commercialization of these antibodies may be terminated or substantially delayed, and our business could be adversely affected." In addition, from time to time we engage in efforts to enter into licensing, distribution and/or collaboration 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 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.

Because we rely on collaborators and licensees for the development and commercialization of certain 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 many 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, pre-clinical and clinical testing, completing regulatory applications, and commercializing product candidates. Our research, development, and commercialization efforts with respect to antibody candidates from our technology platforms are, in part, contingent upon the participation of institutional and corporate collaborators. For example, in February 2015, we began a broad collaboration with Incyte to pursue the discovery and development of antibodies. See "Risk Factors-Risks Related to our Business—We are dependent upon our collaboration with Incyte to further develop, manufacture and commercialize antibodies against certain targets. If we or Incyte fail to perform as expected, the potential for us to generate future revenues under the collaboration could be significantly reduced, the development and/or commercialization of these antibodies may be terminated or substantially delayed, and our business could be adversely affected." Furthermore, we have a collaboration arrangement with Recepta for CTLA-4 and PD-1, giving Recepta rights to certain South American countries and requiring us to agree upon development plans for these candidates. Disagreements or the failure of either party to perform satisfactorily could have an adverse impact on these programs.

In addition, substantially all product candidates containing QS-21 Stimulon depend on the success of GSK, our licensee. Such product candidates depend on GSK successfully enrolling patients and completing clinical trials, being committed to dedicating the resources necessary to advance these product candidates, obtaining regulatory approvals, and successfully manufacturing and commercializing product candidates.

The Brain Tumor Trials Collaborative is sponsoring a Phase 2 clinical trial of our Prophage vaccine candidate in combination with Merck's pembrolizumab in patients with glioma. 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 depend on the success of our collaboration partner. Such product candidates depend on our collaborator successfully enrolling patients and completing clinical trials, being committed to dedicating the resources to advance these product candidates, obtaining regulatory approvals, and successfully manufacturing and commercializing product candidates.

Development activities for our collaboration 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 collaboration 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 not be able to enter into new collaborations on favorable terms or at all. 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 internal computer systems, or those of our third-party CROs, CMOs, licensees, collaborators or other contractors or consultants, may fail or suffer security breaches, which could result in a material disruption in our business and operations or could subject us to sanctions and penalties that could have a material adverse effect on our reputation or financial condition.

Despite the implementation of security measures, our internal computer systems and those of our current and future CROs, CMOs, licensees, collaborators 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, on-going 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 use and store customer, vendor, employee and business partner and, in certain instances patient, personally identifiable information in the ordinary course of our business. We are subject to various domestic and international privacy and security regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which mandates, among other things, the adoption of uniform standards for the electronic exchange of information in common healthcare transactions, as well as standards relating to the privacy and security of individually identifiable health information, which require the adoption of administrative, physical and technical safeguards to protect such information. In addition, many states have enacted comparable laws addressing the privacy and security of health information, some of which are more stringent than HIPAA. Failure to comply with these standards, or a computer security breach or cyber-attack that affects our systems or results in the unauthorized release of proprietary or personally identifiable information, could subject us to criminal penalties and civil sanctions, and our reputation could be materially damaged and our operations could be impaired. We may also be exposed to a risk of loss or litigation and potential liability, which could have a material adverse effect on our business, results of operations and financial condition.

We are highly reliant on certain 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.

Both Garo H. Armen, Ph.D., the Chairman of our Board of Directors and our Chief Executive Officer who co-founded the Company in 1994, and Dr. Jean-Marie Cuillerot, our Chief Medical Officer who joined the Company in July 2016, are integral to building our company and developing our technology. If either Dr. Armen or Dr. Cuillerot is unable or unwilling to continue his relationship with Agenus, our business may be adversely impacted. We have employment agreements with both Dr. Armen and Dr. Cuillerot. They both play important roles in our day-to-day activities. We do not carry key employee insurance policies for Dr. Armen, Dr. Cuillerot 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 partners or our growth generally. 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. 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. Moreover, in connection with our recently announced restructuring activities, certain positions on our management team were eliminated and Dr. Robert Stein retired from his role as President of R&D to become a senior R&D advisor to the Company. Any key capability gaps identified following this restructuring could have a material adverse effect on our business, financial condition and results of operations.

Calamities, power shortages or power interruptions could disrupt our business and materially adversely affect our operations.

If a natural disaster, power outage or other event occurred that prevented us from using all or a significant portion of our facilities, that damaged critical infrastructure (such as our manufacturing facility) or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue certain activities, such as for example our manufacturing capabilities, for a substantial period of time. In December 2015, we acquired an antibody pilot plant manufacturing facility and leased additional office space in Berkeley, CA. This location is in an area of seismic activity near active earthquake faults. Any earthquake, terrorist attack, fire, power shortage or other calamity affecting our facilities or those of third parties upon whom we depend may disrupt our business and could have a material adverse effect on our business, results of operations, financial condition and prospects. The disaster recovery and business continuity plans we have in place currently are limited and are unlikely to prove adequate in the event of a serious disaster or similar event. We may incur substantial expenses and delays as a result of the limited nature of our disaster recovery and business continuity plans, which could have a material adverse effect on our business.

Risks Related to Regulation of the Biopharmaceutical Industry

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

Drug development, including non-clinical testing and clinical development, and the process of obtaining regulatory approvals for new therapeutic products, is lengthy, expensive, and uncertain. For example, as of March 31, 2017, we had spent approximately 20 years and $601.1 million on our research and development programs. The development and regulatory approval processes also can vary substantially based on the therapeutic area, type, complexity, and novelty of the product. We must provide regulatory authorities with manufacturing, product characterization, and pre-clinical 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. Results of pre-clinical studies do not necessarily predict clinical results, and promising results in early clinical studies might not be confirmed in later studies. Any pre-clinical or clinical test may fail to produce results satisfactory to regulatory authorities for many reasons, including but not limited to emerging manufacturing or control issues, limitations of pre-clinical assessments, difficulties to enroll a sufficient number of patients, changing therapeutic landscape or failure to prospectively identify the benefit/risk profile of the new product. Pre-clinical and clinical data can be interpreted in different ways, which could delay, limit, or prevent regulatory approval. Negative or inconclusive results from a pre-clinical study or clinical trial, adverse medical events during a clinical trial, or safety issues emerging with products of the same class of drug could require additional studies 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 or mitigating 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 final clinical results. 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 or our partners receive marketing approval for our product candidates, such product approvals could be subject to restrictions or withdrawals. Regulatory requirements are subject to change. Further, even if we or our partners receive marketing approval, we may not receive sufficient coverage and adequate reimbursement for our products.

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, corrective action requirements, 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 and 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 operate in a highly regulated industry, regulatory authorities could take enforcement action against us in connection with our licensees' or collaborators', and/or our 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, increase, and change the methodology regarding industry rebates for drugs covered under Medicaid programs; impose an annual, nondeductible fee on any entity that manufactures or imports specific branded prescription drugs and biologic agents, apportioned among those entities according to market share in certain government healthcare programs; expand eligibility criteria for Medicaid programs by, among other things, allowing states to offer Medicaid coverage to certain individuals with income at or below 133% of the federal poverty level; expand the entities eligible for discounts under the Public Health Service pharmaceutical pricing program; create a new Patient Centered Outcomes Research Institute to oversee, identify priorities in, and conduct comparative clinical effectiveness research, along with funding for such research; and make changes to the coverage requirements under the Medicare D program. Significant legislative changes to the ACA also appear likely in the 115th U.S. Congress under the Trump Administration.

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. Even if our product candidates are approved, the commercial success of our products will depend substantially on the extent to which they are covered by third-party payors, including government health authorities and private health insurers. In the United States, no uniform policy of coverage and reimbursement for products exists among third-party payors, and coverage and reimbursement for products can differ significantly from payor to payor. If coverage and reimbursement are not available, or reimbursement is available only to limited levels, we or our collaborators may not be able to successfully commercialize our product candidates.

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.

We rely upon a combination of patents, trade secret protection and confidentiality agreements to protect the intellectual property related to our product candidates and technology. Any disclosure to or misappropriation by third parties of our confidential proprietary information could enable competitors to duplicate or surpass our technological achievements, eroding our competitive position in the market. Our patent applications may not result in issued patents, and, even if issued, the patents may be challenged and invalidated. Moreover, our patents and patent applications may not be sufficiently broad to prevent others from practicing our technologies or developing competing products. We also face the risk that others may independently develop similar or alternative technologies or may design around our proprietary property.

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.

Patent terms may be inadequate to protect our competitive position on our product candidates for an adequate amount of time. Patents have a limited lifespan. In the United States, the natural expiration of a patent is generally 20 years after its effective filing date. Various extensions may be available; however the life of a patent, and the protection it affords, is limited. Without patent protection for our product candidates, we may be open to competition from biosimilar or generic versions of our product candidates. 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. For example, if we encounter delays in our development efforts, including our clinical trials, the period of time during which we could market our product candidates under patent protection could be reduced.

Our strategy depends on our ability to identify and seek patent protection for our discoveries. This process is expensive and time consuming, and we and our current or future licensors or licensees 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. It is also possible that we or our current licensors or licensees, or any future licensors or licensees, may not identify patentable aspects of inventions made in the course of development and commercialization activities in time to obtain patent protection on them. Therefore, these and any of our patents and applications may not be prosecuted and enforced in a manner consistent with the best interests of our business. Defects of form in the preparation or filing of our patents or patent applications may exist, or may arise in the future, for example with respect to proper priority claims, inventorship, etc. If we or our current licensors or licensees, or any future licensors or licensees, fail to establish, maintain or protect such patents and other intellectual property rights, such rights may be reduced or eliminated. If our current licensors or licensees, or any future licensors or licensees, are not fully cooperative or disagree with us as to the prosecution, maintenance or enforcement of any patent rights, such patent rights could be compromised. If there are material defects in the form or preparation of our patents or patent applications, such patents or applications may be invalid and unenforceable. 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. Any of these outcomes could impair our ability to prevent competition from third parties, which may have an adverse impact on our business.

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. 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, 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 own, co-own or have exclusive rights to approximately 40 issued United States patents and approximately 125 issued foreign patents. We also own, co-own or have exclusive rights to approximately 30 pending United States patent applications and approximately 70 pending foreign patent applications. However, our patents may not protect us against our competitors. Our patent positions, and those of other biopharmaceutical, 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 ("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 acquisitions of 4-AB, PhosImmune and certain assets of Celexion, we own, co-own, or have exclusive rights to 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 such entities' technology platforms. In particular, we own patents and patent applications relating to our 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. Through our acquisition of PhosImmune, we own, co-own, or have exclusive rights to patents and patent applications directed to various methods and compositions, including a patent directed to methods for identifying phosphorylated proteins using mass spectrometry. This patent is projected to expire in 2023. We also own patents and patent applications relating to the SECANT® platform, a platform used for the generation of novel monoclonal antibodies. This patent family is projected to expire between 2028 and 2029. In addition, as we advance our research and development efforts with our institutional and corporate collaborators, we are seeking patent protection for newly identified therapeutic antibodies and product candidates. We can provide no assurance that any of our patents, including the patents that we acquired or in-licensed in connection with our acquisitions of 4-AB, PhosImmune and certain assets of Celexion, will have commercial value, or that any of our existing or future patent applications, including the patent applications that we acquired or in-licensed in connection with our acquisitions of 4-AB, PhosImmune and certain assets of Celexion, will result in the issuance of valid and enforceable patents

Our issued patents covering Prophage vaccine and methods of use thereof, alone or in combination with other agents, expired or will expire at various dates between 2015 and 2024. In particular, our issued U.S. patents covering Prophage composition of matter expired in 2015. In addition, our issued patents covering QS-21 Stimulon composition of matter expired in 2008. We continue to explore means of extending the life cycle of our patent portfolio.

The patent position of biopharmaceutical, 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 biopharmaceutical, 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.

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

Third parties may infringe or misappropriate our intellectual property, including our existing patents, patents that may issue to us in the future, or the patents of our licensors or licensees to which we have a license. As a result, we may be required to file infringement claims to stop third-party infringement or unauthorized use. Further, we may not be able to prevent, alone or with our licensors or licensees, misappropriation of our intellectual property rights, particularly in countries where the laws may not protect those rights as fully as in the United States.

If we or one of our licensors or licensees were to initiate legal proceedings against a third party to enforce a patent covering our product candidates, the defendant could counterclaim that the patent covering our product candidates is invalid and/or unenforceable. In patent litigation in the United States, defendant counterclaims alleging invalidity and/or unenforceability are commonplace, and there are numerous grounds upon which a third party can assert invalidity or unenforceability of a patent.

In addition, within and outside of the United States, there has been a substantial amount of litigation and administrative proceedings, including interference and reexamination proceedings before the USPTO or oppositions and other comparable proceedings in various foreign jurisdictions, regarding patent and other intellectual property rights in the biopharmaceutical industry. Recently, the AIA introduced new procedures, including inter partes review and post grant review. These procedures may be used by competitors to challenge the scope and/or validity of our patents, including those that patents perceived by our competitors as blocking entry into the market for their products, and the outcome of such challenges.

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 non-exclusive 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 or licensees 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 or licensees 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. An adverse outcome may also put our pending patent applications at risk of not issuing, or issuing with limited and potentially inadequate scope to cover our product candidates. The outcome following legal assertions of invalidity and unenforceability is unpredictable. With respect to the validity question, for example, we cannot be certain that there is no invalidating prior art, of which we and the patent examiner were unaware during prosecution. Additionally, it is also possible that prior art of which we are aware, but which we do not believe affects the validity or

enforceability of a claim, may, nonetheless, ultimately be found by a court of law or an administrative panel to affect the validity or enforceability of a claim, for example, if a priority claim is found to be improper. If a defendant were to prevail on a legal assertion of invalidity and/or unenforceability, we could lose at least part, and perhaps all, of the patent protection on our relevant product candidates. Such a loss of patent protection could have a material adverse impact on our business.

Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation or administrative proceedings, there is a risk that some of our confidential information could be compromised by disclosure. In addition, during the course of litigation or administrative proceedings, there could be public announcements of the results of hearings, motions or other interim proceedings or developments or public access to related documents. If investors perceive these results to be negative, the market price for our common stock could be significantly harmed. Any of these occurrences could adversely affect our competitive business position, business prospects, and financial condition.

Intellectual property rights do not necessarily address all potential threats to our competitive advantage. 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 pre-clinical CPM antibody programs and therapeutic antibodies is crowded.

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 or licensees, we or our licensors or licensees 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 biopharmaceutical, 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.

Changes in U.S. patent law could diminish the value of patents in general, thereby impairing our ability to protect our product candidates.

Obtaining and enforcing patents in the biopharmaceutical industry involves both technological and legal complexity, and therefore, is costly, time-consuming and inherently uncertain. In addition, the United States has recently enacted and is currently implementing wide-ranging patent reform legislation. Further, recent U.S. Supreme Court rulings have either narrowed the scope of patent protection available in certain circumstances or weakened the rights of patent owners in certain situations. In addition to increasing uncertainty with regard to our ability to obtain patents in the future, this combination of events has created uncertainty with respect to the value of patents, once obtained.

For our U.S. patent applications containing a claim not entitled to priority before March 16, 2013, there is a greater level of uncertainty in the patent law. In September 2011, the Leahy-Smith America Invents Act, or the American Invents Act (“AIA”), was signed into law. The AIA includes a number of significant changes to U.S. patent law, including provisions that affect the way patent applications will be prosecuted and may also affect patent litigation. The USPTO is currently developing regulations and procedures to govern administration of the AIA, and many of the substantive changes to patent law associated with the AIA. It is not clear what other, if any, impact the AIA will have on the operation of our business. Moreover, the AIA and its implementation could increase the uncertainties and costs surrounding the prosecution of our patent applications and the enforcement or defense of our issued patents, all of which could have a material adverse effect on our business and financial condition.

An important change introduced by the AIA is that, as of March 16, 2013, the United States transitioned to a "first-inventor-to-file" system for deciding which party should be granted a patent when two or more patent applications are filed by different parties claiming the same invention. A third party that files a patent application in the USPTO after that date but before us could therefore be awarded a patent covering an invention of ours even if we had made the invention before it was made by the third party. This requires us to be cognizant of the time from invention to filing of a patent application. Furthermore, our ability to obtain and maintain valid and enforceable patents depends on whether the differences between our technology and the prior art allow our technology to be patentable over the prior art. Since patent applications in the United States and most other countries are confidential for a period of time after filing, we cannot be certain that we were the first to either (i) file any patent application related to our product candidates or (ii) invent any of the inventions claimed in our patents or patent applications.

Among some of the other changes introduced by the AIA are changes that limit where a patentee may file a patent infringement suit and providing opportunities for third parties to challenge any issued patent in the USPTO. This applies to all of our U.S. patents, even those issued before March 16, 2013. Because of a lower evidentiary standard in USPTO proceedings compared to the evidentiary standard in United States federal court necessary to invalidate a patent claim, a third party could potentially provide evidence in a USPTO proceeding sufficient for the USPTO to hold a claim invalid even though the same evidence would be insufficient to invalidate the claim if first presented in a district court action. Accordingly, a third party may attempt to use the USPTO procedures to invalidate our patent claims that would not have been invalidated if first challenged by the third party as a defendant in a district court action.

We may be subject to claims that our employees, consultants or independent contractors have wrongfully used or disclosed confidential information of third parties.

We may have received confidential and proprietary information from third parties. In addition, we employ individuals who were previously employed at other biopharmaceutical, biotechnology or pharmaceutical companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise improperly used or disclosed confidential information of these third parties or our employees' former employers. Further, we may be subject to ownership disputes in the future arising, for example, from conflicting obligations of consultants or others who are involved in developing our product candidates. We may also be subject to claims that former employees, consultants, independent contractors, collaborators or other third parties have an ownership interest in our patents or other intellectual property. Litigation may be necessary to defend against these and other claims challenging our right to and use of confidential and proprietary information. If we fail in defending any such claims, in addition to paying monetary damages, we may lose our rights therein. Such an outcome could have a material adverse effect on our business. Even if we are successful in defending against these claims, litigation could result in substantial cost and be a distraction to our management and employees.

We may not be able to protect our intellectual property rights throughout the world.

Filing, prosecuting and defending patents on our product candidates in all countries throughout the world would be prohibitively expensive. The requirements for patentability may differ in certain countries, particularly developing countries. For example, China has a heightened requirement for patentability, and specifically requires a detailed description of medical uses of a claimed drug. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as laws in the United States. Consequently, we may not be able to prevent third parties from practicing our inventions in all countries outside the United States. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and, further, may export otherwise infringing products to territories where we have patent protection, but enforcement on infringing activities is inadequate. These products may compete with our product candidates, and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing, and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate and the damages or other remedies awarded, if any, may not be commercially meaningful. In addition, certain countries in Europe and certain developing countries, including India and China, have compulsory licensing laws under which a patent owner may be compelled to grant licenses to third parties. In those countries, we may have limited remedies if our patents are infringed or if we are compelled to grant a license to our patents to a third party, which could materially diminish the value of those patents. This could limit our potential revenue opportunities. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we own or license. Finally, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in foreign intellectual property laws.

Risks Related to Litigation

We may face litigation or regulatory investigations 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, securities, 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 and regulatory investigations consume 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.

If we or our employees fail to comply with laws or regulations, it could adversely impact our reputation, business and stock price.

We are exposed to the risk of employee fraud or other misconduct. Misconduct by employees could include intentional and/or negligent 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, transparency, and/or data privacy and security 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; to promote transparency; and to protect the privacy and security of patient data. 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.

While we have adopted a corporate compliance program, we may not be able to protect against all potential issues of noncompliance. Efforts to ensure that our business complies with all applicable healthcare laws and regulations will involve substantial costs. It is possible that governmental authorities will conclude that our business practices may not comply with current or future statutes, regulations, or case law involving applicable laws and regulations.

Employee misconduct could also involve the improper use or disclosure 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 manufacturing antibodies in our Berkeley, CA facility and may face even greater risks if we ever sell products 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:

- regulatory investigations;
- injury to our reputation;
- withdrawal of clinical trial volunteers;
- costs of related litigation; and
- substantial monetary awards to plaintiffs; and
- decreased demand for any future products.

We manufacture the Prophage 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 do not have any other insurance that covers loss of or damage to the Prophage 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

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.

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

During the period from our initial public offering on February 4, 2000 to March 31, 2017, and the three months ended March 31, 2017, 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 $3.69 and $4.54 per share, respectively. The average daily trading volume for the three months ended March 31, 2017 was approximately 1,200,268 shares, while the average daily trading volume for the year ended December 31, 2016 was approximately 1,207,067. The market may experience significant price and volume fluctuations that are often unrelated to the operating performance of individual companies. In addition to general market volatility, many factors may have a significant adverse effect on the market price of our stock, including:

- continuing operating losses, which we expect over the next several years as we continue our development activities;
- announcements of decisions made by public officials or delays in any such announcements;
- results of our pre-clinical studies and clinical trials or delays in anticipated timing;
- delays in our regulatory filings or those of our partners;
- announcements of new collaboration agreements with strategic partners or developments by our existing collaboration partners;
- announcements of acquisitions;
- 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 acquisitions;
- 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, including our average monthly cash used in operating activities;
- 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 biopharmaceutical, biotechnology and pharmaceutical industries generally;
- 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 many biopharmaceutical, biotechnology and pharmaceutical companies 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 March 31, 2017, we had 98,702,552 shares of common stock outstanding. All of these shares are eligible for sale on NASDAQ, although certain of the shares are subject to sales volume and other limitations. We have filed registration statements to permit the sale of approximately 22,200,000 shares of common stock under our equity incentive plans, to permit the sale of 1,500,000 shares of common stock under our 2015 Inducement Equity Plan, and to permit the sale of 150,000 shares of common stock under an inducement grant. 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 325,000 shares of common stock under our Directors' Deferred Compensation Plan, to permit the sale of approximately 20,101,002 shares of common stock pursuant to various private placement agreements (including 1,400,000 shares of common stock issuable upon the exercise of certain warrants that we issued in February 2015) 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 March 31, 2017, an aggregate of approximately 33million of these shares remained available for sale. In connection with our acquisition of 4-AB in February 2014, we are obligated to make contingent milestone payments to the former shareholders of 4-AB, payable in cash or shares of our common stock at our option, as follows (i) $10.0 million upon our market capitalization exceeding $750.0 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) $10.0 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. In addition, as additional consideration for assets that we purchased from Celexion, we agreed to pay to Celexion $4.0 million on the 24-month anniversary of the Closing Date payable at our discretion in cash, shares of our common stock, or any combination thereof. In connection with our acquisition of PhosImmune in December 2015, we issued 1,631,521 shares of our common stock to the shareholders of PhosImmune and other third parties having a fair market value of approximately $7.4 million at closing. In addition, we may be obligated in the future to pay certain contingent milestones payments, payable at our election in cash or shares of our common stock of up to $35.0 million in the aggregate. Pursuant to a technology transfer and license agreement that we entered into with Iontas Limited ("Iontas") in September 2015, we agreed to pay up to an aggregate of $3,500,000 upon the completion of certain milestones, payable in cash or shares of our common stock at our election. In November 2016, we issued 157,513 shares of our common stock to Iontas as consideration for a $1.0 million milestone payment, and in January 2017 we filed a registration statement to provide for the resale of these shares. In March 2017, we issued an additional 373,351 shares of our common stock to Iontas as consideration for a $1.5 million milestone payment and amended the registration statement to incorporate these additional shares. We are also obligated to file registration statements covering any additional shares that may be issued to Celexion, XOMA, Iontas or the former shareholders of PhosImmune in the future pursuant to the terms of our agreements with Celexion, XOMA, Iontas and PhosImmune, respectively. The market price of our common stock may decrease based on the expectation of such sales. The market price of our common stock may decrease based on the expectation of such sales.

As of March 31, 2017, warrants to purchase approximately 4,351,450 shares of our common stock with a weighted average exercise price per share of $9.01 were outstanding.

As of March 31, 2017, options to purchase 14,940,852 shares of our common stock with a weighted average exercise price per share of $4.33 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 March 31, 2017, we had 7,184,446 vested options and 2,605,674 nonvested shares outstanding.

As of March 31, 2017, our outstanding shares of Series A-1 Convertible Preferred Stock were convertible into 333,333 shares of our common stock.

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, 2016, our procedures are subject to the risk that our controls may become inadequate because of changes in conditions or as a result of a deterioration in compliance with such procedures. No assurance is given that our procedures and processes for detecting weaknesses in our internal control over financial reporting will be effective.

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

Item 6. ***Exhibits***

The Exhibits listed in the Exhibit Index are included in this Quarterly Report on Form 10-Q.

(b) Exhibits

AGENUS INC.

SIGNATURES

Pursuant to the requirements 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.

Date: May 4, 2017

AGENUS INC.

/s/ CHRISTINE M. KLASKIN

Christine M. Klaskin
VP, Finance, Principal Financial Officer, Principal Accounting Officer

Exhibit Index

Exhibit No.	Description
4.1	Stock Purchase Agreement dated as of February 14, 2017, by and between Agenus Inc. and Incyte Corporation. Filed herewith.
4.2	Amendment to Notes and Warrants dated as of March 15, 2017 by and among Agenus Inc. and the Investors listed therein. Filed as Exhibit 4.27 to our Annual Report on Form 10-K (File No. 000-29089) for the year ended December 31, 2016 and incorporated herein by reference.
10.1(1)	First Amendment to License, Development and Commercialization Agreement dated as of February 14, 2017 by and among Agenus Inc., Agenus Switzerland Inc. (f/k/a 4-Antibody AG) and Incyte Europe Sarl. Filed herewith.
10.2	Employment Agreement dated as of March 10, 2017 by and between Agenus Inc. and Dr. Jean-Marie Cuillerot. Filed as Exhibit 10.16 to our Annual Report on Form 10-K (File No. 000-29089) for the year ended December 31, 2016 and incorporated herein by reference.
10.3	Separation Agreement dated as of April 1, 2017 by and between Agenus Inc. and Dr. Robert Stein. Filed herewith.
10.4	Consulting Agreement dated as of April 1, 2017 by and between Agenus Inc. and Dr. Robert Stein. Filed herewith.
31.1	Certification of Principal 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 Principal 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

(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.

Exhibit 4.1

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (this "Agreement") is dated as of February 14, 2017, 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, Agenus Switzerland Inc., and Incyte Europe SARL, a Swiss limited liability company (a société à responsabilité limitée) and an affiliate of the Purchaser, entered into that certain First Amendment to License, Development and Commercialization Agreement dated as of the date hereof (the "Amendment to Collaboration Agreement"); and

WHEREAS, in connection with the execution of the Amendment to 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.

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

"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 date hereof.

"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 Ropes & Gray LLP, with offices located at Prudential Tower, 800 Boylston Street, Boston, MA 02199.

"Disclosure Schedules" means the schedules attached to this Agreement.

"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.

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

"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.

"Sullivan & Cromwell" means Sullivan & Cromwell LLP, with offices located at 125 Broad St, New York, NY 10004.

"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.

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, 10,000,000 shares of Common Stock (the "Shares"), at a price per share of $6.00 (the "Purchase Price"). Subject to the satisfaction or waiver of the covenants and conditions set forth in Sections 2.3 and 2.4, the Closing shall occur on the date hereof at the offices of Sullivan & Cromwell 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 Amendment to 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 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;

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

(c) 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;

(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 Amendment to Collaboration Agreement shall continue to be in full force and effect; and

(iv) Purchaser shall have delivered the Purchase Price.

(b) 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:

(i) the representations and warranties of the Company contained in Section 3.1 shall be true and correct as of the date hereof;

(ii) 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;

(iii) 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;

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

(v) the Company shall have delivered the item set forth in Section 2.3(a) of this Agreement;

(vi) Company Counsel shall have delivered the item set forth in Section 2.3(b) of this Agreement; and

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

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, 2016 is as set forth on Schedule 3.1(a). Except as disclosed on Schedule 3.1(a), the Company has not issued any capital stock since September 30, 2016, 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, 2016: (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, 2014, 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, 2014, 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 notices required or permitted to be filed with certain state and federal securities commissions, which notices will be filed on a timely basis.

