

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

(mark one)

[X]

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

For the fiscal year ended December 31, 2016

or

[]

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

For the transition period from to

Commission File Number: 001-12400

INCYTE CORPORATION

(Exact name of registrant as specified in its charter)

Delaware
(State of other jurisdiction
of incorporation or organization)

1801 Augustine Cut-Off
Wilmington, DE

(Address of principal executives offices)

94-3136539
(IRS Employer
Identification No.)

19803
(zip code)

(302) 498-6700

(Registrant's telephone number, including area code)

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

Title of each class

Common Stock, \$.001 par value per share

Name of exchange on which registered

The NASDAQ Stock Market LLC

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

None

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

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

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes [X] No []

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

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 []

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

The aggregate market value of Common Stock held by non-affiliates (based on the closing sale price on The NASDAQ Global Select Market on June 30, 2016) was approximately \$13.1 billion.

As of February 7, 2017 there were 189,408,381 shares of Common Stock, \$.001 par value per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Items 10 (as to directors and Section 16(a) Beneficial Ownership Reporting Compliance), 11, 12, 13 and 14 of Part III incorporate by reference information from the registrant's proxy statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for the registrant's 2017 Annual Meeting of Stockholders to be held on May 26, 2017.

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Item 1. Business

This report contains forward-looking statements that involve risks and uncertainties. These statements relate to future periods, future events or our future operating or financial plans or performance. Often, these statements include the words “believe,” “expect,” “target,” “anticipate,” “intend,” “plan,” “seek,” “estimate,” “potential,” or words of similar meaning, or future or conditional verbs such as “will,” “would,” “should,” “could,” “might,” or “may,” or the negative of these terms, and other similar expressions. These forward-looking statements include statements as to:

- *the discovery, development, formulation, manufacturing and commercialization of our compounds, our drug candidates and JAKAFI® /JAKAVI® (ruxolitinib) and ICLUSIG® (ponatinib);*
- *the expected benefits from our acquisition of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. and our plans to further develop our European operations;*
- *conducting clinical trials internally, with collaborators, or with clinical research organizations;*
- *our collaboration and strategic relationship strategy; anticipated benefits and disadvantages of entering into collaboration agreements;*
- *our licensing, investment and commercialization strategies, including our plans to commercialize JAKAFI and ICLUSIG;*
- *the regulatory approval process, including obtaining U.S. Food and Drug Administration and other international health authorities approval for our products in the United States and abroad;*
- *the safety, effectiveness and potential benefits and indications of our drug candidates and other compounds under development;*
- *the timing and size of our clinical trials; the compounds expected to enter clinical trials; timing of clinical trial results;*
- *our ability to manage expansion of our drug discovery and development operations;*
- *future required expertise relating to clinical trials, manufacturing, sales and marketing;*
- *obtaining and terminating licenses to products, drug candidates or technology, or other intellectual property rights;*
- *the receipt from or payments pursuant to collaboration or license agreements resulting from milestones or royalties;*
- *plans to develop and commercialize products on our own;*
- *plans to use third party manufacturers;*
- *expected expenses and expenditure levels; expected uses of cash; expected revenues and sources of revenues, including milestone payments; expectations with respect to inventory;*
- *expectations with respect to reimbursement for our products;*
- *expected losses; fluctuation of losses; currency translation impact associated with collaboration royalties;*
- *our profitability; the adequacy of our capital resources to continue operations;*

- *the need to raise additional capital;*
- *the costs associated with resolving matters in litigation;*
- *our expectations regarding competition;*
- *our investments, including anticipated expenditures, losses and expenses;*
- *our patent prosecution and maintenance efforts; and*
- *our indebtedness, and debt service obligations.*

These forward-looking statements reflect our current views with respect to future events, are based on assumptions and are subject to risks and uncertainties. These risks and uncertainties could cause actual results to differ materially from those projected and include, but are not limited to:

- *our ability to successfully commercialize JAKAFI and ICLUSIG;*
- *our ability to maintain at anticipated levels reimbursement for our products from government health administration authorities, private health insurers and other organizations;*
- *our ability to establish and maintain effective sales, marketing and distribution capabilities;*
- *the risk of reliance on other parties to manufacture our products, which could result in a short supply of our products, increased costs, and withdrawal of regulatory approval;*
- *our ability to maintain regulatory approvals to market our products;*
- *our ability to achieve a significant market share in order to achieve or maintain profitability;*
- *the risk of civil or criminal penalties if we market our products in a manner that violates health care fraud and abuse and other applicable laws, rules and regulations;*
- *our ability to discover, develop, formulate, manufacture and commercialize our drug candidates;*
- *the risk of unanticipated delays in, or discontinuations of, research and development efforts;*
- *the risk that previous preclinical testing or clinical trial results are not necessarily indicative of future clinical trial results;*
- *risks relating to the conduct of our clinical trials;*
- *changing regulatory requirements;*
- *the risk of adverse safety findings;*
- *the risk that results of our clinical trials do not support submission of a marketing approval application for our drug candidates;*
- *the risk of significant delays or costs in obtaining regulatory approvals;*
- *risks relating to our reliance on third party manufacturers, collaborators, and clinical research organizations;*

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- *risks relating to the development of new products and their use by us and our current and potential collaborators;*
- *risks relating to our inability to control the development of out-licensed compounds or drug candidates;*
- *risks relating to our collaborators' ability to develop and commercialize drug candidates;*
- *costs associated with prosecuting, maintaining, defending and enforcing patent claims and other intellectual property rights;*
- *our ability to maintain or obtain adequate product liability and other insurance coverage;*
- *the risk that our drug candidates may not obtain or maintain regulatory approval;*
- *the impact of technological advances and competition, including potential generic competition;*
- *our ability to compete against third parties with greater resources than ours;*
- *risks relating to changes in pricing and reimbursement in the markets in which we may compete;*
- *competition to develop and commercialize similar drug products;*
- *our ability to obtain and maintain patent protection and freedom to operate for our discoveries and to continue to be effective in expanding our patent coverage;*
- *the impact of changing laws on our patent portfolio;*
- *developments in and expenses relating to litigation;*
- *the satisfaction of conditions to closing for land purchase agreements;*
- *our ability to in-license drug candidates or other technology;*
- *our ability to integrate successfully acquired businesses, development programs or technology;*
- *our substantial leverage;*
- *our ability to obtain additional capital when needed;*
- *fluctuations in net cash provided and used by operating, financing and investing activities;*
- *our history of operating losses; and*
- *the risks set forth under "Risk Factors."*

Given these risks and uncertainties, you should not place undue reliance on these forward-looking statements. Except as required by federal securities laws, we undertake no obligation to update any forward-looking statements for any reason, even if new information becomes available or other events occur in the future.

In this report all references to "Incyte," "we," "us," "our" or the "Company" mean Incyte Corporation and our subsidiaries, except where it is made clear that the term means only the parent company.

Incyte and JAKAFI are our registered trademarks. We also refer to trademarks of other corporations and organizations in this Annual Report on Form 10-K.

Overview

Incyte is a biopharmaceutical company focused on the discovery, development and commercialization of proprietary therapeutics. Our global headquarters is located in Wilmington, Delaware and we conduct our European clinical development operations from our offices in Geneva, Switzerland and Lausanne, Switzerland.

