ITC Holdings Corp.
Form S-4/A
January 29, 2013
Table of Contents

As filed with the U.S. Securities and Exchange Commission on January 28, 2013

Registration No. 333-184073

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

Amendment No. 2

to

FORM S-4

REGISTRATION STATEMENT

UNDER

THE SECURITIES ACT OF 1933

ITC HOLDINGS CORP

(Exact name of registrant as specified in its charter)

Michigan	4911	32-0058047
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

27175 Energy Way

Novi, Michigan 48377

(248) 946-3000

(Address, including zip code, and telephone number, including area code, of registrant s principal executive offices)

Daniel J. Oginsky, Esq.

Senior Vice President and General Counsel

ITC Holdings Corp.

27175 Energy Way

Novi, Michigan 48377

(248) 946-3000

(Name, address, including zip code, and telephone number, including area code, of agent for service)

With copies to:

Andrew Smith, Esq.	**Daniel T. Falstad, Esq.**	**Pankaj K. Sinha, Esq.**
Simpson Thacher & Bartlett LLP	**Deputy General Counsel and Secretary**	**Michael P. Rogan, Esq.**
425 Lexington Avenue	**Entergy Corporation**	**Skadden, Arps, Slate, Meagher & Flom LLP**
New York, New York 10017	**639 Loyola Avenue**	**1440 New York Avenue, NW**
(212) 455-2000	**New Orleans, Louisiana 70113**	**Washington, DC 20005**
	(504) 576-2095	**(202) 371-7000**

Approximate date of commencement of the proposed sale of the securities to the public: As soon as practicable after this Registration Statement becomes effective and the date on which all other conditions to the merger described in the enclosed proxy statement/prospectus have been satisfied or waived.

If the securities being registered on this Form are being offered in connection with the formation of a holding company and there is compliance with General Instruction G, check the following box. ¨

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act of 1933, as amended, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering. ¨

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

Large accelerated filer	x	Accelerated filer	¨
Non-accelerated filer	¨ (Do not check if a smaller reporting company)	Smaller reporting company	¨

The Registrant hereby amends this Registration Statement on such date or dates as may be necessary to delay its effective date until the Registrant shall file a further amendment which specifically states that this Registration Statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933, as amended, or until the Registration Statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a), may determine.

Table of Contents

EXPLANATORY NOTE

ITC Holdings Corp. (ITC) is filing this registration statement on Form S-4 to register shares of its common stock, without par value, that will be issued in connection with the merger of ITC Midsouth LLC (formerly known as Ibis Transaction Sub LLC) (Merger Sub), which is a wholly-owned subsidiary of ITC, with and into Mid South TransCo LLC (TransCo), which is currently a wholly-owned subsidiary of Entergy Corporation (Entergy), with TransCo surviving the merger as a wholly owned subsidiary of ITC. Pursuant to the instructions on Form S-4, the proxy statement/prospectus which forms a part of this registration statement is also deemed filed pursuant to ITC s obligations under Regulation 14A in connection with ITC s special meeting of ITC shareholders to approve the merger agreement and related proposals described herein. In addition, prior to the closing of the merger, TransCo will file a registration statement on the appropriate form to register its limited liability company membership common units (TransCo common units), which will be distributed to Entergy shareholders pursuant to a spin-off or split-off exchange offer in connection with the merger. The TransCo common units will be immediately converted into shares of ITC common stock in the merger.

Prior to the closing, Entergy will determine whether the TransCo common units will be distributed to Entergy s shareholders in a spin-off or a split-off exchange offer. In a spin-off, all of Entergy shareholders (with certain limited exceptions) would receive a *pro rata* number of shares. In a split-off exchange offer, Entergy shareholders would have the option to exchange their shares of Entergy common stock and receive TransCo common units, which will be immediately exchanged for shares of ITC common stock in the merger, resulting in a reduction in Entergy s outstanding shares. If the split-off exchange offer is consummated but less than all TransCo common units owned by Entergy are exchanged for any reason, the remaining TransCo common units owned by Entergy will then be distributed *pro rata* to the holders of shares of Entergy common stock (with certain limited exceptions). ITC is filing this registration statement under the assumption that the TransCo common units will be distributed to Entergy shareholders pursuant to a spin-off. Once a final decision is made regarding the manner of distribution of the TransCo common units, this registration statement on Form S-4 will be amended to reflect that decision. Entergy may determine to effectuate the distribution as a split-off exchange offer after the ITC special meeting has occurred; ITC does not intend to re-solicit the approval of its shareholders for the merger and related proposals covered by this proxy statement/prospectus because of that determination.

Table of Contents

The information in this proxy statement/prospectus is not complete and may be changed. We may not sell the securities offered by this proxy statement/prospectus until the registration statement filed with the Securities and Exchange Commission is effective. This proxy statement/prospectus does not constitute an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction where an offer or solicitation is not permitted.

PRELIMINARY SUBJECT TO COMPLETION DATED JANUARY , 2013

MERGER PROPOSED YOUR VOTE IS IMPORTANT

Dear Fellow Shareholders:

As previously announced, the board of directors of ITC Holdings Corp. (ITC) has approved a merger that will combine ITC with the transmission business of Entergy Corporation (Entergy). To facilitate this merger, Entergy will cause specific assets and liabilities of its transmission business in Louisiana, Arkansas, Mississippi, Missouri and Texas to be transferred to Mid South TransCo LLC (TransCo), a newly formed subsidiary of Entergy, and distribute the limited liability interests of TransCo to Entergy s shareholders. ITC Midsouth LLC (formerly known as Ibis Transaction Subsidiary LLC), which is a wholly-owned subsidiary of ITC, will be merged with and into TransCo, with TransCo surviving such merger as a wholly-owned subsidiary of ITC.

The merger will result in ITC acquiring Entergy s transmission business, which includes approximately 15,400 circuit miles of transmission lines operated at 69kV to 500kV and approximately 1,400 substations, as well as the employees and assets used to plan, operate and maintain that system. Following the merger, the combined company will continue to operate under the ITC name and its common stock will continue to be listed on the New York Stock Exchange under the ticker symbol ITC . ITC s current management team will manage the combined company after the merger, but will be supplemented with certain key management personnel from Entergy s transmission business. In addition, the board of directors of ITC will continue to govern the combined business after the close of the merger. At the effective time of the merger, ITC s board of directors will cause two vacancies on the board to exist (either through resignations of existing directors, by increasing the size of the board or a combination thereof), which vacancies will be filled immediately following the merger with two new independent directors nominated by ITC s nominating/corporate governance committee. Among other qualifications, these new directors are expected to have transmission industry knowledge and familiarity with the region in which Entergy operates.

Pursuant to the merger agreement, ITC will issue an aggregate number of shares of its common stock to Entergy shareholders which will result in Entergy shareholders (and, if applicable, the exchange trust) owning approximately 50.1% of the shares of ITC common stock outstanding on a fully diluted basis upon the closing of the merger. The number of shares to be issued to Entergy shareholders is based on the exchange ratio set forth in the merger agreement multiplied by the number of shares of ITC common stock on a fully diluted basis. In addition, ITC will also assume approximately $1.775 billion of debt from TransCo and its subsidiaries and issue approximately $740 million of debt in support of the recapitalization it is expected to undertake prior to the merger.

In addition, assuming the merger is consummated, prior to closing ITC will effectuate a $700 million recapitalization, which will take the form of a one-time special dividend to pre-merger ITC shareholders, a share repurchase or a combination thereof. The decision regarding the form of the recapitalization remains in the sole discretion of the ITC board of directors and will be made closer to the closing of the merger.

Based on the number of outstanding shares and the closing price on the New York Stock Exchange of ITC common stock on December 4, 2011, and assuming the consummation of the recapitalization referred to above as a one-time special dividend and the assumption of debt referred to above, as of December 4, 2011, the consideration in the merger agreement implies an enterprise value for Entergy s Transmission Business of approximately $5 billion. You are cordially invited to attend the ITC Holdings Corp. Special Meeting of Shareholders at [ ] local time, on [ ], 2013 at our corporate headquarters located at 27175 Energy Way, Novi, Michigan 48377.

At the special meeting, among other matters, we will ask you to consider and vote on the merger related proposals, including approving the merger agreement, approving an amendment to the ITC Holdings Corp. Articles of Incorporation to increase the number of authorized shares, and approving the issuance of ITC Holdings Corp. common stock pursuant to the merger agreement. A notice of the special meeting and proxy statement follow.

Your board of directors believes that the merger should enhance shareholder value by reinforcing our core strategy, validating the merits of the independent transmission model, strengthening our leading transmission

Table of Contents

platform, increasing our size and scale, enhancing our overall credit quality, diversifying our capital investment profile, and providing long-term sustainable growth, while providing tangible benefits to the customers and stakeholders of the Entergy transmission business. Your board of directors recommends that you vote FOR each proposal.

Your vote is very important. We cannot complete the merger unless all of the merger related proposals are approved by ITC shareholders at the special meeting. Please vote by completing, signing and dating the enclosed proxy card for the special meeting and mailing the proxy card to us, whether or not you plan on attending the special meeting. If you sign, date and mail your proxy card without indicating how you would like to vote, your proxy will be counted as a FOR each of the proposals presented at the special meeting. You can also vote your shares in person, or by phone or Internet. If you do not return your card, or vote in person or by phone or Internet or if you do not specifically instruct your broker how to vote any shares held for you in street name , your shares will not be voted on the proposals relating to the merger at the special meeting.

This document is a proxy statement by ITC for use in soliciting proxies for the special meeting. This document answers questions about the proposed merger and the special meeting and includes a summary description of the merger. We urge you to review this entire document carefully. In particular, you should also consider the matters discussed under Risk Factors beginning on page 53.

We are very excited about the opportunities offered by the proposed transaction, and we thank you for consideration and ongoing support.

Sincerely,

Joseph L. Welch

Chairman, President & CEO

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of the securities to be issued in connection with the merger and the other transactions contemplated by the merger agreement or the separation agreement or passed upon the adequacy or accuracy of this document. Any representation to the contrary is a criminal offense.

Table of Contents

This document is dated [ ], 2013 and is first being mailed to ITC shareholders on or about [ ], 2013.

ADDITIONAL INFORMATION

The accompanying proxy statement/prospectus incorporates by reference important business and financial information about ITC Holdings Corp. (ITC) from documents that are not included in or delivered with the proxy statement/prospectus. This information is available to you without charge upon your written or oral request. You can obtain the documents incorporated by reference in the proxy statement/prospectus from the SEC s website at *http://www.sec.gov* or from ITC s website at *www.itc-holdings.com* or by requesting them in writing or by telephone from ITC at the following address and telephone number:

ITC Holdings Corp.

27175 Energy Way

Novi, Michigan 48377

Attention: Investor Relations

Telephone: (248) 946-3000

In addition, if you have questions about the merger agreement, the merger and related transactions and agreements or the special meeting of ITC shareholders, or if you need to obtain copies of the accompanying proxy statement/prospectus, proxy cards, or other documents incorporated by reference in the proxy statement/prospectus, you may contact ITC s proxy solicitor, at the address and telephone number listed below. You will not be charged for any of the documents you request.

199 Water Street, 26th Floor

New York, NY 10038-3560

Banks and Brokers Call (212) 440-9800

All Others Call Toll-Free (800) 561-2871

If you would like to request documents, please do so by [ ], 2013 in order to receive them before the special meeting of ITC shareholders.

For a more detailed description of the information incorporated by reference in the accompanying proxy statement/prospectus and how you may obtain it, please see the section entitled Where You Can Find More Information; Incorporation By Reference beginning on page 241 of the accompanying proxy statement/prospectus.

Table of Contents

27175 ENERGY WAY

NOVI, MICHIGAN 48377

(248) 946-3000

NOTICE OF SPECIAL MEETING OF SHAREHOLDERS

TO BE HELD ON , 2013

TO THE SHAREHOLDERS:

NOTICE IS HEREBY GIVEN that a Special Meeting of Shareholders of ITC Holdings Corp. (ITC) will be held at our corporate headquarters located at 27175 Energy Way, Novi, Michigan 48377, on [ ], 2013, at [ ], local time, for the following purposes:

(1) *Merger Proposal*. To consider and vote upon a proposal to approve the Merger Agreement, dated as of December 4, 2011, as amended by Amendment No. 1, dated September 21, 2012, and by Amendment No. 2, dated January 28, 2013, among Entergy Corporation, Mid South TransCo LLC (TransCo), ITC and ITC Midsouth LLC (formerly known as Ibis Transaction Subsidiary LLC) (Merger Sub) (as the same may be amended from time to time, the merger agreement), as required under Sections 703a and 754 of the Business Corporation Act of the State of Michigan, as amended, pursuant to which Merger Sub will merge with and into TransCo, with TransCo surviving as a wholly owned subsidiary of ITC;

(2) *Amendment of Articles of Incorporation Proposal*. To consider and vote upon a proposal to amend the Amended and Restated Articles of Incorporation of ITC to increase the number of authorized shares of ITC common stock from 100,000,000 to 300,000,000;

(3) *Stock Issuance Proposal*. To consider and vote upon a proposal to approve the issuance of ITC common stock pursuant to the merger agreement. The exact number of shares to be issued is calculated based on a formula in the merger agreement, described on page 113 of the proxy statement/prospectus. We currently expect, based on the number of outstanding shares of ITC common stock as of January 18, 2013 and assuming the ITC recapitalization takes the form of a one-time special dividend, that ITC will issue to Entergy shareholders approximately 52,786,090 shares of ITC common stock as a result of the transactions, although the precise number of shares will not be known until closer to the closing date of the merger and could be significantly impacted by the form of the ITC recapitalization;

(4) *Merger-Related Executive Compensation Proposal*. To consider and vote upon a proposal to approve, by non-binding advisory vote, certain compensation arrangements for ITC s named executive officers in connection with the merger contemplated by the merger agreement; and

(5) *Adjournment Proposal*. To consider and vote upon a proposal to adjourn the special meeting if necessary or appropriate to permit further solicitation of proxies if there are not sufficient votes at the time of the special meeting to approve proposals (1), (2) and (3).

Proposals (1) through (3) above are collectively referred to as the merger proposals.

The ITC board of directors has fixed the close of business on [ ], 2013 as the record date for the special meeting. Accordingly, only shareholders of record on the record date are entitled to notice of and to vote at the special meeting or at any adjournment of the special meeting. The list of shareholders entitled to vote at the special meeting will be available for review at the special meeting by any ITC shareholder entitled to vote at the special meeting.

THE ITC BOARD OF DIRECTORS HAS APPROVED THE MERGER AGREEMENT, THE MERGER AND THE OTHER TRANSACTIONS CONTEMPLATED BY THE MERGER AGREEMENT AND RECOMMENDS THAT ITC SHAREHOLDERS VOTE FOR EACH PROPOSAL. SHAREHOLDER APPROVAL OF EACH MERGER PROPOSAL IS NECESSARY TO EFFECT THE MERGER. THE APPROVAL OF EACH MERGER PROPOSAL IS CONDITIONED UPON THE APPROVAL OF EACH OF THE OTHER MERGER PROPOSALS.

By Order of the Board of Directors,

Wendy A. McIntyre

Corporate Secretary

Novi, Michigan

, 2013

Table of Contents

YOUR VOTE IS IMPORTANT

YOUR VOTE IS IMPORTANT. PLEASE VOTE ON THE ENCLOSED PROXY CARD NOW EVEN IF YOU PLAN TO ATTEND THE SPECIAL MEETING. YOU CAN VOTE BY SIGNING, DATING AND RETURNING YOUR PROXY CARD BY MAIL IN THE ENCLOSED RETURN ENVELOPE, WHICH REQUIRES NO ADDITIONAL POSTAGE IF MAILED IN THE UNITED STATES, OR BY TELEPHONE OR INTERNET BY FOLLOWING THE INSTRUCTIONS ON THE PROXY CARD. IF YOU DO ATTEND THE SPECIAL MEETING, YOU MAY REVOKE YOUR PROXY AND VOTE IN PERSON IF YOU ARE A SHAREHOLDER OF RECORD OR HAVE A LEGAL PROXY FROM A SHAREHOLDER OF RECORD.

The accompanying proxy statement/prospectus provides a detailed description of the merger agreement, the merger, the merger proposals and related agreements and transactions. We urge you to read the accompanying proxy statement/prospectus, including any documents incorporated by reference into the accompanying proxy statement/prospectus, and its annexes carefully and in their entirety. If you have any questions concerning the merger, the merger proposals, the other proposals or the accompanying proxy statement/prospectus, would like additional copies of the accompanying proxy statement/prospectus or need help voting your shares, please contact ITC s proxy solicitor at the address and telephone number listed below:

199 Water Street, 26th Floor

New York, NY 10038-3560

Banks and Brokers Call (212) 440-9800

All Others Call Toll-Free (800) 561-2871

Table of Contents

TABLE OF CONTENTS

Table of Contents

Table of Contents

HELPFUL INFORMATION

Certain abbreviations and terms used in the text and notes are defined below:

Abbreviation/Term	Description
APSC	Arkansas Public Service Commission
City Council	City Council for the City of New Orleans
Code	The Internal Revenue Code of 1986, as amended
The debt exchange	The planned exchange by Entergy of the TransCo debt securities previously issued to Entergy in full or partial satisfaction of the Entergy exchangeable debt. In the debt exchange (should the debt exchange occur), the unrelated creditor or creditors that hold the Entergy exchangeable debt will receive the TransCo debt securities and Entergy will receive the Entergy exchangeable debt.
DGCL	General Corporation Law of the State of Delaware
The distribution	The distribution by Entergy, pursuant to the merger agreement, of 100% of the TransCo common units (excluding any TransCo common units to be contributed to the exchange trust in the event Entergy makes the exchange trust election) to Entergy s shareholders through a spin-off, a split-off exchange offer or a combination of the two.
E-RSC	Entergy Regional State Committee
Entergy	Entergy Corporation
Entergy Arkansas	Entergy Arkansas, Inc.
The Entergy exchangeable debt	New debt issued by Entergy to one or more unrelated creditors or existing Entergy debt held by one or more unrelated creditors that is expected to be tendered in the debt exchange.
Entergy Gulf States Louisiana	Entergy Gulf States Louisiana, L.L.C.
Entergy Louisiana	Entergy Louisiana, LLC
Entergy Mississippi	Entergy Mississippi, Inc.
Entergy New Orleans	Entergy New Orleans, Inc.
Entergy Texas	Entergy Texas, Inc.
Entergy s Transmission Business (or Transmission Business of Entergy Corporation and Subsidiaries)	The transmission business currently held indirectly by Entergy. Entergy s Transmission Business consists of the Entergy transmission system, which is comprised of approximately 15,400 circuit miles of transmission lines operated at 69kV to 500kV and approximately 1,400 substations, as well as the employees and assets used to plan, operate and maintain that system. The Entergy transmission system spans portions of Arkansas, Louisiana, Mississippi, Missouri and Texas covering 114,000 square miles. Under the terms of the separation agreement, specified assets and liabilities used in Entergy s transmission business as described in this proxy statement/prospectus would transfer to ITC in connection with the separation, distribution and merger.

Table of Contents

ESI	Entergy Services, Inc., which is a service company that provides services to the Utility Operating Companies and which also owns certain assets related to the operation of Entergy s Transmission Business
The exchange trust	An irrevocable trust to be formed in the event that Entergy makes the exchange trust election under Delaware law into which Entergy will transfer the retained TransCo common units
The exchange trust election	Entergy s exercisable right to, at least thirty (30) business days prior to the closing of the merger, retain up to the number of TransCo common units that would convert in the merger into up to 4.9999% of the total number of shares of ITC common stock outstanding on a fully diluted basis immediately following the consummation of the merger that otherwise would have been distributed in the distribution.
FERC	Federal Energy Regulatory Commission
HSR Act	The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended
ICT	Independent coordinator of transmission
IRS	Internal Revenue Service
IRS rulings	Private letter rulings from the IRS with respect to the anticipated non-taxable nature of the transactions
ITC	ITC Holdings Corp.
ISO	Independent system operator that coordinates, controls and monitors the operation of large parts of the transmission system, usually within a single state, but sometimes across multiple states
kV or Kilovolt(s)	A common measure of electric potential, which equals one thousand volts
LPSC	Louisiana Public Service Commission
MBCA	The Business Corporation Act of the State of Michigan
The merger	The merger of Merger Sub with and into TransCo, with TransCo surviving the merger as a wholly owned subsidiary of ITC, as contemplated by the merger agreement
The merger agreement	The Merger Agreement, dated as of December 4, 2011, as amended by Amendment No. 1, dated September 21, 2012, and by Amendment No. 2, dated January 28, 2013, among Entergy, TransCo, ITC and Merger Sub (as the same may be amended from time to time)
Merger Sub	ITC Midsouth LLC (formerly known as Ibis Transaction Subsidiary LLC), which is a wholly owned subsidiary of ITC
MISO	Midwest Independent Transmission System Operator, Inc., a regional transmission organization
MPSC	Mississippi Public Service Commission

Table of Contents

MW or Megawatt(s)	A common measure of electric power, which equals one thousand kilowatts
NYSE	The New York Stock Exchange
OATT	Open Access Transmission Tariff, which is a pricing schedule required by FERC to prevent undue discrimination or preference in the transmission of electricity in interstate commerce
PUCT	Public Utility Commission of Texas
RTOs	Regional transmission organizations that administer the transmission grid on a regional basis throughout North America
The separation	The internal restructuring to separate and consolidate specified assets and liabilities used in Entergy s Transmission Business under TransCo pursuant to the separation agreement
The separation agreement	The Separation Agreement, dated as of December 4, 2011, as amended by Amendment No. 1, dated September 24, 2012, by and among Entergy, ITC, TransCo, each of the Utility Operating Companies and ESI (as the same may be amended from time to time)
SPP	Southwest Power Pool
The transactions	The separation, the distribution and the merger and related transactions
TransCo	Mid South TransCo LLC, which is currently a wholly-owned subsidiary of Entergy Corporation
TransCo common units	Limited liability company membership interests in TransCo
TransCo debt securities	Senior securities of TransCo issued to Entergy in partial consideration for the contribution of equity interests of the TransCo Subs to TransCo
TransCo Subs	The following newly formed subsidiaries of Entergy s Utility Operating Companies, the equity interests of which are to be transferred to TransCo pursuant to the separation: Transmission Company Arkansas, LLC; Transmission Company Louisiana I, LLC; Transmission Company Louisiana II, LLC; Transmission Company Mississippi, LLC; Transmission Company New Orleans, LLC and Transmission Company Texas, LLC.
TransCo Subs Financing	Bridge facility of the TransCo Subs, the proceeds of which will be distributed to Utility Operating Companies in connection with the contribution of each Utility Operating Company s transmission business to its respective TransCo Sub
U.S. GAAP	United States generally accepted accounting principles
Utility Operating Company (or Utility Operating Companies)	The following six companies that, prior to consummation of the transactions described in this proxy statement/prospectus, own the Entergy transmission system assets that are located in their respective service areas: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Texas, Inc.

Table of Contents

QUESTIONS AND ANSWERS ABOUT THE TRANSACTIONS AND THE SPECIAL MEETING

Q: What are ITC shareholders being asked to vote on at the special meeting?

A: In order to implement the merger, ITC shareholders are being asked to consider and vote on a proposal to approve the merger agreement, a proposal to amend ITC s amended and restated articles of incorporation to increase the number of authorized shares of ITC common stock to effectuate the merger and a proposal to approve the issuance of ITC common stock pursuant to the merger agreement (these proposals are collectively referred to as the merger proposals). Approval of each of the merger proposals by ITC shareholders is required for the completion of the merger. The approval of each of the merger proposals is conditioned upon the approval of each of the other merger proposals, and the merger will not occur unless all of the merger proposals are approved. ITC shareholders are also being asked to consider and vote on a proposal to approve, by non-binding advisory vote, certain compensation arrangements for ITC s named executive officers in connection with the merger contemplated by the merger agreement and to vote on the adjournment proposal.

The exact number of shares of ITC common stock to be issued to Entergy shareholders in connection with the merger is calculated based on a formula in the merger agreement, described on page 113 of this proxy statement/prospectus. We currently expect, based on the number of outstanding shares of ITC common stock as of January 18, 2013 and assuming the ITC recapitalization takes the form of a one-time special dividend, that ITC will issue to Entergy shareholders approximately 52,786,090 shares of ITC common stock as a result of the transactions, although the precise number of shares will not be known until closer to the closing date of the merger and could be significantly impacted by the form of the ITC recapitalization.

Q: When and where is the special meeting of ITC shareholders?

A: The special meeting of ITC shareholders will be held at [ ], local time, on [ ], 2013, at ITC corporate headquarters located at 27175 Energy Way, Novi, Michigan 48377.

Q: Who can vote at the special meeting of ITC shareholders?

A: Holders of ITC common stock can vote their shares at the special meeting if they are holders of record of those shares at the close of business on [ ], 2013, the record date for the special meeting.

Q: What vote is required to approve each proposal?

A: The proposal to approve the merger agreement and the proposal to amend ITC s amended and restated articles of incorporation to increase the number of authorized shares of ITC common stock each require the affirmative vote of holders of a majority of the outstanding shares of ITC common stock entitled to vote at the meeting. The proposal to approve the issuance of ITC common stock pursuant to the merger agreement requires the affirmative vote of a majority of the votes cast, in person or by proxy, at the special meeting. However, the approval of each of the merger proposals is conditioned upon the approval of each of the other merger proposals, and the merger will not occur unless all of the merger proposals are approved. The proposal to approve, by non-binding advisory vote, certain compensation arrangements for ITC s named executive officers in connection with the merger and the proposal to approve the adjournment proposal requires the affirmative vote of a majority of the votes cast, in person or by proxy, at the special meeting.

Q: How do ITC shareholders vote?

A: ITC shareholders may submit a proxy to vote before the special meeting in one of the following ways:

- calling the toll-free number shown on the proxy card to submit a proxy by telephone;
- visiting the website shown on the proxy card to submit a proxy via the Internet; or

Table of Contents

completing, signing, dating and returning the enclosed proxy card in the enclosed postage-paid envelope.

ITC shareholders may also vote in person by attending the special meeting and voting their shares.

Q: If an ITC shareholder is not going to attend the special meeting, should that shareholder return his or her proxy card or otherwise vote his or her shares?

A: Yes. Completing, signing, dating and returning the proxy card by mail or submitting a proxy by calling the toll-free number shown on the proxy card or submitting a proxy by visiting the website shown on the proxy card ensures that the shareholder s shares will be represented and voted at the special meeting, even if the shareholder is unable to or does not attend.

Q: If an ITC shareholder s shares are held in street name by his or her broker, will the broker vote the shares for the ITC shareholder?

A: A broker will vote a shareholder s shares only if the shareholder provides instructions to the broker on how to vote. ITC shareholders should follow the directions provided by their brokers regarding how to instruct the broker to vote their shares. Without instructions, the shares will not be voted, which will have the effect of a vote against the approval of the merger agreement, the amendment of ITC s amended and restated articles of incorporation to increase the number of authorized shares of ITC common stock and the approval, by non-binding advisory vote, of certain compensation arrangements for ITC s named executive officers in connection with the merger (though it will have no effect on the vote to approve the issuance of ITC common stock pursuant to the merger agreement or the adjournment proposal), and may result in the failure to establish a quorum for the special meeting.

Q: Can ITC shareholders change their vote?

A: Yes. Holders of record of ITC common stock who have properly completed and submitted their proxy card or proxy by telephone or Internet can change their vote in any of the following ways:

sending a written notice to the ITC Corporate Secretary that is received prior to the special meeting stating that the ITC shareholder revokes his or her proxy;

properly completing, signing and dating a new proxy card bearing a later date and properly submitting it so that it is received prior to the special meeting;

visiting the website shown on the proxy card and submitting a new proxy in the same manner that the shareholder would to submit his or her proxy via the Internet or by calling the toll-free number shown on the proxy card to submit a new proxy by telephone; or

attending the special meeting in person and voting their shares.

Simply attending the special meeting will not revoke a proxy.

An ITC shareholder whose shares are held in street name by his or her broker and who has directed that person to vote his or her shares should instruct that person in order to change his or her vote.

Q: What if ITC shareholders do not vote or abstain from voting?

A: If a holder of ITC common stock fails to submit his or her proxy or vote his or her shares or fails to instruct his or her broker or other nominee how to vote on the proposals to approve the merger agreement and to amend ITC s amended and restated articles of incorporation to increase the number of authorized shares of ITC common stock, that failure will have the same effect as a vote against those proposals. If a holder of ITC common stock

5

Table of Contents

fails to submit his or her proxy or vote his or her shares or fails to instruct his or her broker or other nominee how to vote on the proposal to issue shares of ITC common stock pursuant to the merger agreement, the proposal to approve, by non-binding advisory vote, certain compensation arrangements for ITC s named executive officers in connection with the merger or the adjournment proposal, that failure will have no effect on those proposals, assuming a quorum is present at the special meeting.

Holders of ITC common stock who submit proxy cards but do not indicate how they want to vote on a particular proposal will have their proxies counted as votes in favor of that proposal.

Q: Does the ITC board of directors support the merger?

A: Yes. The ITC board of directors has approved the merger agreement and the merger and recommends that ITC shareholders vote FOR the merger proposals.

Q: What should ITC shareholders do now?