(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, 2016 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, 2014 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.

(t) Takeover Laws. The Board of Directors has taken all action necessary to render inapplicable to Purchaser the restrictions on "business combinations" set forth in Section 203 of the Delaware General Corporation Law and, to the knowledge of the Company, any similar "moratorium," "control share," "fair price," "takeover" or "interested stockholder" law applicable to transactions between Purchaser and the Company.

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) Ownership. As of the date of this Agreement and immediately prior to the Closing, Purchaser and its controlled Affiliates beneficially own (as set forth in Rule 13d-3 promulgated under the Exchange Act) 7,763,968 shares of Common Stock.

(d) 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.

(e) 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.

(f) 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 Amendment to Collaboration Agreement or any other document or instrument executed and/or delivered in connection with this Agreement or the Amendment to 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.

(d) Voting. During the eighteen (18) month period beginning on the Closing Date, Purchaser shall vote, or cause to be voted, all shares of Common Stock then beneficially owned by Purchaser, in accordance with the recommendation of the Board of Directors on any matters presented to the Company's stockholders with respect to any of the Company's equity incentive plans or compensation matters that, in each case, apply to employees of the Company generally.

5.2 Non-Public Information. Except as contemplated by the Amendment to 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.

ARTICLE VI.
MISCELLANEOUS

6.1 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 6.1, 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 6.1, 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 6.1, 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 6.1.

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.

6.2 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.

6.3 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.

6.4 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 (2nd) 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:

with a copy to:

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199, USA
Attention: Zachary R. Blume
Facsimile:

If to Purchaser:

Incyte Corporation
1801 Augustine Cut-Off
Wilmington, Delaware 19803, USA
Attention: General Counsel
Facsimile:

with a copy to:

Sullivan & Cromwell LLP
125 Broad St.
New York, New York 10004, USA
Attention: Matthew G. Hurd and Krishna Veeraraghavan
Facsimile:

6.5 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.

6.6 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.

6.7 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."

6.8 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.

6.9 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.

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

6.11 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.

6.12 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.

6.13 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.

6.14 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.

6.15 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.

6.16 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.

6.17 **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/ Karen H. Valentine
Name: Karen H. Valentine
Title: Chief Legal Officer & General Counsel

INCYTE CORPORATION

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

[********] = 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.

FIRST AMENDMENT TO LICENSE, DEVELOPMENT AND COMMERCIALIZATION AGREEMENT

This FIRST AMENDMENT (this "**Amendment**") dated as of the date last signed below (the "**Amendment Date**") is entered into by Agenus Inc., a Delaware corporation having its principal office at 3 Forbes Road, Lexington, Massachusetts 02421, USA ("**Agenus US**") and its wholly-owned subsidiary, Agenus Switzerland Inc. (f/k/a 4-Antibody AG), a stock corporation organized under the laws of Switzerland with an office at Hochbergerstrasse 60C, CH-4057, Basel, Switzerland (together with Agenus US, "**Agenus**"), and Incyte Europe Sarl, a Swiss limited liability company (a société à responsabilité limitée) having its principal office at Rue du Pré-de-la-Bichette 1, 1202, Geneva, Switzerland ("**Incyte**"), and amends that certain License, Development and Commercialization Agreement dated as of January 9, 2015 (the "**Original Agreement**") by and among Agenus, Incyte, and certain of their Affiliates.

RECITALS

WHEREAS, the Parties wish to amend the Original Agreement to, among other things, (i) permit each Party to advance Multispecific Antibodies (as defined in Section 8 below) independently or with Third Parties in all indications, (ii) Convert the OX-40 Project and the GITR Project to Royalty-Bearing Projects, (iii) give Incyte exclusive rights and all decision-making authority for Manufacturing, Development, and Commercialization with respect to Royalty-Bearing Antibodies and (iv) remove the [********] Project and TIGIT Project from the Program, in each case, subject to the terms and conditions of this Amendment; and

WHEREAS, concurrently with this Amendment, the Parties are entering into a separate Stock Purchase Agreement pursuant to which Incyte will purchase 10,000,000 shares of Agenus common stock at the price and on the terms set forth therein (the "SPA").

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements contained herein, and subject to the Parties' execution and performance of the SPA, the Parties agree as follows:

1. Multispecific Antibodies. The Parties intend that, subject to the terms and conditions in this Amendment, each Party be free to exploit its own Patent Rights and Know-How to advance Multispecific Antibodies in all indications, without such activities constituting a breach of the Original Agreement. For the avoidance of doubt, neither Party shall owe royalty payments or any other consideration in respect of Net Sales of Multispecific Antibodies.

1.1 Definitions.

(a) New and Revised Definitions. Section 8 of this Amendment introduces new defined terms and amends certain existing defined terms set forth in the Original Agreement to reflect that the Parties' rights with respect to Multispecific Antibodies and [********] Antibodies are outside the scope of the Original Agreement.

(a)

[********] = 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) Integration. To the extent this Amendment uses defined terms such as (without limitation) "Development", "Manufacturing" or "Commercialization" in reference to Multispecific Antibodies, [********] Antibodies, [********] Antibodies, or TIGIT Antibodies, such defined terms shall be read to apply to such molecules notwithstanding that the definitions ascribed to those terms in the Original Agreement refer only to Antibodies.

(c) Other Defined Terms. Capitalized terms used but not otherwise defined or modified herein shall have the meanings ascribed to them in the Original Agreement.

1.2 Revisions to Article II.

(a) Section 2.5(a) of the Original Agreement (No Implied Licenses or Rights) is hereby amended by adding the following sentence at the end of Section 2.5(a):

"Further, for 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 any [********] Antibody or any therapeutic preparation that contains one or more [********] Antibodies, and Agenus reserves the exclusive right under Agenus IP to Develop, Manufacture and Commercialize [********] Antibodies and therapeutic preparations containing [********] Antibodies for any use solely outside of the Hematology Field and Oncology Field."

(b) Section 2.7(a) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"(a) [********], neither Agenus nor, subject to Section 12.3(b)(ii), its Affiliates shall Develop, Manufacture or Commercialize outside of the Field any Antibody or Multispecific Antibody, any of which includes a [********] which is [********] to a corresponding [********] of any [********] or [********], provided that the foregoing restriction shall not apply to Agenus' use of the [********] from [********], together with a [********] that is not [********] to the [********]."

(c) A new Section 2.7(g) is hereby inserted immediately following Section 2.7(f) of the Original Agreement as follows:

"(g) Without limiting any right of Incyte or its Affiliates with respect to any Licensed Antibody or Product within the Field, nothing in this Section 2.7 or any other provision of this Agreement shall give either Party rights to Antibodies being Developed, Manufactured or Commercialized outside the Field or to Multispecific Antibodies, or under consideration for the foregoing, by the other Party, its Affiliates or any Third Party. In addition, the Parties expressly agree that the scope of the restrictions set forth in Sections 2.7(a), (b) and (c) and the exclusivity in Section 2.1 shall not restrict either Party from exploiting Patent Rights and Know-How Controlled by such Party to:

(i) carry out Development activities (including Clinical Trials) directed to combination therapies including a Licensed Antibody, TIGIT Antibody, or [********] Antibody, in combination with a non-Program product that is Controlled by such Party pursuant to the licenses and retained rights

described in Section 5.1 of this Amendment; provided that (A) such licenses and retained rights shall not be deemed to extend to any Manufacturing or Commercialization activities of either Party directed to a Licensed Antibody, TIGIT Antibody, or [********] Antibody, (B) [********], this subsection (i) [********] TIGIT [********], and (C) [********] this subsection (i) [********];

(ii) outlicense non-Program products [********] that are Controlled by such Party to Third Parties for all indications; or

(iii) subject to Section 1.4 of this Amendment, Develop, Manufacture or Commercialize, independently or with a Third Party, Multispecific Antibodies (including Multispecific Antibodies that interact with Named Targets or Bullpen Targets), or therapeutic preparations containing Multispecific Antibodies, within or outside of the Field;

provided in each case that except for the research license referenced in clause (i), nothing in Section 2.1, Section 2.2 or this Section 2.7(g) shall be construed as granting a license under the other Party's Patent Rights or Know-How in connection with such activities. For the avoidance of doubt, (x) the licenses granted under Section 2.1 of the Original Agreement do not apply to Incyte's or its Affiliates' Development, Manufacture, Commercialization, or other exploitation of Multispecific Antibodies or activities [********] outside the Field and (y) the licenses granted under Section 2.2 of the Original Agreement do not apply to Agenus's or its Affiliates' Development, Manufacture, Commercialization, or other exploitation of Multispecific Antibodies or activities [********] outside the Field."

(a) A new Section 2.7(h) is hereby inserted immediately following Section 2.7(g) above as follows:

"(h) [********], 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."

(b) Section 8.3(f) of the Original Agreement is hereby amended to include Section 2.7(g) of this Amendment as follows:

(f) "Articles I, VIII, IX, XI, XII and Sections 2.5, 2.7(g), 7.7, 7.8, 7.9, 7.10, 7.11 and 7.12 shall survive termination or expiration of this Agreement."

1.3 Supply Agreement and Pharmacovigilance Agreement. The Parties hereby agree to negotiate in good faith the terms of any supply agreement or pharmacovigilance agreement that either Party may require to conduct combination studies with respect to such Party's Development activities directed to any permitted combination therapies including a Licensed Antibody, TIGIT Antibody, or [********] Antibody in combination with a

non-Program product controlled by such Party pursuant to the licenses and retained rights described in Section 5.1 of this Amendment. Without limiting the foregoing, the terms of any supply agreement will provide that a Party will supply the applicable Antibody at [********] directly incurred with the manufacture of such Antibody. At the time of any request for supply of Antibody from the other Party, a Party shall deliver a copy of a written protocol providing reasonable detail of its proposed combination study. Notwithstanding anything to the contrary in the Original Agreement or this Amendment, neither Party shall have an obligation to supply any Antibody under this Section 1.3 if: (a) based on [********], (i) it [********] that the [********] will [********] for [********]; or (ii) [********], it does [********] of the [********] or [********] in the [********]; and provided, however, that if the supplying party's [********] Antibody is solely due to this (ii), the supplying Party shall [********] if the receiving Party [********] to the [********] by the [********]; or (b) it does not have an adequate supply of Antibody available.

1.4 OX-40/GITR Bispecifics. Notwithstanding anything else in this Amendment or the Original Agreement, from and after the Amendment Date, neither Incyte nor, subject to Section 12.3(b)(ii) of the Original Agreement, its Affiliates shall Develop, Manufacture, Commercialize or otherwise exploit OX-40/GITR Bispecifics within or outside the Field, independently or with a Third Party. As of the Amendment Date, Incyte acknowledges and agrees that Incyte and its Affiliates have no rights in or to OX-40/GITR Bispecifics, including for clarity, any rights under Articles 2, 5, 6 or 9, Sections 4.7 or 4.9, or any other provision of the Original Agreement. To the extent that Incyte Controls any Incyte Program Patent Rights as of the Amendment Date that cover the Development, Manufacture or Commercialization of OX-40/GITR Bispecifics, Incyte hereby grants to Agenus and its Affiliates a non-exclusive, world-wide, royalty-free, transferable (solely in connection with a permitted assignment of the Original Agreement under Section 12.3), and sublicenseable license under such Patent Rights, solely to the extent necessary for Agenus, its Affiliates and sublicensees to Develop, Manufacture, and Commercialize such OX-40/GITR Bispecifics, subject to the terms of this Amendment. For the avoidance of doubt, the licenses granted under Section 2.2 of the Original Agreement do not apply to Agenus' or its Affiliates' or sublicensees' Development, Manufacture, Commercialization, or other exploitation of OX-40/GITR Bispecifics.

1.5 Overlap with Licensed Antibodies. The Parties agree that their respective activities with respect to Multispecific Antibodies should not result in a reduction of Incyte's diligence obligations in advancing Licensed Antibodies. Accordingly, Sections 4.3 and 5.3 of the Original Agreement remain in full force and effect.

1.6 Patent Prosecution; Publication. Article 6 of the Original Agreement is hereby amended as follows:

(a) Each instance of the term "Agenus Patent Rights" as it appears in Sections 6.2(b)-(c), Section 6.3(a)(i), Section 6.3(b)(i)(B) and Sections 6.5 through 6.7 of the Original Agreement is hereby replaced with the term "Agenus Program Patent Rights," defined in Section 8 of this Amendment.

(b) Each instance of the term "Licensed Antibody" in Section 6.3(a) is hereby replaced with the term "Program Antibody" defined in Section 8 of this Amendment.

(c) Each instance of the term "Product" as it appears in Sections 6.3 through Section 6.7 of the Original Agreement (but excluding instances of "Profit-Share Product," Royalty-Bearing Product, or "Co-Developed Product") is hereby replaced with the term "Program Product," defined in Section 8 of this Amendment.

(d) Section 6.2(a)(i) of the Original Agreement is amended to state: "Agenus shall have the sole right to Prosecute all Agenus Platform Patent Rights and Agenus Patent Rights other than Agenus Program Patent Rights, and Agenus shall have the first right to Prosecute the Agenus Program Patent Rights, and".

(e) Section 6.3(a)(ii) of the Original Agreement is hereby amended to state: "known or suspected unauthorized use or misappropriation of Agenus Know-How or Incyte Know-How specifically relating to Program Antibodies or Program Products in the Field of which such Party becomes aware."

2. Conversion of OX-40 Project and GITR Project.

2.1 Conversion of Projects. Subject to Section 2.2 of this Amendment, Agenus hereby elects to convert the OX-40 Project and the GITR Project from Profit-Share Projects to Royalty-Bearing Projects. Products containing an OX-40 Antibody or GITR Antibody are hereby no longer Profit-Share Products and are and will for all purposes under the Original Agreement and this Amendment be deemed to be Royalty-Bearing Products. Incyte hereby waives any notice requirements set forth in Section 4.6 or elsewhere in the Original Agreement with respect to such election, and such election shall be deemed to be effective as of the Amendment Date. Agenus hereby irrevocably waives all Co-Development Options outlined in Section 4.4 of the Original Agreement with respect to all Royalty-Bearing Antibodies.