Marketed Indications - JAKAFI (ruxolitinib)

JAKAFI (ruxolitinib) is our first product to be approved for sale in the United States. It was approved by the U.S. Food and Drug Administration (FDA) in November 2011 for the treatment of patients with intermediate or high-risk myelofibrosis and in December 2014 for the treatment of patients with polycythemia vera who have had an inadequate response to or are intolerant of hydroxyurea. Myelofibrosis and polycythemia vera are both rare blood cancers. Under our collaboration agreement with Novartis International Pharmaceutical Ltd., Novartis received exclusive development and commercialization rights to ruxolitinib outside of the United States for all hematologic and oncologic indications and sells ruxolitinib outside of the United States under the name JAKAVI.

In 2003, we initiated a research and development program to explore the inhibition of enzymes called janus associated kinases (JAK). The JAK family is composed of four tyrosine kinases—JAK1, JAK2, JAK3 and Tyk2—that are involved in the signaling of a number of cytokines and growth factors. JAKs are central to a number of biologic processes, including the formation and development of blood cells and the regulation of immune functions. Dysregulation of the JAK-STAT signaling pathway has been associated with a number of diseases, including myeloproliferative neoplasms, other hematological malignancies, rheumatoid arthritis and other chronic inflammatory diseases. Myeloproliferative neoplasms are a closely related group of blood diseases in which blood cells, specifically platelets, white blood cells, and red blood cells, grow or act abnormally. These diseases include myelofibrosis (MF), polycythemia vera (PV) and essential thrombocythemia.

We have discovered multiple potent, selective and orally bioavailable JAK inhibitors that are selective for JAK1 or JAK1 and JAK2. JAKAFI is the most advanced compound in our JAK program. It is an oral JAK1 and JAK2 inhibitor.

JAKAFI is marketed in the United States through our own specialty sales force and commercial team. JAKAFI was the first FDA-approved JAK inhibitor for any indication and was the first and remains the only product approved by the FDA for use in MF and PV. The FDA has granted JAKAFI orphan drug status for MF, PV and essential thrombocythemia.

To help ensure that all eligible MF and PV patients have access to JAKAFI, we have established a patient assistance program called IncyteCARES (CARES stands for Connecting to Access, Reimbursement, Education and Support). IncyteCARES helps ensure that any patient with intermediate or high-risk MF or uncontrolled PV who meets certain eligibility criteria and is prescribed JAKAFI has access to the product regardless of ability to pay and has access to ongoing support and educational resources during treatment. In addition, IncyteCARES works closely with payers to help facilitate insurance coverage of JAKAFI.

JAKAFI is distributed primarily through a network of specialty pharmacy providers and wholesalers that allow for efficient delivery of the medication by mail directly to patients or direct delivery to the patient's pharmacy. Our distribution process uses a model that is well-established and familiar to physicians who practice within the oncology field.

To further support appropriate use and future development of JAKAFI, our U.S. Medical Affairs department is responsible for providing appropriate scientific and medical education and information to physicians, preparing scientific presentations and publications, and overseeing the process for supporting investigator sponsored trials.

Myelofibrosis. Myelofibrosis is a rare, life-threatening condition. MF, considered the most serious of the myeloproliferative neoplasms, can occur either as primary MF, or as secondary MF that develops in some patients who

previously had polycythemia vera or essential thrombocythemia. We estimate there are between 16,000 and 18,500 patients with MF in the United States. Based on the modern prognostic scoring systems referred to as International Prognostic Scoring System and Dynamic International Prognostic Scoring System, we believe intermediate and high-risk patients represent 80% to 90% of all patients with MF in the United States and encompass patients over the age of 65, or patients who have or have ever had any of the following: anemia, constitutional symptoms, elevated white blood cell or blast counts, or platelet counts less than 100,000 per microliter of blood.

Most MF patients have enlarged spleens and many suffer from debilitating symptoms, including abdominal discomfort, pruritus (itching), night sweats and cachexia (involuntary weight loss). There were no FDA approved therapies for MF until the approval of JAKAFI.

The FDA approval was based on results from two randomized Phase III trials (COMFORT-I and COMFORT-II), which demonstrated that patients treated with JAKAFI experienced significant reductions in splenomegaly (enlarged spleen). COMFORT-I also demonstrated improvements in symptoms. The most common hematologic adverse reactions in both trials were thrombocytopenia and anemia. These events rarely led to discontinuation of JAKAFI treatment. The most common non-hematologic adverse reactions were bruising, dizziness and headache.

In August 2014, the FDA approved supplemental labeling for JAKAFI to include Kaplan-Meier overall survival curves as well as additional safety and dosing information. The overall survival information is based on three-year data from COMFORT-I and II, and shows that at three years the probability of survival for patients treated with JAKAFI in COMFORT-I was 70% and for those patients originally randomized to placebo it was 61%. In COMFORT-II, at three years the probability of survival for patients treated with JAKAFI was 79% and for patients originally randomized to best available therapy it was 59%. In December 2016, we announced an exploratory pooled analysis of data from the five-year follow-up of the COMFORT-I and COMFORT-II trials of patients treated with JAKAFI, which further supported previously published overall survival findings.

In September 2016, we announced that JAKAFI had been included as a recommended treatment in the latest National Comprehensive Cancer Network (NCCN) Clinical Practice Guidelines in Oncology for myelofibrosis, underscoring the important and long-term clinical benefits seen in patients treated with JAKAFI.

Polycythemia Vera. PV is a myeloproliferative neoplasm typically characterized by elevated hematocrit, the volume percentage of red blood cells in whole blood, which can lead to a thickening of the blood and an increased risk of blood clots, as well as an elevated white blood cell and platelet count. When phlebotomy can no longer control PV, chemotherapy such as hydroxyurea, or interferon, is utilized. Approximately 25,000 patients with PV in the United States are considered uncontrolled because they have an inadequate response to or are intolerant of hydroxyurea, the most commonly used chemotherapeutic agent for the treatment of PV.

In December 2014, the FDA approved JAKAFI for the treatment of patients with PV who have had an inadequate response to or are intolerant of hydroxyurea. The approval of JAKAFI for PV was based on data from the pivotal Phase III RESPONSE trial. In this trial, patients treated with JAKAFI demonstrated superior hematocrit control and reductions in spleen volume compared to best available therapy. In addition, a greater proportion of patients treated with JAKAFI achieved complete hematologic remission—which was defined as achieving hematocrit control, and lowering platelet and white blood cell counts. In the RESPONSE trial, the most common hematologic adverse reactions (incidence > 20%) were thrombocytopenia and anemia. The most common non-hematologic adverse events (incidence >10%) were headache, abdominal pain, diarrhea, dizziness, fatigue, pruritus, dyspnea and muscle spasms.

In March 2016, the FDA approved supplemental labeling for JAKAFI to include additional safety data as well as efficacy analyses from the RESPONSE trial to assess the durability of response in JAKAFI treated patients after 80 weeks. At this time, 83% patients were still on treatment, and 76% of the responders at 32 weeks maintained their response through 80 weeks.

In June 2016, we announced data from the Phase 3 RESPONSE-2 study of JAKAFI in patients with inadequately controlled PV that was resistant to or intolerant of hydroxyurea who did not have an enlarged spleen. These data showed that JAKAFI was superior to best available therapy in maintaining hematocrit control (62.2% vs. 18.7%, respectively;

P<0.0001) without the need for phlebotomy.