A: After carefully reading and considering the information contained in this proxy statement/prospectus, ITC shareholders should submit a proxy by mail, via the Internet or by telephone to vote their shares as soon as possible so that their shares will be represented and voted at the special meeting. ITC shareholders should follow the instructions set forth on the enclosed proxy card or on the voting instruction form provided by the record holder if their shares are held in the name of a broker or other nominee.

Q: What are the transactions described in this proxy statement/prospectus?

A: The transactions are designed to effect the transfer of Entergy s Transmission Business to ITC. References to the transactions are to the separation, distribution, merger and related transactions to be entered into by Entergy, ITC, Merger Sub and TransCo, including their respective affiliates, as described under The Transactions and elsewhere in this proxy statement/prospectus.

Q: What will happen in the separation?

A: Prior to the merger, certain subsidiaries of Entergy will undergo an internal restructuring to separate and consolidate Entergy s Transmission Business under TransCo pursuant to the separation ag="font-family:Times New Roman" SIZE="2">

consolidate, merge, sell or otherwise dispose of our assets; and/or

change our line of business.

If the holders elect not to convert into the subsidiary, then at the maturity of the 2006 Notes, we may elect to repay the then outstanding balance in cash or in common stock, subject to certain limitations. If we elect to repay the notes in common stock, we are limited to the number of shares we can issue, whereby the note holders cannot beneficially own in excess of 9.99% of our outstanding common stock at any given time. At December 31, 2011, the outstanding principal balance of the 2006 Notes was $37.5 million.

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

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

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

While NewVac is establishing manufacturing capabilities in Russia, we are obligated to continue Oncophage manufacturing supply in our Lexington, MA, facility. As long as we manufacture Oncophage in the United States for importation into Russia, complexities unique to the logistics of this product may delay shipments and limit our ability to move commercial product in an efficient manner without incident.

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

Table of Contents

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

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

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

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

Oncophage is currently only approved for marketing in Russia for the adjuvant treatment of kidney cancer patients at intermediate-risk for disease recurrence and is the only product from our Prophage Series vaccines that is approved for marketing anywhere. The probability and timing of submissions and/or approval of Prophage Series vaccines in any other jurisdiction or indication is uncertain. Phase 2 trials testing the Prophage Series vaccine candidates G-100 and G-200 are currently underway in both newly diagnosed and recurrent glioma, respectively. There can be no assurance that these trials will support BLA filings.

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

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

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

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

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

Table of Contents

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

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

Our product candidates and the product candidates in development by our collaborative partners may fail because of intense competition from major pharmaceutical companies and specialized biotechnology companies that market products, or that are engaged in the development of product candidates, directed at cancer, infectious diseases and degenerative disorders. See Part I-Item 1 Business Competition in this Annual Report on Form 10-K.

Genentech markets Avastin and Eisai markets Gliadel, both for treatment of recurrent glioma. In addition, TVAX Biomedical is developing an immunotherapy candidate (TVI-Brain-1) for recurrent glioma. Schering Corporation, a subsidiary of Merck, markets Temodar for treatment of patients with newly diagnosed glioma. Other companies are developing vaccine candidates for the treatment of patients with newly diagnosed glioma, such as Innocell Corp (Immuncell-LC), ImmunoCellular Therapeutics (ICT-107), Northwest Biotherapeutics (DC-Vax) and Celldex (CDX-110). One or more of these companies may also develop product candidates for recurrent glioma.

There is no guarantee that our products or product candidates will be able to compete with potential future products being developed by our competitors. For example, Oncophage may compete with therapies currently in development for non-metastatic renal cell carcinoma, such as Wilex AG s Rencarex (WX-G250), sorafenib, sunitinib, temsirolimus, bevacizumab and pazopanib. As vaccines from our Prophage Series are potentially developed in other indications, they could face additional competition in those indications. In addition, and prior to regulatory approval, our Prophage Series vaccines and all of our other product candidates, may compete for access to patients with other products in clinical development, with products approved for use in the indications we are studying, or with off-label use of products in the indications we are studying. We anticipate that we will face increased competition in the future as new companies enter markets we seek to address and scientific developments surrounding immunotherapy and other traditional cancer therapies continue to accelerate.

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

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

We are aware of compounds that claim to be identical to QS-21 that are being used in clinical trials. Several other vaccine adjuvants are in development and could compete with QS-21 for inclusion in vaccines in development. These adjuvants include, but are not limited to, oligonucleotides, under development by Pfizer, Idera, Juvaris, and Dynavax, MF59 under development by Novartis, IC31, under development by Intercell, and MPL, under development by GSK. In the past, the Company has provided QS-21 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. Companies such as Adjuvance Technologies, Inc. and CSL

Table of Contents

Limited, as well as academic institutions, are developing saponin adjuvants, including derivatives and synthetic formulations. It is possible that these compounds could be substituted for the Company s QS-21 in partnered programs.

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

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

Our commercial and international operations experience and resources are limited and may need to be developed or acquired. If we fail to do so, our revenues may be limited or nonexistent. In addition, we may be required to incur significant costs and devote significant efforts to augment our existing capabilities.

As we have limited experience with commercial and international operations, it may be difficult to accurately estimate our costs. We currently do not have employees, manufacturing, or business operations facilities outside of the United States and we will rely significantly on consultants, partners, and other third parties to conduct our sales, marketing, and distribution operations. If these third parties are unable to fulfill their obligations this could have a material adverse effect on our commercialization efforts. If in the future we elect to perform sales, marketing, and distribution functions ourselves, we will face a number of additional risks, including the need to recruit experienced marketing and sales personnel, or incur significant expenditures. In addition, we may need to compete with other companies that have more experienced and better-funded operations. Where we have licensed our products to third-party collaborators or licensees, we will be dependent on their commercial operations, sales and marketing expertise and resources, and any revenues we receive from those products will depend primarily on the sales and marketing efforts of others.

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

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

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

Table of Contents

Except in the case of GSK and JANSSEN AI, we have retained worldwide manufacturing rights for QS-21. We have the right to subcontract manufacturing for QS-21 for our other existing and future QS-21 manufacturing and supply needs, and we have a supply agreement with a contract manufacturer for the production of QS-21 through September 2012. If we are not able to renew this agreement we may not be able to supply QS-21 to meet future supply obligations on favorable terms or at all. For example, although GSK is a source of QS-21 supply for us, their obligation to supply is for a limited duration, and various factors could impact our decision to exercise this right. In addition, we or our currently contracted suppliers may never have the ability to manufacture commercial grade QS-21

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

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

Manufacturing is also subject to extensive government regulation. Regulatory authorities must approve the facilities in which human health care products are produced. In addition, facilities are subject to ongoing inspections, and minor changes in manufacturing processes may require additional regulatory approvals, either of which could cause us to incur significant additional costs and lose revenue.

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

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

In return for rights to use QS-21, our licensees have generally agreed to pay us license fees, supply payments, milestone payments and royalties on product sales for a minimum of 10 years after commercial launch of a vaccine that utilizes QS-21. As each licensee controls its own product development process, we cannot predict our licensees requirements for QS-21 in the future or to what extent, if any, they will develop vaccines that use QS-21 as an adjuvant. Our licensees may initiate or cease programs containing QS-21 at any time. In the event that our licensees develop vaccines using QS-21, there is no guarantee that these products will obtain regulatory approval or, if so approved, will generate significant royalties, if any, or that we will be able to collect royalties, in the future.

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

Table of Contents

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

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

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

Clinical development, including preclinical testing and the process of obtaining and maintaining regulatory approvals for new therapeutic products, is lengthy, expensive, and uncertain. It also can vary substantially based on the type, complexity, and novelty of the product. We must provide regulatory authorities with manufacturing, product characterization, and preclinical and clinical data demonstrating that our product candidates are safe and effective before they can be approved for commercial sale. It may take us many years to complete our testing, and failure can occur at any stage of testing. Interim results of preclinical studies or clinical trials do not necessarily predict their final results, and acceptable results in early studies might not be seen in later studies. Any preclinical or clinical test may fail to produce results satisfactory to regulatory authorities for many reasons, including but not limited to insufficient product characterization, poor study structure conduct or statistical analysis planning, failure to enroll a sufficient number of patients or failure to prospectively identify the most appropriate patient eligibility criteria, and collectability of data. Preclinical and clinical data can be interpreted in different ways, which could delay, limit, or prevent regulatory approval. Negative or inconclusive results from a preclinical study or clinical trial, adverse medical events during a clinical trial, or safety issues resulting from products of the same class of drug could require a preclinical study or clinical trial to be repeated or cause a program to be terminated, even if other studies or trials relating to the program are successful. We or the FDA, other regulatory agencies, or an institutional review board may suspend or terminate human clinical trials at any time on various grounds. As of December 31, 2011, we have spent approximately 17 years and $292.0 million on our research and development program in heat shock proteins for cancer.

The timing and success of a clinical trial is dependent on enrolling sufficient patients in a timely manner, avoiding serious or significant adverse patient reactions, and demonstrating efficacy of the product candidate in order to support a favorable risk versus benefit profile, among other considerations. The timing and success of our clinical trials, in particular, are also dependent on clinical sites and regulatory authorities accepting each trial s protocol, statistical analysis plan, product characterization tests, and clinical data. In addition, regulatory authorities may request additional information or data that is not readily available. Delays in our ability to respond to such requests would delay, and failure to adequately address concerns would prevent, our commercialization efforts.

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 timeframe anticipated, and our business will suffer.

20

Table of Contents

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

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

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

From time to time, new legislation is passed into law that could significantly change the statutory provisions governing the approval, manufacturing, and marketing of products regulated by the FDA and other foreign health authorities. Additionally, regulations and guidance are often revised or reinterpreted by health agencies in ways that may significantly affect our business and our products. It is impossible to predict whether further legislative changes will be enacted, or whether regulations, guidance, or interpretations will change, and what the impact of such changes, if any, may be.

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

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

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

Table of Contents

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

We have been engaged in efforts to enter into licensing, distribution and/or collaborative agreements with one or more pharmaceutical or biotechnology companies to assist us with development and/or commercialization of our product candidates. If we are successful in entering into such agreements, we may not be able to negotiate agreements with economic terms similar to those negotiated by other companies. We may not, for example, obtain significant upfront payments, substantial royalty rates or milestones. If we fail to enter into any such agreements, our efforts to develop and/or commercialize our products or product candidates may be undermined. In addition, if we do not raise funds through any such agreements, we will need to rely on other financing mechanisms, such as sales of debt or equity securities, to fund our operations. Such financing mechanisms, if available, may not be sufficient or timely enough to advance our programs forward in a meaningful way in the short-term.

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

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

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

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

Development activities may fail to produce marketable products due to unsuccessful results or abandonment of these programs, failure to enter into future collaborations or license agreements, or the inability to manufacture product supply requirements for our collaborators and licensees. Several of our agreements also require us to transfer important rights and regulatory compliance responsibilities to our collaborators and licensees. As a result

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

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

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

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

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

If we are not able to protect our proprietary technology, trade secrets, and know-how, our competitors may use our past developments and technologies to develop competing products. We have exclusive rights to 74 issued United States patents and 113 issued foreign patents. We also have exclusive rights to 6 pending United States patent applications and 25 pending foreign patent applications. However, our patents may not protect us against our competitors. Our patent positions, and those of other pharmaceutical and biotechnology companies,

are generally uncertain and involve complex legal, scientific, and factual questions. The standards which the United States Patent and Trademark Office uses to grant patents, and the standards which courts use to interpret patents, are not always applied predictably or uniformly and can change, particularly as new technologies develop. Consequently, the level of protection, if any, that will be provided by our patents if we attempt to enforce them, and they are challenged, is uncertain. In addition, the type and extent of patent claims that will be issued to us in the future is uncertain. Any patents that are issued may not contain claims that permit us to stop competitors from using similar technology.

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

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

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

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

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

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

Table of Contents

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

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

Uncertainties resulting from the initiation and continuation of patent litigation or other proceedings could have a material adverse effect on our ability to enter into collaborations with other entities, obtain financing, or compete in the marketplace. Patent litigation and other proceedings may also absorb significant management time and other resources.

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

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

If we fail to retain the services of our key employees and external consultants we may not be able to achieve our strategic and operational objectives.

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

Effective December 1, 2005, we entered into an employment agreement with Dr. Armen. Subject to the earlier termination as provided in the agreement, the agreement had an original term of one year and is automatically extended thereafter for successive terms of one year each, unless either party provides notice to the other at least ninety days prior to the expiration of the original or any extension term. Dr. Armen plays an important role in our day-to-day activities. We do not carry key employee insurance policies for Dr. Armen or any other employee.

We also rely on a small staff of highly trained and experienced senior management and scientific, administrative and operations personnel and consultants to conduct our business. Reductions in our staffing levels have eliminated redundancies in key capabilities and skill sets among our full time staff and required us to

Table of Contents

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

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

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

Our directors and officers insurance policies provide $30.0 million of coverage. This insurance coverage may not be sufficient to cover us for future claims.

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

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

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

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

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

Table of Contents

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

Although we believe that our current procedures and programs for handling, storage, and disposal of these materials comply with federal, state, and local laws and regulations, we cannot eliminate the risk of accidents involving contamination from these materials. Although we have a workers compensation liability policy, we could be held liable for resulting damages in the event of an accident or accidental release, and such damages could be substantially in excess of any available insurance coverage and could substantially disrupt our business.

Risks Related to our Common Stock

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

According to publicly filed documents, Mr. Brad M. Kelley beneficially owns approximately 924,000 shares of our outstanding common stock and 31,620 shares of our series A convertible preferred stock. The shares of preferred stock are currently convertible at any time into approximately 333,000 shares of common stock at an initial conversion price of $94.86, are non-voting, and carry a 2.5% annual dividend yield. If Mr. Kelley had converted all of the shares of preferred stock on December 31, 2011, he would have held approximately 6% of our outstanding common stock. We currently have a right of first refusal agreement with Mr. Kelley that provides us with limited rights to purchase certain of Mr. Kelley s shares if he proposes to sell them to a third party.

According to publicly filed documents, Ingalls & Snyder, LLC beneficially owns 1,282,517 shares of our common stock, representing approximately 6% of our outstanding common stock. In addition, Ingalls & Snyder LLC holds $30.0 million aggregate principal amount of our 2006 Notes. Upon maturity in 2014, we may elect to repay the outstanding balance of our 2006 Notes in cash or in common stock, subject to certain limitations. If we elect to satisfy the outstanding balance with common stock at maturity (August 2014), the number of shares issued will be determined by dividing the cash obligation by 90 percent of the weighted average price of the common shares for the 20 trading days preceding the maturity date of the 2006 Notes. This right is subject to our market capitalization exceeding $300 million at such time. In no event will the note holder be obligated to accept equity that would result in them owning in excess of 9.99% of the Company s outstanding common stock at any given time in connection with any conversion, redemption, or repayment of the 2006 Notes.

Collectively, Mr. Kelley, Ingalls & Snyder LLC, and Dr. Armen, our Chief Executive Officer, control approximately 17% of our outstanding common stock as of December 31, 2011, providing the ability, if they vote in the same manner, to determine the outcome of matters submitted to a stockholder vote. If Mr. Kelley were to convert all of his preferred stock into common stock, the combined total would increase to 19%. Additional purchases of our common stock by Mr. Kelley also would increase both his percentage of outstanding voting rights and the percentage combined with our Chief Executive Officer. While Mr. Kelley s shares of preferred stock do not carry voting rights, the shares of common stock issuable upon conversion carry the same voting rights as other shares of common stock.

Table of Contents

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

Our common stock is currently listed on The Nasdaq Capital Market (Nasdaq) under the symbol AGEN. In the event that we fail to maintain compliance with the applicable listing requirements, our common stock could become subject to delisting from The Nasdaq Capital Market.

On March 3, 2011, we were notified by the Listing Qualifications Staff that we were not in compliance with the minimum bid price requirement set forth in Nasdaq Marketplace Rule 5550(a)(2) (the Bid Price Requirement) because the bid price for our common stock had closed below the minimum $1.00 per share requirement for 30 consecutive business days.

On October 3, 2011, we effected a one-for-six reverse stock split of our common stock to, in part, regain compliance with the Bid Price Requirement. On October 17, 2011, we received notice from the Nasdaq Listing Qualification Panel (the Panel) that we had regained compliance with the Bid Price Requirement and otherwise satisfied all requirements for continued listing on Nasdaq. Though the bid price of our common stock has remained above $1.00 per share since the reverse split, we cannot guarantee that it will remain at or above $1.00 per share. If the bid price drops below $1.00 per share, our common stock could become subject to delisting again, and we may need to seek shareholder approval for an additional reverse split. A second reverse split could produce negative effects and we cannot provide any assurance that it would result in a long-term or permanent increase in the bid price of our common stock. For example, a second reverse split could make it more difficult for us to comply with other listing standards of Nasdaq, including requirements related to the minimum number of shares that must be in the public float, the minimum market value of publicly held shares and the minimum number of round lot holders. In addition, investors might consider the increased proportion of unissued authorized shares of common stock to issued shares of common stock to have an anti-takeover effect under certain circumstances by allowing for dilutive issuances which could prevent certain shareholders from changing the composition of our Board of Directors. Although we are currently in compliance with all of the listing standards for listing on Nasdaq, we cannot provide any assurance that we will continue to be in compliance in the future. This was the third time we were non-compliant with the Bid Price Requirement since our move to The Nasdaq Capital Market in April 2009.

We have implemented a reverse stock split, which has reduced our trading volume and may result in a decrease in our market capitalization.

On October 3, 2011, we implemented a one-for-six reverse stock split of our common stock to, in part, regain compliance with the Nasdaq Bid Price Requirement. We cannot guarantee that the increase of our common stock price resulting from the reverse split will be proportionate to the reverse split ratio, will last in the marketplace for any length of time, will remain at a price sufficient to meet the listing requirements of Nasdaq or will be sufficient to facilitate raising capital.

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

Table of Contents

advance notice of stockholder proposals and director nominations and permit only our President or a majority of the Board of Directors to call a special stockholder meeting. These provisions may have the effect of preventing or hindering attempts by our stockholders to replace our current management. In addition, Delaware law prohibits a corporation from engaging in a business combination with any holder of 15% or more of its capital stock until the holder has held the stock for three years unless, among other possibilities, the board of directors approves the transaction. Our Board of Directors may use this provision to prevent changes in our management. Also, under applicable Delaware law, our Board of Directors may adopt additional anti-takeover measures in the future.

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

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

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

Between our initial public offering on February 4, 2000 and December 31, 2011, and for the year ended December 31, 2011, the closing price of our common stock has fluctuated between $1.80 and $315.78 per share and $2.00 and $6.66 per share, respectively. The average daily trading volume for the year ended December 31, 2011 was approximately 79,000 shares. The market may experience significant price and volume fluctuations that are often unrelated to the operating performance of individual companies. In addition to general market volatility, many factors may have a significant adverse effect on the market price of our stock, including:

- continuing operating losses, which we expect over the next several years as we continue our development activities;
- announcements of decisions made by public officials;
- results of our preclinical studies and clinical trials;
- announcements of new collaboration agreements with strategic partners or developments by our existing collaborative partners;
- announcements of technological innovations, new commercial products, failures of products, or progress toward commercialization by our competitors or peers;
- developments concerning proprietary rights, including patent and litigation matters;

publicity regarding actual or potential results with respect to product candidates under development; and

quarterly fluctuations in our financial results.

Table of Contents

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

The sale by us or the resale by stockholders of a significant number of shares of our common stock could cause the market price of our common stock to decline. As of December 31, 2011, we had approximately 21,492,000 shares of common stock outstanding. All of these shares are eligible for sale on The Nasdaq Capital Market, although certain of the shares are subject to sales volume and other limitations. We have filed registration statements to permit the sale of approximately 4,167,000 shares of common stock under our equity incentive plans. We have also filed registration statements to permit the sale of approximately 167,000 shares of common stock under our employee stock purchase plan, to permit the sale of 125,000 shares of common stock under our Directors Deferred Compensation Plan, to permit the sale of approximately 8,274,000 shares of common stock pursuant to various private placement agreements and to permit the sale of approximately 3,333,000 shares of our common stock pursuant to our At the Market Sales Agreement. As of December 31, 2011, an aggregate of 7.3 million shares remain available for sale under these registration statements. The market price of our common stock may decrease based on the expectation of such sales.

As of December 31, 2011, options to purchase 1,814,161 shares of our common stock with a weighted average exercise price per share of $8.38 were outstanding. These options are subject to vesting that occurs over a period of up to four years following the date of grant. As of December 31, 2011, we have 135,791 nonvested shares outstanding.

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

The Sarbanes-Oxley Act of 2002 and rules adopted by the Securities and Exchange Commission and the 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, 2011, 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 1B. ***Unresolved Staff Comments***

None

Table of Contents

Item 2. ***Properties***

We maintain our corporate offices in Lexington, Massachusetts. During April 2011, we executed a Fifth Amendment of Lease reducing our occupied space in this facility from approximately 162,000 square feet to approximately 82,000 square feet. This lease agreement terminates in August 2013 with an option to renew for two additional ten-year periods. We have sublet a portion of this facility under a lease that expires in July 2012.

We also lease approximately 5,400 square feet in an office building in New York, New York. Our New York lease terminates in April 2012.

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

Item 3. ***Legal Proceedings***

Agenus, our Chairman and Chief Executive Officer (CEO), Garo H. Armen, Ph.D., and two investment banking firms that served as underwriters in our initial public offering were named as defendants in a federal civil class action lawsuit in the United States District Court for the Southern District of New York. Substantially similar actions were filed concerning the initial public offerings for more than 300 different issuers, and the cases were coordinated for pre-trial purposes as In re Initial Public Offering Securities Litigation, 21 MC 92. The suit alleged that the brokerage arms of the investment banking firms charged secret excessive commissions to certain of their customers in return for allocations of our stock in the offering. The suit also alleged that shares of our stock were allocated to certain of the investment banking firms customers based upon agreements by such customers to purchase additional shares of our stock in the secondary market. These coordinated lawsuits were resolved pursuant to a global settlement. Any portion of the settlement attributable to Agenus has been funded by insurance, and Agenus bears no financial liability. Appeals filed by various objectors to the settlement have been dismissed.

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

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

Not applicable

Executive Officers of the Registrant

Set forth below is certain information regarding our current and certain former executive officers, including their age, as of March 1, 2012:

Name	Age	Title
Garo H. Armen, Ph.D.	59	Chairman of the Board and Chief Executive Officer
Shalini Sharp	37	Vice President and Chief Financial Officer
Christine M. Klaskin	46	Vice President, Finance and Principal Accounting Officer
Karen H. Valentine	40	Vice President and General Counsel
Kerry A. Wentworth	39	Vice President, Clinical, Regulatory & Quality

Table of Contents

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

Shalini Sharp Ms. Sharp is Chief Financial Officer of Agenus Inc. Prior to joining Agenus Inc. in 2003, Ms. Sharp was director of strategic planning at Elan Corporation, plc., where she served as chief of staff to the chairman of the board during the restructuring process and drove to completion a number of strategic corporate and financial transactions. Ms. Sharp was previously a management consultant at McKinsey & Company, specializing in pharmaceuticals and medical devices. Ms. Sharp received her BA and MBA from Harvard University.

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

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

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

Table of Contents

PART II

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

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

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

	High	Low
2010		
First Quarter	$ 7.20	$ 3.60
Second Quarter	10.32	4.20
Third Quarter	6.72	4.38
Fourth Quarter	6.72	5.22
2011		
First Quarter	6.96	5.16
Second Quarter	6.72	4.62
Third Quarter	5.10	2.76
Fourth Quarter	4.43	1.92

As of February 16, 2012, there were approximately 1,700 holders of record and approximately 21,000 beneficial holders of our common stock.

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

Stock Performance

The following graph shows the cumulative total stockholder return on our common stock over the period from December 31, 2006 to December 31, 2011, as compared with that of the Nasdaq Stock Market (U.S. Companies) Index and the Nasdaq Biotechnology Index, based on an initial investment of $100 in each on December 31, 2006. Total stockholder return is measured by dividing share price change plus dividends, if any, for each period by the share price at the beginning of the respective period, and assumes reinvestment of dividends.

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

Table of Contents

COMPARISON OF CUMULATIVE TOTAL RETURN OF AGENUS INC.,

NASDAQ STOCK MARKET (U.S. COMPANIES) INDEX

AND NASDAQ BIOTECHNOLOGY INDEX

	12/31/2006	12/31/2007	12/31/2008	12/31/2009	12/31/2010	12/31/2011
Agenus Inc.	100.00	111.48	26.23	34.97	55.19	18.21
NASDAQ Stock Market (U.S. Companies) Index	100.00	109.81	65.29	93.95	109.84	107.86
NASDAQ Biotechnology Index	100.00	104.58	91.38	105.66	121.52	135.86

Recent Sales of Unregistered Securities None

Information concerning our equity compensation plans is set forth in our Definitive Proxy Statement with respect to our 2012 Annual Meeting of Stockholders to be filed with the Securities and Exchange Commission no later than 120 days after the end of the fiscal year under the heading Equity Plans, which is incorporated herein by reference.

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

We have derived the consolidated balance sheet data set forth below as of December 31, 2011 and 2010, and the consolidated statement of operations data for each of the years in the three-year period ended December 31, 2011, from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

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

Table of Contents

Given our history of incurring operating losses, management believes that it is more likely than not that any deferred tax assets will not be realized through future earnings. Therefore, no income tax benefit has been recognized in the consolidated statements of operations because of the loss before income taxes, and the need to recognize a valuation allowance on the portion of our deferred tax assets, which will not be offset by the reversal of deferred tax liabilities (see Note (1) below).

Changes in cash, cash equivalents, and short-term investments, total current assets, total assets, and stockholders deficit in the periods presented below include the effects of the receipt of net proceeds from our debt offerings, equity offerings, the exercise of stock options and warrants, and employee stock purchases that totaled approximately $8.1 million, $11.6 million, $18.7 million, $46.9 million, and $4.6 million in the years ended December 31, 2011, 2010, 2009, 2008, and 2007, respectively.

	For the Year Ended December 31,				
	2011	2010	2009	2008	2007
	(In thousands, except per share data)				
Consolidated Statement of Operations Data:					
Revenue	$ 2,756	$ 3,360	$ 3,334	$ 2,651	$ 5,552
Operating expenses:					
Cost of goods sold		(123)			
Research and development	(11,023)	(12,878)	(16,903)	(20,663)	(21,789)
General and administrative	(10,820)	(12,112)	(14,110)	(19,832)	(17,041)
Loss from operations	(19,087)	(21,753)	(27,679)	(37,844)	(33,278)
Non-operating income	2	4,680	2,568	12,356	1
Interest expense, net	(4,191)	(4,834)	(5,207)	(5,313)	(4,658)
Net loss (1)	(23,276)	(21,907)	(30,318)	(30,801)	(37,935)
Dividends on series A convertible preferred stock	(790)	(790)	(790)	(790)	(790)
Net loss attributable to common stockholders	(24,066)	$ (22,697)	$ (31,108)	$ (31,591)	$ (38,725)
Net loss attributable to common stockholders per common share, basic and diluted	$ (1.21)	$ (1.41)	$ (2.36)	$ (3.00)	$ (5.00)
Weighted average number of shares outstanding, basic and diluted	19,899	16,108	13,170	10,542	7,752

	December 31,				
	2011	2010	2009	2008	2007
	(In thousands)				
Consolidated Balance Sheet Data:					
Cash, cash equivalents, and short-term investments	$ 10,748	$ 19,782	$ 30,065	$ 34,463	$ 18,679
Total current assets	12,004	20,854	31,533	35,486	20,782
Total assets	19,808	30,907	45,874	56,822	44,351
Total current liabilities	4,754	5,416	5,355	6,997	8,383
Long-term debt, less current portion	32,726	34,050	49,494	64,126	71,524
Stockholders deficit	(20,831)	(14,707)	(16,975)	(20,330)	(41,370)

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

Table of Contents

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

Overview

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

QS-21 is an adjuvant, or a substance added to a vaccine or other immunotherapy that is intended to enhance immune response. The key licensees of QS-21 are GlaxoSmithKline (GSK) and JANSSEN Alzheimer Immunotherapy (JANSSEN AI). There are approximately 15 vaccines containing QS-21 in clinical development by our licensees, including a total of four in Phase 3 testing for malaria, melanoma, non-small cell lung cancer and shingles. The first products containing QS-21 are anticipated to be launched in the 2013-2014 timeframe, and we are entitled to royalties for at least 10 years post-launch.

The Prophage Series vaccines are a patient specific application of our HSP Platform. The Prophage Series vaccine R-100 is referred to as Oncophage® vaccine (vitespen) and is approved in Russia for the treatment of renal cell carcinoma (RCC ; kidney cancer) in patients at intermediate risk of recurrence. In December 2011, we granted NewVac LLC (a subsidiary of ChemRar Ventures LLC) an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. In addition, Phase 2 trials are underway in the United States testing the Prophage Series vaccine candidates G-100 and G-200 in newly diagnosed and recurrent glioma, respectively.

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

In addition to our internal development efforts, we continue to pursue partnering opportunities. We are seeking partners for select products in our portfolio, which include the Prophage G-Series vaccines, G-100 and G-200, QS-21, and HerpV. We are also exploring in-licensing opportunities. Our business activities have included product research and development, intellectual property prosecution, manufacturing, regulatory and clinical affairs, corporate finance and development, market development, business development, and support of our collaborations. Research and development expenses for the years ended December 31, 2011, 2010, and 2009, were $11.0 million, $12.9 million, and $16.9 million, respectively. We have incurred significant losses since our inception. As of December 31, 2011, we had an accumulated deficit of $607.7 million.