2.2 Payments.

(a) Royalty Rate. The Parties agree that the royalty rates in Section 7.6(a) and referenced in Section 4.6 of the Original Agreement shall not apply to Net Sales of the GITR Products and OX-40 Products, and that Incyte shall instead pay to Agenus a flat fifteen percent (15%) royalty on worldwide Net Sales of each OX-40 Product and each GITR Product, on a Product-by-Product basis, in each Calendar Year. The Parties agree that the provisions of Sections 7.6(b) (Royalty Term), 7.6(c) (Stacking), 7.6(d) (Licenses) and 7.6(e) (No Multiple Royalties) of the Original Agreement shall apply to the OX-40 Products and GITR Products.

[********] = 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) Milestones. Incyte shall promptly, but in any event within two (2) Business Days following the Amendment Date, deliver to Agenus a non-refundable payment of Ten Million Dollars ($10,000,000) in lieu of milestone payments due pursuant to Section 7.5(a)(i)(A) (Completion of the first Phase 1 Clinical Trial of each Profit-Share Product) of the Original Agreement for each of the OX-40 Project and the GITR Project, for a total payment of Twenty Million Dollars ($20,000,000). Thereafter, notwithstanding Section 7.5 of the Original Agreement, only the following milestone payments shall apply with respect to the OX-40 Project and the GITR Project:

Milestone Event	**Payment**
(A) [********]	$[********]
(B) [********]	$[********]
(C) [********]	$[********]
(D) [********]	$[********]
(E) [********]	$[********]
(F) [********]	$[********]
(G) [********]	$[********]
(H) [********]	$[********]

For clarity, no other milestones set forth in the Original Agreement shall apply with respect to the OX-40 Project or the GITR Project, and the milestones set forth in (F) through (H) above are payable only once across all Royalty-Bearing Products, based on aggregate sales of LAG-3 Products, TIM-3 Products, [********] Products, GITR Products, and OX-40 Products.

(c) No Other Consideration. Notwithstanding anything to the contrary in the Original Agreement, except as set forth in this Section 2.2 above, no other payment or other consideration of any kind under Article VII of the Original Agreement shall be owing to Agenus with respect to the OX-40 Project or GITR Project or the Development, Manufacturing, or Commercialization of any OX-40 Antibody, GITR Antibody or any therapeutic preparation including any of the foregoing, other than:

(i) amounts that Agenus incurred prior to the Amendment Date that would have been allocated to Incyte under the Original Agreement as Incyte's (50%) share of Profit-and-Loss amounts that accrued under the terms of the Original Agreement, provided, however, that Incyte shall reimburse [********] of any such costs or expenses incurred under services agreements with [********] for (A) invoices received and included on [********] hereto, and (B) amounts accrued prior to [********] for which Agenus has provided Incyte with an invoice, and (C) all amounts properly incurred after [********], provided that the sum of (A) and (B) for which Incyte shall pay [********] shall not exceed [********]; and

(ii) 100% of any Development Costs, Manufacturing Costs or other costs or expenses of any kind Agenus or its Affiliates have incurred or will incur on or after the Amendment Date with respect to the OX-40 Project or GITR Project in accordance with and in performance of its Development and Manufacturing obligations under the Original Agreement, in each case, subject to the oversight and direction of the JSC.

(d) Following the Amendment Date when the GITR and OX-40 Projects are transitioned to Royalty-Bearing Projects, the financial reconciliation process, as established under the Original Agreement, shall continue, except that direct pass-through costs incurred by Agenus shall be [*********].

(e) Notwithstanding the provisions of Section 7.4 of the Original Agreement, Incyte shall pay all invoices for pass-through third party expenses relating to third party services properly incurred within [*********] of receipt thereof from Agenus, and Agenus will use commercially reasonable efforts to pay all such third party (including [*********]) invoices promptly and in accordance with the invoice payment terms.

3. Manufacturing, Development, Commercialization of Royalty-Bearing Products and Royalty-Bearing Antibodies.

3.1 Transfer of Manufacturing.

(a) Manufacturing Rights. Notwithstanding Section 4.8 of the Original Agreement, and subject to Section 5.1 of this Amendment, from and after the Amendment Date and during the Term, as between the Parties, Incyte shall have the exclusive, sublicensable, world-wide right and authority to Manufacture all Products, Licensed Antibodies, [*********] Products, and [*********] Antibodies in the Field, and to make all decisions with respect to the same, including the sole right to select and monitor its and its Affiliates' own Manufacturing vendors; provided, however, that the foregoing exclusivity shall be co-exclusive with Agenus solely to the extent reasonably necessary to permit Agenus and its Affiliates and sublicensees to Develop, Manufacture and Commercialize Multispecific Antibodies.

(b) Manufacturing Transfer Plan. Agenus shall, promptly, but in any case, no later than [*********] from the Amendment Date, use commercially reasonable efforts to take all actions necessary to transfer all Manufacturing activities and Know-How necessary or, at Incyte's reasonable request, useful to the Manufacture of all Royalty-Bearing Products, Royalty-Bearing Antibodies, [*********] Products, and [*********] Antibodies in the Field, including Agenus making commercially reasonable efforts to (i)(1) assign to Incyte all manufacturing agreements relating solely to Royalty-Bearing Products or [*********] Antibodies entered into which by their terms permit such assignment, and (2) provide Incyte with notice of and an opportunity to participate in all ongoing negotiations with any third party manufacturing organization, in each case to the extent related to the Manufacture of one or more of the Royalty-Bearing Antibodies, Royalty-Bearing Products, or [*********] Antibodies or [*********] Products in the Field; provided, however, that in no event shall Incyte or any of its Affiliates assume any liabilities arising under such agreements with respect to activities performed by such third parties on behalf of Agenus outside of the Program prior to the date of their assignment to Incyte; (ii) deliver to Incyte a tangible embodiment of all applicable Know-How necessary or, at Incyte's

reasonable request, useful to Manufacture the Royalty-Bearing Antibodies or Royalty-Bearing Products in the Field; and (iii) assign to Incyte all rights to applicable Regulatory Documentation and data necessary to Manufacture the Royalty-Bearing Antibodies or Royalty-Bearing Products in the Field. During such [********] period, Agenus and Incyte shall agree upon a plan for transfer of Manufacturing of the Royalty-Bearing Antibodies and Royalty-Bearing Products providing for completion of the foregoing activities. To the extent that Incyte has pre-approved associated costs in writing or has approved the Manufacturing transfer plan, all such transfer activities shall be considered Development Costs, and for clarity, Incyte shall not be liable for any other costs or expenses incurred by Agenus in connection with the activities contemplated by this Section 3.1. The Parties shall cooperate to complete the technology transfer activities described in this Section 3.1(b) within [********] of the Amendment Date.

3.2 Development and Commercialization Rights. From and after the Amendment Date and during the Term, as between the Parties, Incyte shall, subject to Sections 3.1(a), 4.3 and 5.3 of the Original Agreement and Section 3.3 and Section 5.1 of this Amendment, have the exclusive, world-wide right and authority to Develop and Commercialize Products, Licensed Antibodies, [********] Products, and [********] Antibodies (but, for clarity, not Multispecific Antibodies, which both Parties may pursue) in the Field, and to make all decisions with respect to the same, including, subject to Section 5.1 of this Amendment, the sole right to conduct Clinical Trials, file and maintain all Regulatory Approvals, and select and monitor distributors, in each case solely in the Field.

3.3 Final Authority. Notwithstanding anything to the contrary in this Amendment or the Original Agreement (including Section 3.5 therein), as of the Amendment Date, the JSC shall have no decision-making authority with respect to any matter related to the Development, Manufacturing, or Commercialization of Royalty-Bearing Products, Royalty-Bearing Antibodies, [********] Products, and [********] Antibodies in the Field. [********] The JSC shall still hold and share information in the committee meetings held in accordance with Section 3.3 of the Original Agreement. Subject to and without limiting the above provisions of this Section 3.3, Agenus [********] as set forth in [********], and the governance and activities of the JSC set forth in Section 3 of the Original Agreement shall remain in effect with respect to such Development of any TIM-3 Antibody, LAG-3 Antibody, [********] Antibody [********], in each case, until the time of IND clearance with respect to such Antibody for the first Phase I study as a monotherapy. If Agenus does not meet its obligations described in this Section 3.3 as determined by the JSC, then Incyte shall have the right to assume control of and responsibility for all such Development activities, and in such event, Agenus will transfer and otherwise provide Incyte all Know-How and other Information required by Incyte in order to assume such control and responsibility.

4. Removal of TIGIT and [********]**.**

4.1 Background. On November 2, 2015, Incyte and Agenus agreed to include the TIGIT Project and [********] Project as Assumed Projects, each as a Profit-Share Project. This agreement was confirmed by the Parties in writing by letter exchanges on November 6, 2015 and November 25, 2015.

4.2 Removal of [********] and TIGIT from Program. Effective as of the Amendment Date, the Parties agree that [********] and TIGIT will cease to be Named Targets or Bullpen Targets, that [********] Antibodies and TIGIT Antibodies will cease to be Licensed Antibodies, and that the [********] Project and TIGIT Project will cease to be Projects under the Original Agreement.

4.3 Reversion of Rights to TIGIT to Agenus. Incyte agrees that beginning on the Amendment Date, nothing in the Original Agreement shall prohibit Agenus from Developing, Manufacturing, Commercializing or otherwise exploiting Antibodies that Interact with TIGIT without limitation, within and outside the Field, independently or with Third Parties, under the Patent Rights and Know-How Controlled by Agenus. To the extent that Incyte or its Affiliates Control any Patent Rights developed under the Original Agreement as of the Amendment Date that cover the activities in the Field described in this Section 4.3, subject to Section 5 of this Amendment, Incyte, on behalf of itself and its Affiliates, hereby grants to Agenus and its Affiliates, solely in the Field: (i) an exclusive, sublicensable, world-wide, royalty-free, transferable, irrevocable, perpetual license under any such Patent Rights exclusively embodied in the TIGIT Antibodies existing as of the Amendment Date, and (ii) a non-exclusive, sublicensable, world-wide, royalty-free, transferable, irrevocable, perpetual license under such Patent Rights to the extent necessary for Agenus and its Affiliates to exercise its rights under this Section 4.3. For the avoidance of doubt, the licenses under Section 2.2 of the Original Agreement do not extend to Agenus' or its Affiliates' Development, Manufacture, Commercialization or other exploitation of any TIGIT Antibodies.

4.4 Reversion of Rights to [********] to Incyte. Agenus agrees that beginning on the Amendment Date, nothing in the Original Agreement shall prohibit Incyte from Developing, Manufacturing, Commercializing or otherwise exploiting Antibodies that Interact with [********] without limitation, within and outside the Field, independently or with Third Parties, under the Patent Rights and Know-How Controlled by Incyte. To the extent that Agenus or its Affiliates Control any Patent Rights developed under the Original Agreement as of the Amendment Date that cover the activities in the Field described in this Section 4.4, subject to Section 5 of this Amendment, Agenus, on behalf of itself and its Affiliates, hereby grants to Incyte and its Affiliates, solely in the Field: (i) an exclusive, sublicensable, world-wide, royalty-free, transferable, irrevocable, perpetual license under any such Patent Rights exclusively embodied in the [********] Antibodies existing as of the Amendment Date, and (ii) a non-exclusive, sublicensable, world-wide, royalty-free, transferable, irrevocable, perpetual license under such Patent Rights to the extent necessary for Incyte and its Affiliates to exercise its rights under this Section 4.4. For the avoidance of doubt, the licenses under Section 2.1 of the Original Agreement do not extend to Incyte's or its Affiliates' Development, Manufacture, Commercialization or other exploitation of any [********] Antibodies.

4.5 Return of Materials. With respect to Know-How and other Confidential Information that solely relates to the [********] Project or the TIGIT Project, the Party returning the [********] Project or TIGIT Project (the "Returning Party") shall, at its own cost, return to the other Party (the "Project Party") such Project Party's Know-How and other Confidential Information or dispose of such Confidential Information, in each case, in accordance with and to the extent required by Section 11.4 of the Original Agreement. Without limiting the foregoing, each Party acknowledges and agrees that all Antibodies that Interact solely with [********] or

TIGIT and which were discovered under the Research Plan or delivered to the Returning Party in the performance of the Program prior to the Amendment Date, including fragments, derivatives and modifications thereof, shall, as of the Amendment Date, no longer constitute Licensed Antibodies. The Returning Party shall use reasonable efforts to return all applicable Know-How and other Confidential Information within [********] after the Amendment Date; provided, however, that Agenus shall not be obligated to return any Know-How or other Confidential Information necessary to satisfy its responsibilities referenced in Section 3.3 of this Amendment until such responsibilities have been satisfied.

4.6 Payments on TIGIT and [********] Products.

(a) Royalty Rate. In consideration of the foregoing, the Project Party shall pay to the Returning Party a flat fifteen percent (15%) royalty on its worldwide Net Sales for any therapeutic preparation [********] that contains one or more [********] Antibodies ("[********] Products") or TIGIT Antibodies ("TIGIT Products"), as applicable, on a product-by-product basis, in each Calendar Year. The Parties agree that the provisions of Sections 7.6(b) (Royalty Term), 7.6(c) (Stacking), 7.6(d) (Licenses) and 7.6(e) (No Multiple Royalties) of the Original Agreement shall apply to (i) Agenus with respect to TIGIT Products; and to (ii) Incyte with respect to [********] Products, in each case, to the same extent as such provisions apply to Incyte with respect to Royalty-Bearing Products under the Original Agreement.

(b) Milestones. The milestone payments to be paid by the Project Party to the Returning Party for Royalty-Bearing Products set forth in Section 7.5(b) of the Original Agreement shall apply to TIGIT Products and [********] Products without modification [********].