We have retained all development and commercialization rights to JAKAFI in the United States and are eligible to receive development and commercial milestones as well as royalties from product sales outside the United States. We hold patents that cover the composition of matter and use of ruxolitinib which patents, including applicable extensions, expire in late 2027.

Marketed Indications - ICLUSIG (ponatinib)

In June 2016, we acquired the European operations of ARIAD Pharmaceuticals, Inc (ARIAD) and obtained an exclusive license to develop and commercialize ICLUSIG (ponatinib) in Europe and other select countries. ICLUSIG is a kinase inhibitor. The primary target for ICLUSIG is BCR-ABL, an abnormal tyrosine kinase that is expressed in chronic myeloid leukemia (CML) and Philadelphia-chromosome positive acute lymphoblastic leukemia (Ph+ ALL).

In the European Union, ICLUSIG is approved for the treatment of adult patients with chronic phase, accelerated phase or blast phase chronic myeloid leukemia (CML) who are resistant to dasatinib or nilotinib; who are intolerant to dasatinib or nilotinib and for whom subsequent treatment with imatinib is not clinically appropriate; or who have the T315I mutation, or the treatment of adult patients with Philadelphia-chromosome positive acute lymphoblastic leukemia (Ph+ ALL) who are resistant to dasatinib; who are intolerant to dasatinib and for whom subsequent treatment with imatinib is not clinically appropriate; or who have the T315I mutation.

Clinical Programs in Oncology

We believe that the future of cancer treatment lies in the use of immune therapies, which seek to recruit the patient's own immune system to tackle cancer, and targeted therapies, which aim to block, directly or indirectly, the effects of cancer-causing mutations. Our most advanced programs are detailed below.

We also have a number of other early programs at various stages of preclinical and clinical testing. We intend to describe these programs once we have obtained clinical proof-of-concept and established that a compound within a specific program warrants further development.

Targeted Therapies

Following positive proof-of-concept data, we are preparing to begin a pivotal program investigating ruxolitinib for the treatment of patients with essential thrombocythemia (ET). ET is a Philadelphia chromosome negative myeloproliferative neoplasm, characterized by the overproduction of platelets in the bone marrow. The pivotal program is expected to enroll ET patients that are refractory to or intolerant of hydroxyurea, the current standard of care for first line treatment of these patients, and is expected to begin in 2017.

Building upon positive, independently published third-party data of ruxolitinib in graft-versus-host-disease (GVHD), we have initiated REACH1, a pivotal Phase II trial in steroid-refractory acute GVHD and the first in a registration program for ruxolitinib in GVHD. The REACH2 and REACH3 randomized Phase 3 trials in steroid-refractory acute and steroid-refractory chronic GVHD, respectively, are expected to begin in 2017 in collaboration with Novartis. In June 2016, we announced that the FDA granted Breakthrough Therapy Designation for ruxolitinib in patients with acute GVHD. In April 2016, we announced an agreement with Eli Lilly and Company enabling us to develop and commercialize ruxolitinib in the United States for the treatment of GVHD. We also announced an agreement with Novartis granting Novartis exclusive research, development and commercialization rights for ruxolitinib in GVHD outside the United States.

A proof-of-concept trial of itacitinib (formerly INCB39110), a selective JAK1 inhibitor, is ongoing for the treatment of patients with acute GVHD. Based on preliminary data from this trial, a pivotal program investigating itacitinib for the treatment of patients with treatment-naïve acute GVHD is expected to be initiated during 2017.

GVHD is a condition that can occur after an allogeneic transplant (the transfer of genetically dissimilar stem cells or tissue). In GVHD, the donated bone marrow or peripheral blood stem cells view the recipient's body as foreign and

attack the body. We estimate that the long-term survival in patients with corticosteroid-refractory GVHD is approximately 5% to 30% and that the diagnosed incidence of acute and chronic GVHD is approximately 17,000 per year across the United States and Europe.

We have a portfolio of wholly-owned selective JAK1 inhibitors, including itacitinib (formerly INCB39110) and INCB52793. The clinical program to evaluate itacitinib in solid tumors includes a clinical trial in combination with AstraZeneca/MedImmune’s EGFR inhibitor osimertinib. INCB52793 is in a Phase I/II trial in patients with advanced malignancies.

The PI3K-delta pathway mediates oncogenic signaling in B cell malignancies. A Phase I/II trial of INCB50465, our second generation PI3K-delta inhibitor, is underway both as monotherapy and in combination with the JAK1 inhibitor itacitinib. Phase II trials of INCB50465 are planned in diffuse large B-cell lymphoma (DLBCL) and other non-Hodgkin lymphomas.

INCB54828 is an inhibitor of the FGFR isoforms 1, 2 and 3 that has demonstrated potency and selectivity in preclinical studies. The FGFR family of receptor tyrosine kinases can act as oncogenic drivers in a number of liquid and solid tumor types. Three Phase II trials of INCB54828 are now open for recruitment. These trials are being conducted in patients with bladder cancer and cholangiocarcinoma patients harboring FGFR alterations, and in patients with 8p11 myeloproliferative syndrome (8p11 MPNs).

BRDs are a family of proteins which play important roles in mediating gene transcription, most notably by facilitating the expression of oncogenes such as MYC, one of the most frequently dysregulated oncogenes in all human cancer. We have two BRD inhibitors, INCB54329 and INCB57643, and both are being studied in open-label dose-escalation trials in patients with advanced malignancies. These two compounds will allow us to evaluate different pharmacokinetic and pharmacodynamic profiles.

INCB53914 is a pan-PIM kinase inhibitor that has demonstrated potency and selectivity in preclinical studies. PIM kinases integrate signals from multiple pathways important for the survival and proliferation of malignant cells. Over expression of PIM kinases has been reported in human hematological cancers with each isoform showing a distinct expression pattern among the various malignancy subtypes. A clinical trial of INCB53914 in advanced malignancies is underway.

INCB59872 is an LSD1 inhibitor. LSD1 is a key enzyme that is involved in epigenetic regulation of gene transcription. Dysregulated LSD1 activity can perturb normal gene expression, leading to cellular transformation. In particular, the function of LSD1 has been reported to maintain stem cell-like gene expression patterns in various cancers, including acute myeloid leukemia and small cell lung cancer. A proof-of-concept clinical trial of INCB59872 is underway.

INCB62079 is a selective, irreversible inhibitor of FGFR4 that has exhibited 250 times greater selectivity for FGFR4 than other FGFR isoforms in preclinical studies. Preclinical data has also demonstrated the compound’s selective activity against cancer cell lines with FGF19-FGFR4 pathway activation, and dose-dependent activity in murine models of FGF19-driven hepatocellular carcinoma. We expect to begin clinical trials of INCB62079 in 2017.