We have financed our operations primarily through the sale of equity and convertible notes. We believe that, based on our current plans and activities, our working capital resources at December 31, 2011 and the net proceeds raised from equity sales and license agreements since year-end, along with the estimated proceeds from our license, supply, and collaborative agreements, will be sufficient to satisfy our liquidity requirements through 2013 based on our estimated annual use of cash of $13-16 million during 2012. We expect to attempt to raise additional funds in advance of depleting our funds. We may attempt to raise additional funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling equity securities. Satisfying long-term liquidity needs may require the successful commercialization and/or one or more partnering arrangements for (1) our product, Oncophage and/or our other Prophage Series vaccines, (2) vaccines containing QS-21 under development by our licensees, and/or (3) potentially other product candidates, each of which will require additional capital.

Table of Contents

Our common stock is currently listed on The Nasdaq Capital Market under the symbol AGEN . In April 2009, we moved from The Nasdaq Global Market to The Nasdaq Capital Market as part of our plan to regain compliance with minimum market value requirements. On March 3, 2011, we were notified by the Listing Qualifications Staff of Nasdaq (the Staff) that we were not in compliance with the minimum bid requirement set forth in Nasdaq Marketplace Rule 5550(a)(2) (the Bid Price Requirement) because the bid price for our common stock had closed below the minimum $1.00 per share requirement for 30 consecutive business days. Effective October 3, 2011, our certificate of incorporation was amended to effect a reverse stock split of our common stock on the basis of one post-split share for every six pre-split shares to, in part, regain compliance with the Bid Price Requirement. On October 17, 2011, we received notice from the Nasdaq Listing Qualifications Panel (the Panel) that we had regained compliance with the Bid Price Requirement and otherwise satisfied the requirements for continued listing on Nasdaq.

Historical Results of Operations

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

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

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

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

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

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

Year Ended December 31, 2010 Compared to the Year Ended December 31, 2009

Revenue: We generated revenue of $3.4 million and $3.3 million during the years ended December 31, 2010 and 2009, respectively. Revenue includes revenue earned on shipments of QS-21 to our QS-21 licensees, license fees, royalties earned, and in 2010, grants earned and Oncophage sales. In the years ended December 31, 2010 and 2009, we recorded $1.5 million each period from the amortization of deferred revenue related to our QS-21 partnered programs.

Table of Contents

Research and Development: Research and development expenses include the costs associated with our internal research and development activities, including compensation and benefits, occupancy costs, clinical manufacturing costs, costs of consultants, and administrative costs. Research and development expense decreased 24% to $12.9 million for the year ended December 31, 2010 from $16.9 million for the year ended December 31, 2009. The decrease included declines of $1.7 million for personnel related expenses and $367,000 for facility related costs primarily due to cost containment efforts, and $1.8 million for various outside services primarily related to the status of our efforts in Russia and other territories.

General and Administrative: General and administrative expenses consist primarily of personnel costs, facility expenses, and professional fees. General and administrative expenses decreased 14% to $12.1 million for the year ended December 31, 2010 from $14.1 million for the year ended December 31, 2009. This decrease is largely attributable to declines of $1.5 million for various outside services primarily relating to the status of our efforts in Russia and other territories, and $145,000 in employee and director noncash share-based compensation expense.

Interest Expense: Interest expense decreased to $4.9 million for the year ended December 31, 2010 from $5.3 million for the year ended December 31, 2009. This decrease is related to the repurchase of a portion of our 2005 Notes. Interest on our 2006 Notes is payable semi-annually on December 30 and June 30 in cash or, at our option, in additional notes or a combination thereof. During the years ended December 31, 2010 and 2009, interest expense included $2.6 million and $2.4 million, respectively, paid in the form of additional 2006 Notes.

Interest Income: Interest income decreased 73% to $38,000 for the year ended December 31, 2010 from $137,000 for the year ended December 31, 2009. This decrease is primarily attributable to a decrease in our average cash, cash equivalents and short-term investments balance coupled with declining interest rates earned on our cash, cash equivalents, and short-term investments. Our average interest rate earned decreased from 0.49% for the year ended December 31, 2009 to 0.15% for the year ended December 31, 2010.

Research and Development Programs

Prior to 2002, we did not track costs on a per project basis, and therefore have estimated the allocation of our total research and development costs to our largest research and development programs for that time period. During 2011, these research and development programs consisted largely of our Prophage Series vaccines and QS-21, as indicated in the following table (in thousands).

Research and Development Program	Product	Year Ended December 31, 2011	2010	2009	Prior to 2009	Total
Heat shock proteins for cancer	Prophage Series Vaccines	$ 10,182	$ 10,960	$ 15,309	$ 255,582	$ 292,033
Heat shock proteins for infectious diseases	HerpV	734	644	262	17,448	19,088
Vaccine adjuvant *	QS-21	94	1,185	1,071	10,148	12,498
Other research and development programs		13	89	261	33,177	33,540
Total research and development expenses		$ 11,023	$ 12,878	$ 16,903	$ 316,355	$ 357,159

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

Research and development program costs include compensation and other direct costs plus an allocation of indirect costs, based on certain assumptions and our review of the status of each program. Our Prophage Series vaccines are in various stages of development as described below. Significant additional expenditures will be required if we start new trials, encounter delays in our programs, apply for regulatory approvals, continue

Table of Contents

development of our technologies, expand our operations, and/or bring our product candidates to market. The eventual total cost of each clinical trial is dependent on a number of factors such as trial design, length of the trial, number of clinical sites, and number of patients. The process of obtaining and maintaining regulatory approvals for new therapeutic products is lengthy, expensive, and uncertain. Because the further development of our Prophage Series vaccines is subject to evaluation and uncertainty, and because HerpV is an early-stage clinical development candidate, we are unable to reliably estimate the cost of completing our research and development programs, the timing of bringing such programs to various markets, and, therefore, when, if ever, material cash inflows are likely to commence. Programs involving QS-21 depend on our collaborative partners or licensees successfully completing clinical trials, successfully manufacturing QS-21 to meet demand, obtaining regulatory approvals and successfully commercializing product candidates containing QS-21.

Product Development Portfolio

QS-21

QS-21 Stimulon® adjuvant, from our Saponin Platform, is an adjuvant, or a substance added to a vaccine or other immunotherapy, that is intended to enhance immune response. The key licensees of QS-21 are GSK and JANSSEN AI. There are 15 vaccines containing QS-21 in clinical development, including a total of four in Phase 3 testing for malaria, melanoma, non-small cell lung cancer and shingles. The first products containing QS-21 are anticipated to be launched in the 2013-2014 timeframe. The pipeline of product candidates containing QS-21 is extraordinarily diverse, encompassing prophylactic as well as therapeutic vaccines for infectious diseases, multiple cancer types, and Alzheimer s disease. The Company does not incur clinical development costs for these products. For additional information regarding QS-21, please read Part I-Item 1. Business of this Annual Report on Form 10-K.

Prophage Series Vaccines

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

We believe that the collective results from clinical trials thus far show that the vaccine candidates that have been clinically evaluated have a favorable safety profile. We also believe that available results from clinical trials suggest that treatment with the Prophage Series vaccines can generate immunological and anti-tumor responses. For additional information regarding our Prophage Series vaccines, please read Part I-Item 1. Business of this Annual Report on Form 10-K.

Liquidity and Capital Resources

We have incurred annual operating losses since inception, and we had an accumulated deficit of $607.7 million as of December 31, 2011. We expect to incur significant losses over the next several years as we continue clinical trials, apply for regulatory approvals, prepare for commercialization, and continue development of our technologies. We have financed our operations primarily through the sale of equity and convertible notes, and interest income earned on cash, cash equivalents, and short-term investment balances. From our inception through December 31, 2011, we have raised aggregate net proceeds of $514.4 million through the sale of common and preferred stock, the exercise of stock options and warrants, proceeds from our employee stock purchase plan, and the issuance of convertible notes. During February 2010, we entered into an At the Market Sales Agreement (the 2010 ATM) with McNicoll, Lewis & Vlak LLC and Wm Smith & Co (the Sales Agents) under which we were able to sell an aggregate of up to 3,333,333 shares of our common stock from

Table of Contents

time to time through the Sales Agents. As of February 29, 2012, we issued approximately 2.4 million shares of our common stock in at the market offerings through the Sales Agents and raised net proceeds of approximately $12.6 million after deducting offering costs of approximately $450,000. As of December 31, 2011, we had debt outstanding of $37.9 million in principal, including $37.5 million in principal of our 2006 Notes maturing August 31, 2014 and $100,000 in principal of our 2005 Notes maturing February 20, 2025. The 2005 Notes are currently redeemable by us or at the option of the holders on February 1, 2015 and 2020.

Our cash, cash equivalents, and short-term investments at December 31, 2011 were $10.7 million, a decrease of $9.0 million from December 31, 2010. We believe that, based on our current plans and activities, our cash balance of $10.7 million as of December 31, 2011, plus the $18 million net proceeds from equity offerings and license agreements since year-end, along with the estimated additional proceeds from our license, supply, and collaborative agreements will be sufficient to satisfy our liquidity requirements through 2013 based on our estimated annual use of cash of $13-16 million during 2012. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations.

We believe that, based on our current plans and activities, our working capital resources at December 31, 2011 and the net proceeds raised from equity sales and license agreements since year-end, along with the estimated proceeds from our license, supply, and collaborative agreements, will be sufficient to satisfy our liquidity requirements into 2013. We closely monitor our cash needs. 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 commercially feasible. In addition, we will continue to adjust other spending as needed in order to preserve liquidity. We expect to attempt to raise additional funds in advance of depleting our current funds. In order to fund our operations through 2012 and beyond, we will need to contain costs and raise additional funds. We may attempt to raise additional funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing and/or (5) selling additional equity securities. Our ability to successfully enter into any such arrangements is uncertain, and if funds are not available, or not available on terms acceptable to us, we may be required to revise our planned clinical trials, other development activities, capital expenditures, and/or the scale of our operations. As noted above, we expect to attempt to raise additional funds in advance of depleting our funds; however, we may not be able to raise funds or raise amounts sufficient to meet the long-term needs of the business. Satisfying long-term liquidity needs may require the successful commercialization of Oncophage and/or one or more partnering arrangements for our other Prophage Series vaccines, successful commercialization of vaccines containing QS-21 under development by our licensees, and potentially successful commercialization of other product candidates, each of which will require additional capital, as discussed above. We hope to earn royalties from our QS-21 product in the 2013-2014 timeframe. Please see Note Regarding Forward-Looking Statements on page 2 of this Annual Report on Form 10-K and the risks highlighted under Part I-Item 1A. Risk Factors of this Annual Report on Form 10-K.

Our future cash requirements include, but are not limited to, supporting clinical trial and regulatory efforts and continuing our other research and development programs. Since inception, we have entered into various agreements with institutions and clinical research organizations to conduct and monitor our clinical studies. Under these agreements, subject to the enrollment of patients and performance by the applicable institution of certain services, we have estimated our payments to be $47.6 million over the term of the studies. Through December 31, 2011, we have expensed $47.1 million as research and development expenses and $46.8 million has been paid related to these clinical studies. The timing of expense recognition and future payments related to these agreements is subject to the enrollment of patients and performance by the applicable institution of certain services.

We have also entered into sponsored research agreements related to our product candidates that required payments of $6.5 million, all of which has been paid as of December 31, 2011. We plan to enter into additional sponsored research agreements, and we anticipate significant additional expenditures will be required to advance

Table of Contents

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

Net cash used in operating activities for the year ended December 31, 2011 and 2010 was $16.2 million and $14.8 million, respectively. We continue to support and develop our QS-21 partnering collaborations, with the goal of earning royalties from this product in the 2013-2014 timeframe. Our future ability to generate cash from operations will depend on achieving regulatory approval of our product candidates, and market acceptance of Oncophage and our product candidates, achieving benchmarks as defined in existing collaborative agreements, and our ability to enter into new collaborations. Please see Note Regarding Forward-Looking Statements on page 2 of this Annual Report on Form 10-K section and the risks highlighted under Part I-Item 1A. Risk Factors of this Annual Report on Form 10-K.

The table below summarizes our contractual obligations as of December 31, 2011 (in thousands).

		Payments Due by Period			
	Total	Less than 1 Year	1 3 Years	3 5 Years	More than 5 Years
Long-term debt (1)	$ 46,710	$ 268	$ 46,339	$ 103	$
Operating leases (2)	1,861	1,137	724		
Total	$ 48,571	$ 1,405	$ 47,063	$ 103	$

(1) Assumes the 2006 Notes are not converted and are paid at maturity on August 31, 2014. In certain circumstances, the 2006 Notes could be converted before then. Also includes fixed interest payments, some of which may be paid in kind, and assumes that the 2005 Notes are not converted and are paid on February 1, 2015. In certain circumstances, the 2005 Notes could be converted before then. In addition, the holders of the 2005 Notes can require us to purchase debt from them at certain dates between 2012 and 2020. If the 2005 Notes are not converted and we are not required to purchase the debt, the 2005 Notes mature on February 1, 2025. If the 2005 Notes were outstanding until maturity, there would be additional interest payments of $68,000 for the period 2012 through 2025.

(2) Effective July 30, 2010, we sublet part of our Lexington facility to Cubist Pharmaceuticals, Inc. whose lease expires in July 2012. Our Lexington facility and New York office leases expire August 2013 and April 2012, respectively.

Inflation

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

Off-Balance Sheet Arrangements

At December 31, 2011, we had no off-balance sheet arrangements.

Table of Contents

Critical Accounting Policies and Estimates

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

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

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

Share-Based Compensation

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

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

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

Fair Value Accounting Derivative Liability

As a result of the adoption of certain guidance within ASC 815-40, *Derivatives and Hedging- Contracts In Entity s Own Equity,* as of January 1, 2009, the conversion feature embedded in our 2006 Notes was treated as a derivative and recorded at its fair value, with period to period changes in the fair value recorded as a gain or loss in our consolidated statement of operations. In February 2011, we entered into a Ninth Amendment of Rights Agreement for the 2006 Notes and as amended, the 2006 Notes no longer fall within this guidance since they are no longer convertible into our common stock, therefore the conversion option is no longer a derivative liability.

Table of Contents

We measured fair value based on a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company s assumptions about the inputs that market participants would use in pricing the asset or liability and are developed based on the best information available in the circumstances. Our derivative liability was valued based on significant unobservable inputs.

Revenue Recognition

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

Recent Accounting Pronouncements

In December 2010, the Financial Accounting Standards Board (FASB) issued additional guidance on when to perform Step 2 of the goodwill impairment test for reporting units with zero or negative carrying amounts. The criteria for evaluating Step 1 of the goodwill impairment test and proceeding to Step 2 was amended for reporting units with zero or negative carrying amounts and requires performing Step 2 if qualitative factors indicate that it is more likely than not that a goodwill impairment exists. This guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2010. Upon adoption of this guidance on January 1, 2011, we had a negative carrying value but determined there were no qualitative factors that indicated it was more likely than not that a goodwill impairment existed and accordingly, Step 2 of the goodwill impairment test was not required to be performed. The adoption of this amended guidance did not have any impact on our consolidated financial statements.

In September 2011, the FASB amended the guidance on the annual testing of goodwill for impairment. This amended guidance permits companies to assess qualitative factors to determine whether to perform the two-step goodwill impairment test. This amendment is effective for fiscal years beginning after December 15, 2011 with early adoption permitted. We do not anticipate any material impact of this guidance on our consolidated financial statements.

In June 2011, the FASB issued Accounting Standard Update No. 2011-05, Comprehensive Income (ASU 2011-05) which increases the prominence of other comprehensive income in financial statements. Under this standard, the components of net income and other comprehensive income must be presented in either one or two consecutive financial statements. The standard eliminates the option to present other comprehensive income in the statement of changes in equity. ASU 2011-05 is effective for fiscal years beginning after December 15, 2011 and interim and annual periods thereafter. The standard should be applied retrospectively and early adoption is permitted. Adoption of this standard will impact only the presentation of our financial information. In December 2011, the FASB decided to defer the effective date of those changes in ASU 2011-05 that relate only to the presentation of reclassification adjustments in the statement of income by issuing ASU 2011-12, Comprehensive Income.

In December 2011, the FASB issued ASU No. 2011-11, Balance Sheet (Topic 210): Disclosures about Offsetting Assets and Liabilities (ASU 2011-11). The amendments in ASU 2011-11 require companies to disclose information about offsetting and related arrangements to enable users of their financial statements to understand the effects of those arrangements on its financial position. ASU 2011-11 is required to be applied retrospectively for all prior periods presented and is effective for fiscal years, and interim periods within those years, beginning on or after January 1, 2013. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

Table of Contents

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

In the normal course of business, we are exposed to fluctuations in interest rates as we seek debt financing and invest excess cash. We are also exposed to foreign currency exchange rate fluctuation risk related to our transactions denominated in foreign currencies. We do not currently employ specific strategies, such as the use of derivative instruments or hedging, to manage these exposures. Our currency exposures vary, but are primarily concentrated in the Euro. During the year ended December 31, 2011, there has been no material change with respect to our interest rate and foreign currency exposures or our approach toward those exposures. However, we are exploring possible commercialization of Oncophage outside of the U.S., which could result in increased foreign currency exposure.

The information below summarizes our market risks associated with debt obligations as of December 31, 2011. Fair value included herein has been estimated taking into consideration the nature and terms of each instrument and the prevailing economic and market conditions at December 31, 2011. The table presents principal payments by year of maturity based on the terms of the debt (in thousands).

	Estimated Fair Value (2)	Outstanding Principal Amount December 31, 2011	Year of Maturity			
			2012	2013	2014	2015
Long-term debt (1)	$ 30,837	$ 37,885	$ 198	$ 87	$ 37,500	$ 100

(1) Fixed interest rates range from 5.25% to 8%. The above table is based on the assumptions that future interest on the 2006 Notes is paid in cash and that these notes are not converted at maturity August 31, 2014. In certain circumstances, the 2006 Notes could be converted before then. In addition, the table is based on the assumption that the 2005 Notes are redeemed on February 1, 2015. In certain circumstances, the 2005 Notes could be converted on or before February 1, 2015. The note holders of our 2005 Notes can require us to redeem debt at certain dates between 2015 and 2020. If the 2005 Notes are not converted and we are not required to purchase the notes, they mature on February 1, 2025.

(2) The estimated fair value of our long-term debt was derived by evaluating the nature and terms of each note and considering the prevailing economic and market conditions at the balance sheet date. In addition, the fair value of our 2005 Notes was estimated based on the most recent market transactions.

We had cash and cash equivalents at December 31, 2011 of $10.7 million, which are exposed to the impact of interest and foreign currency exchange rate changes, and our interest income fluctuates as interest rates change. Due to the short-term nature of our investments in money market funds, our carrying value approximates the fair value of these investments at December 31, 2011, however, we are subject to investment risk.

We invest our cash, cash equivalents, and short-term investments 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. Our investments are also subject to interest rate risk and will decrease in value if market interest rates increase. However, due to the conservative nature of our investments and relatively short duration, interest rate risk is mitigated. We do not invest in derivative financial instruments. Accordingly, we do not believe that there is currently any material market risk exposure with respect to derivative or other financial instruments that would require disclosure under this item.

Table of Contents

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

INDEX TO FINANCIAL STATEMENTS

Table of Contents

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders

Agenus Inc.:

We have audited the accompanying consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2011 and 2010, and the related consolidated statements of operations, stockholders equity (deficit) and comprehensive loss, and cash flows for each of the years in the three-year period ended December 31, 2011. These consolidated financial statements are the responsibility of the Company s management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits.

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

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Agenus Inc. and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2011, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Agenus Inc. and subsidiaries internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), and our report dated March 6, 2012, expressed an unqualified opinion on the effectiveness of the Company s internal control over financial reporting.

/s/ KPMG LLP

Boston, Massachusetts

March 6, 2012

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED BALANCE SHEETS

	December 31, 2011	December 31, 2010
ASSETS		
Cash and cash equivalents	$ 10,747,951	$ 19,781,976
Inventories	20,072	26,432
Accounts receivable		35,000
Prepaid expenses	536,270	704,744
Other current assets	699,786	306,008
Total current assets	12,004,079	20,854,160
Plant and equipment, net of accumulated amortization and depreciation of $26,081,778 and $24,993,225 at December 31, 2011 and 2010, respectively	4,136,699	6,194,465
Goodwill	2,572,203	2,572,203
Other long-term assets	1,094,549	1,285,831
Total assets	$ 19,807,530	$ 30,906,659
LIABILITIES AND STOCKHOLDERS DEFICIT		
Current portion, long-term debt	$ 197,684	$ 146,061
Current portion, deferred revenue	1,542,395	1,540,385
Accounts payable	807,928	698,554
Accrued liabilities	1,730,290	2,684,609
Other current liabilities	475,342	346,314
Total current liabilities	4,753,639	5,415,923
Convertible notes	32,637,757	34,050,033
Other long-term debt	88,247	
Deferred revenue	2,078,651	3,612,156
Derivative liability		755,000
Other long-term liabilities	1,080,201	1,780,759
Commitments and contingencies (Notes 12 and 15)		
STOCKHOLDERS DEFICIT		
Preferred stock, par value $0.01 per share; 25,000,000 shares authorized:		
Series A convertible preferred stock; 31,620 shares designated, issued, and outstanding at December 31, 2011 and 2010; liquidation value of $31,817,625 at December 31, 2011	316	316
Series B2 convertible preferred stock; 3,105 shares designated, issued, and outstanding at December 31, 2011 and 2010	31	31
Common stock, par value $0.01 per share; 250,000,000 shares authorized; 21,535,037 and 18,647,626 shares issued at December 31, 2011 and 2010, respectively (Note 1)	215,350	186,476
Additional paid-in capital (Note 1)	581,392,602	569,849,178
Treasury stock, at cost; 43,490 shares of common stock at December 31, 2011 and 2010 (Note 1)	(324,792)	(324,792)
Accumulated deficit	(607,694,596)	(584,418,421)
Noncontrolling interest	5,580,124	
Total stockholders deficit	(20,830,965)	(14,707,212)
Total liabilities and stockholders deficit	$ 19,807,530	$ 30,906,659

See accompanying notes to consolidated financial statements.

47

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF OPERATIONS

For the Years Ended December 31, 2011, 2010, and 2009

	2011	2010	2009
Revenue:			
Product revenue	$	$ 52,500	$
Grant revenue		424,720	
Research and development revenue	2,755,772	2,882,391	3,334,444
Total revenues	2,755,772	3,359,611	3,334,444
Operating expenses:			
Cost of goods sold		(122,946)	
Research and development	(11,022,391)	(12,877,695)	(16,902,537)
General and administrative	(10,820,187)	(12,111,507)	(14,110,514)
Operating loss	(19,086,806)	(21,752,537)	(27,678,607)
Other income (expense):			
Non-operating income	1,941	4,680,120	2,568,545
Interest expense	(4,210,097)	(4,871,446)	(5,344,713)
Interest income	18,787	37,560	137,482
Net loss	(23,276,175)	(21,906,303)	(30,317,293)
Dividends on series A convertible preferred stock	(790,500)	(790,500)	(790,500)
Net loss attributable to common stockholders	$ (24,066,675)	$ (22,696,803)	$ (31,107,793)
Per common share data, basic and diluted:			
Net loss attributable to common stockholders	$ (1.21)	$ (1.41)	$ (2.36)
Weighted average number of common shares outstanding, basic and diluted	19,898,632	16,108,353	13,169,524

See accompanying notes to consolidated financial statements.

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY (DEFICIT) AND COMPREHENSIVE LOSS

For the Years Ended December 31, 2011, 2010, and 2009

	Series A Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional	Treasury Stock				
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Paid-In Capital	Number of Shares	Amount	Accumulated Deficit	Noncontrolling Interest	Total
Balance January 1, 2009	31,620	$ 316	5,250	$ 53	11,082,956	$ 110,830	$ 512,001,800	23,838	$ (269,849)	$ (532,173,577)	$	$ (20,330,427)
Net loss and comprehensive loss										(30,317,293)		(30,317,293)
Adoption of EITF 07-5							(1,352,317)			(21,248)		(1,373,565)
Share-based compensation							3,115,642					3,115,642
Shares issued in private placements					1,564,327	15,643	18,557,012					18,572,655
Conversion of series B2 preferred shares			(2,145)	(22)	988,202	9,882	(9,860)					
Shares issued to repurchase convertible senior notes					932,893	9,329	14,124,860					14,134,189
Exercise of stock options					13,212	132	141,180					141,312
Employee share purchases					6,883	69	16,864					16,933
Shares issued under Directors Deferred Compensation Plan					2,562	26	21,474					21,500
Shares issued to CEO in lieu of cash compensation					21,690	217	109,783					110,000
Reclassification of liability classified option grants							(220,470)					(220,470)
Vesting of nonvested shares					389,848	3,898	(3,898)					
Treasury stock received for vested share tax payments								19,652	(54,943)			(54,943)
Dividends on series A convertible preferred stock ($25 per share)							(790,500)					(790,500)
	31,620	$ 316	3,105	$ 31	15,002,573	$ 150,026	$ 545,711,570	43,490	$ (324,792)	$ (562,512,118)	$	$ (16,974,967)

Balance at
December 31,
2009

See accompanying notes to consolidated financial statements.

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY (DEFICIT) AND COMPREHENSIVE LOSS (Continued)

For the Years Ended December 31, 2011, 2010, and 2009

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

See accompanying notes to consolidated financial statements.

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF STOCKHOLDERS EQUITY (DEFICIT) AND COMPREHENSIVE LOSS (Continued)

For the Years Ended December 31, 2011, 2010, and 2009

	Series A Convertible Preferred Stock		Series B2 Convertible Preferred Stock		Common Stock		Additional	Treasury Stock				
	Number of Shares	Par Value	Number of Shares	Par Value	Number of Shares	Par Value	Paid-In Capital	Number of Shares	Amount	Accumulated Deficit	Noncontrolling Interest	Total
ss and rehensive loss										(23,276,175)		(23,276
Note dment conversion valuation							755,000				5,580,124	6,335
s sold at the t					2,552,492	25,525	7,477,850					7,503
s issued in private ments					88,333	883	476,117					477
-based ensation							3,335,066					3,335
ssification of ty classified grants							(78,079)					(78
g of nonvested s					165,586	1,656	(1,656)					
s issued to CEO of cash ensation					36,577	366	155,834					156
s issued to ltants for services					16,192	162	94,538					94
ise of stock s					319	3	1,435					1
oyee share ases					20,524	205	80,893					81
s issued to or for services					7,388	74	36,926					37
ends on series A rtible preferred ($25 per share)							(790,500)					(790
ce at mber 31, 2011	31,620	$ 316	3,105	$ 31	21,535,037	$ 215,350	$ 581,392,602	43,490	$ (324,792)	$ (607,694,596)	$ 5,580,124	$ (20,830

See accompanying notes to consolidated financial statements.

Table of Contents

AGENUS INC. AND SUBSIDIARIES

CONSOLIDATED STATEMENTS OF CASH FLOWS

For the Years Ended December 31, 2011, 2010, and 2009

	2011	2010	2009
Cash flows from operating activities:			
Net loss	$ (23,276,175)	$ (21,906,303)	$ (30,317,293)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	2,252,412	3,437,767	4,108,538
Share-based compensation	2,646,767	3,151,537	3,130,804
Noncash interest expense	4,167,849	4,053,272	4,014,840
Loss on monetization of receivable			317,512
Gain on extinguishment of debt		(2,761,426)	(2,653,387)
Asset impairment		629,382	
Change in fair value of derivative liability		(1,910,156)	(47,707)
Loss on disposal of assets	37,447	161,188	51,584
Changes in operating assets and liabilities:			
Accounts receivable	35,000	(35,000)	
Inventories	6,360	297,603	(97,659)
Prepaid expenses	168,474	47,216	(141,498)
Accounts payable	105,667	(198,116)	296,094
Deferred revenue	(1,531,495)	674,101	(440,404)
Accrued liabilities and other current liabilities	(269,713)	(246,879)	(2,120,876)
Other operating assets and liabilities	(591,504)	(152,221)	(293,559)
Net cash used in operating activities	(16,248,911)	(14,758,035)	(24,193,011)
Cash flows from investing activities:			
Proceeds from maturities of available-for-sale securities	5,000,000	40,000,000	30,000,000
Purchases of available-for-sale securities	(4,998,799)	(29,989,763)	(29,986,794)
Proceeds from sale of equipment	23,884	50,299	53,550
Purchases of plant and equipment	(54,547)	(130,437)	(243,868)
Collection of receivable from sale of patent applications			2,337,475
Net cash (used in) provided by investing activities	(29,462)	9,930,099	2,160,363
Cash flows from financing activities:			
Net proceeds from sales of equity	7,980,375	11,525,236	18,572,655
Proceeds from exercise of stock options	1,438	719	141,312
Proceeds from employee stock purchases	81,098	48,603	16,933
Treasury stock received to satisfy minimum tax withholding requirements			(54,943)
Payments of series A convertible preferred stock dividends	(790,500)	(790,500)	(790,500)
Payments of long-term debt	(28,063)	(6,240,963)	(255,000)
Net cash provided by financing activities	7,244,348	4,543,095	17,630,457
Net decrease in cash and cash equivalents	(9,034,025)	(284,841)	(4,402,191)
Cash and cash equivalents, beginning of year	19,781,976	20,066,817	24,469,008
Cash and cash equivalents, end of year	$ 10,747,951	$ 19,781,976	$ 20,066,817

Supplemental cash flow information:			
Cash paid for interest	$ 12,458	$ 1,122,473	$ 1,573,906
Non-cash investing and financing activities:			
Issuance of senior secured convertible notes as payment in-kind for interest	$ 2,829,105	$ 2,615,667	$ 2,418,332
Convertible Note adjustment to equity for conversion option	5,580,124		
Reclassification of derivative liability into equity	755,000		
Long-term debt equipment financing	171,640		
Issuance of common stock, $0.01 par value, as payment of long-term debt including accrued and unpaid interest		10,361,920	14,134,189

See accompanying notes to consolidated financial statements.