(c) No Other Consideration. Notwithstanding anything to the contrary in the Original Agreement, (i) except as set forth in this Section 4.6 above, no other payment or other consideration of any kind under Article VII of the Original Agreement shall be owing to the Returning Party with respect to the TIGIT Project or [********] Project as applicable, or the Development, Manufacturing, or Commercialization of any TIGIT Antibody or [********] Antibody or any therapeutic preparation including any of the foregoing, other than amounts that may have accrued under the terms of the Original Agreement prior to the Amendment Date, and (ii) neither Party shall be obligated to reimburse the other Party for any Development Costs or other costs or expenses of any kind the other Party or its Affiliates have incurred after the Amendment Date with respect to the TIGIT Project or [********] Project.

5. Research Rights; Antibody Panels

5.1 Research License. Notwithstanding Section 2.1 of the Original Agreement or Section 1.2 of this Amendment, each of the Parties hereby acknowledges and agrees that the licenses, assignments, and other rights granted to each Party and its Affiliates herein and in the Original Agreement are subject to the following retained right and internal research license (the "Research License") for the duration of the Term:

(a) Agenus hereby retains a right under the Agenus IP licensed to Incyte hereunder, and Incyte and its Affiliates hereby grant to Agenus and its Affiliates under the Incyte Patent Rights a royalty-free, worldwide, non-exclusive, sublicensable (solely to research collaborators), transferable (solely in connection with a permitted assignment of the Original Agreement under Section 12.3), irrevocable right and license, in each case, solely to make, use, and develop Licensed Antibodies and [********] Antibodies for non-commercial research, educational or internal uses only, including, [********] the right to carry out Development activities (including Clinical Trials) directed to combination therapies including a Licensed Antibody or [********] Antibody in combination with a non-Program product that is controlled by Agenus, its Affiliates or its research collaborator (an "**Agenus Combination Study**"); and

(b) Agenus and its Affiliates hereby grant to Incyte and its Affiliates a royalty-free, worldwide, non-exclusive, sublicensable (solely to research collaborators), transferable (solely in connection with a permitted assignment of the Original Agreement under Section 12.3), irrevocable right and license under the Agenus Patent Rights solely to make, use, and develop TIGIT Antibodies for non-commercial research, educational or internal uses only, including, [********] the right to carry out Development activities (including Clinical Trials) directed to combination therapies including a TIGIT Antibody in combination with a non-Program product that is controlled by Incyte, its Affiliates or its research collaborator (an "**Incyte Combination Study**").

(c) Subject to Section 1.3 of this Amendment, each Party shall provide a Right of Cross-Reference to its existing respective IND as necessary to enable an Incyte Combination Study or Agenus Combination Study, as applicable, to be conducted under the respective INDs or if required by Regulatory Authorities.

(d) Nothing in this Section 5.1 shall be interpreted to limit rights otherwise retained by Agenus under the Original Agreement or this Amendment, including without limitation with respect to [********] Antibodies and Multispecific Antibodies.

5.2 Antibody Panels. Subject to the Parties' rights and obligations in the Original Agreement and this Amendment, the Parties hereby agree that Incyte shall have, with respect to the TIM-3 Project, LAG-3 Project, [********] Project, GITR Project, OX-40 Project, and [********] Project, access to Antibody sequences from Antibody panels identified and developed pursuant to each such Project as of the Amendment Date, and set forth in a schedule to be delivered to Incyte within a reasonable time after the Amendment Date ("Antibody Panels"), solely for use in the Field and solely for use in connection with Development, Manufacture and Commercialization of Licensed Antibodies and [********] Antibodies. The foregoing right includes, with respect to Licensed Antibodies, the [********] right to Develop, Manufacture, and Commercialize [********] Licensed Antibody [********] candidates for [********], provided that [********] such Licensed Antibody [********] candidates [********] (each a "[********] Licensed Antibody") [********]. Until the earlier of (i) [********] for a Product in a given Project or (ii) [********] after the Amendment Date (the "Trigger Date"), [********] (i) [********] and (ii) [********], to be delivered by Incyte within [********] thereafter, [********]. After the Trigger Date, [********], provided that [********] prior to the Trigger Date, and provided further that [********] at any time for a given program. After the Trigger Date, [********]. Within [********], or is under consideration therefor, [********]. Nothing in this Section 5.2 shall be deemed to grant Incyte rights to use the Antibody Panels to Develop,

Manufacture or Commercialize (a) Multispecific Antibodies or (b) Licensed Antibodies or [********] Antibodies outside the Field, and in each case, such use of the Antibody panels shall be subject to the first sentence of Section 2.7(g), as set forth in Section 1.2(b) of this Amendment. For clarity, the Antibody Panels [********] Agenus Know-How.

5.3 No Other Rights. Except as expressly set forth in Sections 1.2, 1.4, 1.6, 4.3, 4.4, or this Section 5 of this Amendment, neither Incyte, Agenus, nor any of their Affiliates assigns, sells or transfers any Intellectual Property rights or grants any license, covenant not to sue or other right under any Intellectual Property rights, to the other Party or any of its Affiliates expressly, by implication, estoppel, exhaustion or otherwise, by operation of this Amendment.

5.4 Further Assurances. Each Party shall cooperate with the other and take such actions as may reasonably be requested from time to time in order to carry out, evidence or confirm their rights or obligations, or as may be reasonably necessary or helpful to give effect to, this Amendment.

6. Term and Termination

6.1 Amendment Term. The term of this Amendment shall commence on the Amendment Date and shall continue in full force and effect until the expiration or termination of the Term in accordance with the Original Agreement. For clarity, upon the expiration or termination of the Term in accordance with the Original Agreement, the licenses (and sublicenses granted thereunder) and other rights granted by either Party shall automatically terminate.

6.2 Survival of [********] Project and TIGIT Project. Notwithstanding the termination or expiration of the Original Agreement or this Amendment, Section 4 of this Amendment and any other provisions of the Original Agreement which are referenced therein shall survive.

7. **Standstill.** Section 10.5(c) of the Original Agreement is hereby deleted in its entirety and replaced with the following:

(c) Notwithstanding anything in this Section 10.5 to the contrary, Incyte and its Affiliates may acquire, through that certain Stock Purchase Agreement privately negotiated 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 the greater of 18.1% of the voting power represented by Agenus' Voting Stock or 17,763,968 shares of Agenus' common 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.

8. Definitions. The Original Agreement is hereby amended to include the following defined terms. To the extent the Original Agreement contains definitions for any of the following terms, such definitions are hereby deleted in their entirety and replaced with the meanings given in this Section 8.

8.1 "**Agenus Program 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 Program Antibody or Program Product or a therapeutic preparation containing a Program Antibody or Program Product, or (ii) are otherwise necessary or reasonably useful to Develop, Manufacture or Commercialize a Program Antibody or Program Product.

8.2 "**Agreement**" means the Original Agreement, as amended by this Amendment.

8.3 "**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 a Target. This defined term expressly excludes a Multispecific Antibody.

8.4 "**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 of the Original Agreement. The Parties acknowledge that as of the Amendment Date there are no Bullpen Targets.

8.5 "[********]" means [********].

8.6 "[********] **Antibody**" means an Antibody that Interacts with [********] that is Controlled by Agenus or, subject to Section 12.3(b)(ii) of the Original Agreement, any of its Affiliates, as of the Amendment Date or during the Term, or arises out of the [********] Project.

8.7 "[********] **Product**" means any therapeutic preparation that is approved for an indication in the Field that contains one or more [********] Antibodies.

8.8 "[********] **Project**" means the project conducted under the Original Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with [********].

8.9 "[********] **Antibody**" means an Antibody that (a) Interacts with a Named Target or with [********]; (b) has been demonstrated to exhibit opposing or otherwise alternative cellular pharmacology from a Program Antibody or [********] Program Antibody; (c) does not engage the Named Target or [********] in a therapeutically effective manner in the Field; and (d) is developed solely for use outside of the Hematology Field and Oncology Field.

8.10 "**GITR Product**" means any therapeutic preparation that is approved for an indication in the Field that contains one or more GITR Antibodies.

8.11 "**LAG-3 Product**" means any therapeutic preparation that is approved for an indication in the Field that contains one or more LAG-3 Antibodies.

8.12 "**Licensed Antibody**" means a Profit-Share Antibody or a Royalty-Bearing Antibody, but expressly excludes [********] Antibodies.

8.13 "[********]" means [********].

8.14 "**Multispecific Antibody**" means a molecule, or a covalently linked plurality of molecules, which comprise(s): [********]. For purposes of this definition, (a) [********], will be [********] for purposes of this definition; and (b) [********] of the [********] will be [********].

8.15 "**Named Target**" means, as applicable, GITR, OX-40, TIM-3, LAG-3, [********], or the Target to which an Assumed Project is directed. "Named Target" expressly excludes [********] and TIGIT.

8.16 "**OX-40/GITR Bispecific**" means a Multispecific Antibody which specifically binds to each of GITR and OX-40, and which does not include or comprise any [********] other than [********].

8.17 "**OX-40 Product**" means any therapeutic preparation that is approved for an indication in the Field that contains one or more OX-40 Antibodies.

8.18 "**Profit-Share Antibodies**" means Assumed Project Antibodies arising out of an Assumed Project designated by Agenus as a Profit-Share Project pursuant to Section 4.5(b)(i). The Parties acknowledge that there are no Profit-Share Antibodies as of the Amendment Date.

8.19 "**Right of Cross-Reference**" means, with regard to a Party, allowing the applicable Regulatory Authority in a country to have access (by cross-reference, incorporation by reference or otherwise) to relevant information contained in the Regulatory Documentation filed with such Regulatory Authority with respect to a Party's Antibody, only to the extent necessary for the applicable purpose as specified in this Amendment.

8.20 "**Program Antibody"** means a Licensed Antibody that is identified in, and is being Developed, Manufactured or Commercialized by Incyte under, a Development Plan or Commercialization Plan hereunder as of the Effective Date or any time during the Term including any Backup Licensed Antibody for each Program. A complete list of Program Antibodies as of the Amendment Date is provided in [********], which, for avoidance of doubt, will be deemed to be Antibodies and not Multispecific Antibodies.

8.21 "**Program Product**" means any therapeutic preparation that contains one or more [********].

8.22 "**Royalty-Bearing Antibodies**" means GITR Antibodies, OX-40 Antibodies, TIM-3 Antibodies, LAG-3 Antibodies, [********] Antibodies, any applicable Backup Licensed Antibody for each Program, 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).

8.23 "**Royalty-Bearing Product**" means, subject to Section 1.120, any therapeutic preparation that contains one or more Royalty-Bearing Antibodies.

8.24 "**TIGIT**" means the T cell immunoreceptor with Ig and ITIM domains that is otherwise known as WUCAM and Vstm3.

8.25 "**TIGIT Antibody**" means an Antibody that Interacts with TIGIT that is Controlled by Agenus or, subject to Section 12.3(b)(ii) of the Original Agreement, any of its Affiliates, as of the Amendment Date, or is developed using TIGIT Project Know-How [********].

8.26 "**TIGIT Project**" means the project conducted under the Original Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with TIGIT.

8.27 "**TIM-3 Product**" means any therapeutic preparation that is approved for an indication in the Field that contains one or more TIM-3 Antibodies.

8.28 "[********]" means a [********].

8.29 "[********]" means a [********] of [********].

8.30 "[********]" means a [********] of [********].

8.31 "[********]" means [********].

8.32 "[********] **Antibody**" means an Antibody that Interacts with [********] that is Controlled by Agenus or, subject to Section 12.3(b)(ii) of the Original Agreement, any of its Affiliates, as of the Amendment Date, or is developed using [********] Project Know-How [********].

8.33 "[********] **Program Antibody**" means a [********] Antibody under Development, Manufacturing or Commercialization by Incyte as disclosed to the JSC pursuant to Section 3 of the Original Agreement or as otherwise disclosed to Agenus in writing.

8.34 "[********] **Project**" means the project conducted under the Original Agreement directed to the Development, Manufacture and Commercialization of Antibodies that Interact with [*********].

9. Miscellaneous.

9.1 Governing Law. This Amendment shall in all respects be governed by and construed in accordance with the laws of the State of New York, USA, without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

9.2 Entire Agreement. The Original Agreement, as amended by this Amendment, shall be read and construed as a single agreement. Except as expressly amended hereby, the Original Agreement remains in full force and effect in accordance with its terms.

9.3 Execution in Counterparts. This Amendment 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.

9.4 Notices. The addresses for notices and communications set forth in Section 12.5 of the Original Agreement and for all communications, notices, instructions and consents provided for herein or in connection herewith shall be as follows.

Notices to Agenus shall be addressed to:

Agenus Inc.
3 Forbes Road
Lexington, Massachusetts 02421, USA
Attention: General Counsel

With a copy to:

Ropes & Gray LLP
Prudential Tower
800 Boylston Street
Boston, Massachusetts 02199, USA
Attention: Zachary R. Blume

Notices to Agenus Switzerland Inc. shall be addressed to:

Agenus Switzerland Inc.
Hochbergerstrasse 60C
CH-4057 Basel, Switzerland
Attention: Marc van Dijk

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
Rue du Pré-de-la-Bichette 1, 1202
Geneva
Switzerland
Attention: General Counsel

With a copy to:

Sullivan & Cromwell LLP
125 Broad St.
New York, New York 10004, USA
Attention: Matthew G. Hurd

and

Sullivan & Cromwell LLP
1870 Embarcadero Road
Palo Alto, California 94303, USA
Attention: Nader A. Mousavi

provided, however, that if either Party will have designated a different address by notice to the other Party in accordance with Section 12.5 of the Original Agreement, then to the last address so designated.

[*signature page follows*]

[********] = 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.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the Amendment Date.

INCYTE EUROPE SARL

By: /s/ Herve Hoppenot
Name: Herve Hoppenot
Title: Managing Officer
Date: February 13, 2017

AGENUS INC.

By: /s/ Karen H. Valentine
Name: Karen H. Valentine
Title: Chief Legal Officer & General Counsel
Date: February 14, 2017

AGENUS SWITZERLAND INC.