	Indication	Status Update
Ruxolitinib (JAK1/JAK2)	Steroid-refractory acute GVHD	Pivotal (REACH1) trial underway; Phase III (REACH2) trial expected to begin in 2017
Ruxolitinib (JAK1/JAK2)	Steroid-refractory chronic GVHD	Phase III (REACH3) trial expected to begin in 2017
Ruxolitinib (JAK1/JAK2)	Essential thrombocythemia	Pivotal program expected to begin in 2017
Itacitinib (JAK1)	Treatment-naïve acute GVHD	Pivotal program expected to begin in 2017
Itacitinib (JAK1)	Non-small cell lung cancer	Phase I/II in combination with osimertinib (EGFR)

INCB52793 (JAK1)	Advanced malignancies	Phase I/II dose-escalation
INCB50465 (PI3Kδ)	DLBCL	Phase II (CITADEL-202) expected to begin in first half of 2017
INCB54828 (FGFR1/2/3)	Bladder cancer, cholangiocarcinoma, 8p11 MPNs	Phase II
INCB54329 (BRD)	Advanced malignancies	Phase I/II dose-escalation
INCB57643 (BRD)	Advanced malignancies	Phase I/II dose-escalation
INCB53914 (PIM)	Advanced malignancies	Phase I/II dose-escalation
INCB59872 (LSD1)	Acute myeloid leukemia, small cell lung cancer	Phase I/II dose-escalation
INCB62079 (FGFR4)	Hepatocellular carcinoma	Phase I/II dose-escalation expected to begin in 2017

Immune Therapies

The enzyme indoleamine 2, 3-dioxygenase-1 (IDO1) is a key regulator of the mechanisms that are responsible for allowing tumors to escape from a patient's immune surveillance. IDO1 expression by tumor cells, or by antigen presenting cells such as macrophages and dendritic cells in tumors, creates an environment in which tumor specific cytotoxic T lymphocytes are rendered functionally inactive or are no longer able to attack a patient's cancer cells. By inhibiting IDO1, it is proposed that this "brake" on the anti-tumor immune response is removed, allowing anti-tumor specific cytotoxic T cells, generated in a patient spontaneously in response to the tumor, or through a therapy designed to stimulate the immune response, to have greater anti-tumor efficacy.

Epacadostat is a novel, potent and selective inhibitor of the enzyme IDO1. We believe that the optimal development strategy for epacadostat is for the compound to be developed in combination with other immuno-oncology agents. During 2014, we signed clinical trial collaboration agreements with Merck, Bristol-Myers Squibb, AstraZeneca / MedImmune and Roche / Genentech to evaluate epacadostat with their respective anti-PD-1 and anti-PD-L1 agents, pembrolizumab, nivolumab, durvalumab and atezolizumab, respectively, in Phase I/II trials. All four of these trials are in progress. We have global development and commercialization rights to epacadostat for all indications.

In October 2015, we and Merck announced an expansion of the companies' ongoing clinical trial collaboration to include ECHO-301, a Phase III study evaluating the combination of epacadostat with pembrolizumab as a first-line treatment for patients with advanced or metastatic melanoma. This trial is recruiting patients.

In January 2017, we and Merck announced an intention to further expand the companies' ongoing clinical trial collaboration to include four additional tumor types, evaluating epacadostat plus pembrolizumab in patients with non-small cell lung (NSCLC), renal, bladder, and head & neck cancers. Phase III trials in these additional tumor types are expected to be initiated in 2017.

In January 2017, we licensed worldwide rights from Calithera Biosciences, Inc. to develop and commercialize INCB01158, a first-in-class, small molecule arginase inhibitor in hematology and oncology. In preclinical models, arginase inhibition has been shown to enhance anti-tumor immunity both as a single agent and in combination with other immunomodulatory therapeutics. INCB01158 is currently being studied in a monotherapy dose escalation trial and additional studies are expected to evaluate the compound in combination with immuno-oncology agents, including anti-PD-1 therapy.

INCSHR1210 is an anti-PD-1 monoclonal antibody that we have licensed under our agreement with Jiangsu Hengrui Medicine Co., Ltd. (Hengrui). Many tumor cells express PD-L1, an immunosuppressive PD-1 ligand. Inhibition of the interaction between PD-1 and PD-L1, known as immune checkpoint blockade, can enhance T-cell responses and mediate preclinical antitumor activity. The dose-escalation portion of the proof-of-concept clinical trial of INCSHR1210 in patients with advanced solid tumors has been completed. Enrollment of new subjects into the trial has been suspended.

in order to perform a thorough assessment of the compound's profile before proceeding to enroll any additional subjects.

We have two co-stimulatory antibodies in clinical development. INCAGN1876 is an anti-GITR agonist antibody and INCAGN1949 is an anti-OX40 agonist antibody. Both are programs within our antibody discovery and development collaboration with Agenus Inc. GITR and OX40 are costimulatory receptors that are expressed on effector T cells and is important for T cell survival and enhanced cytokine production. Both are also expressed on regulatory T cells and can abrogate their suppressive function. Preclinical data demonstrate that anti-GITR and anti-OX40 agonist antibodies inhibit tumor growth by enhancing the levels and function of effector T cells and by decreasing regulatory T cells. Single agent, dose-escalation safety trials of both INCAGN1876 and INCAGN1949 have been initiated.

We have also launched two platform studies to investigate the effects of PD-1, JAK1, IDO1 and PI3K δ inhibition on the tumor microenvironment. The PD-1 platform study is investigating the effects of adding either itacitinib (JAK1) or INCB50465 (PI3K δ) to pembrolizumab (PD-1). The JAK1 platform study is investigating all-oral doublets combining either INCB50465 (PI3K δ) or epacadostat (IDO1) with itacitinib (JAK1).

	Indication	Status Update
Epacadostat (IDO1)	Unresectable or metastatic, advanced melanoma	Phase III (ECHO-301) in combination with pembrolizumab (PD-1)
	NSCLC, renal, bladder, head & neck cancer	Phase III trials expected to begin in 2017
	Multiple tumor types	Phase II (ECHO-202) expansion cohorts in combination with pembrolizumab (PD-1)
	Multiple tumor types	Phase II (ECHO-204) expansion cohorts in combination with nivolumab (PD-1)
	Multiple tumor types	Phase II (ECHO-203) expansion cohorts in combination with durvalumab (PD-L1)
	NSCLC, bladder cancer	Phase I/II (ECHO-110) dose-escalation in combination with atezolizumab (PD-L1)
INCB01158 (ARG, co-developed with Calithera)	Solid tumors	Phase I/II dose-escalation
INCSHR1210 (PD-1, licensed from Hengrui)	Solid tumors	Phase I/II dose-escalation completed; enrollment suspended
INCAGN1876 (GITR)	Solid tumors	Phase I/II dose-escalation
INCAGN1949 (OX40)	Solid tumors	Phase I/II dose-escalation
PD-1 platform study	Solid tumors	Phase I/II, pembrolizumab (PD-1) in combination with itacitinib (JAK1) or INCB50465 (PI3K δ)
JAK1 platform study	Solid tumors	Phase I/II, itacitinib (JAK1) in combination with epacadostat (IDO1) or INCB50465 (PI3K δ)

Clinical Programs outside Oncology

In October 2015, we initiated a Phase II trial of ruxolitinib cream for the topical treatment of alopecia areata. This study builds on published data showing efficacy of oral JAK inhibitors, including ruxolitinib, in alopecia areata. Alopecia areata is an autoimmune skin disease resulting in the loss of hair on the scalp and elsewhere on the body. Alopecia areata occurs in males and females of all ages, but onset often occurs in childhood. We estimate that over 6.6 million people in the United States and 147 million people worldwide have, had or will develop alopecia areata at some point in their lives.

In January 2017, we initiated a Phase II trial of ruxolitinib cream for the topical treatment of atopic dermatitis. Atopic dermatitis is a skin disorder that causes the skin to become red, scaly, and itchy. Onset can occur at any age, but is much more common in infants and children. United States and European prevalence are estimated at 10.3 million patients and 6.5 million patients, respectively. During 2017 we expect to begin a Phase II trial of ruxolitinib cream for the topical treatment of vitiligo, a long term skin condition characterized by patches of the skin losing their pigment.