Table of Contents

AGENUS INC. AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(1) Description of Business

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

We have incurred significant losses since our inception. As of December 31, 2011, we had an accumulated deficit of $607.7 million. Since our inception, we have financed our operations primarily through the sale of equity and convertible notes, and interest income earned on cash, cash equivalents, and short-term investment balances. We believe that, based on our current plans and activities, our cash balance of $10.7 million as of December 31, 2011, plus the $18 million net proceeds from equity offerings and license agreements since year-end, along with the estimated additional proceeds from our license, supply, and collaborative agreements will be sufficient to satisfy our liquidity requirements into 2013 based on our estimated annual use of cash of $13-16 million during 2012. We continue to monitor the likelihood of success of our key initiatives and are prepared to discontinue funding of such activities if they do not prove to be feasible, restrict capital expenditures and/or reduce the scale of our operations.

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

As of December 31, 2011, we had debt outstanding of $37.9 million in principal, including $37.5 million in principal of our 8% senior secured convertible notes due August 2014 (the 2006 Notes) and $100,000 in

Table of Contents

principal of our 5.25% convertible senior notes due February 2025 (the 2005 Notes). The 2005 Notes are currently subject to redemption by us and at the option of the holders on February 1, 2015. We expect to attempt to raise additional funds in advance of depleting our current funds. We may attempt to raise funds by: (1) out-licensing technologies or products to one or more third parties, (2) renegotiating third party agreements, (3) selling assets, (4) securing additional debt financing, and/or (5) selling equity securities. Satisfying long-term liquidity needs may require the successful commercialization and/or one or more partnering arrangements for (1) our product, Oncophage and/or our other Prophage Series vaccines, (2) vaccines containing QS-21 under development by our licensees and/or (3) potentially other product candidates, each of which will require additional capital. If we incur operating losses for longer than we expect and/or we are unable to raise additional capital, we may become insolvent and be unable to continue our operations.

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

(2) Summary of Significant Accounting Policies

(a) Basis of Presentation and Principles of Consolidation

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

(b) Segment Information

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

(c) Use of Estimates

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

(d) Cash and Cash Equivalents

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

(e) Investments

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

Table of Contents

(f) Concentrations of Credit Risk

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

(g) Inventories

Inventories are stated at the lower of cost or market. Cost has been determined using standard costs that approximate the first-in, first-out method. Inventory as of December 31, 2011 and 2010 consisted solely of finished goods.

(h) Plant and Equipment

Plant and equipment, including software developed for internal use, are carried at cost. Depreciation is computed using the straight-line method over the estimated useful lives of the assets. Amortization of leasehold improvements is computed over the shorter of the lease term or estimated useful life of the asset. Additions and improvements are capitalized, while repairs and maintenance are charged to expense as incurred. Amortization and depreciation of plant and equipment was $2.2 million, $2.6 million, and $2.8 million, for the years ended December 31, 2011, 2010, and 2009, respectively.

(i) Fair Value of Financial Instruments

The estimated fair values of all of our financial instruments, excluding debt, approximate their carrying amounts in the consolidated balance sheets. As of December 31, 2011, the fair value of our 2005 Notes was estimated based on the most recent market transactions. The fair value of our 2006 Notes exclusive of the conversion option is based on a present value methodology. The outstanding principal amount of debt, including the current portion, is $37.9 million and $34.9 million at December 31, 2011 and 2010, respectively.

(j) Revenue Recognition

Revenue for services under research and development contracts are recognized as the services are performed, or as clinical trial materials are provided. Non-refundable milestone payments that represent the completion of a separate earnings process are recognized as revenue when earned. License fees and royalties are recognized as they are earned. Revenue recognized from collaborative agreements is based upon the provisions of ASC 605-25, *Revenue Recognition Multiple-Element Arrangements*, as amended by Accounting Standards Update 2009-13. Product revenue is recognized as product is shipped. For the years ended December 31, 2011, 2010, and 2009, 48%, 39%, and 51%, respectively, of our revenue was earned from one research partner. In addition, 43%, 31%, and 32% of our revenue for the years ended December 31, 2011, 2010, and 2009 was earned from one of our licensees. These revenues will not continue past 2011 due to the amended license agreement of non-core technologies (See Note 19).

(k) Foreign Currency Transactions

Gains and losses from our euro based currency accounts and foreign currency transactions, such as those resulting from the translation and settlement of receivables and payables denominated in foreign currencies, are included in the consolidated statements of operations. We do not currently use derivative financial instruments to manage the risks associated with foreign currency fluctuations. We recorded foreign currency losses of $9,000, $45,000, and $32,000, for the years ended December 31, 2011, 2010, and 2009, respectively. Such losses are included as a component of operating expenses.

Table of Contents

(l) Research and Development

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

(m) Share-Based Compensation

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

(n) Income Taxes

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

(o) Net Loss Per Share

Basic income and loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted average number of common shares outstanding (including common shares issuable under our Directors Deferred Compensation Plan). Diluted income per common share is calculated by dividing net income attributable to common stockholders by the weighted average number of common shares outstanding (including common shares issuable under our Directors Deferred Compensation Plan) plus the dilutive effect of outstanding instruments such as warrants, stock options, nonvested shares, convertible preferred stock, and convertible notes. Because we reported a net loss attributable to common stockholders for all periods presented, diluted loss per common share is the same as basic loss per common share, as the effect of utilizing the fully diluted share count would have reduced the net loss per common share. Therefore, the following potentially dilutive securities have been excluded from the computation of diluted weighted average shares outstanding as of December 31, 2011, 2010, and 2009, as they would be anti-dilutive:

	At December 31,		
	2011	**2010**	**2009**
Warrants	3,309,378	3,309,378	6,994,453
Stock options	1,814,161	1,212,095	1,024,770
Nonvested shares	135,791	85,564	33,338
Convertible preferred stock	333,333	333,333	333,333
Convertible notes		1,926,134	2,090,261

Table of Contents

(p) Goodwill and Acquired Intangible Assets

Goodwill represents the excess of cost over the fair value of net assets of businesses acquired. Goodwill is not amortized, but instead tested for impairment at least annually. Intangible assets with estimable useful lives are amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment as deemed necessary.

Annually we assess whether there is an indication that goodwill is impaired, or more frequently if events and circumstances indicate that the asset might be impaired during the year. We perform our annual impairment test as of October 31 of each year. We consider ourselves a single reporting unit for purposes of the impairment test. We determine our fair value using the quoted market price of our common stock, adjusted for certain factors, and compare it to our net book value at the date of our evaluation. To the extent our net book value exceeds the fair value, there is an indication that the reporting unit goodwill may be impaired and a second step of the impairment test is performed to determine the amount of the impairment to be recognized, if any.

The costs of core and developed technology are presented at their estimated fair value as of their acquisition date. These costs were being amortized on a straight-line basis over their estimated useful lives of 10 years.

(q) Accounting for Asset Retirement Obligations

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

(r) Long-lived Assets

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

(s) Recent Accounting Pronouncements

In December 2010, the Financial Accounting Standards Board (FASB) issued additional guidance on when to perform Step 2 of the goodwill impairment test for reporting units with zero or negative carrying amounts. The criteria for evaluating Step 1 of the goodwill impairment test and proceeding to Step 2 was amended for reporting units with zero or negative carrying amounts and requires performing Step 2 if qualitative factors indicate that it is more likely than not that a goodwill impairment exists. This guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2010. Upon adoption of this guidance on January 1, 2011, we had a negative carrying value but determined there were no qualitative factors that indicated it was more likely than not that a goodwill impairment exists and accordingly, Step 2 of the goodwill impairment test was not required to be performed. The adoption of this amended guidance did not have any impact on our consolidated financial statements.

Table of Contents

In September 2011, the FASB amended the guidance on the annual testing of goodwill for impairment. This amended guidance permits companies to assess qualitative factors to determine whether to perform the two-step goodwill impairment test. This amendment is effective for fiscal years beginning after December 15, 2011 with early adoption permitted. We do not anticipate any material impact of this guidance on our consolidated financial statements.

In June 2011, the FASB issued Accounting Standard Update No. 2011-05, Comprehensive Income (ASU 2011-05) which increases the prominence of other comprehensive income in financial statements. Under this standard, the components of net income and other comprehensive income must be presented in either one or two consecutive financial statements. The standard eliminates the option to present other comprehensive income in the statement of changes in equity. ASU 2011-05 is effective for fiscal years beginning after December 15, 2011 and interim and annual periods thereafter. The standard should be applied retrospectively and early adoption is permitted. Adoption of this standard will impact only the presentation of our financial information. In December 2011, the FASB decided to defer the effective date of those changes in ASU 2011-05 that relate only to the presentation of reclassification adjustments in the statement of income by issuing ASU 2011-12, Comprehensive Income.

In December 2011, the FASB issued ASU No. 2011-11, Balance Sheet (Topic 210): Disclosures about Offsetting Assets and Liabilities (ASU 2011-11). The amendments in ASU 2011-11 require companies to disclose information about offsetting and related arrangements to enable users of their financial statements to understand the effects of those arrangements on its financial position. ASU 2011-11 is required to be applied retrospectively for all prior periods presented and is effective for fiscal years, and interim periods within those years, beginning on or after January 1, 2013. We do not expect the adoption of this guidance to have a material impact on our consolidated financial statements.

(3) Investments

Cash Equivalents and Short-term Investments

Cash equivalents and short-term investments consisted of the following as of December 31, 2011 and 2010 consisted solely of institutional money market funds with cost approximating the estimated fair value.

Proceeds from maturities of available-for-sale securities amounted to $5.0 million, $ 40.0 million, and $30.0 million, for the years ended December 31, 2011, 2010, and 2009, respectively. No available-for-sale securities were sold before their maturity in 2011, 2010 or 2009. Gross realized gains and gross realized losses included in net loss as a result of those maturities were immaterial for each of the years in the three-year period ended December 31, 2011. As a result of the short-term nature of our investments, there were no unrealized holding gains or losses as of December 31, 2011, 2010, and 2009.

(4) Plant and Equipment

Plant and equipment as of December 31, 2011 and 2010 consists of the following (in thousands).

	2011	2010	Estimated Depreciable Lives
Furniture, fixtures, and other	$ 1,643	$ 1,649	3 to 10 years
Laboratory and manufacturing equipment	4,547	5,546	4 to 10 years
Leasehold improvements	18,254	18,218	2 to 12 years
Software and computer equipment	5,774	5,774	3 years
	30,218	31,187	
Less accumulated depreciation and amortization	(26,081)	(24,993)	
	$ 4,137	$ 6,194	

Table of Contents

During the years ended December 31, 2011 and 2010, plant and equipment with a net book value of approximately $37,000 and $155,000, respectively, was retired from service and disposed.

(5) Other Intangible Assets

The following table presents certain information on our intangible assets as of December 31, 2011 and 2010 (in thousands).

	Weighted Average Amortization Period	As of December 31, 2010			
		Gross Carrying Amount	Impairment Charge	Accumulated Amortization	Net Carrying Amount
Amortizing intangible assets:					
Core and developed technology	10 years	$ 11,073	$ 630	$ 10,443	$

Our intangible assets were being amortized over their estimated useful lives of 10 years, with no estimated residual values. Amortization expense related to core and developed technology was $690,000, and $1.1 million, in 2010 and 2009 respectively. As further development of Aroplatin, a liposomal chemotherapeutic tested in a Phase 1 clinical trial for the treatment of solid malignancies and B-cell lymphomas, was discontinued, we determined that an impairment had occurred and accordingly recorded a loss of approximately $630,000 during the year ended December 31, 2010, representing the net carrying value of the intangible asset related to liposomal technology at the time development was discontinued. This impairment charge is included in research and development expenses.

(6) Income Taxes

We are subject to taxation in the U.S. and various state, local, and foreign jurisdictions. We remain subject to examination by U.S. Federal, state, local, and foreign tax authorities for tax years 2008 through 2011. With a few exceptions, we are no longer subject to U.S. Federal, state, local, and foreign examinations by tax authorities for the tax year 2007 and prior. However, net operating losses from the tax year 2007 and prior would be subject to examination if and when used in a future tax return to offset taxable income. Our policy is to recognize income tax related penalties and interest, if any, in our provision for income taxes and, to the extent applicable, in the corresponding income tax assets and liabilities, including any amounts for uncertain tax positions.

As of December 31, 2011, we have available net operating loss carryforwards of $497.3 million and $130.1 million for Federal and state income tax purposes, respectively, which are available to offset future Federal and state taxable income, if any, and expire between 2012 and 2031. Our ability to use these net operating losses is limited by change of control provisions under Internal Revenue Code Section 382 and may expire unused. In addition, we have $8.2 million and $6.6 million of Federal and state research and development credits, respectively, available to offset future taxable income. These Federal and state research and development credits expire between 2012 and 2031 and 2015 and 2026, respectively. The potential impacts of such provisions are among the items considered and reflected in management s assessment of our valuation allowance requirements.

Table of Contents

The tax effect of temporary differences and net operating loss and tax credit carryforwards that give rise to significant portions of the deferred tax assets and deferred tax liabilities as of December 31, 2011 and 2010 are presented below (in thousands).

	2011	2010
Deferred tax assets:		
Net operating loss carryforwards	$ 175,965	$ 170,171
Research and development tax credits	12,546	12,122
Other	13,510	13,042
Total deferred tax assets	202,021	195,335
Less: valuation allowance	(200,072)	(195,052)
Net deferred tax assets	1,949	283
Deferred tax liabilities	(1,949)	(283)
Net deferred tax	$	$

In assessing the realizablility of deferred tax assets, we consider whether it is more likely than not that some portion or all of the deferred tax assets will not be realized. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which the net operating loss and tax credit carryforwards can be utilized or the temporary differences become deductible. We consider projected future taxable income and tax planning strategies in making this assessment. In order to fully realize the deferred tax asset, we will need to generate future taxable income sufficient to utilize net operating losses prior to their expiration. Based upon our history of not generating taxable income due to our business activities focused on product development, we believe that it is more likely than not that deferred tax assets will not be realized through future earnings. Accordingly, a valuation allowance has been established for deferred tax assets which will not be offset by the reversal of deferred tax liabilities. The valuation allowance on the deferred tax assets increased by $5.0 million and $2.8 million during the years ended December 31, 2011 and 2010, respectively. The net operating loss includes amounts pertaining to tax deductions relating to stock exercises for which any subsequently recognized tax benefit will be recorded as an increase to additional paid-in capital.

Income tax benefit was nil for each of the years ended December 31, 2011, 2011, and 2009, and differed from the amounts computed by applying the U.S. Federal income tax rate of 34% to loss before income taxes as a result of the following (in thousands).

	2011	2010	2009
Computed expected Federal tax benefit	$ (7,912)	$ (7,451)	$ (10,308)
(Increase) reduction in income taxes benefit resulting from:			
Change in valuation allowance	5,033	2,760	(3,415)
Increase due to uncertain tax positions	59	67	241
State and local income benefit, net of Federal income tax benefit	(1,182)	(534)	(1,498)
Net operating loss expirations	1,979	4,363	14,759
Increase due to debt discount adjustment	2,192		
Other, net	(169)	795	221
	$	$	$

As of December 31, 2011 and 2010, our gross unrecognized tax benefits totaled $5.4 million. These unrecognized tax benefits would all impact the effective tax rate if recognized. There are no positions which we anticipate could change within the next twelve months.

Table of Contents

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

Balance, December 31, 2010	$ 5,429
Increase related to current year positions	64
Decrease related to previously recognized positions	(5)
Balance, December 31, 2011	$ 5,488

(7) Accrued and Other Current Liabilities

Accrued liabilities consist of the following as of December 31, 2011 and 2010 (in thousands)

	2011	2010
Professional fees	$ 892	$ 888
Payroll	184	1,086
Other	654	711
	$ 1,730	$ 2,685

Other current liabilities consist of the following as of December 31, 2011 and 2010 (in thousands)

	2011	2010
Deferred rent expense	$ 405	$ 44
Value of liability classified option grants	70	282
Other		20
	$ 475	$ 346

(8) Equity

Our authorized capital stock consists of 250,000,000 shares of $0.01 par value per share of common stock and 25,000,000 shares of preferred stock, $0.01 par value per share. Our Board of Directors is authorized to issue the preferred stock and to set the voting, conversion, and other rights.

In a private placement in September 2003, we sold 31,620 shares of our series A convertible preferred stock, par value $0.01 per share, for net proceeds of $31.6 million. Under the terms and conditions of the Certificate of Designation creating the series A convertible preferred stock, this stock is convertible by the holder at any time into our common stock, is non-voting, carries a 2.5% annual dividend yield, has an initial conversion price of $94.86 per common share, subject to adjustment, and is redeemable by us at its face amount ($31.6 million) on or after September 24, 2013. The Certificate of Designation does not contemplate a sinking fund. The series A convertible preferred stock ranks senior to our common stock. In a liquidation, dissolution, or winding up of the Company, the series A convertible preferred stock s liquidation preference must be fully satisfied before any distribution could be made to the holders of the common stock. Other than in such a liquidation, no terms of the series A convertible preferred stock affect our ability to declare or pay dividends on our common stock as long as the series A convertible preferred stock s dividends are accruing. The liquidation value of this series A convertible preferred stock is equal to $1,000 per share outstanding plus any accrued unpaid dividends. Accrued and unpaid dividends of the series A convertible preferred stock aggregated $197,625 or $6.25 per share, at December 31, 2011.

In September 2007, we issued 270,562 shares of our common stock at a price of $18.48 per share to a single institutional investor. In conjunction with this transaction, we also issued to the investor 10,000 shares of our new series B1 convertible preferred stock and 5,250 shares of our new

series B2 convertible preferred stock. Shares of the series B1 convertible preferred stock permitted the investor, within one year of the anniversary of closing, to

purchase up to an additional $10.0 million of common shares at a purchase price equal to the lesser of $18.48 per share or a price calculated based on the then-prevailing price of our common stock minus $1.80 per share. Gross proceeds of $5.0 million were received as a result of this transaction. Net proceeds, after deducting the placement agent fees and offering expenses paid by us, were $4.7 million. The class B convertible preferred stock has been recorded as an equity classified instrument in accordance with the applicable authoritative guidance. In April 2008, we issued 264,199 shares of our common stock upon conversion of 10,000 shares of our series B1 convertible preferred stock via a cashless conversion. These shares were issued pursuant to an effective shelf registration statement. Shares of the series B2 convertible preferred stock permit the investor to purchase common shares for consideration of up to 35 percent of the total dollar amount previously invested pursuant to the agreement with the investor, including conversions of the series B1 convertible preferred stock, at a purchase price equal to the lesser of $24.96 per common share or a price calculated based on the then-prevailing price of our common stock, and such right expires seven years from the date of issuance. In April 2009, we issued 988,202 shares of our common stock upon conversion of 2,145 shares of our series B2 convertible preferred stock via cashless conversions. Upon completion of the conversions, 3,105 shares of our series B2 convertible preferred stock are still outstanding although no further shares can be converted into shares of common stock as the maximum number of shares (as defined in the agreement) have been issued. The total number of shares of common stock issued or issuable to the holder of the class B convertible preferred stock cannot exceed 19.9% of our outstanding common stock. No dividends are paid on the class B convertible preferred stock and there are no liquidation preferences.

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

In February 2008, we filed a registration statement covering the resale of the 1,451,450 shares of common stock issued and the 1,451,450 shares issuable upon the exercise of the 10-year warrants issued in the January 2008 private placement. The Securities and Exchange Commission (the SEC) declared the resale registration statement effective on February 14, 2008.

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

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

Table of Contents

In August 2009, we entered into a private placement agreement under which we issued and sold (i) 730,994 shares of our common stock, (ii) six-month warrants to purchase up to 365,495 additional shares of common stock at an exercise price of $13.86 per share, and (iii) four-year warrants to purchase up to 328,946 additional shares of common stock at an exercise price of $15.00 per share, for $13.68 for each share sold generating gross proceeds of $10.0 million. The warrants were not exercisable for the first six months following the closing, which occurred on August 4, 2009. The six-month warrants expired unexercised in July 2010. Subsequently, we filed, and the SEC declared effective, a registration statement covering the resale of the 730,994 shares of our common stock issued and the 694,441 shares issuable upon the exercise of the related warrants issued in this private placement. In connection with the two private placements during 2009, we raised net proceeds of $18.6 million, after deducting offering costs of $1.4 million.

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

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

In December 2010, we entered into subscription agreements under which we issued and sold 533,241 shares of our common stock for the aggregate purchase price of $2,879,506. Additionally, within 90 calendar days of the date of the subscription agreements, the investors had the right and option to purchase up to an additional 106,648 shares of our common stock for the aggregate purchase price of up to $575,901. In March 2011, we issued and sold 88,333 shares based on the exercise of a purchase option and received net proceeds of $477,000. The offering and sale of these common shares were made under an effective shelf registration statement.

During August 2011, we issued and sold approximately 2.3 million shares of our common stock in an underwritten offering. Net proceeds after deducting offering expenses were approximately $6.3 million. These shares were issued pursuant to a shelf registration statement on Form S-3 filed with the SEC on January 22, 2010.

During the year ended December 31, 2009, certain employees, in lieu of paying withholding taxes on the vesting of nonvested stock awarded under our 1999 Equity Incentive Plan, as amended (the 1999 EIP), authorized the withholding of an aggregate of 117,913 shares, of common stock to satisfy the minimum tax withholding requirements related to such vesting. We recorded these shares as treasury stock using the cost method at the market price of the common stock on the vesting dates.

(9) Share-based Compensation Plans

Our 1999 EIP authorized awards of incentive stock options within the meaning of Section 422 of the Internal Revenue Code (the Code), non-qualified stock options, nonvested (restricted) stock, and unrestricted stock for up to 2,000,000 shares of common stock (subject to adjustment for stock splits and similar capital changes and exclusive of options exchanged at the consummation of mergers) to employees and, in the case of non-qualified stock options, nonvested (restricted) stock, and unrestricted stock, to consultants and directors as defined in the 1999 EIP. The plan terminated on November 15, 2009. On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, our 2009 Equity Incentive Plan (the 2009 EIP). The 2009 EIP provides for the grant of incentive stock options intended to qualify under Section 422 of the Code, nonstatutory stock options, restricted stock, unrestricted stock and other equity-based awards, such as stock appreciation rights, phantom stock awards, and restricted stock units, which we refer collectively as Awards, for

Table of Contents

up to 2,166,666 shares of our common stock (subject to adjustment in the event of stock splits and other similar events). The Board of Directors appointed the Compensation Committee to administer the 1999 EIP and the 2009 EIP.

Under the 1999 Employee Stock Purchase Plan, as amended (the 1999 ESPP), eligible employees purchased shares of common stock at a discount from fair value. There were 75,000 shares of common stock reserved for issuance under the 1999 ESPP. The 1999 ESPP, which terminated on November 15, 2009, was intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Code. On March 12, 2009, our Board of Directors adopted, and on June 10, 2009, our stockholders approved, the 2009 Employee Stock Purchase Plan (the 2009 ESPP) to provide eligible employees the opportunity to acquire our common stock in a program also designed to comply with Section 423 of the Code. There are 83,333 shares of common stock reserved for issuance under the 2009 ESPP subject to adjustment as defined in the plan. Rights to purchase common stock under the 2009 ESPP are granted at the discretion of the Compensation Committee, which determines the frequency and duration of individual offerings under the plan and the dates when stock may be purchased. Eligible employees participate voluntarily and may withdraw from any offering at any time before the stock is purchased. Participation terminates automatically upon termination of employment. The purchase price per share of common stock in an offering is 85% of the lesser of its fair value at the beginning of the offering period or on the applicable exercise date and may be paid through payroll deductions, periodic lump sum payments, the delivery of our common stock, or a combination thereof. Unless otherwise permitted by the Board of Directors, no participant may acquire more than 3,333 shares of stock in any offering period. No participant is allowed to purchase shares under the 2009 ESPP if such employee would own or would be deemed to own stock possessing 5% or more of the total combined voting power or value of the Company. No offerings will be made under the 2009 ESPP after June 10, 2019.

Our Director s Deferred Compensation Plan, as amended, permits each outside director to defer all, or a portion of, their cash compensation until their service as a director ends or until a specified date into a cash account or a stock account. There are 125,000 shares of our common stock reserved for issuance under this plan. As of December 31, 2011, 15,491 shares have been issued. Amounts deferred to a cash account will earn interest at the rate paid on one-year Treasury bills with interest added to the account annually. Amounts deferred to a stock account will be converted on a quarterly basis into a number of units representing shares of our common stock equal to the amount of compensation which the participant has elected to defer to the stock account divided by the applicable price for our common stock. The applicable price for our common stock has been defined as the average of the closing price of our common stock for all trading days during the calendar quarter preceding the conversion date as reported by The Nasdaq Capital Market. Pursuant to this plan, a total of 95,211 units, each representing a share of our common stock at a weighted average common stock price of $8.23, have been credited to participants stock accounts as of December 31, 2011. The compensation charges for this plan were immaterial for all periods presented.

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

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

	2011	2010	2009
Expected volatility	103%	104%	94%
Expected term in years	6	6	6
Risk-free interest rate	1.6%	2.1%	2.7%
Dividend yield	0%	0%	0%

Table of Contents

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

A summary of option activity for 2011 is presented below:

	Options	Weighted Average Exercise Price	Weighted Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value
Outstanding at December 31, 2010	1,212,095	$ 13.43		
Granted	748,161	4.63		
Exercised	(319)	4.50		
Forfeited	(53,233)	9.03		
Expired	(92,543)	43.54		
Outstanding at December 31, 2011	1,814,161	$ 8.38	7.6	$ 41
Vested or expected to vest at December 31, 2011	1,761,439	$ 8.49	7.6	$ 40
Exercisable at December 31, 2011	1,160,421	$ 10.31	6.8	$ 20

The weighted average grant-date fair values of options granted during the years ended December 31, 2011, 2010, and 2009, was $3.61, $3.66, and $7.26, respectively.

The aggregate intrinsic value in the table above represents the difference between our closing stock price on the last trading day of fiscal 2011 and the exercise price, multiplied by the number of in-the-money options that would have been received by the option holders had all option holders exercised their options on December 31, 2011 (the intrinsic value is considered to be zero if the exercise price is greater than the closing stock price). This amount changes based on the fair market value of our stock. The total intrinsic value of options exercised during the years ended December 31, 2011, 2010, and 2009, determined on the dates of exercise, was $0, $0 and $54,000, respectively.

During 2011, 2010, and 2009, all options were granted with exercise prices equal to the market value of the underlying shares of common stock on the grant date.

As of December 31, 2011, $1.9 million of total unrecognized compensation cost related to stock options granted to employees and directors is expected to be recognized over a weighted average period of 2.2 years.

As of December 31, 2011, 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 $11,000. Such amount is subject to change each reporting period based upon changes in the fair value of our common stock, expected volatility, and the risk-free interest rate, until the outside advisor completes his or her performance under the option agreement.

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

Table of Contents

A summary of nonvested stock activity for 2011 is presented below:

	Nonvested Shares	Weighted Average Grant Date Fair Value
Outstanding at December 31, 2010	85,564	$ 5.28
Granted	224,618	6.19
Vested	(165,024)	6.03
Forfeited	(9,367)	5.64
Outstanding at December 31, 2011	135,791	5.85

As of December 31, 2011, there was $362,000 of unrecognized share-based compensation expense related to these nonvested shares. This cost is expected to be recognized over a weighted average period of 1.5 years. The total intrinsic value of shares vested during the years ended December 31, 2011, 2010, and 2009, was $330,000, $1.6 million, and $1.5 million, respectively.

Cash received from option exercises and purchases under our 2009 ESPP for the years ended December 31, 2011, 2010, and 2009, was $83,000, $49,000, and $158,000, respectively. We issue new shares upon option exercises, purchases under our 2009 ESPP, vesting of nonvested stock, and under the Director s Deferred Compensation Plan. During the years ended December 31, 2011, 2010, and 2009, 20,524 shares, 14,954 shares, and 6,883 shares, were issued under the 2009 ESPP, respectively. During the years ended December 31, 2011 and 2010, 165,586 shares and 264,317 shares, respectively were issued as a result of the vesting of nonvested stock. During the year ended December 31, 2009, 370,196 shares, net of 19,652 shares withheld to cover personal income tax withholding, were issued as a result of the vesting of nonvested stock. The shares withheld were recorded as treasury stock using the cost method, at weighted average prices of $ 2.82 per share during the year ended December 31, 2009 based on the closing sale price of our common stock on the vesting dates, for a total of approximately $55,000.

For the year ended December 31, 2009, 2,562 shares were issued under our Directors Deferred Compensation Plan. No shares were issued during the years ended December 31, 2011 and 2010.

The impact on our results of operations from share-based compensation for the years ended December 31, 2011, 2010, and 2009, was as follows (in thousands).