By: /s/ Christine M. Klaskin
Name: Christine M. Klaskin
Title: Director
Date: February 14, 2007

Exhibit 10.3

April 1, 2017

By Hand Delivery

Robert Stein, M.D., Ph.D.
7 Peter Cooper Road
Apt 10B
New York, NY 10010

Dear Bob:

As we have discussed, you have voluntarily retired from your employment with Agenus Inc. (the "Company"), effective as of April 1, 2017 (the "Separation Date"). The purpose of this letter agreement ("Agreement") is to confirm the understanding between you and the Company concerning your separation benefits, as follows:

1. **Employment Status**.

(a) You and the Company agree and acknowledge that your retirement is a termination "By the Executive Other than for a Compensation Reduction" as defined in Section 5(f) of the the employment agreement that you executed dated June 30, 2015 (the "Employee Agreement"), and that the Employee Agreement is hereby terminated in accordance with Section 5(f).

(b) On the Separation Date, the Company will pay you any salary you have earned during the final payroll period of your employment, through the date your employment terminates, to the extent not previously paid to you, and will provide you pay, at your final base rate, for any vacation you have earned, but not used, through that date, as determined in accordance with the Company's records and policies.

(c) On the Separation Date, you will execute a copy of the Consulting Agreement attached hereto as Exhibit A.

2. **Severance Benefits.** In consideration of your acceptance of this Agreement without exercising your revocation rights described below, and subject to your meeting in full your obligations under this Agreement, under the Employee Nondisclosure Agreement between you and the Company (the "Nondisclosure Agreement"), and under Sections 7, 8 and 9 of your Employee Agreement, the Company will provide you with the following:

(a) A lump sum payment of Two Hundred Fifty Thousand Dollars and No Cents ($250,000.00).

(b) Until July 1, 2018, the Company shall pay the full premium cost of your participation in the Company's group medical and dental insurance plans, provided that you are entitled to continue such participation under applicable law and plan terms. Notwithstanding anything in this Agreement to the contrary, in the event that the Company determines that any provision contained in this Agreement regarding payment or assistance to you related to the continuation of healthcare coverage would cause the Company or you to violate any applicable laws or regulations, any such provision shall be null and void.

(c) Until July 1, 2017, the Company will continue to pay for the advisory services of Ron Sacco of RJ Sacco and Company LLP that are currently being provided pursuant to the existing terms and conditions in existence on the Separation Date..

(d) The Company will continue paying the rent for your current New York apartment lease until the end of the current lease term, August 27, 2017. Payments will be made on a monthly basis. At the expiration of the current lease, you agree to vacate the apartment or assume the lease on the terms offered by the lessor. The Company will use reasonable efforts to discuss with the landlord the potential to transition the apartment to you personally.

(e) Other than as set forth in this Agreement, all other rights and benefits that you either currently receive or may be entitled to under the Employee Agreement will terminate on April 1, 2017.

(f) In the event of a Change of Control (as defined in the Employment Agreement) during the term of your Consulting Agreement, all vesting of your stock options will immediately be accelerated in full.

3. **Payments and Withholding.**

(a) The payments and benefits identified in Paragraphs 2(a) and 2(b) will be provided to you beginning on the next regular Company pay day that is at least ten (10) business days after the effective date of this Agreement.

(b) All payments made by the Company under this Agreement shall be reduced by any tax or other amounts required to be withheld by the Company under applicable law and all other deductions authorized by you.

(c) This Agreement is intended to comply with, or be exempt from, Section 409A of the Internal Revenue Code of 1986, as amended ("Section 409A") and shall be construed and administered in accordance with Section 409A. In the event any aspect of this Agreement is determined to be subject to Section 409A, this Agreement will be interpreted in a manner intended to comply with Section 409A. Notwithstanding anything herein to the contrary, (i) if on the Separation Date you are a “specified employee" as defined in Section 409A of the Code (and any related regulations or other pronouncements thereunder) and the deferral of the commencement of any payments or benefits otherwise payable hereunder as a result of such

termination of employment is necessary in order to prevent any accelerated or additional tax under Section 409A of the Code, then the Company will defer the commencement of the payment of any such payments or benefits hereunder (without any reduction in such payments or benefits ultimately paid or provided to you) until the date that is six months following your termination of employment with the Company (or the earliest date as is permitted under Section 409A of the Code), and (ii) if any other payments of money or other benefits due to you hereunder could cause the application of an accelerated or additional tax under Section 409A of the Code, such payments or other benefits shall be deferred if deferral will make such payment or other benefits compliant under Section 409A of the Code, or otherwise such payment or other benefits shall be restructured, to the extent possible, in a manner, determined by the Company, that does not cause such an accelerated or additional tax.

4. **Acknowledgement of Full Payment.** You acknowledge and agree that the payments and benefits provided under Paragraphs 1 and 2 of this Agreement are in complete satisfaction of any and all compensation due to you from the Company, whether for services provided to the Company or otherwise, through the Separation Date and that, except as expressly provided under this Agreement, no further compensation is owed to you.

5. **Status of Employee Benefits, Paid Time Off and Equity.** Your participation in all employee benefit plans of the Company will end as of the Separation Date, in accordance with the terms of those plans, as amended from time to time. You will not continue to earn vacation or other paid time off after the Separation Date. Your and the Company's rights and obligations with respect to any stock options or other equity previously granted to you shall be governed by the terms of any applicable grant or award agreement, equity plan, and any other applicable agreements or requirements, as amended from time to time. Any restricted stock, stock options or other equity that was not vested as of the Separation Date may continue to vest after the Separation Date according to the terms of the Consulting Agreement.

6. **Non-Disparagement.** Except as provided in Paragraph 12 below, you agree that you will not disparage or criticize the Company, its business, its management or its products.

7. **Return of Company Documents and Other Property.** In signing this Agreement, you agree that you will return to the Company any and all documents, materials and information (whether in hardcopy, on electronic media or otherwise) related to Company business (whether present or otherwise) and all keys, access cards, credit cards, computer hardware and software, telephones and telephone-related equipment and all other property of the Company in your possession or control, except as needed to comply with your responsibilities under the Consulting Agreement. Further, except as needed to comply with your responsibilities under the Consulting Agreement, you agree that you will not retain any copy of any Company documents, materials or information (whether in hardcopy, on electronic media or otherwise). Recognizing that your employment with the Company has ended, you agree that you will not, for any purpose unrelated to your responsibilities under the Consulting Agreement, attempt to access or use any Company computer or computer network or system, including without limitation its

electronic mail system. Further, you acknowledge that you will disclose to the Company all passwords necessary or desirable to enable the Company to access all information which you have password-protected on any of its computer equipment or on its computer network or system.

8. **Release of Claims.**

(a) In exchange for the promises and benefits provided you under this Agreement, to which you would not otherwise be entitled absent your execution of this Agreement, on your own behalf and that of your heirs, executors, administrators, beneficiaries, personal representatives and assigns, you hereby release and forever discharge the Company and its Affiliates and all of their respective past and present directors, shareholders, officers, members, managers, general and limited partners, employees, employee benefit plans, agents, representatives, predecessors, successors and assigns, and all others connected with any of them, both individually and in their official capacities (the "Company Releasees"), from any and all legally waivable actions or causes of action, suits, claims, complaints, contracts, liabilities, agreements, promises, contracts, torts, debts, damages, controversies, judgments, rights and demands of every kind and nature, whether existing or contingent, known or unknown, suspected or unsuspected, including without limitation those arising out of your employment with, change in employment status with, and/or separation of employment from, the Company. For avoidance of doubt, by signing this Agreement, you are releasing any waivable claims under the following nonexclusive list of discrimination and employment statutes: The Age Discrimination in Employment Act; The Older Workers Benefit Protection Act of 1990; Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, The Americans With Disabilities Act, The ADA Amendments Act, the Rehabilitation Act of 1973, The Equal Pay Act, The Lilly Ledbetter Fair Pay Act, The Family and Medical Leave Act, The Worker Adjustment and Retraining Notification Act ("WARN"), The Employee Retirement Income Security Act ("ERISA"), The Massachusetts Fair Employment Practices Law (M.G.L. ch. 151B), The Massachusetts Equal Rights Act, The Massachusetts Equal Pay Act, the Massachusetts Privacy Statute and/or The Massachusetts Civil Rights Act, all as amended, the fair employment practices statutes of the state or states in which you have provided services to the Company, and/or any other federal, state or local law, regulation or other requirement, all as amended. This release also includes any wage and hour related claims arising out of or in any way connected with your employment at the Company including but not limited to claims under any federal, state or local laws, The Fair Labor Standards Act, Massachusetts Payment of Wages Act, Mass. Gen. Laws Ch. 149 § 148, et seq. (including but not limited to § 148 and § 150), the Massachusetts Overtime Law, M.G.L. Ch. 151, § 1A, et seq. (including but not limited to § 1A and § 1B), the Massachusetts Minimum Fair Wages Statute, Mass. Gen. Laws Ch. 151 § 1, et seq., the Minimum Wage Regulations, 454 CMR § 27.00 et seq., Mass. Gen. Laws Ch. 149 §§ 100 and 101, Meal Break regulations (Massachusetts General Laws Chapter 149 sections 100 and 101), the Massachusetts Domestic Violence Leave Act (Mass. Gen. Laws. Ch. 149 section 52E), The Massachusetts Sick Leave law (Massachusetts General Laws Chapter 149 section 148C), and any other claims for unpaid or delayed payment of wages, overtime, severance,

bonuses, missed or interrupted meal periods, time off, leaves of absence, interest, attorneys' fees, costs, expenses, liquidated damages, treble damages or damages of any kind to the maximum extent permitted by federal and state law. You understand the provisions of this release and acknowledge that your agreement to its terms, including terms related to wage and hour related claims, is knowing and voluntary, and you hereby release and forever discharge the Company Releasees from any and all such causes of action, rights or claims.

(b) You understand and intend that this Paragraph 8 constitutes a general release of all claims and that no reference therein to a specific form of claim, statute or type of relief is intended to limit the scope of such general release and waiver. You acknowledge and agree that you are releasing all legally waivable rights to sue or obtain equitable, remedial or punitive relief from any or all Company Releasees of any kind whatsoever, including without limitation, reinstatement, back pay, front pay, attorneys' fees and any form of injunctive relief. Notwithstanding the foregoing, this release does not include any claim which, as a matter of law, cannot be released by private agreement such as claims for unemployment compensation and workers compensation.

9. **Cooperation**. By signing this Agreement, you agree that you will cooperate fully with the Company, upon request, in relation to the defense, prosecution or other involvement by the Company, in any continuing or future claims, lawsuits, charges, audits and internal or external investigations that arise out of events or business matters that occurred during your employment with the Company. This continuing duty of cooperation shall include your being available to the Company, upon reasonable notice, for interviews, depositions, and appearances as a witness, and furnishing information to the Company and its legal counsel upon request. The Company will reimburse your out-of-pocket expenses incurred in complying with Company requests hereunder, provided such expenses are authorized by the Company in advance.

10. **Waiver of Rights and Claims Under the Age Discrimination in Employment Act of 1967**. Since you are 40 years of age or older, you are being informed that you have or may have specific rights and/or claims under the Age Discrimination in Employment Act of 1967 ("ADEA") and you agree that:

(a) In consideration for the Severance Benefits described in paragraph 2 of this Agreement, which you are not otherwise entitled to receive, you specifically and voluntarily waive such rights and/or claims under the ADEA you might have against the Company Releasees to the extent such rights and/or claims arose prior to the date this Agreement was executed.

(b) You understand that you are not waiving rights or claims under the ADEA which may arise after the date this Agreement is executed.

(c) You are hereby informed, at the commencement of the 45-day period discussed below, of the class, unit or group of individuals considered for the termination program, the employees eligible and selected for the employment termination program, the job title and ages of all individuals selected for the program and the ages of all individuals in the same job classification or organizational unit who are not selected for the program (a copy of the lists and information referenced in this paragraph 10 are attached hereto as Exhibit B).

(d) This Agreement, including the release of claims set forth above, creates legally binding obligations and the Company therefore advises you to consider it carefully. In signing this Agreement, you give the Company assurance that you have signed it voluntarily and with a full understanding of its terms; that you have had sufficient opportunity, before signing this Agreement, to consider its terms and to consult with an attorney, if you wished to do so, or to consult with any other of those persons to whom reference is made in the first sentence of paragraph 6 above; and that, in signing this Agreement, you have not relied on any promises or representations, express or implied, that are not set forth expressly in this Agreement.

(e) You understand that you may take up to forty-five (45) calendar days from the Separation Date to consider whether or not you should execute this Agreement. You further understand that you are not required to take the entire forty-five-day period to decide. Should you wish to execute this Agreement sooner, you may do so on an accelerated basis without prejudice to your own or the Company's rights under this Agreement. Changes to this Agreement, whether material or immaterial, will not restart this acceptance period; provided, however, that you may not sign this Agreement any sooner than the Separation Date.

(f) You understand that you have a right to revoke this Agreement to release your potential claims, if any, under the Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq. (the "ADEA claims"), within a period of seven (7) days after you sign the Agreement. If you elect to revoke your agreement to release your claims as provided above, you understand that your revocation must be in writing and hand-delivered or mailed to the person listed below. If your revocation is hand-delivered, it must be provided to the Company within the relevant time period set forth above; if your revocation is mailed, it must be postmarked within the relevant time period set forth above. If mailed, your revocation must be sent by certified mail, return receipt requested, and addressed as follows:

Legal Department
Agenus Inc.
3 Forbes Road
Lexington, MA 02421-7305
Attention: Karen H Valentine

If you exercise this right to revoke, the Company is released from any obligations under this Agreement.

11. **Miscellaneous**.

(a) This Agreement constitutes the entire agreement between you and the Company and supersedes all prior and contemporaneous communications, agreements and understandings, whether written or oral, with respect to your employment, its termination, payments and benefits to you, and all related matters, excluding only the Nondisclosure Agreement, the Employee Agreement (to the extent the provisions thereof survive its termination), and your and the Company's rights and obligations with respect to securities of the Company (including, without limitation, your obligations under any grant agreement or equity plan), all of which shall remain in full force and effect in accordance with their respective terms, except as expressly modified herein. This Agreement specifically supersedes any provisions relating to severance in the Employee Agreement.