	Indication	Status Update
Ruxolitinib (JAK1/JAK2)	Alopecia areata, atopic dermatitis	Phase II (topical formulation ¹)
	Vitiligo	Phase II (topical formulation ¹) expected to begin in 2017

¹ Novartis' rights for ruxolitinib outside of the United States under our Collaboration and License Agreement with Novartis do not include topical administration.

Partnered Programs

Baricitinib

We have a second JAK1 and JAK2 inhibitor, baricitinib, which is subject to our collaboration agreement with Eli Lilly and Company, in which Lilly received exclusive worldwide development and commercialization rights to the compound for inflammatory and autoimmune diseases. The Phase III program of baricitinib in patients with rheumatoid arthritis incorporated all three rheumatoid arthritis populations (methotrexate naïve, biologic naïve, and tumor necrosis factor (TNF) inhibitor inadequate responders); used event rates to fully power the baricitinib program for structural comparison and non-inferiority vs. adalimumab; and evaluated patient-reported outcomes. All four Phase III trials met their respective primary endpoints.

In January 2016, Lilly submitted a New Drug Application (NDA) to the FDA and a Marketing Authorization Application (MAA) to the European Medicines Agency for baricitinib as treatment for mild-to-moderately severe rheumatoid arthritis. In February 2017, we and Lilly announced that the European Commission approved baricitinib – which will be marketed as OLUMIANT[®] – for the treatment of moderate to severe active rheumatoid arthritis in adult patients who have responded inadequately to, or who are intolerant to, one or more disease-modifying antirheumatic drugs (DMARDs).

In January 2017, the FDA extended the review period for the NDA for baricitinib by three months. The FDA extended the action date to allow time to review additional data analyses submitted by Lilly in response to the FDA's information requests. The submission of the additional information has been determined by the FDA to constitute a major amendment to the NDA.

Rheumatoid Arthritis. Rheumatoid arthritis is an autoimmune disease characterized by aberrant or abnormal immune mechanisms that lead to joint inflammation and swelling and, in some patients, the progressive destruction of joints. Rheumatoid arthritis can also affect connective tissue in the skin and organs of the body.

Current rheumatoid arthritis treatments include the use of non-steroidal anti-inflammatory drugs, disease-modifying anti-rheumatic drugs, such as methotrexate, and the newer biological response modifiers that target pro-inflammatory cytokines, such as tumor necrosis factor, implicated in the pathogenesis of rheumatoid arthritis. None of these approaches to treatment is curative; therefore, there remains an unmet need for new safe and effective treatment options for these patients. Rheumatoid arthritis is estimated to affect about 1% of the world's population.

Psoriatic Arthritis. Psoriatic arthritis is an inflammatory arthritis that is seen in association with skin psoriasis. It causes joint pain and swelling that can lead to damage of the joint if the inflammation is not controlled. Lilly plans to initiate a Phase III program to evaluate the safety and efficacy of baricitinib in patients with psoriatic arthritis (PsA) during 2017. Baricitinib has been shown to inhibit the JAK-STAT pathway in related conditions such as psoriasis in Phase II

trials, and based on its activity profile, baricitinib also has the potential to demonstrate positive clinical outcomes in PsA.

Atopic Dermatitis. Atopic dermatitis is a condition that makes the skin red and itchy and which is common in children but can occur at any age. Atopic dermatitis is long lasting and tends to flare periodically and then subside. Lilly has initiated a Phase IIa trial to evaluate the safety and efficacy of baricitinib in patients with moderate-to-severe atopic dermatitis. The JAK-STAT pathway has been shown to play an essential role in the dysregulation of immune responses in atopic dermatitis. Therefore, we believe that inhibiting cytokine pathways dependent on JAK1 and JAK2 may lead to positive clinical outcomes in atopic dermatitis.

Systemic Lupus Erythematosus. Systemic lupus erythematosus (SLE) is a chronic disease that causes inflammation. In addition to affecting the skin and joints, it can affect other organs in the body such as the kidneys, the tissue lining the lungs and heart, and the brain. Lilly has initiated a Phase II trial to evaluate the safety and efficacy of baricitinib in patients with SLE. Baricitinib's activity profile suggests that it inhibits cytokines implicated in SLE such as type I interferon (IFN), type II IFN- γ , IL-6, and IL-23 as well as other cytokines that may have a role in SLE, including granulocyte macrophage colony stimulating factor (GM-CSF) and IL-12. The potential impact of baricitinib on the IFN pathway is highly relevant to SLE, as clinical and preclinical studies have established that this pathway is involved in the pathogenesis of SLE.

We exercised our co-development options in both rheumatoid arthritis and psoriatic arthritis to fund 30% of future global development costs through regulatory approval, including post-launch studies required by a regulatory authority, in exchange for increased tiered royalties ranging up to the high twenties on potential future sales. We also exercised our co-development options in both atopic dermatitis and axial spondyloarthritis, should Lilly decide to progress into a pivotal program in these indications.

Capmatinib

Capmatinib is a potent and highly selective c-MET inhibitor. The investigational compound has demonstrated inhibitory activity in cell-based biochemical and functional assays that measure c-MET signaling and c-MET dependent cell proliferation, survival and migration. Under our agreement, Novartis received worldwide exclusive development and commercialization rights to capmatinib and certain back-up compounds in all indications. Capmatinib is being evaluated in patients with hepatocellular carcinoma, non-small cell lung cancer and other solid tumors, and may have potential utility as a combination agent.

c-MET is a clinically validated receptor kinase cancer target. Abnormal c-MET activation in cancer correlates with poor prognosis. Dysregulation of the c-MET pathway triggers tumor growth, formation of new blood vessels that supply the tumor with nutrients, and causes cancer to spread to other organs. Dysregulation of the c-MET pathway is seen in many types of cancers, including lung, kidney, liver, stomach, breast and brain.

	Indication	Status Update
Baricitinib (JAK1/JAK2) (licensed to Lilly)	Rheumatoid arthritis	Approved in Europe; FDA review extended by three months
	Psoriatic arthritis	Phase III expected to begin in 2017
	Atopic dermatitis, systemic lupus erythematosus	Phase II
Capmatinib (c-MET, licensed to Novartis)	NSCLC, liver cancer	Phase II in EGFR wild-type ALK negative NSCLC patients with c-MET amplification and mutation

License Agreements and Business Relationships

As part of our business strategy, we establish business relationships, including collaborative arrangements with other companies and medical research institutions to assist in the clinical development and/or commercialization of certain

of our drugs and drug candidates and to provide support for our research programs. We also evaluate opportunities for acquiring products or rights to products and technologies that are complementary to our business from other companies and medical research institutions.

Below is a brief description of our significant business relationships and collaborations and related license agreements that expand our pipeline and provide us with certain rights to existing and potential new products and technologies.

Novartis

In November 2009, we entered into a Collaboration and License Agreement with Novartis. Under the terms of the agreement, Novartis received exclusive development and commercialization rights outside of the United States to ruxolitinib and certain back-up compounds for hematologic and oncology indications, including all hematological malignancies, solid tumors and myeloproliferative diseases. We retained exclusive development and commercialization rights to JAKAFI (ruxolitinib) in the United States and in certain other indications. Novartis also received worldwide exclusive development and commercialization rights to our c-MET inhibitor compound capmatinib and certain back-up compounds in all indications. We retained options to co-develop and to co-promote capmatinib in the United States.