	2011	2010	2009
Research and development	$ 765	$ 1,058	$ 864
General and administrative	1,882	2,094	2,267
Total share-based compensation expense	$ 2,647	$ 3,152	$ 3,131

(10) License, Research, and Other Agreements

In November 1994, we entered into a Patent License Agreement with the Mount Sinai School of Medicine, or Mount Sinai (the Mount Sinai Agreement). Through the Mount Sinai Agreement, we obtained an exclusive worldwide license to patent rights relating to the heat shock protein technology that resulted from the research and development performed by Dr. Pramod Srivastava, our founding scientist and a former member of our Board of Directors. We agreed to pay Mount Sinai a royalty on the net sales of products covered by the licensed patent rights and also provided Mount Sinai with a 0.45% equity interest in the Company (approximately 10,000 shares valued at $90,000 at the time of issuance). The term of the Mount Sinai Agreement ends when the last of the licensed patents expires (2018) or becomes no longer valid. If we fail to pay royalties that are due under the agreement, Mount Sinai may issue written notice to us. If we continue to fail to pay royalties after 60 days from

receipt of the written notice, Mount Sinai can terminate the agreement. The Mount Sinai Agreement requires us to use due diligence to make the products covered by the licensed patent rights commercially available, including a requirement for us to use best efforts to reach a number of developmental milestones which have been achieved. If we fail to comply with the due diligence provisions of the agreement, Mount Sinai could take actions to convert our exclusive license to a non-exclusive license after six months written notice. The Mount Sinai Agreement does not contain any milestone payment provisions.

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

We entered into a license agreement with UConn in May 2001 (the License Agreement) that provides us with the exclusive, worldwide rights to technologies discovered and developed under the research agreement. The term of the License Agreement ends when the last of the licensed patents expires (2019) or becomes no longer valid. UConn may terminate the License Agreement: (1) if, after 30 days written notice for breach, we continue to fail to make any payments due under the License Agreement, or (2) we cease to carry on our business related to the patent rights or if we initiate or conduct actions in order to declare bankruptcy. We may terminate the License Agreement upon 90 days written notice. The License Agreement contains aggregate milestone payments of $1.2 million for each product we develop covered by the licensed patent rights. These milestone payments are contingent upon regulatory filings, regulatory approvals and commercial sales of products. We have also agreed to pay UConn a royalty on the net sales of products covered by the License Agreement as well as annual license maintenance fees beginning in May 2006. Royalties otherwise due on the net sales of products covered by the License Agreement may be credited against the annual license maintenance fee obligations. As of December 31, 2011, we have paid $340,000 to UConn under the License Agreement. The License Agreement gives us complete discretion over the commercialization of products covered by the licensed patent rights, but also requires us to use commercially reasonable diligent efforts to introduce commercial products within and outside the United States. If we fail to meet these diligence requirements, UConn may be able to terminate the License Agreement.

In March 2003, we entered into an amendment agreement that amended certain provisions of the License Agreement. The amendment agreement granted us a license to additional patent rights. In consideration for execution of the amendment agreement, we agreed to pay UConn an upfront payment and to make future payments for licensed patents or patent applications. Through December 31, 2011, we have paid approximately $100,000 to UConn under the License Agreement, as amended.

In December 2011, we signed a license, development and manufacturing technology transfer agreement (NewVac Agreement) for Oncophage with NewVac LLC (a subsidiary of ChemRar Ventures LLC, NewVac), a company focused on the development of innovative technology for cancer immunotherapy. Under the NewVac Agreement, we granted NewVac an exclusive license to manufacture, market and sell Oncophage as well as pursue a development program in the Russian Federation and certain other CIS countries. The NewVac Agreement may be terminated by either party upon a material breach if the breach is not cured within the time specified in the agreement. The NewVac Agreement may also be terminated by us if certain milestones are not achieved and by NewVac without cause. Unless the NewVac Agreement is earlier terminated, or extended, we are entitled to receive modest milestone payments in addition to payments for supply of Oncophage and/or

Table of Contents

royalties in the low double-digits on net sales of Oncophage through December 2014. Upon termination of the NewVac Agreement, all activity under the agreement immediately ceases.

We have entered into various agreements with institutions and contract research organizations to conduct clinical studies. Under these agreements, subject to the enrollment of patients and performance by the institution of certain services, we have estimated our payments to be $47.6 million over the term of the studies. For the years ended December 31, 2011, 2010, and 2009, $623,000, $361,000, and $170,000, respectively, have been expensed in the accompanying consolidated statements of operations related to these clinical studies. Through December 31, 2011, $46.8 million of this estimate has been paid. The timing of our expense recognition and future payments related to these agreements is dependent on the enrollment of patients and documentation received from the institutions.

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

On January 16, 2009, we entered into an Amended and Restated Manufacturing Technology Transfer and Supply Agreement (the Amended GSK Supply Agreement) under which GSK has the right to manufacture all of its requirements of commercial grade QS-21. In addition, the parties have amended their purchase and supply obligations with respect to pre-commercial grade QS-21. In accordance with the terms of the Amended GSK Supply Agreement, upon our election, GSK is obligated to supply us (or our affiliates, licensees, or customers) certain quantities of commercial grade QS-21 for a stated period of time.

As consideration for our entering into the Amended GSK Supply Agreement, we received a $2.0 million upfront non-refundable payment from GSK in lieu of a milestone payment that would have otherwise been payable under the original agreement. In addition, GSK is obligated to make payments to us totaling $5.25 million through December 2012, of which $3.5 million has been received, for manufacturing profits that were anticipated to have otherwise been earned under the original agreement. Except as expressly provided in the Amended GSK Supply Agreement, all other financial obligations of GSK under the original agreement, including royalty payments, remain unchanged. As of December 31, 2011, we have received $10.5 million of a potential $15.3 million in upfront and milestone payments related to our agreements with GSK. We are also entitled to receive low single-digit royalties on the net sales for a period of at least 10 years after the first commercial sale of a resulting GSK product.

During the years ended December 31, 2011, 2010, and 2009, we recognized revenue of $1.3 million each year related to payments received under our license and supply agreements with GSK. Deferred revenue of $2.2 million related to our agreements with GSK is included in deferred revenue on our consolidated balance sheet as of December 31, 2011.

Effective September 14, 2009, we entered into an Amended and Restated License Agreement (Amended License Agreement) with Elan Corporation, plc and/or its affiliates (Elan) and Elan Pharmaceuticals, Inc. for providing Elan a commercial license for the use of QS-21 in the research and commercialization of an Alzheimer s disease vaccine containing QS-21 (Licensed Product). On September 17, 2009, the Amended License Agreement was assigned to JANSSEN Alzheimer s Immunotherapy (JANSSEN AI), a subsidiary of Johnson & Johnson. Under the terms of the Amended License Agreement assigned to JANSSEN AI, they have the right to develop, make, have made, use, sell, offer for sale, import, and have sold the Licensed Product. In addition, pursuant to the terms of the Amended License Agreement, JANSSEN AI has the right to manufacture all of its requirements of QS-21 for use in the Licensed Product and we have no further supply obligations. As of December 31, 2011, we have received $1.5 million in upfront and milestone payments under this agreement and are entitled to receive up to $10 million in additional future payments contingent upon successful milestone achievements. In addition, we are entitled to

Table of Contents

receive mid single-digit royalties on a country-by-country basis on net sales of the Licensed Product for a period of at least 10 years after first commercial sale in that country. Deferred revenue of $1.1 million related to this Amended License Agreement is included in deferred revenue on our consolidated balance sheet as of December 31, 2011.

(11) Certain Related Party Transactions

In March 1995, we entered into a consulting agreement with Dr. Pramod Srivastava, our scientific founder and a former member of our Board of Directors, and upon its expiration in March 2006, we entered into a new consulting agreement, effective March 28, 2006, with Dr. Srivastava. The agreement expired March 31, 2011. In exchange for the timely performance of services, as defined in the agreement, Dr. Srivastava was entitled to receive compensation to be established by the Compensation Committee of the Agenus Board of Directors. For the twelve-month period ended March 31, 2011, Dr. Srivastava received $50,000. Dr. Srivastava was also eligible to receive an annual bonus and stock options at the discretion of the Compensation Committee of our Board of Directors. During the year ended December 31, 2009, we paid Dr. Srivastava an additional $50,000 for his work related to our marketing authorization application submitted to the European Medicines Agency.

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

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

In August 2011, we issued and sold approximately 2.3 million shares of our common stock in an underwritten offering for net proceeds of approximately $6.3 million. 358,496 of these shares of common stock were issued and sold to our CEO.

(12) Leases

We lease manufacturing, research and development, and office facilities under various long-term lease arrangements. Rent expense (before sublease income) was $1.7 million, $2.6 million, and $2.9 million, for the years ended December 31, 2011, 2010, and 2009, respectively.

We lease an 83,000 square foot facility in Lexington, Massachusetts. During April 2011, we executed a Fifth Amendment of Lease reducing our occupied space in this facility from approximately 162,000 square feet to approximately 82,000 square feet. The future minimum rental payments under our leases of our New York City facility, which expires in 2012, and our Lexington headquarters, which expires in 2013, are as follows (in thousands).

Year ending December 31,	
2012	$ 1,137
2013	724
Total	$ 1,861

Table of Contents

In connection with the Lexington facility, we maintain a fully collateralized letter of credit of $1.0 million. No amounts have been drawn on the letter of credit as of December 31, 2011. In addition, for the office space in New York City, we were required to deposit $161,000 with the landlord as an interest-bearing security deposit pursuant to our obligations under the lease.

We sublet a portion of our facilities and received rental payments of $541,000, $1.1 million and $1.2 million for the years ended December 31, 2011, 2010, and 2009, respectively. We are contractually entitled to receive rental payments of $320,000 in 2012.

(13) Debt

As of December 31, 2011, we have $37.9 million in principal of debt outstanding: $37.5 million due in 2014 (2006 Notes), $100,000 due in 2025 (2005 Notes), $146,000 currently due and $140,000 related to an equipment financing due in 2014.

Convertible Notes 2006 Notes

On October 30, 2006 (the Issuance Date), we issued $25.0 million of the 2006 Notes to a group of accredited investors (Investors). These 2006 Notes bear interest at 8% (an effective rate of 8.10%) payable semi-annually on December 30 and June 30 in cash or, at our option, in additional notes or a combination thereof and had an original maturity date of August 30, 2011. During the years ended December 31, 2011, 2010, and 2009, we issued additional 2006 Notes in the amount of $2.8 million, $2.6 million, and $2.4 million, respectively, as payment for interest due.

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

As of December 31, 2010, the 2006 Notes were convertible into our common stock at a fixed conversion price of $18.00 per share at the option of the Investors. Effective with the Amendment this conversion provision is removed from the terms of the 2006 Notes. The 2006 Notes can be converted into an interest in one of our wholly-owned subsidiaries that holds the QS-21 and HerpV technologies. If converted into an interest of this subsidiary, the ownership interest in the subsidiary is determined by multiplying the quotient of the conversion amount divided by $25.0 million, by 30%.

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

In no event will any Investor be obligated to accept equity that would result in an Investor owning in excess of 9.99% of the Company s outstanding common stock at any given time in connection with any redemption or repayment of the 2006 Notes. The note agreements include a change of control provision whereby the holders of the 2006 Notes could require us to redeem all or a portion of the then outstanding 2006 Notes at a price equal to

Table of Contents

101% of the conversion amount being redeemed and a right of first refusal provision for the holders of the 2006 Notes on any sales of equity of the subsidiary holding the QS-21 and HerpV technologies, to purchase up to 50% of such sales of equity on the same terms as the third-party purchaser.

Convertible Notes 2005 Notes

On January 25, 2005, we issued $50.0 million of our 2005 Notes. Proceeds from the sale of the 2005 Notes were approximately $48.0 million net of issuance costs. Issuance costs are being amortized using the effective interest method over seven years, the expected life of the 2005 Notes based on the earliest date on which the holders can require redemption. During 2008, we repurchased $11.8 million in principal of these 2005 Notes for $2.9 million plus accrued interest of $178,000. During 2009, we repurchased $18.2 million in principal of our 2005 Notes for $255,000 and approximately 5,482,000 shares of our common stock. In connection with these 2009 repurchases we recorded a net gain of $2.7 million in non-operating income, which is comprised of inducement expense of $9.8 million and a gain on extinguishment of debt of $12.5 million. During 2010, we repurchased $19.9 million in principal of the 2005 Notes for $6.2 million and approximately 9,643,000 shares of our common stock. In connection with these 2010 repurchases we recorded a net gain of $2.8 million in non-operating income, which is comprised of inducement expense of $8.9 million and a gain on extinguishment of debt of $11.7 million. At December 31, 2011, $100,000 of the 2005 Notes remains outstanding.

The 2005 Notes, which mature in 2025, bear interest payable semi-annually on February 1 and August 1 of each year, at a rate of 5.25% per annum (an effective rate of 5.94%) and are convertible into common stock at an initial conversion price of $64.56 per share. On or after February 1, 2012, we may redeem the 2005 Notes for cash, at a redemption price equal to 100% of the principal amount of the 2005 Notes, plus any accrued and unpaid interest. On each of February 1, 2015 and February 1, 2020, holders may require us to purchase their 2005 Notes for cash equal to 100% of the principal amount of the 2005 Notes, plus any accrued and unpaid interest. At December 31, 2011, $100,000 of the 2005 Notes remain outstanding.

Convertible Notes Conversion Option

As of January 1, 2009, we adopted revised guidance that addressed certain matters applicable to convertible debt instruments and retrospectively applied this change in accounting to all prior periods presented for which we had applicable outstanding convertible debt, as required by this new guidance. Under this new method of accounting, the debt and equity components of our 2005 Notes and our 2006 Notes are bifurcated and accounted for separately based on the fair value and related interest rate of a non-convertible debt security with the same terms. The fair value of a non-convertible debt instrument at the original issuance dates of our 2005 Notes and our 2006 Notes was determined to be $42.6 million and $23.6 million, respectively. The equity (conversion options) components of our convertible debt securities have been included in additional paid-in capital on our consolidated balance sheet and, accordingly, the initial carrying value of the debt securities was reduced by $8.8 million.

Additionally, as a result of the adoption of revised guidance for evaluating when adjustment features within contracts are considered to be equity-indexed, as of January 1, 2009, the conversion feature embedded in our 2006 Notes was treated as a derivative liability and recorded at its fair value, with period to period changes in the fair value recorded as a gain or loss in our consolidated statement of operations. Accordingly, upon adoption we recorded a reduction to additional paid-in capital of $1.4 million, an increase to debt discount of $1.3 million, a derivative liability of $2.7 million, and a charge to opening accumulated deficit of $21,000. As of December 31, 2010 and 2009, our debt discount balance was $720,000, and $2.5 million, respectively. During the year ended December 21, 2010, we recorded a gain of $1.9 million due to the change in the fair value of the derivative. For the year ended December 31, 2009, we recorded a charge to other income of $48,000 due to changes in the fair value of the derivative and noncash interest expense of $1.3 million due to the adoption of this revised guidance. As amended, the 2006 Notes no longer fall within this guidance since they are no longer convertible into our common stock, therefore, the conversion option is no longer valued as a derivative liability. Accordingly, the value of the derivative has been reduced to zero with a corresponding increase to additional paid-in capital of

Table of Contents

$755,000. Also, as the Amendment did not modify our ability to settle the 2006 Notes in cash, the 2006 Notes are now within the guidance of ASC 470-20, *Debt with Conversion and Other Options.* In accordance with this guidance, the debt and equity components of the 2006 Notes are bifurcated and accounted for separately based on the value and related interest rate of a non-convertible debt security with the same terms. The fair value of the 2006 Notes at February 23, 2011 (the date of the Amendment) was determined to be $28.5 million. The equity (conversion option) component of the notes has been classified as noncontrolling interest on our consolidated balance sheet and accordingly, the carrying value of the 2006 Notes was reduced by approximately $5.6 million.

Other

At December 31, 2011, approximately $146,000 of debentures we assumed in our merger with Aquila Biopharmaceuticals are outstanding. These debentures carry interest at 7% and are callable by the holders. Accordingly they are classified as part of the current portion of long-term debt.

During 2011 we entered into an equipment purchase financing arrangement for approximately $154,000 payable in monthly installments over three years. At December 31, 2011, approximately $140,000 remains outstanding with approximately $52,000 classified as part of the current portion of long-term debt on our consolidated balance sheet.

(14) Fair Value Measurements

We measure fair value based on a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that observable inputs be used when available. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of the Company. Unobservable inputs are inputs that reflect the Company s assumptions about the inputs that market participants would use in pricing the asset or liability and are developed based on the best information available in the circumstances. The fair value hierarchy is broken down into three levels based on the source of inputs as follows:

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

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

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

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

We measure our derivative liability at fair value. Our derivative liability is classified within Level 3 because it is valued using a modified Black-Scholes model. Certain inputs into this model were valued using a combination of income and market approaches which are unobservable in the market and are significant.

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

Table of Contents

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

	December 31, 2011		December 31, 2010	
Description	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Unobservable Inputs (Level 3)	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Unobservable Inputs (Level 3)
Liabilities:				
Derivative liability				$ 755

The following table presents our liabilities measured at fair value using significant unobservable inputs (Level 3), as of December 31, 2011 (amounts in thousands):

Balance, December 31, 2010	$ 755
Decrease for reclassification as Equity (see Note 13)	(755)
Balance, December 31, 2011	$

As of December 31, 2011 and 2010, $37.5 million and $34.7 million in principal of the 2006 Notes are outstanding respectively. The fair value of the debt portion of the 2006 Notes exclusive of the conversion option at December 31, 2011, and 2010, is $30.8 million, based on a present value methodology. The fair value of the embedded conversion option at December 31, 2011, is $988,000.

(15) Contingencies

Agenus, our Chairman and CEO, Garo H. Armen, Ph.D., and two investment banking firms that served as underwriters in our initial public offering were named as defendants in a federal civil class action lawsuit in the United States District Court for the Southern District of New York. Substantially similar actions were filed concerning the initial public offerings for more than 300 different issuers, and the cases were coordinated for pre-trial purposes as In re Initial Public Offering Securities Litigation, 21 MC 92. The suit alleged that the brokerage arms of the investment banking firms charged secret excessive commissions to certain of their customers in return for allocations of our stock in the offering. The suit also alleged that shares of our stock were allocated to certain of the investment banking firms customers based upon agreements by such customers to purchase additional shares of our stock in the secondary market. These coordinated lawsuits were resolved pursuant to a global settlement. Any portion of the settlement attributable to Agenus has been funded by insurance, and Agenus bears no financial liability. Appeals filed by various objectors to the settlement have been dismissed. No accrual has been recorded at December 31, 2011 for this action.

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

(16) 401(k) Plan

We sponsor a defined contribution 401(k) savings plan for all eligible employees, as defined. Participants may contribute up to 60% of their compensation, as defined in the savings plan, with a maximum contribution of $16,500 for individuals under 50 years old and $22,000 for individuals 50 years old and older in 2011. Each participant is fully vested in his or her contributions and related earnings and losses. The Company matched 50% of the participant s contribution, subject to a maximum of 6% of compensation through February 2009. Such matching contributions vest over four years. In 2010 we made a discretionary contribution to the savings plan of approximately $42,000. For the years ended December 31, 2010, and 2009, we expensed $42,000, and $37,000, respectively, for the Company s contributions to the 401(k) plan.

73

Table of Contents

(17) Restructuring Costs

On February 2, 2009, we initiated a plan of restructuring that resulted in a reduction of our workforce by approximately 20%, or 19 positions. We engaged in this workforce reduction in order to reduce operating expenses in light of market conditions and to focus our resources on near-term commercial opportunities. This restructuring action resulted in total charges of approximately $177,000 in severance and outplacement expenses in the quarter ended March 31, 2009, with $42,000 included in research and development expenses and $135,000 included in general and administrative expenses in our consolidated statement of operations. The charge to operations was reduced by $10,000 during the quarter ended June 30, 2009 based on actual activities. All amounts were paid during 2009.

(18) Quarterly Financial Data (Unaudited)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2011				
Revenue	$ 672	$ 786	$ 654	$ 644
Net loss	(5,963)	(5,759)	(5,534)	(6,020)
Net loss attributable to common stockholders	(6,161)	(5,957)	(5,732)	(6,217)
Per common share, basic and diluted:				
Net loss attributable to common stockholders	$ (0.30)	$ (0.30)	$ (0.28)	$ (0.29)

	Quarter Ended,			
	March 31,	June 30,	September 30,	December 31,
	(In thousands, except per share data)			
2010				
Revenue	$ 936	$ 806	$ 624	$ 994
Net loss	(8,811)	(4,972)	(5,707)	(2,416)
Net loss attributable to common stockholders	(9,009)	(5,170)	(5,905)	(2,613)
Per common share, basic and diluted:				
Net loss attributable to common stockholders	$ (0.60)	$ (0.30)	$ (0.36)	$ (0.16)

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

(19) Subsequent Events

Subsequent to December 31, 2011, we issued approximately 952,000 shares of our common stock in at the market offerings through our sales agents, McNicoll, Lewis & Vlak LLC and Wm Smith & Co. and raised net proceeds of approximately $2.8 million after deducting offering costs of approximately $87,000. These offerings were made under effective shelf registration statements and proceeds from the offerings will be used for general corporate purposes. On March 2, 2012 we issued a notice of termination of this related At the Market Sales Agreement which, in accordance with the terms of the agreement, will be effective on March 12, 2012. In addition, on March 2, 2012 we entered into an At Market Issuance Sales Agreement with MLV & Co. LLC under which we may sell from time to time up to 5,000,000 shares of our common stock.

Also on March 2, 2012, we entered into an First Right to Negotiate and Amendment agreement with GSK whereby we agreed to grant GSK the first right to negotiate for the purchase of Agenus or certain of our assets. The first right to negotiate will expire after five years. Under the terms of the agreement, GSK will pay us a non-refundable payment of $9 million, of which $2.5 million is creditable against future manufacturing technology transfer royalty payments. The agreement also includes royalty payments for an undisclosed indication upon commercialization of a vaccine product.

We also received $6.3 million through an amended license of non-core technologies.

Table of Contents

Item 9. ***Changes in and Disagreements With Accountants on Accounting and Financial Disclosure***
Not applicable.

Item 9A. ***Controls and Procedures***
Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

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

Management s Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Securities Exchange Act Rule 13a-15(f). Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework, our management concluded that our internal control over financial reporting was effective as of December 31, 2011.

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

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the fourth quarter of 2011 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Table of Contents

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders

Agenus Inc.:

We have audited Agenus Inc. and subsidiaries internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Agenus Inc. s management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management s Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the Company s internal control over financial reporting based on our audit.

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

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

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

In our opinion, Agenus Inc. and subsidiaries maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2011 and 2010, and the related consolidated statements of operations, stockholders equity (deficit) and comprehensive loss, and cash flows for each of the years in the three-year period ended December 31, 2011, and our report dated March 6, 2012 expressed an unqualified opinion on those consolidated financial statements.

/s/ KPMG LLP

Boston, Massachusetts

March 6, 2012

Table of Contents

Item 9B. ***Other Information***
None.

PART III

Item 10. ***Directors, Executive Officers and Corporate Governance***
The response to this item is incorporated by reference from Executive Officers of the Registrant found in Part I of this Annual Report on Form 10-K, following Item 4 of this Annual Report on Form 10-K, and from sections entitled Proposal 1 Election of Director, Our Corporate Governance, and Section 16(a) Beneficial Ownership Reporting Compliance in our Proxy Statement relating to our 2012 Annual Meeting of Stockholders to be filed with the SEC within 120 days after the end of our 2011 fiscal year (the 2012 Proxy Statement).

Item 11. ***Executive Compensation***
The response to this item is incorporated by reference into this Annual Report on Form 10-K from sections entitled Our Corporate Governance, Compensation Discussion and Analysis, Compensation Committee Report, Compensation of Executive Officers, and Director Compensation in our 2012 Proxy Statement.

Item 12. ***Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters***
The response to this item is incorporated by reference into this Annual Report on Form 10-K from sections entitled Equity Plans and Ownership of Our Common Stock in our 2012 Proxy Statement.

Item 13. ***Certain Relationships and Related Transactions, and Director Independence***
The response to this item is incorporated by reference into this Annual Report on Form 10-K from the sections entitled Our Corporate Governance and Certain Relationships and Related Transactions in our 2012 Proxy Statement.

Item 14. ***Principal Accountant Fees and Services***
The response to this item is incorporated by reference into this Annual Report on Form 10-K from the section entitled Proposal 3 Ratify the Appointment of KPMG LLP as our Independent Registered Public Accounting Firm for the Fiscal Year Ending December 31, 2012 in our 2012 Proxy Statement.