(b) If any provision of this Agreement, or part thereof, is held invalid, void or voidable as against public policy or otherwise, the invalidity shall not affect other provisions, or parts thereof, which may be given effect without the invalid provision or part; provided however that if Paragraph 8, or any part thereof, is held invalid, this Agreement shall be null and void. To this extent, the provisions and parts thereof of this Agreement are declared to be severable. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise. The language of all parts of this Agreement shall in all cases be construed according to its fair meaning and not strictly for or against either of the parties.

(c) You may not assign any of your rights or delegate any of your duties under this Agreement. The rights and obligations of the Company shall inure to the benefit of the Company's successors and assigns. This is a Massachusetts contract, signed under seal, and shall be construed and governed in all respects by the laws of the Commonwealth of Massachusetts, without regard to the conflict of laws principles thereof.

(d) This Agreement may not be modified or amended, and no breach shall be deemed to be waived, unless agreed to in writing by you and the Chief Executive Officer of the Company or his expressly authorized designee. The captions and headings in this Agreement are for convenience only and in no way define or describe the scope or content of any provision of this Agreement.

(e) The obligation of the Company to make payments or provide benefits to you or on your behalf under this Agreement is expressly conditioned upon your continued full performance of your obligations under this Agreement, under Sections 7, 8 and 9 of the Employee Agreement, and under the Nondisclosure Agreement.

(f) You acknowledge and agree that you have received and read this Agreement. You acknowledge that the provisions of the Agreement are understandable to you, that you fully appreciate and understand the meaning and effect of the terms in the Agreement and Waiver Notice, and that you are freely and voluntarily entering into this Agreement.

(g) You acknowledge that you have been provided with a reasonable and sufficient period of at least forty-five (45) days within which to consider whether or not to accept this Agreement, and that you are hereby advised to, and are fully aware of your right to, consult with an attorney for advice in connection with this Agreement and prior to signing the Agreement.

12. **No Interference with Rights**. You understand, agree and acknowledge that nothing contained in this Agreement will prevent you from filing a charge or complaint with, reporting possible violations of any law or regulation, making disclosures to, and/or participating in any investigation or proceeding conducted by, the National Labor Relations Board, Equal Employment Opportunity Commission, the Securities and Exchange Commission, and/or any governmental authority charged with the enforcement of any laws, including providing any documents or information to any such agencies, or from truthfully testifying in any arbitration, administrative agency, or legal proceeding, although by signing this Agreement you are waiving rights to individual relief based on claims asserted in such a charge or complaint, except where such a waiver of individual relief is prohibited and except for any right you may have to receive a payment from a government agency (and not the Company Releasees) for information provided to the government agency, and you agree that the consideration you will receive as provided in this Agreement fully and completely satisfies any and all such individual claims for relief.

If the terms of this Agreement are acceptable to you, please sign, date and return it to me no later than forty-five (45) days after receiving it. You may revoke this Agreement at any time during the seven-day period immediately following the date of your signing. If you do not revoke it, then, at the expiration of that seven-day period, this letter will take effect as a legally-binding agreement between you and the Company, subject to the conditions set forth above. The enclosed copy of this letter, which you should also sign and date, is for your records.

Sincerely,

AGENUS INC.

By: /s/ Garo Armen
Garo Armen
Chief Executive Officer

I REPRESENT THAT I HAVE READ THE FOREGOING AGREEMENT, THAT I FULLY UNDERSTAND THE TERMS AND CONDITIONS OF SUCH AGREEMENT AND THAT I AM KNOWINGLY AND VOLUNTARILY EXECUTING THE SAME. IN ENTERING INTO THIS AGREEMENT, I DO NOT RELY ON ANY REPRESENTATION, PROMISE OR INDUCEMENT MADE BY THE COMPANY OR ITS REPRESENTATIVES WITH THE EXCEPTION OF THE CONSIDERATION DESCRIBED IN THIS DOCUMENT.

ACCEPTED AND AGREED:

Printed Name: Robert B. Stein, MD, PhD

Signature: /s/ Robert B. Stein

Date: March 29, 2017

Exhibit 10.4

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement"), effective as of April 1, 2017 (the "Effective Date") is made between Agenus Inc., a Delaware corporation, having an address at 149 Fifth Avenue, Suite 500, New York, NY 10010 ("Agenus"), and Dr. Robert Stein, an individual currently residing at 7 Peter Cooper Rd., Apt 10-B, New York, NY 10010 (the "Consultant") (each a "Party" and collectively the "Parties").

WHEREAS, Consultant and Agenus were previously parties to an Employment Agreement dated June 30, 2015 (the "Employment Agreement"), pursuant to which Consultant served as Agenus' President of Research & Development;

WHEREAS, concurrent with the execution of this Agreement, Consultant and Agenus entered into a severance agreement that, amongst other things, terminated the Employment Agreement; and

WHEREAS, Agenus desires to retain the services of Consultant, and Consultant desires to perform certain services exclusively for Agenus, as set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agenus and Consultant hereby agree as follows:

1. Services.

1.1 Description of Services. Subject to the terms and conditions of this Agreement, Agenus hereby exclusively retains Consultant as a Senior Advisor, Research & Development, to its CEO, Dr. Garo Armen, and/or his designees, to provide scientific guidance and advisory services to Agenus and/or its Affiliates, and such other services as may be requested from time to time (collectively, the "Services"). Consultant shall make himself reasonably available to Agenus on full time basis to the extent requested by Agenus during the Term, including providing updates to the CEO at least bi-weekly, and participating in Agenus research personnel meetings upon request of the CEO or his designee. Consultant shall perform the Services promptly and in compliance with the provisions of this Agreement and all applicable laws, rules and regulations, including if applicable, laws and regulations administered by the U.S. Food and Drug Administration ("FDA") regarding the promotion and marketing of pharmaceutical products. Consultant shall ensure that the Services are performed promptly and diligently.

As used in this Agreement "Affiliate" means any corporation, firm, partnership or other entity, which controls, is controlled by or is under common control with a Party. As used in this Agreement, "control" means direct or indirect ownership of fifty percent (50%) or more of the outstanding stock or other voting rights entitled to elect directors thereof or the ability to otherwise control the management of the corporation, firm, partnership or other entity.

1.2 Non-Solicitation. Consultant agrees that during the term of this Agreement and for a period of two (2) years thereafter, Consultant shall not, directly or indirectly, (i) solicit, divert, or take away, or attempt to divert or take away, the business or patronage of any actual or prospective clients, customers, or accounts of Agenus, or (ii) recruit, solicit, or hire any employee of Agenus, or induce or attempt to induce any employee of Agenus, to discontinue his or her relationship with Agenus.

1.3 Third Party Obligations. Consultant represents and warrants to Agenus that none of his or her current obligations conflict with this Agreement or the Services to be provided hereunder. Consultant covenants not to enter into any such conflicting agreement or incur any such conflicting obligation without the prior written consent of Agenus. Consultant further covenants that the performance of the Services will not breach any agreement or obligation with any third party, including without limitation any obligation to refrain from engaging in activities that may compete with such party.

1.4 Non-Competition. During the Term and for a period of 12-months thereafter, Consultant shall not, directly or indirectly, whether as owner, partner, investor, consultant, agent, employee, co-venturer or otherwise, compete with Agenus or any of its Affiliates or undertake any planning for any business competitive with Agenus or any of its Affiliates. Specifically, but without limiting the foregoing, Consultant agrees not to engage in any manner in any activity that is directly or indirectly competitive with the business of Agenus or any of its Affiliates as conducted or under consideration at any time during the Term or during Consultant's previous employment with Agenus. Restricted activity includes without limitation accepting employment or a consulting position with any Person (as defined below) who is, or at any time during the Term or during Consultant's previous employment with Agenus has been, a competitor or a customer of Agenus or any of its Affiliates. For the purposes of this Section 1.4, the business of Agenus and its Affiliates shall include all Products (as defined below), and Consultant's undertaking shall encompass all items, products and services that may be used in substitution for Products. The foregoing shall not prohibit Consultant's passive ownership of two percent (2%) or less of the equity securities of any publicly traded company. Consultant agrees that, during the Term and for a period of 12-months thereafter, he will not undertake any outside activity, whether or not competitive with the business of Agenus or its Affiliates, that could reasonably give rise to a conflict of interest or otherwise interfere with his duties and obligations to Agenus or any of its Affiliates. "Person" means an individual, a corporation, an association, a partnership, an estate, a trust and any other entity or organization, other than Agenus or any of its Affiliates. "Products" mean all products planned, researched, developed, under development, tested, manufactured, sold, licensed, leased or otherwise distributed or put into use by Agenus or any of its Affiliates, together with all services provided or planned by Agenus or any of its Affiliates, during the Term or during Consultant's previous employment with Agenus.

1.5 No Disparagement; Moral Hazard Clause. Consultant agrees that during the Term and thereafter, Consultant shall not disparage Agenus or any of its Affiliates, or their respective directors, officers, employees, consultants, or agents, or otherwise make any statement or take any actions that would be materially harmful to the business, interests or reputation of Agenus or any of its Affiliates, or their respective directors, officers, employees, consultants, or agents. Consultant further agrees that that during the Term and thereafter, Consultant shall not engage in any behavior that could adversely impact the reputation of Agenus, including but not limited to committing, or being arrested for or charged with, any crime, or committing any acts of moral turpitude.

2. Compensation.

2.1 Compensation. In exchange for the timely completion of Services during the Term, Agenus shall pay to Consultant a monthly retainer of $35,416.67 (the "Compensation"), and Consultant shall be entitled to continuation of vesting during the Term with respect to all equity incentive awards held by Consultant as of the Effective Date. In the event of a Change of Control (as defined in the Employment Agreement) during the Term, all vesting of Consultant's stock options will immediately be accelerated in full. All payments for Compensation shall be made within 15 days following the end of each month Services are performed. In addition to the Compensation provided for above, (i) so long as this Agreement remains in effective at all times on and through the one-year anniversary of the Effective Date (e.g., April 1, 2018), Consultant may be eligible to receive up to an additional $170,000 in Agenus' sole discretion as a bonus payment for Services performed; and (ii) so long as this Agreement remains in effective at all times on and through the 15-month anniversary of the Effective Date (e.g., July 1, 2018), Consultant may be eligible to receive up to an additional $42,500, in Agenus' sole discretion as a bonus payment for Services performed. All monies to be paid under this Agreement shall be paid to Consultant in U.S. Dollars. Consultant acknowledges and agrees that payments made hereunder are for Services performed by Consultant. No payments shall be passed through to third parties on behalf of Agenus without a valid invoice or other written documentation between the Parties evidencing such payment arrangement.

2.2 Reimbursement of Expenses. Agenus shall reimburse Consultant for reasonable travel and other out-of-pocket expenses incurred by Consultant in performance of the Services and in accordance with Agenus's reimbursement policies, as they may be amended from time to time by Agenus, provided that (i) Consultant shall have submitted to Agenus written expense statements and other supporting documentation in a form that is reasonably satisfactory to Agenus, (ii) any individual expenses in excess of $500.00 must be pre-approved by Agenus in writing, and (iii) all expenses incurred under this Agreement in the aggregate shall not exceed $2,500.00 without Agenus' prior written approval. Agenus shall provide Consultant with a check for any amounts due under this Section 2.2 within forty-five (45) days after Agenus receives satisfactory documentation.

2.3 Independent Contractor. Consultant is an independent contractor of Agenus. Consultant acknowledges and agrees that Agenus will not provide Consultant with any benefits. Without in any way limiting the generality of the foregoing, Consultant acknowledges and agrees that he or she has no right to participate in any Agenus equity plan(s). Consultant is also responsible for the payment and the withholding of all applicable taxes, levies and/or duties applicable to any compensation or reimbursements paid to Consultant hereunder in accordance with all applicable laws, rules and regulations. In the event it is determined that Agenus has failed to make proper payment or withholding of income, payroll, or other taxes with respect to any compensation or reimbursements paid to Consultant hereunder and a federal or state tax authority determines that Agenus is liable for such nonpayment or underpayment or for any fines, penalties or interest connected with Consultant's nonpayment or underpayment or the Parties' characterization of such compensation or reimbursements, Consultant agrees to and shall, upon delivery of written notice from Agenus of a claim hereunder, indemnify and hold Agenus harmless from those amounts (including taxes, fines and/or penalties incurred in connection therewith) which Agenus pays.

2.4 No Additional Obligation/Fair Market Value. Consultant acknowledges and agrees that the compensation payable hereunder represents Agenus's full and complete obligation for any and all Services to be rendered by Consultant under this Agreement. Consultant further represents to Agenus that the compensation paid hereunder represents fair market value for Consultant's time and the Services hereunder and is consistent with fees paid to Consultant for similar time and services provided by Consultant to others. Both Parties acknowledge that the compensation is not determined in a manner that takes into account the volume or value of any future business that might be generated between the Parties. In addition, Consultant and Agenus acknowledge that nothing in this Agreement shall be construed to require Consultant to promote, purchase, prescribe, or otherwise recommend any Agenus products being marketed or under development.

3. Term and Termination.

3.1 Term. This Agreement shall commence on the Effective Date and shall remain in effect for a period of 15 months, unless extended by mutual written agreement of the Parties, or earlier terminated in accordance with the provisions of this Article 3 (such 15-month period as it may be extended or terminated, the "Term").

3.2 Termination.

(a) The Parties may mutually agree to terminate this Agreement at any time.

(b) Agenus may terminate this Agreement immediately upon written notice to Consultant (or his legal representative) in the event (i) of the death or legal incapacity of Consultant; (ii) that Consultant is otherwise no longer able to perform the Services; or (iii) if Consultant breaches any provision of Sections 1.2, 1.3, 1.4, 1.5 or Articles 4, 5 or 6.

3.3 Survival. The following provisions shall survive the expiration or termination of this Agreement: Articles 4, 5 and 6; Sections 1.2, 1.4, 1.5, 7.4 through 7.10, and this Section 3.3.

4. Confidential Information.

4.1 Definition of Confidential Information. Confidential Information shall mean any technical or business information furnished by or on behalf of Agenus to Consultant in connection with this Agreement or developed by Consultant in the course of performing the Services, regardless of whether such Confidential Information is in oral, electronic or written form. Such Confidential Information may include, without limitation, trade secrets, know-how, inventions, technical data or specifications, testing methods, business or financial information, research and development activities, product and marketing plans, and customer and supplier information.