Under this agreement, we received an upfront payment and immediate milestone payment totaling \$210 million and were initially eligible to receive additional payments of up to approximately \$1.2 billion if defined development and commercialization milestones are achieved. We are also eligible to receive tiered, double-digit royalties ranging from the upper-teens to the mid-twenties percent on future ruxolitinib net sales outside of the United States, and tiered, worldwide royalties on future capmatinib net sales that range from 12% to 14%. In addition, Novartis has received reimbursement and pricing approval for ruxolitinib in a specified number of countries, and we are now obligated to pay to Novartis tiered royalties in the low single digits on future ruxolitinib net sales within the United States. Each company is responsible for costs relating to the development and commercialization of ruxolitinib in its respective territories, with costs of collaborative studies shared equally. Novartis is also responsible for all costs relating to the development and commercialization of capmatinib.

In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the graft-versus-host-disease (“GVHD”) field. Under this amendment, we received a \$5 million payment in exchange for the development and commercialization rights to ruxolitinib in GVHD outside of the United States and became eligible to receive up to \$75 million of additional potential development and regulatory milestones relating to GVHD.

The Novartis agreement will continue on a program-by-program basis until Novartis has no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. Royalties are payable by Novartis on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Novartis or its affiliates or sublicensees. The agreement may be terminated in its entirety or on a program-by-program basis by Novartis for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach.

Lilly

In December 2009, we entered into a License, Development and Commercialization Agreement with Lilly. Under the terms of the agreement, Lilly received exclusive worldwide development and commercialization rights to baricitinib and certain back-up compounds for inflammatory and autoimmune diseases. We received an initial payment of \$90 million, and were initially eligible to receive additional payments of up to \$665 million based on the achievement of defined development, regulatory and commercialization milestones.

We retained options to co-develop our JAK1/JAK2 inhibitors with Lilly on a compound-by-compound and indication-by-indication basis. Lilly is responsible for all costs relating to the development and commercialization of the

compounds unless we elect to co-develop any compounds or indications. If we elect to co-develop any compounds and/or indications, we would be responsible for funding 30% of the associated future global development costs from the initiation of a Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. We would receive an incremental royalty rate increase across all tiers resulting in effective royalty rates ranging up to the high twenties on potential future global net sales for compounds and/or indications that we elect to co-develop. For indications that we elect not to co-develop, we would receive tiered, double-digit royalty payments on future global net sales with rates ranging up to 20% if the product is successfully commercialized. We previously had retained an option to co-promote products in the United States but, in March 2016, we waived our co-promotion option as part of an amendment to the agreement.

In July 2010, we elected to co-develop baricitinib with Lilly in rheumatoid arthritis and we are responsible for funding 30% of the associated future global development costs for this indication from the initiation of the Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. In January 2017, we elected to co-develop baricitinib with Lilly in psoriatic arthritis. We also exercised our co-development options in both atopic dermatitis and axial spondyloarthritis, should Lilly decide to progress into a pivotal program in these indications.

In March 2016, we entered into an amendment to the agreement with Lilly that allows us to engage in the development and commercialization of ruxolitinib in the GVHD field. We paid Lilly an upfront payment of \$35 million and Lilly is eligible to receive up to \$40 million in additional regulatory milestone payments relating to ruxolitinib in the GVHD field.

The Lilly agreement will continue until Lilly no longer has any royalty payment obligations or, if earlier, the termination of the agreement in accordance with its terms. Royalties are payable by Lilly on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Lilly or its affiliates or sublicensees. The agreement may be terminated by Lilly for convenience, and may also be terminated under certain other circumstances, including material breach.

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG (now known as Agenus Switzerland Inc.), which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno-therapeutics using Agenus' antibody discovery platforms. In February 2017, we and Agenus amended this agreement.

Under the terms of this agreement, as amended, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added. Targets may be designated profit-share programs, where all costs and profits are shared equally by us and Agenus, or royalty-bearing programs, where we are responsible for all costs associated with discovery, preclinical, clinical development and commercialization activities. The programs relating to GITR and OX40 and two of the undisclosed targets were profit-share programs until February 2017, while the other targets currently under collaboration are royalty-bearing programs. The February 2017 amendment converted the programs relating to GITR and OX40 to royalty-bearing programs and removed from the collaboration the profit-share programs relating to the two undisclosed targets, with one reverting to us and one reverting to Agenus. Should any of those removed programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. There are currently no profit-share programs. For each royalty-bearing product other than GITR and OX40, Agenus will be eligible to receive tiered royalties on global net sales ranging from 6% to 12%. For GITR and OX40, Agenus will be eligible to receive 15% royalties on global net sales. Under the February 2017 amendment, we paid Agenus \$20 million in accelerated milestones relating to the clinical development of the GITR and OX40 programs. Agenus is eligible to receive up to an additional \$510 million in future contingent development, regulatory and commercialization milestones

across all programs in the collaboration. The agreement may be terminated by us for convenience upon 12 months' notice and may also be terminated under certain other circumstances, including material breach.

Hengrui

In September 2015, we entered into a License and Collaboration Agreement with Hengrui. Under the terms of this agreement, we received exclusive development and commercialization rights worldwide, with the exception of Mainland China, Hong Kong, Macau and Taiwan, to INCSHR1210, an investigational PD-1 monoclonal antibody, and certain back-up compounds. We paid to Hengrui an upfront payment of \$25 million. Hengrui is also eligible to receive potential milestone payments of up to \$770 million, consisting of \$90 million for regulatory approval milestones, \$530 million for commercial performance milestones, and \$150 million for a clinical superiority milestone. Also, Hengrui may be eligible to receive tiered royalties in the high single digits to mid-double digits based on net sales in our territories. Each company will be responsible for costs relating to the development and commercialization of the PD-1 monoclonal antibody in its respective territories.

The agreement will continue on a country-by-country basis until we have no royalty payment obligations with respect to such country or, if earlier, the termination of the agreement in accordance with its terms. The agreement may be terminated in its entirety by us for convenience, and may also be terminated under certain other circumstances, including material breach.

Merus

In December 2016, we entered into a Collaboration and License Agreement with Merus N.V. Under this agreement, which became effective in January 2017, the parties have agreed to collaborate with respect to the research, discovery and development of bispecific antibodies utilizing Merus' technology platform. The collaboration encompasses up to eleven independent programs, including two of Merus' current preclinical immuno-oncology discovery programs. We received exclusive development and commercialization rights outside of the United States to products and product candidates resulting from one of Merus' current preclinical discovery programs, referred to as "Program 1." We also received worldwide exclusive development and commercialization rights to products and product candidates resulting from the other current Merus preclinical discovery program that is subject to the collaboration and to up to nine additional programs. Merus retained exclusive development and commercialization rights in the United States to products and product candidates resulting from Program 1 and options, subject to certain conditions, to co-fund development of products resulting from two other programs in exchange for a share of profits in the United States. Merus will also have the right to participate in a specified proportion of detailing activities in the United States for one of those co-developed programs. Should Program 1 fail to successfully complete IND-enabling toxicology studies, Merus would be granted an additional option to co-fund development of a program in exchange for a share of profits in the United States. All costs related to the collaboration are subject to joint research and development plans. Each party will share equally the costs of mutually agreed global development activities for Program 1, and fund itself any independent development activities in its territory. We will be responsible for all research, development and commercialization costs relating to all other programs, subject to Merus' election to co-fund development and co-detail described above. If Merus exercises its co-funding option for a program, Merus would be responsible for funding 35% of the associated future global development costs and, for certain of such programs, would be responsible for reimbursing us for certain development costs incurred prior to the option exercise. All products as to which Merus has exercised its option to co-fund development would be subject to joint development plans and overseen by a joint development committee, but we will have final determination as to such plans in cases of dispute.