Table of Contents

PART IV

Item 15. ***Exhibits and Financial Statement Schedules***

(a) 1. *Consolidated Financial Statements*

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

2. *Financial Statement Schedules*

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

3. *Exhibits*

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

(b) Exhibits

Exhibit Index

Exhibit No.	Description
3.1	Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 10, 2002 and incorporated herein by reference.
3.1.1	Certificate of Amendment to the Amended and Restated Certificate of Incorporation of Antigenics Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
3.1.2	Certificate of Ownership and Merger changing the name of the corporation to Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
3.1.3	Certificate of Second Amendment to the Amended and Restated Certificate of Incorporation of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 30, 2011 and incorporated herein by reference.
3.2	Fifth Amended and Restated By-laws of Agenus Inc. Filed as Exhibit 3.2 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
3.3	Certificate of Designation, Preferences and Rights of the Series A Convertible Preferred Stock of Agenus Inc. filed with the Secretary of State of the State of Delaware on September 24, 2003. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 25, 2003 and incorporated herein by reference.
3.4	Certificate of Designations, Preferences and Rights of the Class B Convertible Preferred Stock of Agenus Inc. Filed as Exhibit 3.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
4.1	Form of Common Stock Certificate. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 6, 2011 and incorporated herein by reference.
4.2	Indenture, dated January 25, 2005, between the Registrant and HSBC Bank USA, National Association. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 25, 2005 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
4.3	Registration Rights Agreement, dated January 25, 2005, between the Registrant and the initial purchasers. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on January 25, 2005 and incorporated herein by reference.
4.4	Form of Amended and Restated Note under the Securities Purchase Agreement dated as of October 30, 2006 (as amended), by and among Agenus Inc. Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.4 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
4.5	Form of Amended and Restated PIK Note under the Securities Purchase Agreement dated as of October 30, 2006 (as amended), by and among Agenus Inc. Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.5 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
4.6	Pledge of Security Agreement dated as of October 30, 2006 by and among Agenus Inc. Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.3 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.7	Guaranty dated as of October 30, 2006 by and between Agenus Inc. Inc., a Massachusetts corporation and Ingalls & Snyder LLC, as Collateral Agent for the Buyers. Filed as Exhibit 4.4 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.8	Guaranty dated as of October 30, 2006 by and between Aronex Pharmaceuticals, Inc. and Ingalls & Snyder LLC, as Collateral Agent for the Buyers. Filed as Exhibit 4.5 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.9	Securities Purchase Agreement dated as of October 30, 2006 by and among Agenus Inc. Inc., a Delaware corporation and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 4.6 to our Current Report on Form 8-K (File No. 0-29089) filed on October 31, 2006 and incorporated herein by reference.
4.10	Form of Warrant under the Securities Purchase Agreement dated January 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.11	Purchase Agreement dated August 31, 2007 by and between Agenus Inc. and Fletcher International. Filed as Exhibit 99.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 5, 2007 and incorporated herein by reference.
4.12	Securities Purchase Agreement dated April 8, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.13	Form of Warrant to purchase common stock dated April 9, 2008. Filed as Exhibit 4.1 to our Current Report on Form 8-K (File No. 0-29089) filed on April 10, 2008 and incorporated herein by reference.
4.14	Securities Purchase Agreement by and between Agenus Inc. and the investors identified on Schedule I attached to the agreement, dated January 9, 2008. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 11, 2008 and incorporated herein by reference.
4.15	Form of 4 Year Warrant under the Securities Purchase Agreement dated July 30, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
4.16	Form of 4 Year Warrant under the Securities Purchase Agreement dated August 3, 2009. Filed as Exhibit 4.2 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.
4.17	Ninth Amendment of Rights with respect to Events of Default and Issuance of Other Securities by and between Agenus Inc. and Ingalls & Snyder Value Partners L.P. dated February 23, 2011. Filed as Exhibit 4.17 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.1*	1999 Equity Incentive Plan, as amended. Filed as Exhibit 10.1 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2008 and incorporated herein by reference.
10.1.2*	Form of Non-Statutory Stock Option. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 15, 2004 and incorporated herein by reference.
10.1.3*	Form of 2007 Restricted Stock Award Agreement. Filed as Exhibit 10.1.5 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2007 and incorporated herein by reference.
10.1.4*	Form of 2008 Restricted Stock Award Agreement. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on March 11, 2008 and incorporated herein by reference.
10.1.5*	Sixth Amendment to the Agenus Inc. 1999 Equity Incentive Plan. Filed as Appendix D to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.2*	1999 Employee Stock Purchase Plan, as amended. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
10.3	Founding Scientist s Agreement between Agenus Inc. and Pramod K. Srivastava, Ph.D. dated March 28, 1995. Filed as Exhibit 10.3 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.3.1(1)	Amendment to Founding Scientist s Agreement dated January 1, 2003. Filed as Exhibit 10.29 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2002 and incorporated herein by reference.
10.4	Form of Indemnification Agreement between Agenus Inc. and its directors and executive officers. These agreements are materially different only as to the signatories and the dates of execution. Filed as Exhibit 10.4 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.4.1	Current schedule indentifying the directors and executive officers who are party to an Indemnification Agreement, the form of which was filed as Exhibit 10.4 to our registration statement on Form S-1 (File No. 333-91747). Filed as Exhibit 10.4.1 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.5(1)	Patent License Agreement between Agenus Inc. and Mount Sinai School of Medicine dated November 1, 1994, as amended on June 5, 1995. Filed as Exhibit 10.8 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.6(1)	Sponsored Research and Technology License Agreement between Agenus Inc. and Fordham University dated March 28, 1995, as amended on March 22, 1996. Filed as Exhibit 10.9 to our registration statement on Form S-1 (File No. 333-91747) and incorporated herein by reference.
10.7	Lease of Premises at 3 Forbes Road, Lexington, Massachusetts dated as of December 6, 2002 from BHX, LLC, as Trustee of 3 Forbes Realty Trust, to Agenus Inc. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 8, 2003 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
10.7.1	First Amendment of Lease dated as of August 15, 2003 from BHX, LLC, as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2004 and incorporated herein by reference.
10.7.2	Second Amendment of Lease dated as of March 7, 2007 from BHX, LLC as trustee of 3 Forbes Road Realty, to Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2007 and incorporated herein by reference.
10.7.3	Third Amendment to Lease dated April 23, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2008 and incorporated herein by reference.
10.7.4	Fourth Amendment to Lease dated September 30, 2008 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2008 and incorporated herein by reference.
10.7.5	Fifth Amendment to Lease dated April 11, 2011 between TBCI, LLC, as successor to BHX, LLC, as Trustee of 3 Forbes Road Realty Trust, and Agenus Inc. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2011 and incorporated herein by reference.
10.8*	Agenus Inc. Directors Deferred Compensation Plan, as amended. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on June 11, 2007 and incorporated herein by reference.
10.8.1*	Third Amendment to Directors Deferred Compensation Plan. Filed as Appendix E to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.8.2*	Fourth Amendment to Directors Deferred Compensation Plan. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 14, 2010 and incorporated herein by reference.
10.9(1)	License Agreement between the University of Connecticut Health Center and Agenus Inc. dated May 25, 2001, as amended on March 18, 2003. Filed as Exhibit 10.2 to the Amendment No. 1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2003 and incorporated herein by reference.
10.9.1(1)	Letter Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated May 11, 2009. Filed as Exhibit 10.5 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.9.2(1)	Amendment Number Two to License Agreement by and between Agenus Inc. and The University of Connecticut Health Center dated June 5, 2009. Filed as Exhibit 10.6 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.10*	Employment Agreement dated February 20, 2007 between Agenus Inc. and Shalini Sharp. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on February 26, 2007 and incorporated herein by reference.
10.10.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Shalini Sharp. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
10.10.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Shalini Sharp. Filed as Exhibit 10.10.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.11*	Employment Agreement dated February 20, 2007 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on February 26, 2007 and incorporated herein by reference.
10.11.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.4 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.11.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Kerry Wentworth. Filed as Exhibit 10.11.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.12*	Employment Agreement dated December 1, 2005 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 7, 2005 and incorporated herein by reference.
10.12.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference
10.12.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Garo Armen. Filed as Exhibit 10.12.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.13*	Amended and Restated Executive Change-in-Control Plan. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on November 3, 2010 and incorporated herein by reference.
10.14*	2004 Executive Incentive Plan, as amended. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on January 27, 2011 and incorporated herein by reference.
10.15*	Consulting Agreement dated March 28, 2006 between Agenus Inc. and Pramod Srivastava. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on March 28, 2006 and incorporated herein by reference.
10.16(1)	License Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated July 6, 2006. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2006 and incorporated herein by reference.
10.17	Standard Form of Loft Lease effective October 24, 2006 between 162 Fifth Avenue Associates LLC and Agenus Inc. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2006 and incorporated herein by reference.
10.18	Form of the Johns Hopkins University Uniform Provisions for Board Service. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 15, 2006 and incorporated herein by reference.
10.19	At Market Issuance Sales Agreement between Agenus Inc. and McNicoll, Lewis & Vlak LLC and Wm Smith & Co., dated February 26, 2010. Filed as Exhibit 1.1 to our Current Report on Form 8-K (File No. 0-29089) filed on March 1, 2010 and incorporated herein by reference.
10.20*	Employment Agreement dated September 16, 2008 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on September 19, 2008 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
10.20.1*	First Amendment to Employment Agreement dated July 2, 2009 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.20.2*	Second Amendment to Employment Agreement dated December 15, 2010 between Agenus Inc. and Karen Valentine. Filed as Exhibit 10.20.2 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.21(1)	Amended and Restated License Agreement by and between Antigenics Inc., a Massachusetts corporation and wholly owned subsidiary of Agenus Inc., Elan Pharma International Limited, and Elan Pharmaceuticals, Inc. dated September 14, 2009. Filed as Exhibit 10.5 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.22	Notice of Assignment of Amended and Restated License Agreement by and between Antigenics Inc., a Massachusetts corporation and wholly owned subsidiary of Agenus Inc., Elan Pharma International Limited, and Elan Pharmaceuticals, Inc. dated September 17, 2009. Filed as Exhibit 10.6 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.23(1)	Supply Agreement by and between Agenus Inc. and ISSI-Strategy LLC dated July 9, 2009. Filed as Exhibit 10.7 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended September 30, 2009 and incorporated herein by reference.
10.24	Securities Purchase Agreement dated as of July 30, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 3, 2009 and incorporated herein by reference.
10.25	Securities Purchase Agreement dated as of August 3, 2009 by and among Agenus Inc. and the investors listed on the Schedule of Buyers thereto. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 5, 2009 and incorporated herein by reference.
10.26(1)	Amended and Restated Manufacturing Technology Transfer and Supply Agreement by and between Agenus Inc. and GlaxoSmithKline Biologicals SA dated January 19, 2009. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2009 and incorporated herein by reference.
10.27*	Summary of oral agreement between Garo H. Armen, PhD and Agenus Inc. Agenus Inc. modifying the base salary of Dr. Armen. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended March 31, 2009 and incorporated herein by reference.
10.28	Securities Exchange Agreement by and between Agenus Inc. and Tang Capital Partners, LP dated June 3, 2009. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.29	Securities Exchange Agreement by and between Agenus Inc. and The Conus Fund L.P., The Conus Fund Offshore Master Fund Ltd., and The Conus Fund (QP) L.P. dated June 4, 2009. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.
10.30	Securities Exchange Agreement by and between Agenus Inc. and The Wolverine Convertible Arbitrage Fund Trading Limited dated June 4, 2009. Filed as Exhibit 10.3 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2009 and incorporated herein by reference.

Table of Contents

Exhibit No.	Description
10.31*	Agenus Inc. 2009 Equity Incentive Plan. Filed as Appendix A to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.31.1*	Form of Restricted Stock Agreement for the Agenus Inc. Agenus Inc. 2009 Equity Incentive Plan. Filed as Exhibit 10.2 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.
10.31.2*	Form of Stock Option Agreement for the Agenus Inc. 2009 Equity Incentive Plan. Filed as Exhibit 10.3 to our Current Report on Form 8-K (File No. 0-29089) filed on June 15, 2009 and incorporated herein by reference.
10.32*	Agenus Inc. 2009 Employee Stock Purchase Plan. Filed as Appendix B to our Definitive Proxy Statement on Schedule 14A filed on April 27, 2009 and incorporated herein by reference.
10.33	Landlord, Sublessor and Sublessee Agreement dated August 4, 2010 between Agenus Inc., Cubist Pharmaceuticals, Inc., and TBCI, LLC, as Trustee of 3 Forbes Road Realty Trust. Filed as Exhibit 10.1 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2010 and incorporated herein by reference.
10.34	Sublease Agreement by and between Agenus Inc. and Cubist Pharmaceuticals, Inc. dated July 30, 2010. Filed as Exhibit 10.2 to our Quarterly Report on Form 10-Q (File No. 0-29089) for the quarter ended June 30, 2010 and incorporated herein by reference.
10.35	Form of Subscription Agreement. Filed as Exhibit 10.1 to our Current Report on Form 8-K (File No. 0-29089) filed on December 14, 2010 and incorporated herein by reference.
10.36	Securities Exchange Agreement by and between Agenus Inc. and Invus Public Equities L.P. dated April 22, 2010. Filed as Exhibit 10.37 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.37	Securities Exchange Agreement by and between Agenus Inc. and Bruce Fund Inc. dated November 18, 2010. Filed as Exhibit 10.38 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.38	Securities Exchange Agreement by and between Agenus Inc. and Professional Life and Casualty dated November 18, 2010. Filed as Exhibit 10.39 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.39	Securities Repurchase Agreement by and between Agenus Inc. and Ingalls & Snyder Value Partners L.P. dated December 7, 2010. Filed as Exhibit 10.40 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.40	Securities Exchange Agreement by and between Agenus Inc. and Ingalls & Snyder Value Partners L.P. dated December 28, 2010. Filed as Exhibit 10.41 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
10.41	Underwriting Agreement by and between Agenus Inc. and William Blair & Company, LLC dated August 10, 2011. Filed as Exhibit 1.1 to our Current Report on Form 8-K (File No. 0-29089) filed on August 11, 2011 and incorporated herein by reference.
10.42	License Agreement by and between Agenus Inc. and NewVac LLC dated December 19, 2011. Filed herewith.
21	Subsidiaries of Agenus Inc. Filed as Exhibit 21 to our Annual Report on Form 10-K (File No. 0-29089) for the year ended December 31, 2010 and incorporated herein by reference.
23	Consent of KPMG LLP, independent registered public accounting firm. Filed herewith.

84

Table of Contents

Exhibit No.	Description
31.1	Certification of Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.
31.2	Certification of Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended. Filed herewith.
32.1(2)	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350 as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Submitted herewith.
101.INS	XBRL Instance Document(3)
101.SCH	XBRL Taxonomy Extension Schema Document(3)
101.CAL	XBRL Calculation Linkbase Document(3)
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document(3)
101.LAB	XBRL Label Linkbase Document(3)
101.PRE	XBRL Taxonomy Presentation Linkbase Document(3)

* Indicates a management contract or compensatory plan.

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

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

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

Table of Contents

SIGNATURES

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

AGENUS INC.

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

Dated: March 6, 2012

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant in the capacities indicated as of March 6, 2012.

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

Table of Contents

Exhibit 10.42

LICENSE AND DEVELOPMENT AND MANUFACTURING TECHNOLOGY TRANSFER AGREEMENT

This Exclusive License and Development and Manufacturing Technology Transfer Agreement (this "Agreement"), effective as of the date of the last signature hereto (the "Effective Date"), is made by and between Agenus Inc., a Delaware corporation having offices at 3 Forbes Road, Lexington, MA 02421 ("Agenus"), and NewVac Ltd., a limited liability company established under Russian laws, with offices at 2a-1, Rabochaya St., Khimki, Moscow 141400 Russia ("Licensee"). Agenus and Licensee are each referred to herein as a "Party" and collectively, as the "Parties".

RECITALS

WHEREAS, Agenus is in the business of developing novel products for the prevention and treatment of cancers and infectious diseases, and has proprietary rights in a product approved in the Russia Federation for the prevention of the recurrence of adjuvant renal cell carcinoma;

WHEREAS, Licensee is in the business of developing, manufacturing and commercializing novel products in the Russian Federation and is interested in collaborating with Agenus for the further development and commercialization of the Agenus product.

NOW THEREFORE, in consideration of the foregoing premises, the following mutual promises and covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

Definitions

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

1.1 "Agenus Product" means HSPPC-96 vaccine, also known as vitespen, and also known as Oncophage® vaccine for the adjuvant treatment of renal cell carcinoma, as defined in the Registration Certificate attached in the Exhibit B.

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

Table of Contents

1.2 Agenus Product Requirements means the amount of Agenus Product which Licensee and its Sublicensees require pursuant to the provisions hereof for commercialization of Agenus Product pursuant to this Agreement and the research and development of the Combination Product pursuant to this Agreement.

1.3 Affiliate means any corporation or other entity that controls, is controlled by, or is under common control with, a Party. For purposes of this Section 1.3, an entity shall be regarded as in control of another corporation or entity if it owns or directly or indirectly controls more than 50% of the voting securities or other ownership interest of the other corporation or entity.

1.4 Biomaterial means a tumor tissue specimen collected for use in manufacturing Agenus Product.

1.5 cGMPs means the applicable current Good Manufacturing Practices for Finished Pharmaceuticals pursuant to 21 C.F.R. 210 et seq., as amended from time to time, or its equivalent in the Russian Federation or such other equivalent in the applicable territory within the Territory.

1.6 CMO means a contract manufacturing organization.

1.7 Development Indication shall mean the Licensed Indication, or such other indication(s) as may be agreed to in writing between the Parties.

1.8 Development Plan has the meaning set forth in Section 4.1(b).

1.9 Combination Product means Agenus Product combined with Licensee Product whether administered together or via different routes of administration and/or at different sites or times.

1.10 Commercialization Plan has the meaning set forth in Section 4.1(b)

1.11 Control or Controlled means with respect to any material, item of information or intellectual property right, the possession, whether by ownership, license or otherwise, of the right to grant a license, sublicense or other right with respect thereto.

1.12 Developments has the meaning set forth in Section 11.1(b).

1.13 First Commercial Sale means on a country-by-country basis the date of first commercial sale of such product in such country pursuant to this Agreement.

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Table of Contents

1.14 "Gross Sales" means the amount billed or invoiced on arms-length sales by Licensee, its Sublicensees or distributors to Third Parties.

1.15 "Licensed Indication" means the adjuvant treatment of renal cell carcinoma in patients at intermediate risk of recurrence.

1.16 "Licensed Know-how" means (a) the Manufacturing Technology, and (b) any other materials, data, results, formulae, designs, specifications, methods, processes, improvements, techniques, ideas, discoveries, technical information, process information, clinical information and any other information, whether or not any of the foregoing is patentable, which is known to, and is Confidential Information and proprietary to, Agenus and Controlled by Agenus, to the extent that any of the foregoing (i) is necessary or reasonably useful to make, have made, use or sell the Agenus Product in the Licensed Indication in accordance with this Agreement, or (ii) is otherwise necessary or reasonably useful for the use of Agenus Product in connection with the research, development, manufacture or use of the Combination Product in the Development Indication in accordance with this Agreement.

1.17 "Licensed Patent Rights" means any and all patent applications and patents (including inventor's certificates and utility models) throughout the world, including any substitutions, extensions, reissues, reexaminations, renewals, divisions, continuations and continuations-in-part of the foregoing, Controlled by Agenus (regardless of any royalty or other payments to a Third Party required of Agenus), necessary or reasonably useful for the development, manufacture, use, sale offer for sale or importation of the Agenus Product or the Combination Product. The "Licensed Patent Rights" existing as of the Effective Date are listed on Exhibit A attached and incorporated into this Agreement.

1.18 "Licensee Product" means Istradefyllin as a co-adjuvant.

1.19 "Manufacturing Capacity" means the capacity of the Agenus manufacturing facility in Lexington, MA USA to make Agenus Product for Licensee hereunder, taking into account Agenus' other manufacturing & on-going compliance requirements, financial resources, staffing and capital equipment considerations, as of January 31, 2012, or such other capacity as may be agreed to between the Parties from time to time.

1.20 "Manufacturing Technology" means materials, data, results, formulae, designs, specifications, methods, processes, improvements, techniques, ideas, discoveries, technical information, process information, clinical information and any other information, whether or not any of the foregoing is patentable, which is known to and is Confidential Information and proprietary to Agenus and is Controlled by Agenus, solely to the extent that any of the foregoing is necessary or reasonably useful for the manufacture of the Agenus Product for the Licensed Indication and Development Indication in accordance with the Specifications and Agenus standard operating procedures as of the Effective Date, as further defined in the Technology Transfer Plan.

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Table of Contents

1.21 Net Sales means with respect to the Agenus Product, or the Combination Product, as the case may be, the Gross Sales of such Agenus Product or Combination Product minus the following items to the extent such items are incurred, taken or borne by the seller thereof and do not exceed reasonable and customary amounts in the market in which such sale occurred: (a) trade, cash or quantity discounts; (b) credits or allowances given or made for rejection or approved return of goods; (c) taxes or government charges, duties or tariffs (other than an income tax) levied on the sale, transportation or delivery of such Agenus Product or Combination Product. Sales between Licensee and its Sublicensees or its distributors shall be excluded from the computation of Net Sales except where such Sublicensees are the end users, but Net Sales shall include the subsequent final sales to Third Parties by such Sublicensees, or distributors.

1.22 Pre-existing Intellectual Property shall have the meaning set forth in Section 11.1(a).

1.23 Price shall have the meaning set forth in Section 3.2.

1.24 Production Milestone has the meaning set forth in Section 12.2(a).

1.25 Production Milestone Deadline has the meaning set forth in Section 12.2(b).

1.26 Registration Certificate has the meaning set forth in Section 6.1(a).

1.27 Regulatory Approval means any approval of any applicable Regulatory Authority necessary for the marketing and sale of a pharmaceutical product in any country or regulatory jurisdiction in the Territory, including, if applicable, any separate pricing or reimbursement approvals that may be required in any country or regulatory jurisdiction in the Territory.

1.28 Regulatory Authority means any federal, national, multi-national, state, provincial or local regulatory agency, department, bureau or other governmental entity with authority over the marketing or sale of pharmaceutical products.

1.29 Regulatory Materials means regulatory applications, submissions, notifications, registrations, Regulatory Approvals, including the Registration Certificate, and/or other filings made to or with a Regulatory Authority that are necessary or reasonably desirable in order to research, develop, manufacture, receive Regulatory Approval or market and distribute the a pharmaceutical product in a particular country or regulatory jurisdiction.

1.30 Specifications shall mean the product release specifications for the Agenus Product, whether sold as Agenus Product or as part of the Combination Product, as defined in Exhibit C.

1.31 Sublicensee(s) means a party granted a sublicense of the licenses granted pursuant to Section 2.1 of this Agreement, whether such party is an Affiliate or Third Party.

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Table of Contents

1.32 "Supply Opt Out" has the meaning set forth in Section 12.3.

1.33 "Supply Period" has the meaning set forth in Section 12.3.

1.34 "Technology Transfer Plan" has the meaning set forth in Section 12.1.

1.35 "Term" is defined in Section 10.1.

1.36 "Territory" means the countries listed on Exhibit D.

1.37 "Third Party" means any party other than a Party, their respective Affiliates or a Sublicensee.

1.38 "Valid Claim" means a claim in an issued, unexpired patent, or a claim of a pending patent application, in the Licensed Patent Rights, which has not been held invalid, unpatentable or unenforceable in an unappealed or unappealable decision of a court or other governmental body of competent jurisdiction, which has not been rendered unenforceable through disclaimer or otherwise, and which has not been lost through an interference or other proceeding, provided that if any pending patent application is pending for more than [**] years, it shall cease to be within the definition of Valid Claim unless and until it issues.

ARTICLE II

Licenses

2.1 Grant of License Rights to Licensee. Subject to the terms and conditions of this Agreement, Agenus hereby grants to Licensee an exclusive license within the Territory to use and practice the Licensed Know-how and Licensed Patent Rights: (a) to make, have made, use, sell, offer for sale, and import Agenus Product for the Licensed Indication in the Territory; and (b) to make, have made and use Agenus Product solely to research, develop, make, have made, use, sell, offer for sale and import Combination Products for the Development Indication in the Territory solely in accordance with the Development Plan. In no event shall Licensee, its Sublicensees, or any CMO acting at Licensee s or its Sublicensees instruction, practice the Licensed Patent Rights or Licensed Know-how for purposes other than as set forth above. In no event shall Licensee have the right to manufacture or have manufactured the Agenus Product outside of the Specifications without the prior written consent of Agenus.

2.2 Sublicenses. Licensee shall have the right (a) to grant sublicenses of its rights under this Agreement with respect to Agenus Product and/or Combination Product, and/or (b) to engage a CMO approved pursuant to Section 12.2(d) for purposes of manufacturing the Agenus Product for use alone or in the Combination Product, in each case, solely with the prior written consent of Agenus. Licensee shall promptly notify Agenus of the execution of

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each Sublicense or CMO arrangement and shall provide Agenus with a copy of the same. Licensee and each Sublicensee or CMO shall enter into a written sublicense agreement subject to, consistent with, and not to extend beyond the scope of Licensee s rights and obligations under, and the terms and conditions of, this Agreement, which written sublicense agreement shall require the Sublicensee to agree to be bound by and comply with provisions that are consistent with the provisions of this Agreement. Licensee shall remain responsible for compliance by any Sublicensee or CMO receiving any rights hereunder with all terms and conditions of this Agreement relevant to such Sublicensee or CMO.

ARTICLE III

Payments

3.1 Milestones. As consideration for the rights and licenses granted to Licensee upon the achievement of [**] of the Agenus Product (including as part of a Combination Product) of [**] U.S. dollars ($[**] USD) (as measured on an Agreement year basis until the [**] anniversary of the Effective Date, and as measured during any [**] period thereafter), Licensee shall pay Agenus [**] U.S. dollars ($[**] USD) within thirty days (30) of such achievement. Licensee shall promptly give Agenus notice of the occurrence of such milestone.

[**] made in any currency other than United States dollars shall be converted to United States dollars for the purpose of assessing achievement of this milestone. Such conversion shall be done in accordance with the following formula:

A/B = United States dollar sales amount for each month, where

A = foreign currency [**] in the applicable month; and

B = foreign exchange conversion rate, expressed in local currency per United States dollar (using as the applicable foreign exchange conversion rate, the rate established by the Central Bank of the Russia Federation, or any other mutually agreed-upon source, for the last five (5) business days of each month).

3.2 Agenus Product Supply Pricing and Payment Terms.

3.2.1 Pricing. For each patient batch of Agenus Product that may be supplied by Agenus pursuant to Section 12.3, Licensee shall purchase such Agenus Product at a transfer price (the Price) of $[**] USD per patient batch, subject to the remaining provisions of this Agreement. For Agenus Product so supplied by Agenus pursuant to Section 12.3 and to be used by Licensee for use in clinical trials under the Development Plan and for which Licensee

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makes [**] or receives any other form of [**], Agenus shall supply such Agenus Product at [**] (i.e., at a Price of $[**] USD per [**]); provided, however, that is without in any way limiting Agenus other rights under this Agreement, in the event that Licensee has not met the [**] (as defined in Section 12.2(a)) by the [**] of the Effective Date and Agenus agrees to [**] the relevant milestone deadlines pursuant to the provisions of this Agreement, then Licensee shall pay Agenus a Price of $[**] USD per patient batch for such Agenus Product supplied by Agenus pursuant to Section 12.3. The Price does not include, and Licensee shall be solely responsible for: (i) costs of transporting Biomaterials to Agenus facility in Lexington, MA, USA, including any additional licenses Agenus would need to obtain to facilitate such activities, (ii) costs of shipping Agenus Product to the Territory (CIP Moscow, customs border or such other country border within the Territory as may be agreed to between the Parties), including any additional licenses Agenus would need to obtain to facilitate such activities, and (iii) all other costs and expenses related to the supply of the Agenus Product by Agenus, such as customs fees, VAT, etc. For the avoidance of doubt and notwithstanding any other provision of this Agreement, in the event that Licensee sells Agenus Product to a Third Party for use in [**] under the Development Plan, Licensee shall compensate Agenus the applicable $[**] USD or $[**] USD Price for such Agenus Product supplied by Agenus pursuant to Section 12.3. In addition to the applicable Price set forth above, in the event that Licensee sells any Agenus Product supplied by Agenus pursuant to Section 12.3 at a Gross Sales price above $[**] USD per patient batch, then in addition to the Price for such Agenus Product, Licensee shall also pay Agenus a royalty of [**]% on the difference in Net Sales for such Agenus Product.

3.2.2 Payment Terms. Agenus shall invoice Licensee for each Agenus Product sold for which payment is owing pursuant to this Section 3.2. Invoices may be sent by Agenus via email or in hard copy, such as with the Agenus Product shipment. Licensee shall pay Agenus the Price for each Agenus Product and any royalty that may be owing under Section 3.2.1 above within the earlier of (i) five (5) Business Days of the receipt of payment to Licensee from the purchaser or (ii) sixty (60) days of delivery of Agenus Product to the Russian custom s border (or other applicable country within the Territory s customs border). Unless otherwise elected by Agenus, Licensee shall make all payments required under this Agreement in United Stated Dollars by wire transfer to an account specified by Agenus. Licensee shall be responsible for the banking charges associated with any wire transfers under this Agreement.

3.3 Royalties. Subject to other terms of this Agreement, and as consideration for the rights and licenses granted to Licensee hereunder, Licensee shall pay royalties to Agenus on Net Sales of Agenus Product not supplied by Agenus pursuant to Section 12.3 as follows:

(i) Licensee will pay to Agenus a royalty of [**] percent ([**]%) of Net Sales of each Agenus Product in the Territory.

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Table of Contents

(ii) In the event of Regulatory Approval of the Combination Product in a given Territory, Licensee would pay to Agenus a royalty of [**] percent ([**]%) of Net Sales of such Combination Product in such Territory. For the avoidance of doubt, Net Sales of Agenus Product made prior to Regulatory Approval of the Combination Product would be subject to the royalty provisions of Section 3.3(i) above.

3.4 Royalty Term. Licensee will make royalty payments on a country-by-country basis during the Term, as may be extended pursuant to Section 10.2.

3.5 Royalty Payments, Reports and Records

3.5.1 Commercial Introduction. Licensee shall promptly give Agenus notice of the occurrence of the First Commercial Sale of the Agenus Product and the First Commercial Sale of the Combination Product, if applicable, in each country within the Territory hereunder. In no event shall the First Commercial Sale of any Agenus Product occur prior to January 31, 2012 unless otherwise agreed in writing between the Parties.

3.5.2 Royalty Payments.

(a) Payments: Deduction of Taxes. A royalty report and payment under this Agreement on Net Sales of the Agenus Product will be due and payable from Licensee to Agenus within forty-five (45) days of the last calendar day of each month. Licensee will remit any such payment due to Agenus under this Agreement by wire or check payable to Agenus. Licensee shall make applicable withholding payments due on behalf of Agenus and shall promptly provide Agenus with written documentation of any such taxes withheld and paid by Licensee or its Sublicensees for the benefit of Agenus. Notwithstanding the foregoing, if Agenus is entitled under any applicable tax treaty to a reduction of the rate of, or the elimination of, applicable withholding tax, it may deliver to Licensee or the appropriate governmental authority (with the assistance of Licensee to the extent that this is reasonably required and is expressly requested in writing) the prescribed forms necessary to reduce the applicable rate of withholding tax or to relieve Licensee of its obligation to withhold tax, and Licensee shall apply the reduced rate of withholding tax, or dispense with withholding tax, as the case may be. If, in accordance with the foregoing, Licensee withholds any amount, it shall pay to Agenus the balance when due, make timely payment to the proper taxing authority of the withheld amount, and send to Agenus proof of such payment within thirty (30) days following that payment. In addition to, and notwithstanding any other provision of this Agreement, in the event that Licensee grants a sublicense or assigns its rights and obligations hereunder, and as a result of such sublicense or assignment, a deduction or withholding on any payment to Agenus under this Agreement is required by any applicable

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law that would not have been required absent such sublicense or assignment, then Licensee (including its successors, transferees, and assigns) will pay (or authorize payment) to Agenus such additional amount as is necessary to ensure that the net amount actually received by Agenus (free and clear of any tax/withholding, including any tax/withholding imposed on or with respect to the additional amount, whether assessed against Licensee or Agenus) will equal the full amount Agenus would have received had no such deduction or withholding been required.

(b) Foreign Currency Conversion. For sales of any Licensed Product that occur in a currency other than United States dollars (Foreign Currency Sales), the monthly royalty payment will be calculated as follows:

(A/B) X C = United States dollars royalty payment on Foreign Currency Sales, where

A = foreign currency Net Sales per month; B = foreign exchange conversion rate, expressed in local currency per United States dollar (using as the applicable foreign exchange conversion rate, the rate established by the Central Bank of the Russia Federation, or any other mutually agreed-upon source, on the day of payment); and

C = the royalty rate applicable to such Net Sales under Section 3.3.

3.5.3 Royalty Reports. Licensee shall render to Agenus, together with the royalty payment due under Section 3.5.2 for a given calendar month, within [**] days of the end of such month, a written account for such calendar month showing (a) total Gross Sales and Net Sales for the Agenus Product and the Combination Product in the Territory, separately, and (b) a calculation of the royalties payable under Section 3.3, or 3.2.2 if applicable, for the Agenus Product (including, in the case of foreign currency sales, the total foreign currency Net Sales during such calendar month, the applicable foreign exchange conversion rate(s) and the total United States dollar royalty payment amount).

3.6 Delinquent Payments. Any delinquent payment amounts under this Agreement shall bear interest at a rate equal to [**] percent ([**]%) per month ([**] percent ([**]%) per [**]) or, if lower, at the maximum rate allowed by applicable law. Agenus reserves the right to withhold delivery of Agenus Product during any period in which Licensee has any amounts outstanding and past due. Such withholding of delivery will not constitute a breach of Agenus obligations.