4.2 Obligations. Consultant shall

(a) maintain all Confidential Information in strict confidence; and

(b) use all Confidential Information solely for the purpose of providing the Services as requested by Agenus; and

(c) reproduce the Confidential Information only to the extent necessary for providing the Services as requested by Agenus, with all such reproductions being considered Confidential Information;

(d) disclose the Confidential Information only as expressly permitted in order to perform the Services; and

(e) not disclose or publish any Confidential Information to any third party without the express prior written consent of Agenus, in each case in Agenus's sole discretion.

4.3 Exceptions. The obligations of Consultant under Section 4.2 shall not apply to the extent that Consultant can demonstrate that certain information:

(a) was in the public domain prior to the time of its disclosure or development under this Agreement;

(b) entered the public domain after the time of its disclosure or development under this Agreement other than due to an act or omission by Consultant;

(c) was independently developed by Consultant prior to the time of its disclosure or development under this Agreement and without access to Confidential Information; or

(d) is or was disclosed to Consultant at any time prior to its disclosure or development under this Agreement, without restriction, by a third party having no fiduciary relationship with Agenus and having no obligation of confidentiality with respect to such Confidential Information.

4.4 Required Disclosures. In addition Consultant may disclose Confidential Information to the extent necessary to comply with applicable laws or regulations, or with a court or administrative order, provided that Consultant (i) gives Agenus prompt written notice of such requirement, (ii) takes all reasonable and lawful actions to obtain confidential treatment for such disclosure and, if possible, to minimize the extent of such disclosure, and (iii) discloses only the Confidential Information strictly required to comply with such legal obligation.

4.5 Return of Confidential Information; Survival of Obligations. Upon the termination of this Agreement, or earlier at the request of Agenus, Consultant shall return to Agenus all originals, copies, and summaries of documents, materials, and other tangible manifestations of Confidential Information in the possession or control of Consultant. The obligations set forth in this Article 4 shall remain in effect for a period of five (5) years after termination of this Agreement, except that the obligations of Consultant to return Confidential Information shall survive until fulfilled. Consultant acknowledges and agrees that the Confidential Information is of extreme value to Agenus, and any use or disclosure thereof other than as expressly allowed under this Agreement would cause irreparable harm to Agenus for which Agenus could obtain relief as contemplated in Section 7.9 of this Agreement, and that such unauthorized disclosure may represent Consultant's violation of U.S. securities laws.

5. Developments; Third Party IP; Avoidance of Claims.

5.1 Proprietary Property. Consultant acknowledges and agrees that all Confidential Information and Proprietary Property (as defined below) and any and all intellectual property rights therein is and shall remain the exclusive property of Agenus or the third party entrusting any Confidential Information to Agenus. Consultant hereby assigns, conveys, and grants, and agrees to assign, convey, and grant to Agenus, all of his right, title, and interest in and to any and all Proprietary Property. Consultant agrees to promptly disclose to Agenus any and all Proprietary Property. Consultant further agrees to cooperate fully to allow Agenus to obtain patent or other proprietary protection for such Proprietary Property, all in the name of Agenus and at Agenus's cost and expense, and shall execute and deliver all requested applications, assignments and other documents and take such other measures as Agenus shall reasonably request in order to perfect and enforce Agenus's rights in the Proprietary Property (including transfer of possession to Agenus of all Proprietary Property embodied in tangible materials), and hereby appoints Agenus's attorney to execute and deliver any such documents on his behalf in the event Consultant fails or refuses to do so. As used in this Agreement, "Proprietary Property" shall mean any and all inventions, developments, data (including without limitation, written, printed, graphic, video and audio material, and information contained in any computer database or computer readable form), discoveries, improvements, ideas, concepts, computer programs, algorithms, protocols, systems and related documentation, and any other works of invention or authorship (whether or not patentable, copyrightable, or entitled to or eligible for other forms of legal protection) generated, conceived, discovered, written, invented, developed, or reduced to practice or tangible medium by or on behalf of Consultant (whether alone, jointly with others, or under Consultant's direction) ***whether or not in the course of providing the Services***, and any and all patent, patent applications, copyrights, trademarks, trade secrets or other intellectual property rights in any of the foregoing. Consultant shall maintain adequate records (whether written, electronic, or otherwise) to document the Proprietary Property, including without limitation the conception and reduction to practice of all inventions, and shall make such records available to Agenus upon request. Agenus shall have sole ownership of all such records.

5.2 Works. In addition and without in any way limiting the foregoing, Consultant agrees that all right, title and interest in and to any works of authorship or copyrightable materials resulting from the performance of the Services and all copies thereof, in whatever media, (the "Works") shall be in Agenus. Consultant specifically agrees that, to the extent that any portion of the Works constitutes a work protectable under the copyright law of the United States (the "Copyright Law"), Agenus and Consultant agree that any such portion of the Works has been specifically ordered and commissioned by Agenus and shall be considered a "work made for hire" as such term is used and defined in the Copyright Law. Accordingly, Agenus shall be considered the "author" of such portion of the Works and the sole and exclusive owner throughout the world of copyright therein. In the event that any portion of the Works constitutes a work protectable under the Copyright Law but does not qualify as a "work made for hire" as such term is used and defined in the Copyright Law, Contractor hereby assigns and agrees to assign to Agenus all right, title and interest in and to copyright in the Works or in any such portion thereof and agrees to execute and deliver to Agenus, upon request, appropriate assignments of copyright and such other documents and instruments as Agenus may request.

5.3 Third-Party Intellectual Property. Consultant acknowledges that Agenus does not desire to acquire any trade secrets, know-how, confidential information, or other intellectual property that Consultant may have acquired from or developed for any third party ("Third-Party IP"). Consultant agrees that in the course of providing the Services, Consultant shall not improperly use or disclose any Third-Party IP.

5.4 Avoidance of Claims by Third-Parties. Unless covered by an appropriate agreement between any third party and Agenus, Consultant shall not engage in any activities or use any facilities, funds or equipment, in the course of providing Services, which could result in claims of ownership to any Proprietary Property by such third party.

6. U.S. Foreign Corrupt Practices Act Compliance.

6.1 FCPA. Consultant understands that Agenus is an issuer of securities in the United States and is subject to the provisions of the U. S. Foreign Corrupt Practices Act, 15 U.S.C. §§ 78m, 78dd-1 through 78dd-3 ("FCPA"). This law prohibits making, promising or offering to make corrupt payments to foreign officials, political parties or candidates, or making payments to other persons who will offer or make payments to any of the aforementioned parties in order to obtain business, retain business or gain an improper advantage. Consultant represents and warrants to Agenus that Consultant is familiar with and understands the FCPA.

6.2 Representations. Consultant represents and warrants to Agenus that throughout the period in which Consultant provides Services to Agenus, neither Consultant, nor any person performing Services on behalf of Consultant will engage in any activity that could cause a violation of any provision of the FCPA by Agenus. Consultant represents and warrants that Consultant has not made, promised to make, or arranged for any third party to make any payments or gifts to foreign officials in connection with Consultant's engagement by Agenus. Further, Consultant represents and warrants to Agenus that Consultant has not violated any anti-corruption law and further that Consultant is not involved in, or the subject of, any investigation involving bribery, corruption or improper payments to foreign government officials, as defined in the FCPA. Consultant agrees to update these representations and warranties on a periodic basis as required by Agenus in a format prescribed by Agenus.

6.3 Notice of Violation. Consultant agrees to notify Agenus immediately in writing if Consultant or any person who is performing Services hereunder on behalf of Consultant is suspected of violating any anti-corruption law or becomes involved in, or a subject of, an investigation or law enforcement inquiry into possible improper payments to foreign officials or possible violations of anti-corruption laws. Consultant further agrees to provide such notification if Consultant or any person performing Services hereunder on behalf of Consultant becomes involved in any action, suit, claim, investigation or proceeding that is pending, or to the knowledge of Consultant threatened, relating to a potential violation of any anti-corruption laws, including the FCPA.

6.4 Audits. Consultant agrees to grant Agenus the right to audit Consultant's books and records regarding the receipt and disposition of any payments made to Consultant by Agenus, and Consultant further agrees to cooperate with Agenus in connection with such audits.

6.5 Material Provision. It is agreed between Consultant and Agenus that this Article 6 is deemed by the Parties to be a material provision of this Agreement.

6.6 Agenus Policy. Consultant has received a copy of Agenus's Policy on Improper Payments and Compliance with the FCPA (the "Policy"). Consultant represents and warrants that Consultant has had the opportunity to review the Policy, understands the Policy, and will comply with it.

7. Miscellaneous.

7.1 Counterparts. This Agreement may be executed in counterparts, which, when taken together, shall constitute one agreement. If 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.

7.2 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, except that Agenus may assign this Agreement to an affiliate or in connection with the merger, consolidation, or sale of all or substantially all of its business or assets relating to this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective lawful successors, assigns, heirs, and personal representatives.

7.3 Insider Trading. Consultant acknowledges that Consultant may receive material, non-public information about Agenus and its business in the course of providing the Services, that this information must be maintained in strict confidence, and that the U.S. securities laws restrict trading on the basis of such information or providing such information to third parties who may trade on such information.

7.4 Publicity. Consultant consents to use by Agenus of Consultant's name and likeness in written materials or oral presentations to current or prospective customers, investors or others, provided that such materials or presentations accurately describe the nature of Consultant's relationship with or contribution to Agenus.

7.5 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed given (a) when delivered personally, (b) upon confirmation of delivery by email if sent during normal business hours, and otherwise on the next business day, (c) on the next business day after timely delivery to an overnight courier (postage prepaid), or (d) on the third business day after deposit in the United States mail (certified or registered mail return receipt requested, postage prepaid), to the addresses of the Parties set forth in the first paragraph of this Agreement, and in the case of correspondence to Agenus, with a copy to "Legal Department" at the same address. Either Party may change its designated address by notice to the other Party in the manner provided in this Section 7.5.

7.6 Entire Agreement; Amendment. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral and prior written agreements and understandings. This Agreement may

be modified, amended, or supplemented only by means of a written instrument signed by both Parties. Any waiver of any rights or failure to act in a specific instance shall relate only to such instance and shall not be construed as an agreement to waive any rights or fail to act in any other instance, whether or not similar.

7.7 Governing Law. This Agreement has been drafted in the English Language and the English language shall govern its interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of New York irrespective of any conflict of laws principles.

7.8 Severability. In the event that any provision of this Agreement shall, for any reason, be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid or unenforceable provision had not been included herein. If any provision hereof shall, for any reason, be held by a court to be excessively broad as to duration, geographical scope, activity, or subject matter, it shall be construed by limiting and reducing it to make it enforceable to the extent compatible with applicable law as then in effect. To the extent this Agreement may be construed in accordance with the laws of any state that limits the assignability to Agenus of certain Proprietary Property, the provisions of this Agreement shall be modified to conform to such state limitation while most closely effectuating the original intention of the Parties (e.g., by providing for fully paid up license rights, or the like).

7.9 Equitable Relief. Consultant acknowledges that the restrictions contained in this Agreement are necessary for the protection of the business and goodwill of Agenus and are reasonable for such purpose. Consultant agrees that any breach or threatened breach of his or her obligations under this Agreement will cause irreparable harm to Agenus. Therefore, in addition to any other remedies that may be available to Agenus, Agenus may apply for and obtain immediate injunctive relief in any court of competent jurisdiction to restrain the breach or threatened breach of, or otherwise to specifically enforce, any obligations of Consultant under this Agreement.

7.10 Massachusetts Information Security Regulations Compliance. Massachusetts Information Security Regulations, 201 Code of Mass. Regs. 17.00 et seq. (the "IS Regulations") mandate procedures to safeguard the "Personal Information," as defined in the IS Regulations, of Massachusetts residents. Because Consultant may have access to the Personal Information of Agenus's employees, contractors, business associates, or customers who are Massachusetts residents ("Protected Information"), the IS Regulations require Consultant to certify compliance with the IS Regulations. Accordingly, Consultant agrees that, as long as Consultant has access to or maintains copies of Protected Information Consultant will: (a) comply with the IS Regulations with respect to the Protected Information, (b) promptly notify Agenus of any suspected or actual data breach involving Protected Information, and (c) cooperate with Agenus to investigate and remediate any suspected or actual data breach involving Protected Information.

7.11 Whistleblower Notice. Pursuant to 18 USC § 1833(b), an individual may not be held criminally or civilly liable under any federal or state trade secret law for disclosure of a trade secret: (i) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law; and/or

(ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Accordingly, the Parties to this Agreement have the right to disclose in confidence trade secrets to Federal, State, and local government officials, or to an attorney, for the sole purpose of reporting or investigating a suspected violation of law. The Parties also have the right to disclose trade secrets in a document filed in a lawsuit or other proceeding, but only if the filing is made under seal and protected from public disclosure.

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IN WITNESS WHEREOF, the Parties each have caused this Agreement to be executed by their duly respective authorized representative as of the Effective Date.

AGENUS INC.

/s/ Garo H. Armen
Name: Garo H. Armen, PhD
Title: Chairman & CEO
Date: March 29, 2017

CONSULTANT

/s/ Robert Stein
Name: Dr. Robert Stein
Date: March 29, 2017

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 Quarterly Report on Form 10-Q 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: May 4, 2017

/s/ GARO H. ARMEN, PH.D.

Garo H. Armen, Ph.D.

Chief Executive Officer and Principal 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 Quarterly Report on Form 10-Q 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: May 4, 2017

/s/ CHRISTINE M. KLASKIN

Christine M. Klaskin

VP, Finance and 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 Quarterly Report on Form 10-Q of Agenus Inc. (the "Company") for the quarterly period ended March 31, 2017 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, as amended; 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 and Principal Executive Officer

/s/ CHRISTINE M. KLASKIN

Christine M. Klaskin

VP, Finance and Principal Financial Officer

Date: May 4, 2017

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company 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 Report and should not be considered filed as part of the Report.