We have agreed to pay Merus an upfront non-refundable payment of \$120 million. For each program as to which Merus does not have commercialization or co-development rights, Merus will be eligible to receive up to \$100 million in future contingent development and regulatory milestones and up to \$250 million in commercialization milestones as well as tiered royalties ranging from 6% to 10% of global net sales. For each program as to which Merus exercises its option to co-fund development, Merus will be eligible to receive a 50% share of profits (or sustain 50% of any losses) in the United States and be eligible to receive tiered royalties ranging from 6% to 10% of net sales of products outside of the United States. If Merus opts to cease co-funding a program as to which it exercised its co-development option, then Merus will no longer receive a share of profits in the United States but will be eligible to receive the same milestones from the

co-funding termination date and the same tiered royalties described above with respect to non-co-developed programs and, depending on the stage at which Merus chose to cease co-funding development costs, additional royalties ranging up to 4% of net sales in the United States. For Program 1, we and Merus will each be eligible to receive tiered royalties on net sales in the other party's territory at rates ranging from 6% to 10%.

The Merus agreement will continue on a program-by-program basis until we have no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. The agreement may be terminated in its entirety or on a program-by-program basis by us for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the agreement. If the agreement is terminated with respect to one or more programs, all rights in the terminated programs revert to Merus, subject to payment to us of a reverse royalty of up to 4% on sales of future products, if Merus elects to pursue development and commercialization of products arising from the terminated programs.

Calithera

In January 2017, we entered into a Collaboration and License Agreement with Calithera Biosciences, Inc. Under this agreement, we received an exclusive, worldwide license to develop and commercialize small molecule arginase inhibitors, including CB-1158, which is currently in phase I clinical trials, for hematology and oncology indications. We have agreed to co-fund 70% of the global development costs for the development of the licensed products for hematology and oncology indications. Calithera will have the right to conduct certain clinical development under the collaboration, including combination studies of a licensed product with a proprietary compound of Calithera. We will be entitled to 60% of the profits and losses from net sales of licensed product in the United States, and Calithera will have the right to co-detail licensed products in the United States, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products outside the United States. Calithera may opt out of its co-funding obligation, in which case the U.S. profit sharing will no longer be in effect, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products both in the United States and outside the United States, and additional royalties to reimburse Calithera for previously incurred development costs.

Calithera retains rights to certain arginase inhibitors that are not part of the collaboration for specific orphan indications outside of hematology and oncology, subject to our rights to negotiate a license for any such programs under specified circumstances if Calithera elects to out-license them.

In January 2017, we paid Calithera an upfront license fee of \$45.0 million and have agreed to pay potential development, regulatory and sales milestone payments of over \$430.0 million if the profit share is in effect, or \$750.0 million if the profit share terminates.

The Calithera agreement will continue on a product-by-product and country-by-country basis for so long as we are developing or commercializing products in the United States (if the parties are sharing profits in the United States) and until we have no further royalty payment obligations, unless earlier terminated according to the terms of the agreement. The agreement may be terminated in its entirety or on a product-by-product and/or a country-by-country basis by us for convenience. The agreement may also be terminated by us for Calithera's uncured material breach, by Calithera for our uncured material breach and by either party for bankruptcy or patent challenge. If the agreement is terminated early with respect to one or more products or countries, all rights in the terminated products and countries revert to Calithera.

Pfizer

In January 2006, we entered into a Collaborative Research and License Agreement with Pfizer Inc. for the pursuit of our CCR2 antagonist program. Pfizer gained worldwide development and commercialization rights to our portfolio of CCR2 antagonist compounds. Pfizer's rights extend to the full scope of potential indications, with the exception of multiple sclerosis and autoimmune nephritides, where we retained worldwide rights, along with certain compounds. We do not have obligations to Pfizer on pre-clinical development candidates we select for pursuit in these indications. The agreement will terminate upon the expiration of the last to expire of patent rights licensed under the agreement. Prior to such expiration, either party can terminate the agreement for the uncured material breach of the agreement by the other party or for the insolvency of the other party. In addition, Pfizer may terminate the agreement at any time upon 90 days' notice.

We received an upfront nonrefundable, non-creditable payment of \$40 million in January 2006 and were initially eligible to receive up to \$743 million of additional future development and commercialization milestone payments. We are also eligible to receive tiered royalties based upon net sales of any potential products ranging from the high single digits to the mid-teens.

ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. Acquisition

In June 2016, we acquired from ARIAD all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l., the parent company of ARIAD's European subsidiaries responsible for the development and commercialization of ICLUSIG in the European Union and other countries, including Switzerland, Norway, Turkey, Israel and Russia, in exchange for an upfront payment of \$147.5 million, including customary working capital adjustments. We obtained an exclusive license to develop and commercialize ICLUSIG in Europe and other select countries. ARIAD will be eligible to receive from us tiered royalties on net sales of ICLUSIG in our territory and up to \$135 million in potential future oncology development and regulatory approval milestone payments, together with additional milestone payments for non-oncology indications, if approved, in our territory.

Our license agreement with ARIAD contains a limited buy-back option for the acquirer of ARIAD to reacquire the rights to ICLUSIG in exchange for repayment to us of our initial purchase price and any milestone payments and development costs previously paid by us to ARIAD, together with an additional payment based upon the last 12 months of ICLUSIG sales booked by us. We would also be eligible to receive royalties of between 20% to 25% from an ARIAD acquirer on future sales of ICLUSIG in our territory.

Incyte's Approach to Drug Discovery and Development

Our productivity in drug discovery is primarily a result of our core competency in medicinal chemistry which is tightly integrated with, and supported by, an experienced team of biologists and pharmaceutical scientists with expertise in multiple therapeutic areas. This discovery team operates in concert with an equally experienced drug development organization with expertise in clinical sciences, statistics, and regulatory affairs. Our drug development organization manages our clinical programs and utilizes clinical research organizations (CROs), expert scientific advisory boards, and leading consultants and suppliers as appropriate to ensure our clinical trials are conducted efficiently, effectively, and in accordance with regulatory and compliance guidelines.

To succeed in our objective to discover and advance novel therapeutics that address serious unmet medical needs, we have established a broad range of discovery capabilities in-house, including target validation, high-throughput screening, medicinal chemistry, computational chemistry, and pharmacological and ADME (absorption, distribution, metabolism and excretion) assessment. We augment these capabilities through collaborations with academic and contract laboratory resources with relevant expertise.

In addition to our small molecule expertise, we have added biotherapeutic antibody discovery capabilities. The collaboration with Agenus has provided us with access to their antibody discovery platform and provided us with both clinical antibodies and pre-clinical candidates. Recently, we have expanded our discovery reach to include bispecific antibodies through a collaboration with Merus. We are complementing these collaborations by building in-house antibody discovery, pharmacology, ADME and CMC capabilities and will partner these efforts with our small molecule portfolio.