3.7 Licensee s Recordkeeping and Inspection. Licensee shall keep records of all sales of Agenus Product and Combination Product in sufficient detail to permit Agenus to confirm the accuracy of payments owing and made hereunder, for a period of at least [**] years from the

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Table of Contents

date such payments would be owing hereunder. At the request of Agenus no more frequently than once per year, upon at least ten (10) business days prior written notice to Licensee from Agenus, and at the expense of Agenus (except as otherwise provided below), Licensee shall permit a U.S. nationally recognized, independent certified public accountant selected by Agenus and reasonably acceptable to Licensee to inspect, during regular business hours, any such Licensee records solely to the extent necessary to verify such calculations, provided that such accountant in advance has entered into a confidentiality agreement with Licensee (substantially similar to the confidentiality provisions of this Agreement) limiting the disclosure of such information to authorized representatives of the Parties. Results of any such inspection shall be made available to both Parties. If such inspection reveals a deficiency in the calculation of payments owed or owing resulting in an underpayment to Agenus, Licensee shall promptly pay the difference owing, and in the event that the deficiency in the calculation of payments owed or owing results in an underpayment to Agenus by five percent (5%) or more, Licensee shall promptly pay all reasonable costs and expenses of such inspection.

3.8 Acknowledgement. The Parties acknowledge and agree that (i) the compensation terms set forth in this Agreement were agreed to after careful evaluation of various alternatives to reasonably compensate Agenus for its substantial investment over time in developing the Agenus Product, Licensed Patent Rights and Licensed Know-how, including without limitation potential up-front payments, refunds for past investments by Agenus, milestone payments, royalties, and maintenance fees, and (ii) the current payment terms as set forth herein where agreed to by Agenus and Licensee each, for the convenience of the Parties, including to enable Licensee to defer payment obligations.

ARTICLE IV

Joint Steering Committee and Specific Responsibilities of the Parties

4.1 Joint Steering Committee.

(a) Within thirty (30) days after the Effective Date, Agenus and Licensee will establish a joint steering committee (the JSC) to oversee the activities to be undertaken pursuant to this Agreement. The JSC will facilitate communication between the Parties and provide a forum to review any matters relating to manufacturing technology transfer, supply, the Commercialization Plan and the Development Plan. The JSC shall consist of an equal number of individuals appointed by each Party (up to three (3) per Party), or such other number of representatives the Parties may mutually agree upon, and may also include additional representatives from the Parties, as mutually agreed, on an ad-hoc basis. The JSC shall be co-chaired by one appointee of each of Agenus and Licensee. The co-chairs will coordinate agendas and minute-taking for meetings of the JSC. Each Party may replace its JSC representatives at any time upon written notice to the other Party provided that, the Party intending to change its representative(s) will first notify the other Party and will take the other

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Table of Contents

Party s reasonable objection to any such replacement into consideration. Meetings of the JSC shall be effective only if at least one representative of each Party is present and participating. The JSC may establish certain ad hoc sub-committees which consider certain matters, including without limitation, one or more sub-committees (consisting of at least one (1) individual from each Party). Each Party shall be responsible for its own expenses for participating in the JSC.

(b) The JSC shall meet (in person, or by teleconference or videoconference as agreed by the Parties) at least once quarterly (or more frequently as the Parties mutually agree is appropriate, or on such dates and at such times as the Parties shall agree). The JSC (itself or through one or more sub-committees) will, among other things: (i) develop and oversee the commercialization activities relating to the Agenus Product in the Licensed Indication in the Territory, in accordance with the commercialization plan and budget (the Commercialization Plan), and (ii) develop and oversee the development activities relating to the Combination Product in the Development Indication, in accordance with the 3 year development and regulatory strategy, implementation plan and budget for the Combination Product in the Development Indication in the Territory (the Development Plan), as may be amended from time to time by the JSC, (iii) discuss and review the conceptual design of Licensee s or CMO s manufacturing facility for Agenus Product and discuss and review validation plans for manufacturing, QC testing and facilities; and (iv) address such other matters as may be agreed to between the Parties, including open matters that may exist at the level of the sub-committees. The initial Development Plan and Commercialization Plan shall be consistent with the provisions of Exhibit E-1 and E-2 respectively and shall be agreed to between the Parties within forty-five (45) days of the Effective Date, and may thereafter be amended from time to time by the JSC.

(c) Decisions of the JSC will be made by unanimous consent of the co-chairs. In the event that the co-chairs of the JSC cannot come to consensus within thirty (30) days with respect to any matter over which the JSC has authority and responsibility, the JSC shall submit the matter to dispute resolution in accordance with Section 13.4.

(d) The JSC shall continue to exist until the first to occur of: (a) the Parties mutually agreeing to disband the committee; or (b) Agenus providing to Licensee written notice of its intention to disband and no longer participate in the JSC.

(e) Should the JSC disband per subsection (d), above, and not as part of the termination of this Agreement, the Parties agree to each nominate a single point of contact within their respective companies, to facilitate the continuation of the activities and projects contemplated by this Agreement.

4.2 Certain Responsibilities of the Parties. The Parties acknowledge and agree that, subject to the provisions of this Agreement: (i) Licensee shall be primarily responsible for conducting the development activities under the Development Plan and all commercialization

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activities under the Commercialization Plan, unless otherwise expressly set forth in this Agreement, at its sole cost and expense, (ii) Agenus shall reasonably cooperate with Licensee in connection therewith by providing reasonable access to (a) Licensed Know-How necessary to conduct the Development Plan and Commercialization Plan activities, and (b) personnel necessary to carry out the Commercialization Plan or Development Plan, at Agenus sole cost and expense up to a maximum of $[**] USD during the Term (including FTEs at an annual FTE rate of $[**] USD), and Licensee shall reimburse Agenus all costs and expenses of Agenus, in excess of such $[**] cap, and in each case provided that such cooperation does not unreasonably interfere with the business operations of Agenus, (iii) Agenus shall provide available and approved tumor procurement/shipping kits for the Biomaterials and the Agenus Product during the Supply Period; and (iv) Licensee shall provide Licensee Product for use in the Development Plan activities during the Term at its sole cost and expense. In addition, and for the avoidance of doubt, Licensee shall have the following responsibilities: (a) use its best commercially reasonable efforts to commercialize the Agenus Product in the Territory in accordance with the provisions of the Agreement, the Commercialization Plan, and all applicable laws; (b) conduct a limited physician post marketing (observation or registry) study (PhIV) in the Licensed Indication during the initial Term; (c) conduct all marketing and sales activities for the Agenus Product in the Territory in the Licensed Indication (and Development Indication, if applicable) in accordance with a Commercialization Plan; (d) manage all tumor procurement and logistical activities; (e) manage all regulatory and pharmacovigilance activities for the Agenus Product in the Territory in the Licensed Indication and the Combination Product in the Development Indication in accordance with Article VI; (f) expeditiously obtain and maintain Biomaterial export and Agenus Product import licenses during the Supply Period, if applicable; (g) act as importer for tumor procurement/shipping kits during the Supply Period, if applicable; and (h) manufacture all Agenus Product for the Territory and Approved Indication and Development Indication in accordance with the Technology Transfer Plan and applicable laws, rules and regulations, other than any Agenus Product that may be supplied by Agenus pursuant to Section 12.3. Licensee acknowledges and agrees to the following obligations: (i) Licensee shall conduct all activities in the Territory with respect to the Agenus Product and Combination Product and its activities hereunder in accordance with this Agreement, the Specifications, and all applicable laws, rules, regulations and guidelines; and (ii) Licensee shall obtain and maintain all permits, licenses, filings, certifications or other authorizations required by Regulatory Authorities for the performance of its rights and obligations under this Agreement.

ARTICLE V

Due Diligence

5.1 Maintenance of License. In order to maintain the licenses granted pursuant to Section 2.1, Licensee shall use its best commercially reasonable efforts at its sole cost and expense to (i) complete the Manufacturing Diligence Milestones (as defined in Section 12.2) by the

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Table of Contents

Manufacturing Milestone Deadlines (as defined in Section 12.2 and subject to Section 12.2(b)) and (ii) market and sell the Agenus Product in the Licensed Indication in the Territory and conduct the Development Plan activities, in each case in accordance with applicable laws, rules and regulations, and the provisions of this Agreement, including without limitation, meeting the following commercial milestones by the applicable milestone dates below (each a "Commercial Milestone Deadline"):

MILESTONE	MILESTONE DATE
$[**] USD in [**] Gross Sales	By [**], provided that in the event that [**] the [**], then within first [**] months of the [**] date,
$[**] USD in [**] Gross Sales	between [**] and [**], provided that in the event that [**] the [**], then between the [**] and [**] [**] of the [**] date
$[**] USD in [**] Gross Sales	between [**] and [**], provided that in the event that [**] the [**], then between the [**] and the [**] [**] of the [**] date

In the event that any of the milestones above are not met by the respective milestone date, the Parties shall meet to discuss the reasons for failure. In the event that Licensee demonstrates to Agenus satisfaction that it used its best commercially reasonable efforts to meet such milestone, the Parties shall agree upon an appropriate extension for achievement of such milestone and Agenus shall not have the right to terminate the Agreement. In addition and notwithstanding the above, in the event that Licensee fails to demonstrate to Agenus satisfaction that it used its best commercially reasonable efforts to meet any of the above commercial milestones by the milestone dates (or any extension allowed for above), Agenus shall have a right to terminate the Agreement upon 60 days written notice to Licensee. Upon receipt of any termination notice under this Agreement, Licensee shall immediately cease taking new product orders with respect to Agenus Product and Combination Product (if applicable) unless otherwise agreed in writing between the Parties, and shall cause its Sublicensees and distributors to do the same.

Gross Sales made in any currency other than United States dollars shall be converted to United States dollars for the purpose of assessing achievement of this milestone. Such conversion shall be done in accordance with the following formula:

A/B = United States dollar sales amount for each month, where

A = foreign currency Gross Sales in the applicable month; and

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Table of Contents

B = foreign exchange conversion rate, expressed in local currency per United States dollar (using as the applicable foreign exchange conversion rate, the rate established by the Central Bank of the Russia Federation, or any other mutually agreed-upon source, for the last five (5) business days of each month).

ARTICLE VI

Regulatory Matters

6.1 Regulatory Filings

(a) Agenus Product.

(i) Agenus will maintain and transfer to Licensee the registration certificate for Regulatory Approval of the Agenus Product for the Licensed Indication in Russia (the Registration Certificate) upon the later of (i) Licensee s achievement of the Production Milestone or (ii) the extension of the initial Registration Certificate (the Certificate Transfer Date); provided that Licensee is in full compliance with the provisions of this Agreement. In furtherance thereof and subject to the foregoing, the Parties shall work together to begin the process of filing necessary amendments in a timely manner so as to mitigate the chances of a potential lag in the effectiveness of the Registration Certificate. Upon transfer of the Registration Certificate to Licensee hereunder, Licensee shall be responsible for the maintenance thereof in accordance with the remaining provisions of this Section 6.1 at its sole cost and expense.

(ii) Except as expressly set forth above and unless otherwise agreed in writing between the Parties, Licensee shall be responsible for preparing and filing all Regulatory Materials, including without limitation furnishing timely notice of all side effects, drug interactions and other adverse effects identified or suspected with respect to the Agenus Product, and seeking all Regulatory Approvals for the Licensed Indication in the Territory in the name of Licensee, and for all communications and other dealings with the Regulatory Authorities relating to the Agenus Product in the Territory. Notwithstanding the foregoing or any other provision of this Agreement, Agenus shall have the right to review and pre-approve and/or propose modifications of, all such materials, approvals and communications, as well as all marketing and/or education materials collectively referred to herein as Pre-Certificate Transfer Date Regulatory Materials) relating to the Agenus Product prior to the Certificate Transfer Date. NewVac shall provide all such Pre-Certificate Transfer Date Regulatory Materials to Agenus in both the Russian and English languages in a timely manner, and Agenus will provide to NewVac a response (in English) approving or requesting modifications to such Pre-Certificate Transfer Date Regulatory Materials within 5 business days from receipt thereof.

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(iii) Upon the expiration or termination of this Agreement, Licensee shall promptly take all actions necessary to make Agenus the legal and beneficial owner of all Regulatory Approvals and Regulatory Materials for the Agenus Product in the Territory. In the event that any such Regulatory Approvals and/or Regulatory Materials are not transferable to Agenus, then Licensee shall use its best efforts, at its own expense, to assist Agenus in obtaining Regulatory Approvals and/or Regulatory Materials substantially similar to the non-transferable Regulatory Approvals and/or Regulatory Materials. Without in any way limiting the foregoing, upon the expiration or termination of the Agreement, the Registration Certificate would be re-transferred to Agenus, and Licensee would take all legal actions necessary to facilitate such transfer or reissuance.

(iv) Combination Product. Unless otherwise agreed in writing between the Parties, Licensee shall be responsible for preparing and filing all Regulatory Materials, including without limitation furnishing timely notice of all side effects, drug interactions and other adverse effects identified or suspected with respect to the Combination Product, and seeking all Regulatory Approvals in the Development Indication in the Territory. All Regulatory Materials for the Combination Product in the Territory shall be filed in the name of Licensee, and Licensee shall be responsible for all communications and other dealings with the Regulatory Authorities relating to the Combination Product in the Territory. Notwithstanding the foregoing or any other provision of this Agreement, Agenus shall have the right to review and pre-approve and/or propose modifications of, all Pre-Certificate Transfer Date Regulatory Materials relating to the Combination Product prior to the Certificate Transfer Date. NewVac shall provide all such Pre-Certificate Transfer Date Regulatory Materials to Agenus in both the Russian and English languages in a timely manner, and Agenus will provide to NewVac a response (in English) approving or requesting modifications to such Pre-Certificate Transfer Date Regulatory Materials within a commercially reasonable time from receipt thereof. Licensee shall be the legal and beneficial owner of all Regulatory Approvals, to the extent applicable during the Term, and Regulatory Materials for the Combination Product in the Territory or in the event any such Regulatory Approvals and/or Regulatory Materials may not be owned by Licensee, they shall be held for the benefit of Licensee and shall be transferable as directed by Licensee, subject to Section 13.2.

6.2 Dealings with Regulatory Authorities. In addition and notwithstanding the foregoing, each Party shall promptly notify the other Party of all Regulatory Materials that it submits pursuant to this Agreement, and, at the other Party s request, shall promptly provide the other Party with a copy of such Regulatory Materials. Each Party will provide the other Party with reasonable advance notice of any scheduled meeting with any Regulatory Authority in the Territory relating to the Agenus Product or Combination Product in the Licensed Indication or Development Indication (as applicable), and the other Party shall have the right to participate

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in any such meeting, to the extent permitted by law. Each Party shall promptly furnish the other Party with summaries (in English) of all material correspondence or material meetings with any Regulatory Authority relating to the Agenus Product or Combination Product in the Licensed Indication or Development Indication (as applicable) in the Territory, and each Party shall, at the other Party s request, promptly furnish the other Party with copies of such correspondence or copies of minutes of such meetings in English.

6.3 Adverse Events. Licensee agrees, subject to regulatory guidelines and restrictions, to provide Agenus with all safety information developed during the course of its studies in humans on the Agenus Product or Combination Product. On an on-going basis during the Term and for the term during which Licensee has any safety reporting responsibilities for the Agenus Product or Combination Product, Licensee agrees to provide Agenus with any written information in its possession and Control which likely related to adverse effects in humans associated with the Agenus Product or Combination Product, and all written information in its possession and Control of a reasonably material nature regarding the amelioration of such adverse events.

6.4 Product Withdrawals and Recalls. In the event that any Regulatory Authority (a) threatens or initiates any action to remove the Agenus Product or Combination Product from the market in any country in the Territory or (b) requires Licensee or its Affiliates to distribute a Dear Doctor letter or its equivalent regarding use of the Agenus Product or Combination Product in the Territory, Licensee shall notify Agenus and the JSC of such event within one (1) business day after Licensee becomes aware of the action, threat, or requirement. The JSC shall immediately evaluate the request of such Regulatory Authority prior to initiating a recall or withdrawal of the Agenus Product or Combination Product in the Territory. If the Parties do not reach an agreement within five (5) business days the final decision as to whether to recall or withdraw the Agenus Product or Combination Product or take other remedial action in the Territory, such decision will be the responsibility of the party holding the Registration Certificate. Licensee will be responsible, at its sole expense, for conducting any recalls or taking such other necessary remedial action related to the Agenus Product or Combination Product. Licensee shall maintain complete distribution records by purchaser, and by unique patient code and batch number for all Agenus Product or Combination Product sold within the Territory in accordance with cGMPs. If either Party becomes aware of information about the Agenus Product or Combination Product indicating that it may not conform to the Specifications for the Agenus Product (including as part of a Combination Product), or that there are potential adulteration, misbranding and/or other issues regarding safety or effectiveness, it shall promptly so notify the other Party.

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Table of Contents

ARTICLE VII

Representations and Warranties and Obligations of the Parties

7.1 General Licensee Representations. Licensee represents and warrants and agrees as follows as of the Effective Date:

(a) Organization, Standing and Authority. Licensee is a company duly organized, validly existing and in good standing under the laws of Russia. Licensee has all requisite corporate power to own and operate its properties and assets and to carry on its business as presently being conducted and as proposed to be conducted. Licensee has, and will have on all relevant dates, all requisite legal and corporate power to execute and deliver this Agreement, and to carry out and perform its obligations under the terms of this Agreement.

(b) The execution and delivery of this Agreement and the performance of the transactions contemplated hereby have been duly authorized by all appropriate Licensee corporate action. The performance by Licensee of any of terms and conditions of this Agreement on its part to be performed does not and will not constitute a breach or violation of any other agreement or understanding, written or oral, to which it is a party.

7.2 General Agenus Representations and Obligations. Agenus represents and warrants and agrees as follows as of the Effective Date:

(a) Organization, Standing and Authority. Agenus is a corporation duly organized, validly existing and in good standing under the laws of the state of Delaware. Agenus has all requisite corporate power to own and operate its properties and assets and to carry on its business as presently being conducted and as proposed to be conducted. Agenus has, and will have on all relevant dates, all requisite legal and corporate power to execute and deliver this Agreement.

(b) The execution and delivery of this Agreement and the performance of the transactions contemplated hereby have been duly authorized by all appropriate Agenus corporate action. The performance by Agenus of any of the terms and conditions of this Agreement on its part to be performed does not and will not constitute a breach or violation of any other agreement or understanding, written or oral, to which it is a party. Agenus has the full right and legal capacity to provide in the Territory all rights to the Licensed Know-how and Licensed Patent Rights granted to Licensee hereunder.

(c) Agenus shall maintain all permits, licenses, filings, certifications or other authorizations existing as of the Effective Date to the extent required by Regulatory

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Table of Contents

Authorities for the performance of its rights and obligations under this Agreement. In the event that Licensee seeks Regulatory Approval(s) for territories within the Territory other than the Russian Federation during the Supply Period, if applicable and subject to Supply Opt Out, Agenus shall reasonably consider any request of Licensee to obtain any additional permits licenses, filings, certifications or other authorizations required by Regulatory Authorities for Agenus to supply in such territories within the Territory, but shall not be obligated to do so.

7.3 Licensee Performance Representations. Licensee, represents, warrants, and covenants and agrees to Agenus as follows:

(a) the rights conferred hereunder are of significant importance and value to the business prospects of Licensee;

(b) Licensee shall conduct all activities in the Territory with respect to the Agenus Product and Combination Product and its activities hereunder in accordance with this Agreement, the Specifications, and all applicable laws, rules, regulations and guidelines;

(c) Licensee shall obtain and maintain all permits, licenses, filings, certifications or other authorizations required by Regulatory Authorities for the performance of its rights and obligations under this Agreement.

7.4 U.S. Foreign Corrupt Practices Act Compliance.

(a) Licensee acknowledges that it 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. Licensee represents and warrants and confirms to Agenus that it is familiar with and understands the FCPA.

(b) Licensee is obligated to ensure that throughout the Term, neither Licensee, nor any person performing activities on behalf of Licensee will engage in any activity that could cause a violation of any provision of the FCPA by Agenus. Licensee represents and warrants and confirms that it has not made, promised to make, or arranged for any third party to make any payments or gifts to foreign officials in connection with Agenus Product, Combination Product, the practice of any rights or licensed granted under this Agreement, or any activities contemplated by this Agreement. Further, Licensee represents and warrants and confirms to Agenus that it has not violated any anti-corruption law, including any law applicable within the Territory, and further that Licensee is not involved in,

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or the subject of, any investigation involving bribery, corruption or improper payments to foreign government officials, as defined in the FCPA. Licensee agrees to update these foregoing statements on a periodic basis as required by Agenus in a format prescribed by Agenus.

(c) Licensee agrees to notify Agenus immediately in writing if Licensee or any person who is performing activities on behalf of Licensee 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. Licensee further agrees to provide such notification if Licensee or any person performing activities hereunder on behalf of Licensee becomes involved in any action, suit, claim, investigation or proceeding that is pending, or to the knowledge of Licensee threatened, relating to a potential violation of any anti-corruption laws, including the FCPA.

(d) It is agreed between Licensee and Agenus that this Section is deemed by the Parties to be a material provision of this Agreement.

ARTICLE VIII

Indemnification and Liability

8.1 Indemnification.

8.1.1 Indemnification by Licensee. During the Term and thereafter, Licensee shall indemnify and hold Agenus, its Affiliates and their respective officers, directors, employees, consultants and agents (each, an Agenus Indemnitee) harmless against any liability, damages or loss from any Third Party claims, demands, suits, or other proceedings (each a Claim) arising out of, based on or caused by Licensee s or its Sublicensees , distributors or CMOs activities with respect to the Agenus Product or Combination Product or the practice of the licenses granted hereunder, or otherwise resulting from any activities undertaken by or on behalf of Licensee, its Sublicensees, distributors or CMOS, except to the extent that such Claim is due to product liability arising from Agenus negligence or willful misconduct.

8.1.2 Indemnification by Agenus. During the term of this Agreement and thereafter, Agenus will defend, indemnify and hold harmless Licensee, its Affiliates and their respective officers, directors, employees, consultants and agents (each, a Licensee Indemnitee) against any and all third Party Claims arising out of, based on or caused by product liability issues arising from Agenus negligence or the willful misconduct of Agenus.

8.1.3 Indemnification Procedures. Any Agenus Indemnitee or Licensee Indemnitee (each, an Indemnitee) shall promptly notify the other Party (the Indemnitor) of any loss, claim, damage, liability, or other action in respect of which the Indemnitee intends to claim such

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indemnification, setting forth the nature of the claim and the basis for indemnification hereunder, and the Indemnitor shall assume the defense thereof with counsel of its choice, subject to such counsel being reasonably acceptable to the other Party; provided, however, that the Indemnitee shall have the right to retain its own counsel, with the reasonable fees and expenses to be paid by the Indemnitor, only if representation of the Indemnitee by the counsel retained by the Indemnitor would be inappropriate due to actual or reasonably likely conflicts of interest between such Indemnitee and any party represented by such counsel in such proceedings. The Indemnitee shall cooperate fully with the Indemnitor in such defense and will permit the Indemnitor to conduct and control such defense and the disposition of such claim, suit, or action (including all decisions relative to litigation, appeal and settlement). The Indemnitor shall have no liability hereunder for amounts paid in settlement of any loss, claim, damage, liability or action if such settlement is effected by the Indemnitee without the consent of the Indemnitor. The failure to deliver notice to the Indemnitor promptly after the commencement of any such action, to the extent prejudicial to its ability to defend such action, shall relieve the Indemnitor of any liability to the Indemnitee under this Agreement. The Indemnifying Party agrees not to enter into any settlement which would have a material adverse effect on the other Party without prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

8.2 LIMITATION OF LIABILITY. EXCEPT A) WITH RESPECT TO LIABILITY RELATING TO THIRD PARTY CLAIMS UNDER SECTIONS 8.1; B) LIABILITY FOR BREACH OF ARTICLE IX; AND C) CLAIMS FOR MISUSE, MISAPPROPRIATION OR INFRINGEMENT OF INTELLECTUAL PROPERTY, IT IS AGREED BY THE PARTIES THAT NEITHER PARTY NOR ITS AFFILIATES SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES (OTHER THAN REVENUES COMPRISING ROYALTIES OR OTHER PAYMENTS TO BE EARNED AND PAID TO A PARTY BY THE OTHER PARTY UNDER THIS AGREEMENT) OR PROFITS RELATING TO THE SAME), ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME.

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Table of Contents

ARTICLE IX

Confidentiality

9.1 Confidential Information shall mean any proprietary and valuable technical, scientific or business information, which the Disclosing Party (as defined below) has taken reasonable measures to protect, furnished by or on behalf of one Party or its Affiliates (the Disclosing Party) to the other Party or its Affiliates (the Receiving Party) in connection with this Agreement or the activities contemplated hereunder, regardless of whether such information is specifically designated as confidential and regardless of whether such information is in oral, written, electronic or other form. Notwithstanding the foregoing or any other provision of this Article IX, the Developments shall be considered the Confidential Information of both Parties, and the terms of this Agreement shall be considered Confidential Information of both Parties, in each case subject to the provisions of this Article IX and Section 13.6. Confidential Information shall not include information that: (a) is in the public domain or thereafter becomes available to the public through no act of the Receiving Party; or (b) was independently known to the Receiving Party prior to receipt thereof or was discovered independently outside the scope of this Agreement by an employee of the Receiving Party who had no access to the information supplied by or on behalf of the Disclosing Party; or (c) was made available to the Receiving Party as a matter of lawful right by a Third Party who had no obligations of confidentiality to the Disclosing Party.

9.2 Obligations. The Receiving Party agrees that it shall not, without the prior written consent of the Disclosing Party, directly or indirectly: (a) make any use of any portion of the Confidential Information of the Disclosing Party for purposes other than those set forth in this Agreement; or (b) disclose or transfer any portion of the Confidential Information to any person, except that the Receiving Party may disclose or permit the disclosure of Confidential Information to its Affiliates and sublicensees and subcontractors and partners and its and their respective directors, officers, employees, consultants, and advisors, and potential collaborative partners, and investors and potential investors in connection with a general financing transaction who are under obligations no less stringent than those included herein (contractual or otherwise) to maintain the confidential nature of such Confidential Information and who need to know such Confidential Information for the purposes set forth in this Agreement or for other legitimate business purposes. Notwithstanding the above, the Receiving Party may disclose Confidential Information of the Disclosing Party when required by applicable laws or government rules or regulations (including without limitation, applicable securities regulations), provided that, to the extent reasonably possible, the Receiving Party provides reasonable prior written notice of such disclosure to the Disclosing Party and takes reasonable and lawful efforts to avoid and/or minimize the extent of disclosure.

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9.3 Upon expiration or termination of this Agreement and upon request of the Disclosing Party, all copies of any Disclosing Party s Confidential Information shall be returned to the Disclosing Party or destroyed, such destruction being accompanied by an affidavit certifying the destruction, except that each Receiving Party may retain one (1) copy of the Confidential Information received hereunder, solely for monitoring its obligations under this Agreement.

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

ARTICLE X

Term and Termination

10.1 Term. This Agreement shall commence as of the Effective Date and, unless sooner terminated or extended as provided in this Article X, shall expire on the third (3rd) anniversary of the Effective Date, provided that in the event that Agenus exercises the Supply Opt Out pursuant to Section 12.3, and Licensee meets the Production Milestone Deadline, then the Agreement shall expire thirty (30) days after the third (3rd) anniversary of the Production Milestone achievement date (the Term).

10.2 Term Extension. The Parties acknowledge that the initial Term is intended for the Parties to (A) assess the feasibility of Licensee establishing successful manufacturing and commercial operations in the Territory, and (B) generate data under the Development Plan to better formulate potential long term development plans of Licensee for the Combination Product in the Development Indication in the Territory. In addition, the Parties recognize the prior investment of Agenus and the investments being made by both Parties during the initial Term, and mutual desire for a longer term commitment pending favorable outcomes. Accordingly, the Parties agree as follows:

(a) If: (1) (x) both Parties are in material compliance with this Agreement, and (y) Licensee has met the milestones set forth in Sections 5.1 and 12.2(a) by the respective deadlines, and (2) Licensee elects in writing to continue the manufacturing and commercialization of the Agenus Product in the Licensed Indication in the Territory, such writing to be received by Agenus by the Production Milestone achievement date, then the Parties shall amend this Agreement to extend the license granted under Section 2.1(a) of this Agreement for a period ending the later to occur of: (i) ten years from the Effective Date, or (ii) the expiration of the last Valid Claim of the Licensed Patent Rights, subject to the Parties agreement on a reasonable on-going Commercialization Plan and related sales milestones.

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Table of Contents

(b) In the event that Licensee used its best commercially reasonable efforts but did not meet the milestones set forth in Sections 5.1 and 12.2(a) by the respective deadlines, Agenus shall reasonably consider Licensee s request to amend this Agreement to extend the license granted under Section 2.1(a) of this Agreement for a period ending the later to occur of: (i) ten years from the Effective Date, or (ii) the expiration of the last Valid Claim of the Licensed Patent Rights, subject to the Parties agreement on a reasonable on-going Commercialization Plan, related sales milestones and other terms and conditions; provided that Agenus shall not be obligated to enter into any such amendment.

(c) In the event the Agreement is not extended beyond the initial Term, upon Agenus request, the Parties agree to negotiate in good faith provisions for the continuation of the manufacture by Licensee of Agenus Product on behalf of Agenus and/or its designees and to establish a supply agreement for Agenus Product to be manufactured in Licensee s designated facility for Agenus and/or its Affiliates, licensees and partners.

(d) Upon the recommendation of the JSC (or agreement of both Parties in the event the JSC is disbanded), and provided the Parties agree to extend the term of the license granted under Section 2.1(a) of this Agreement pursuant to clauses (i) or (ii) above, the Parties agree to negotiate in good faith an extension of the license granted in Section 2.1(b) of this Agreement and provisions for further development activities for the Combination Product, including an updated Development Plan.

10.3 Material Breach. Failure by either Party to comply with any of the material obligations contained in this Agreement shall entitle the other Party to give to the Party in default written notice specifying the nature of the default and requiring it to cure such default. If such default is not cured within sixty (60) days after the receipt of such notice, the notifying Party shall be entitled, without prejudice to any of its other rights conferred on it by this Agreement and in addition to any other remedies available to it by law or in equity, to terminate this Agreement effective upon written notice to the other Party.

10.4 Termination by Agenus. In addition and notwithstanding the foregoing, Agenus shall have the right to terminate the Agreement upon no less than sixty (60) days written notice: (i) in the event that manufacturing operations are not maintained in accordance with the Specifications, cGMP and Agenus operating procedures, (ii) pursuant to Section 5.1, (iii) pursuant to Section 12.2(b) and (iv) pursuant to Section 13.7.

10.5 Termination by Licensee. Licensee may terminate this Agreement without cause by giving sixty (60) days written notice to Agenus, provided that upon such termination all rights to Licensed Know-how and Licensed Patent Rights shall revert to Agenus.

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Table of Contents

10.6 Accrued Rights, Post-Termination Obligations, Sublicensees.

(a) Upon receipt or delivery of any termination notice under this Agreement, Licensee shall immediately cease taking new product orders with respect to Agenus Product and Combination Product (if applicable) unless otherwise agreed in writing hereunder, and shall cause its Sublicensees and distributors to do the same. Expiration or any termination of this Agreement for any reason shall be without prejudice to any rights which shall have accrued to the benefit of either Party prior to such expiration or termination. Unless otherwise agreed in writing by Agenus, expiration or termination of this Agreement shall automatically terminate any sublicense or CMO agreement.

(b) In the event of the termination or expiration this Agreement, Licensee shall immediately cease and shall instruct its Sublicensees, distributors, and CMOs to immediately: (i) cease any use of the Licensed Patent Rights and Licensed Know-how, and, coordinate the transfer or appropriate disposition of any Biomaterials or Agenus Product in the possession of Licensee and/or its Sublicensees, CMO, distributors or legitimate third parties in cooperation with and as instructed by Agenus, and (ii) decommission any portion of the manufacturing facility in the Territory dedicated to Agenus Product manufacture or otherwise containing, incorporating, utilizing, or based on the Manufacturing Technology or other Licensed Know-how, and certify to Agenus that the foregoing has been accomplished. Notwithstanding the foregoing however, in the event that Licensee believes that it will have any product orders in process at the time of expiration or termination, it shall promptly notify Agenus thereof, and, at the election of Agenus, fill such orders prior to ceasing operations. Should Agenus elect to immediately take over all sales operations, both Parties agree that Licensee shall receive full credit and compensation for any product orders in process made by Licensee in accordance with the provisions of this Agreement, less] any royalties or other payments owing to Agenus with respect thereto. Immediately after termination or expiration, Licensee shall provide all cooperation and assistance reasonably requested by Agenus to enable Agenus to assume and/or continue, with as little disruption as reasonably possible, the continued sale and distribution of Agenus Product in the Territory, including, without limitation, (a) as directed by Agenus, terminate all agreements between Licensee and any Third Parties relating to the distribution or sale of Agenus Product, or assign them to Agenus or a Third Party designated by Agenus, (b) at the direction of Agenus, remove from any literature or other media of Licensee any and all references to Agenus and the Agenus Product, (c) cease to use any Agenus Trademarks and Tradenames (as defined in Section 11.4(b)) and assign to Agenus all right, title and interest in any such trademarks or tradenames to the extent necessary, (d) transfer or assign to Agenus all Regulatory Materials, Regulatory Approvals, licenses, permits, authorizations or similar documents for the Agenus Product that Licensee holds as of the time of any such termination, (e) return to Agenus all Confidential Information of Agenus, (f) pay Agenus any outstanding invoices and royalty amounts, and (h) provide Agenus with a final marketing and distribution report containing data through the effective date of the termination or expiration of this Agreement, including without limitation, customer account information and market data and intelligence.

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Table of Contents

ARTICLE XI

Intellectual Property

11.1 Inventions.

(a) This Agreement does not affect the ownership of inventions (whether patentable or unpatentable), trade secrets, works of authorship, and other developments existing as of the Effective Date, and all patents, copyrights, trade secret rights and other intellectual property rights to such inventions, discoveries, trade secrets, works of authorship, and other developments, (collectively, Pre-existing Intellectual Property). Neither Party shall have any rights to any Pre-existing Intellectual Property of the other Party, except as may be otherwise expressly provided in this Agreement.

(b) The Parties shall jointly own all data and inventions arising from Licensee s activities under the Commercialization Plan or Development Plan (Developments), and each Party shall fully cooperate with the other Party to vest title therein with both Parties, including executing any necessary documents of assignment. With respect to the Combination Product, the Parties acknowledge and agree that it is not feasible at this point in time to determine the long term development and commercialization plans for the Combination Product. Accordingly, the Parties acknowledge and agree that each Party has and shall have the right to license and otherwise exploit the Developments, subject to any freedom to operate restrictions, without any further accounting to the other Party, provided however, that neither Party is receiving hereunder any rights to the Pre-existing Intellectual Property or any other intellectual property of the other Party, including without limitation, the Licensed Patent Rights and Licensed Know-how of Agenus, in each case except as expressly set forth in the Agreement.

11.2 Patent Prosecution Strategy. Subject to the other terms of this Agreement, as mutually agreed by the Parties, one Party shall assume responsibility (the Controlling Party) for the preparation, filing, prosecution, and maintenance of all U.S. and foreign patent applications and patents covering Developments (Development Patent Rights), using patent counsel reasonably acceptable to both Parties, and the non-Controlling Party shall reasonably cooperate with respect thereto. The Controlling Party shall (i) notify the non-controlling Party reasonably prior to the filing of any Development Patent Rights and permit review of such Development Patent Rights by the non-Controlling Party, (ii) provide the non-Controlling Party promptly with copies of all communications received by the Controlling Party with respect to Development Patent Rights, (iii) keep the non-Controlling Party reasonably informed of the status of such Development Patent Rights, and (iv) provide the non-Controlling Party notice at least thirty (30) days in advance of taking or failing to take any action that would affect the scope or validity of any such Development Patent Rights (including but not limited to substantially narrowing or canceling any claim, abandoning any

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such Development Patent Rights or not filing or perfecting the filing of any such Development Patent Rights in any country), with prior written notice of such proposed action or inaction so that the non-Controlling Party has a reasonable opportunity to review and make comments. Unless otherwise agreed, the Parties shall share equally the expenses of such preparation, filing, prosecution, and maintenance. Either Party may assign its rights to any jointly owned Development Patent Rights to the other Party, who will have the right in its discretion, to assume the prosecution and maintenance thereof at its sole expense and as the sole owner thereof.

11.3 Third Party Infringement. Either Party promptly shall notify the other Party in writing of any alleged infringement of the Licensed Patent Rights in the Territory, or the Development Patent Rights and of any available evidence thereof. The Parties shall consult as to a potential litigation strategy or strategies against any alleged infringer. If the Parties commence and prosecute a suit jointly, Licensee shall pay all associated attorney s fees and out-of pocket litigation expenses. All monies recovered upon the final judgment or settlement of any such action shall be used (a) first, to reimburse the costs and expenses (including reasonable attorneys fees and costs) of the Parties, (b) second (to the extent that damages are awarded for lost sales or lost profits from the sale of Agenus Product or Combination Product), to Licensee with Agenus receiving the royalties that would have been payable to Agenus on the sale of such products, and (c) the remainder to be split equally between the Parties. If the Parties do not decide to jointly commence an action within thirty (30) days of the notice specified above, or otherwise terminate the alleged infringement, Agenus shall have the right, at its expense, to bring suit against the allegedly infringing party.

11.4 Trademarks.

(a) The terms Trademark or Tradename shall include, without limitation, the name or names of any Agenus Product or Combination Product, the design of the packaging of any Agenus Product or Combination Product, and the appearance of dosage forms of any Agenus Product or Combination Product.

(b) Unless otherwise agreed between the Parties in writing, Agenus, at its expense, shall be responsible for the selection, registration and maintenance of all Trademarks and Tradenames employed in connection with the Agenus Product (the Agenus Trademarks and Tradenames). The Agenus Trademarks and Tradenames in the Territory as of the Effective Date are set forth on Exhibit F. The Agenus Trademarks and Tradenames, and any reputation and goodwill in them, are, and will remain, the exclusive property of Agenus, and Licensee does not have and shall not have any right to use any Agenus Trademarks and Tradenames other than in connection with the exercise of its rights under the terms and conditions of this Agreement. All use of the Agenus Trademarks and Tradenames shall inure solely to the benefit of Agenus.

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Table of Contents

(c) Subject to the foregoing and the remaining provisions of this Agreement, Agenus hereby grants to Licensee a license to use the Agenus Trademarks and Tradenames in the Territory during the Term solely in connection with the exercise of the licenses granted in Section 2.1, and in conformance with the standards established by Agenus. Licensee shall not: (i) use any Agenus Trademarks and Tradenames, or any word, symbol, or design confusingly similar to any Agenus Trademarks and Tradenames as part of its corporate or legal name or in connection with any product sold by Licensee, its Sublicensees or distributors except as set forth herein; or (ii) do or cause to be done any act or thing which would in any way impair the rights of Agenus in and to any Agenus Trademarks and Tradenames. The use of Trademarks and Tradenames in connection with the sale of Combination Products shall be as agreed to between the Parties.

ARTICLE XII

Manufacture and Supply

12.1 Manufacturing Technology Transfer. The Parties shall use commercially reasonable efforts to complete the Manufacturing Technology transfer in accordance with the plan and timelines as set forth in this Article XII and the technology transfer plan governing the transfer of the Manufacturing Technology between the Parties (the "Technology Transfer Plan"). The initial Technology Transfer Plan is attached to this Agreement as Exhibit G, and may be updated between the Parties upon mutual written agreement within thirty (30) days of the Effective Date. Agenus will provide reasonable training to Licensee and assist Licensee in the Manufacturing Technology transfer process in accordance with the Technology Transfer Plan at its sole cost and expense up to $[**] USD (including FTEs at an annual FTE rate of $[**] USD). Licensee shall reimburse Agenus all costs and expenses of Agenus in excess of such $[**] cap. Due to the unique nature of the manufacturing process for the Agenus Product which was perfected by Agenus over time, it is critical that Licensee maintain the integrity and quality of the manufacturing process. Upon the written request of Licensee, the Parties shall enter into a quality agreement governing the manufacture of the Agenus Product in the Territory during the Supply Period, which shall contain typical terms and conditions as agreed to between the Parties. In addition, the Parties shall agree upon appropriate, thorough, and meaningful safeguards for Agenus, including the following (i) Licensee shall guarantee to hire the appropriate amount of qualified Licensee employees in Russia to the reasonable satisfaction of Agenus to ensure a smooth transition, (ii) Agenus will have the right to pre-approve the manufacturing facility, and (iii) Agenus will have the right (but not the obligation) to have an employee or consultant in the manufacturing facility overseeing and approving manufacturing operations and release of Agenus Product until the Production Milestone is achieved.

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

Table of Contents

12.2 Licensee Obligations to Establish Manufacturing Capability.

(a) Licensee shall use its best commercially reasonable efforts at its sole cost and expense to do the following activities, in each case in accordance with all applicable laws, rules and regulations, and the provisions of the Agreement: (i) manufacture, market and sell the Agenus Product in the Licensed Indication in the Territory in accordance with the Specifications and the Commercialization Plan, (ii) carrying out the Development Plan, and (iii) establish manufacturing capability in the Territory, including without limitation, meeting the following milestones (each a "Manufacturing Diligence Milestone"):

MILESTONE:	**DATE**
Identify [**] for [**]	[**] days from Effective Date
[**] of NewVac [**] (Agenus sign off, requires [**] of [**] and [**] of [**])	[**] from Effective Date
[**] for [**] to [**] of [**] ("[**] Milestone")	[**] from Effective Date
Obtain [**] for [**] for [**] ("[**] Milestone")	[**] from [**] Milestone
Produce [**] of Agenus Product manufactured in Russia at the manufacturing facility in accordance with the Specifications ("Production Milestone")	[**] after [**]

(b) In the event that any Manufacturing Diligence Milestone is not met by the respective milestone date (each date, the applicable "Manufacturing Milestone Deadline"), the Parties shall meet to discuss the reasons for such delay. In the event that Licensee demonstrates to Agenus' satisfaction that it used its best commercially reasonable efforts to meet such Manufacturing Milestone Deadline, the Parties shall agree upon an appropriate extension for such Manufacturing Milestone Deadline (a "Milestone Extension") and Agenus shall not have the right to terminate the Agreement for such failure, provided that in the event that Agenus elects to exercise the Supply Opt Out pursuant to Section 12.3 below, then in no event shall the Production Milestone Manufacturing Milestone Deadline or any Milestone Extension thereof (the "Production Milestone Deadline") extend beyond the third anniversary of the Effective Date unless otherwise agreed by Agenus in its sole discretion. In addition and notwithstanding the above, if Licensee fails to demonstrate to Agenus' satisfaction that it used its best

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commercially reasonable efforts to meet the above Manufacturing Diligence Milestones by the Manufacturing Milestone Deadlines or any Milestone Extensions, or for the avoidance of doubt, in the event that Licensee fails to meet the Production Milestone Deadline, Agenus shall have a right to terminate the Agreement.

(c) Licensee shall not use any CMO to manufacture or produce the Agenus Product, alone or as part of the Combination Product, without the prior written consent of Agenus in its sole discretion.

12.3 Agenus Product Supply

(a) Agenus Supply Opt Out. The Parties acknowledge and agree that Agenus shall have the right to opt out of its right and obligation to supply any Agenus Product under this Agreement (the Supply Opt Out) at any time prior to January 31, 2012 upon written notice to Licensee.

(b) Supply Period Obligations. In the event that Agenus does not exercise the Supply Opt Out pursuant to Section 12.3 (a) above, then from January 31, 2012 (or such sooner period of time as may be elected in writing by Agenus) until the achievement of the Production Milestone (the Supply Period), the following provisions shall apply. During the Supply Period, Licensee agrees to purchase solely from Agenus, and Agenus agrees to use its commercially reasonably efforts to supply Licensee and its Sublicensees with one hundred percent (100%) of their initial requirements of Agenus Product (subject to the Manufacturing Capacity) for use solely in accordance with the licenses granted pursuant to Section 2.1 of this Agreement. Following the Supply Period, Licensee shall have no further obligation to purchase Agenus Product from Agenus, and Agenus shall have no further obligation to supply Agenus Product. Subject to the terms and conditions contained in this Agreement, during the Supply Period Licensee shall purchase from Agenus and Agenus shall supply to Licensee, Agenus Product in the amounts and timelines and pursuant to the terms and conditions set forth in Section 3.2 and on Exhibit H.

12.4 Agenus Reservation of Rights. Agenus reserves the right to manufacture (or have manufactured) and supply Agenus Product for itself, Affiliates and/or any Third Parties outside the exclusive license grants to Licensee hereunder.

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Table of Contents

ARTICLE XIII

Miscellaneous Provisions

13.1 No Partnership. Nothing in this Agreement is intended or shall be deemed to constitute a partnership, distributorship, agency, employer-employee or joint venture relationship between the Parties. No Party shall incur any debts or make any commitments for the other, except to the extent, if at all, specifically provided herein.

13.2 Assignments. Neither Party shall assign any of its right or obligations hereunder or this Agreement without the prior written consent of the other Party, except that Agenus may do so: (a) to a Third Party as incident to the merger, consolidation, reorganization or acquisition of stock or assets affecting all or substantially all of the assets of such Party relating to the subject matter of this Agreement (Acquiring Party); or (b) to an Affiliate. This Agreement shall be binding upon the successors and permitted assigns of the Parties and the name of a Party appearing herein shall be deemed to include the names of such Party s successors and permitted assigns to the extent necessary to carry out the intent of this Agreement. Any permitted assignee shall assume all obligations of its assignor under this Agreement. No assignment shall relieve any Party of its responsibility for the performance of any obligations that such Party has under this Agreement. Any assignment not in accordance with this Section 13.2 shall be void.

13.3 Further Actions. Each Party agrees to execute, acknowledge and deliver such further instruments, and to do all such acts, as may be necessary or appropriate in order to carry out the purposes and intent of this Agreement.

13.4 Dispute Resolutions. Except for the right of any Party to apply for a temporary restraining order, a preliminary injunction or other preliminary equitable relief in any court or tribunal of appropriate jurisdiction to preserve the status quo or prevent irreparable harm, any dispute, other than disputes regarding the construction, validity or enforcement of patents, arising between the Parties relating to, arising out of or in any way connected with this Agreement or any term or condition hereof, or the performance by either Party of its obligations hereunder, whether before or after termination of this Agreement, shall be resolved exclusively as follows:

(a) Any Party may trigger this provision by written notice to the other Party that reasonably describes the nature of the dispute;

(b) If the dispute cannot be resolved by the Parties through their duly authorized representatives within thirty (30) days of such notice, the Chief Executive Officers of the Parties (or their respective designees) shall meet in person at a mutually acceptable time and location or by means of telephone or video conference within ten (10) business days of the matter being referred to them.

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(c) If the Chief Executive Officers of the Parties (or their respective designees) are unable to settle any dispute within thirty (30) days, then either Party may initiate mediation upon written notice to the other Party (the Notice Date), whereupon both Parties shall engage in a mediation proceeding under the then current International Institute for Conflict Prevention and Resolution Inc. (CPR) Mediation Procedure , except that specific provisions of this Section shall override any inconsistent provisions of the CPR Mediation Procedures. The mediator will be selected from the CPR Panel of Neutrals. If the Parties cannot agree upon a mediator within 15 business days of the Notice Date, one shall be appointed by the CPR. The Parties shall attempt to resolve the dispute through mediation until the first of the following to occur: (i) the Parties reach a written settlement, (ii) the mediators notify the Parties in writing that they have reached an impasse, (iii) the Parties agree in writing that they have reached an impasse, or (iv) the Parties have not reached a settlement within sixty (60) days after the Notice Date. Completion of the requirements of this provision is a condition precedent to proceeding to provision (d) unless one of the Parties refuses to cooperate in step (c).

(d) If the Parties fail to resolve the dispute through mediation, the Parties shall submit to final and binding arbitration administered by the International Institute for Conflict Prevention and Resolution Inc. pursuant to the International Institute for Conflict Prevention & Resolution Rules for Non-Administered Arbitration. The Parties agree that the Arbitrator(s) may provide any and all appropriate relief, including injunctive relief. Any such arbitration shall take place in the Commonwealth of Massachusetts.

13.5 No Name or Trademark Rights. Except as otherwise provided herein, no right, express or implied, is granted by this Agreement to use in any manner the names of the Parties or any version or contraction thereof or any other Tradename or Trademark of Agenus or Licensee in connection with the performance of this Agreement.

13.6 Public Announcements. The Parties have agreed on the pre-cleared content for public disclosure (as described in more detail on Exhibit I attached hereto) for release by either Party within a reasonable time after the Effective Date. Except for such content, neither Party shall issue any press releases or public disclosure relating to this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed, provided, however, that (i) a Party may, without the prior consent of the other Party, issue such press release or public disclosure as may be required by applicable laws, rules and regulations (including any applicable securities regulations) and (ii) once any press release or other public disclosure is approved for disclosure by the Parties, either Party hereto may make a subsequent public disclosure of the contents of such approved press release or other public disclosure. Notwithstanding the provisions of Section 13.11 below, for purposes of this Section 13.6, and notices may be sent via email, if to Agenus, to shalini.sharp@agenusbio.com with a copy to karen.valentine@agenusbio.com, and if to Licensee, to Sergey Bugrov: sb@newvac.ru with a copy to Ron Demuth: rdemuth@torreypinesinv.com.

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

Table of Contents

13.7 Force Majeure. If any default or delay occurs which prevents or materially impairs a Party s performance and is due to a cause beyond the Party s reasonable control, including but not limited to any act of any god, flood, fire, explosion, earthquake, casualty, accident, war, terrorism, revolution, civil commotion, blockade or embargo, injunction, law, proclamation, order, regulation or governmental demand, the affected Party promptly shall notify the other Party in writing of such cause and shall exercise diligent efforts to resume performance under this Agreement as soon as possible. Neither Party shall be liable to the other Party for any loss or damage due to such cause. Neither Party may terminate this Agreement because of such default or delay, unless such event continues unabated for a period of [**] months, in which case the Party disadvantaged by such default or delay may, at its option, terminate this Agreement upon written notice to the other Party.

13.8 Entire Agreement of the Parties, Amendments. This Agreement, including the exhibits attached hereto which are incorporated herein, constitutes and contains the entire understanding and agreement of the Parties and cancels and supersedes any and all prior negotiations, correspondence, understandings and agreements, whether verbal or written, between the Parties respecting the subject matter hereof. No waiver, modification or amendment or any provision of this Agreement shall be valid or effective unless made in writing and signed by a duly authorized officer of each of the Parties.

13.9 Severability. In the event that any of the provisions of this Agreement shall for any reason be held by any court or authority of competent jurisdiction to be invalid, illegal or unenforceable, such provision or provisions shall be validly reformed to as nearly as possible approximate the intent of the Parties and, if unenforceable, shall be divisible and deleted in such jurisdiction; elsewhere, this Agreement shall not be affected so long as the Parties are still able to realize the principal benefits bargained for in this Agreement.

13.10 Applicable Law. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Massachusetts, USA applicable to agreements made and performed wholly within such state without regard to its principles of conflicts of laws, provided that questions affecting the construction and effect of any patent shall be determined by the laws of the country in which the patent shall have been granted. The Parties agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods shall not apply to or affect any term of this Agreement.

13.11 Notices and Deliveries. Any notice, requests, delivery, approval or consent required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given if delivered in person, transmitted by facsimile (with written confirmation to follow via an internationally recognized courier) or three (3) days after being sent by internationally recognized courier to the Party to whom it is directed at its address shown below or such other address as such Party shall have last given by written notice to the other Party in accordance with this Section.

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

Table of Contents

If to Agenus, addressed to:

Agenus Inc.

3 Forbes Road

Lexington, MA 02421

Attn: Chief Financial Officer

With a copy to:

Agenus Inc.

3 Forbes Road

Lexington, MA 02421

Attn: Legal Department

If to Licensee, addressed to:

NewVac LLC

Rabochaya St. 2-a, Bldg. 1

Khimki, Moscow

141400, Russia

Phone: +7 (495) 995-4944

Fax: +7 (495) 926 9970

Attn: Sergey Bugrov, PhD, CEO

With a copy to:

De Novo Legal PC

2244 Faraday Ave. Suite 103

Carlsbad, CA 92008

Attn: Maria Johnson

13.12 Governing Language. The Parties acknowledge and agree that the English language shall govern this Agreement and all communications required or anticipated pursuant to this Agreement. All written materials to be provided by Licensee to Agenus pursuant to this Agreement shall be written in the English language, and all oral communications between the Parties shall be with fluent English speaking representatives of the Parties.

13.13 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by

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facsimile or electronic copies bearing the facsimile signatures of the Parties shall constitute a valid and binding execution and delivery of this Agreement by the signing Party, and such facsimile and/or electronic copies shall constitute original documents.

13.14 Compliance with Laws. Licensee and Agenus each shall comply with all applicable laws in connection with its own performance under this Agreement. Without limiting the generality of the foregoing, Licensee shall be responsible for compliance with all applicable product safety, product testing, product labeling, package marking, and product advertising laws and regulations, except with respect to efforts performed by Agenus in which case Agenus shall be responsible for its activities as governed by such laws and regulations.

13.15 Survival. Unless otherwise expressly noted herein, the following provisions shall survive expiration or termination of this Agreement: Articles III (with respect to payment obligations owing or that have accrued prior to the effective date of expiration or termination, or sales made prior to the effective date of expiration or termination or in accordance with Section 10.6(b)), Article VIII, and IX, and Sections 6.1(iii), 6.3, 7.3, 7.4, 10.6, 11.1, 11.2, 11.3, 13.4, 13.5, 13.10, 13.12, 13.13, and this Section 13.15.

13.16 Construction. Except where the context requires otherwise, the use of any gender is applicable to all genders and the term including or includes means including, without limiting the generality of any description preceding such term. The wording of this Agreement shall be deemed to be the wording mutually chosen by the parties and no rule of strict construction shall be applied. All monetary amounts are in United States dollars unless otherwise explicitly provided. The headings of each Article and Section in this Agreement have been inserted for convenience of reference only and are not intended to limit or expand on the meaning of the language contained in the particular Article or Section.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their respective corporate officers, duly authorized as of the dates written below.

Agenus		**Licensee**
By:	/s/ Garo H. Armen	/s/ Nikolay Savchuk
Name:	Garo H. Armen	Nikolay Savchuk
Title:	Chairman and CEO	Chairman of the Board
Date:	December 16, 2011	December 16, 2011

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

Table of Contents

For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of Agenus executing and delivering this Agreement, Chemrar Group Companies hereby unconditionally guaranties to Agenus, its successors and assigns, full and prompt payment and performance of all of the obligations of Licensee in connection with this Agreement. This guaranty shall operate as continuing, absolute, and irrevocable. The liability of Chemrar Group Companies hereunder should be primary, and Chemrar Group Companies hereby waives all suretyship defenses.

Chemrar Group Companies

By: /s/ Nikolay Savchuk

Name: Nikolay Savchuk

Title: Board Member

Date: December 16, 2011

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

Table of Contents

Exhibit 23

Consent of Independent Registered Public Accounting Firm

The Board of Directors

Agenus Inc.:

We consent to the incorporation by reference in the registration statements on Form S-8 (Nos. 333-40440, 333-40442, 333-50434, 333-69580, 333-106072, 333-115984, 333-143807, 333-143808, 333-151745, 333-160084, 333-160087, 333-160088 and 333-176609), on Form S-3 (Nos. 333-149116, 333-150326, 333-151244, 333-161277, 333-163221 and 333-164481), and on Form S-1 (No. 333-156556) of Agenus Inc. and subsidiaries of our reports dated March [ ], 2012, with respect to the consolidated balance sheets of Agenus Inc. and subsidiaries as of December 31, 2011 and 2010, and the related consolidated statements of operations, stockholders equity (deficit) and comprehensive loss, and cash flows for each of the years in the three-year period ended December 31, 2011, and the effectiveness of internal control over financial reporting as of December 31, 2011, which reports appear in the December 31, 2011 annual report on Form 10-K of Agenus Inc. and subsidiaries.

/s/ KPMG LLP

Boston, Massachusetts

March 6, 2012

Table of Contents

Exhibit 31.1

Certification Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended

I, Garo H. Armen, certify that:

1. I have reviewed this Annual Report on Form 10-K of Agenus Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

   a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles;

   c. evaluated the effectiveness of the Registrant s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. disclosed in this report any change in the Registrant s internal control over financial reporting that occurred during the Registrant s most recent fiscal quarter (the Registrant s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant s internal control over financial reporting; and

5. The Registrant s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant s auditors and the audit committee of the Registrant s board of directors (or persons performing the equivalent function):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant s ability to record, process, summarize and report financial

information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant s internal control over financial reporting.

Date: March 6, 2012

/s/ GARO H. ARMEN, PH.D.
Garo H. Armen, Ph.D.
Chief Executive Officer

Table of Contents

Exhibit 31.2

Certification Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as amended

I, Shalini Sharp, certify that:

1. I have reviewed this Annual Report on Form 10-K of Agenus Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the Registrant as of, and for, the periods presented in this report;

4. The Registrant s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Registrant and have:

   a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the Registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles;

   c. evaluated the effectiveness of the Registrant s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. disclosed in this report any change in the Registrant s internal control over financial reporting that occurred during the Registrant s most recent fiscal quarter (the Registrant s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the Registrant s internal control over financial reporting; and

5. The Registrant s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Registrant s auditors and the audit committee of the Registrant s board of directors (or persons performing the equivalent function):

   a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the Registrant s ability to record, process, summarize and report financial

information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the Registrant s internal control over financial reporting.

Date: March 6, 2012

/s/ SHALINI SHARP
Shalini Sharp
Chief Financial Officer

Table of Contents

Exhibit 32.1

Certification

Pursuant to 18 U.S.C. Section 1350,

As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Agenus Inc. (the Company) for the year ended December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the Report), each of the undersigned to his/her knowledge hereby certifies, pursuant to 18 U.S.C. Section 1350, that:

(i) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(ii) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GARO H. ARMEN, PH.D.
Garo H. Armen, Ph.d.
Chief Executive Officer

/s/ SHALINI SHARP
Shalini Sharp
Chief Financial Officer

Date: March 6, 2012

A signed original of this written statement required by Section 906 has been provided to Antigenics Inc. and will be retained by Agenus Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished to the Securities and Exchange Commission as an exhibit to the Annual Report on Form 10-K for the year ended December 31, 2011 and should not be considered filed as part of the Annual Report on Form 10-K.