Driven by a target- and pathway-centric discovery process, our pipeline has grown and is currently focused primarily in the area of oncology. We conduct a limited number of discovery programs in parallel at any one time. This focus allows us to allocate resources to our selected programs at a level that we believe is competitive with larger pharmaceutical companies. We continually modify the resourcing of our discovery efforts with the goals of maximizing information content when and where we need it and ensuring that each program, regardless of stage, is executed in the most efficient and data-rich manner possible. We believe this approach has played a critical role in the development of our product portfolio.

Once our compounds reach clinical development, our objective is to rapidly progress the lead candidate into a proof-of-concept clinical trial to quickly assess the therapeutic potential of the clinical candidate itself as well as its

underlying mechanism of action. This information is then used to evaluate the compound's development opportunities, identify the most appropriate indication or indications to pursue, and develop a clinical and regulatory plan to advance the molecule forward.

Our development teams are responsible for ensuring that our clinical candidates are expeditiously progressed through clinical safety, proof-of-concept, and formal efficacy/pivotal trials. Our development teams include employees with expertise in drug development, including clinical trial design, statistics, regulatory affairs, medical affairs, pharmacovigilance and project management. We have also built internal process chemistry and formulation teams that work closely with external GMP contract manufacturers to support our drug development efforts.

Incyte's Commercial Strategy

Our strategy is to develop and commercialize our compounds on our own in selected markets where we believe a company of our size can successfully compete, such as in myelofibrosis, polycythemia vera, and other oncology indications. In November 2011, we received regulatory approval of JAKAFI (ruxolitinib) in the United States for the treatment of intermediate or high-risk myelofibrosis. Since that time, we have focused on increasing utilization of JAKAFI in this patient population. In December 2014, JAKAFI was approved for the treatment of patients with polycythemia vera who have had an inadequate response to or are intolerant of hydroxyurea. JAKAFI is the only FDA-approved product to treat these two diseases. We have expanded the marketing, medical, sales and operational infrastructure to support continued commercialization of JAKAFI in its two indications and to prepare for potential future indications of JAKAFI and other products in the United States.

For rights to ruxolitinib outside the United States as well as for pipeline compounds that are outside of our core expertise, would require expensive clinical studies, or could be used in combination with other compounds or biologics, we have established or may in the future establish collaborations or strategic relationships to support development and commercialization, such as our collaborations with Novartis and Lilly for our JAK inhibitors. We believe the key benefits to entering into strategic relationships include the potential to receive upfront payments and future milestones and royalties in exchange for certain rights to our compounds, as well as the potential to expedite the development and commercialization of certain of our compounds.

ICLUSIG is approved in the European Union for the treatment of adult patients with CML who are resistant to dasatinib or nilotinib; who are intolerant to dasatinib or nilotinib and for whom subsequent treatment with imatinib is not clinically appropriate, or who have the T315I mutation. ICLUSIG is also indicated in adult patients with Philadelphia positive AML who are resistant to dasatinib; who are intolerant to dasatinib and for whom subsequent treatment with imatinib is not clinically appropriate, or who have the T315I mutation. We are focused on increasing the utilization of ICLUSIG in this patient population within our territory as appropriate. We are expanding marketing, medical and operational infrastructure outside of the United States and within the United States to prepare for potential approval of other products.

Please also see Note 16 of Notes to Consolidated Financial Statements included in this Annual Report on Form 10-K for financial information about geographic areas.

Patents and Other Intellectual Property

We regard the protection of patents and other enforceable intellectual property rights that we own or license as critical to our business and competitive position. Accordingly, we rely on patent, trade secret and copyright law, as well as nondisclosure and other contractual arrangements, to protect our intellectual property. We have established a patent portfolio of patents and patent applications owned or licensed by us that cover aspects of all our drug products and drug candidates. The patents and patent applications relating to our drug products and drug candidates generally include claims directed to the compounds, methods of using the compounds, formulations of the compounds, pharmaceutical salt forms of the compounds, and methods of manufacturing the compounds. Our policy is to pursue patent applications on inventions and discoveries that we believe are commercially important to the development and growth of our business. The following

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table sets forth the status of the patents and patent applications in the United States, the European Union, and Japan, covering our drug products and drug candidates in key programs that have progressed into at least Phase II clinical trials:

Drug/Drug Candidate (Target)	Status of United States Patent Estate (Earliest Anticipated Expirations, Subject to Potential Extensions and Payment of Maintenance Fees)	Status of European Union and Japan Patent Estate (Earliest Anticipated Expirations, Subject to Potential Extensions and Payment of Maintenance Fees)
ruxolitinib (JAK)	Granted and pending (2026)	Granted and pending (2026)
baricitinib (JAK)	Granted and pending (2029)	Granted and pending (2029)
epacadostat (IDO)	Granted and pending (2029)	Granted and pending (2029)
itacitinib (JAK)	Granted and pending (2031)	Granted and pending (2031)
capmatinib (cMET)	Granted and pending (2027)	Granted and pending (2027)
INCB050465 (Pi3K d)	Granted and pending (2032)	Granted and pending (2032)
INCB054828 (FGFR)	Pending (2033)	Granted and pending (2033)
ponatinib (BCR ABL)		Granted and pending (2026)

Patents extend for varying periods according to the date of patent filing or grant and the legal term of patents in the various countries where patent protection is obtained. The actual protection afforded by a patent, which can vary from country to country, depends on the type of patent, the scope of its coverage and the availability of legal remedies in the country.

We may seek to license rights relating to technologies, drug candidates or drug products in connection with our drug discovery and development programs and commercialization activities. Under these licenses, such as our licenses from Agenus, ARIAD, Calithera, Hengrui and Merus, we may be required to pay up-front fees, license fees, milestone payments and royalties on sales of future products.

Although we believe our rights under patents and patent applications provide a competitive advantage, the patent positions of pharmaceutical and biotechnology companies are highly uncertain and involve complex legal and factual questions. We may not be able to develop patentable products or processes, and may not be able to obtain patents in the United States or elsewhere from pending applications. Even if patent claims are allowed, the claims may not issue, or in the event of issuance, may not be valid or enforceable or may not be sufficient to protect the technology owned by or licensed to us or provide us with a competitive advantage. Any patent or other intellectual property rights that we own or obtain may be circumvented, challenged or invalidated by our competitors. Others may have patents that relate to our business or technology and that may prevent us from marketing our drug candidates unless we are able to obtain a license to those patents. In addition, litigation or other proceedings may be necessary to defend against claims of infringement, to enforce patents, to protect our other intellectual property rights, to determine the scope and validity of the proprietary rights of third parties or to defend ourselves in patent or other intellectual property right suits brought by third parties. We could incur substantial costs in such litigation or other proceedings. An adverse outcome in any such litigation or proceeding could subject us to significant liability.

With respect to proprietary information that is not patentable, and for inventions for which patents are difficult to enforce, we rely on trade secret protection and confidentiality agreements to protect our interests. While we require all employees, consultants and potential business partners to enter into confidentiality agreements, we may not be able to adequately protect our trade secrets or other proprietary information. Others may independently develop substantially equivalent proprietary information and techniques or otherwise gain access to our trade secrets.

Competition

Our drug discovery, development and commercialization activities face, and will continue to face, intense competition from organizations such as pharmaceutical and biotechnology companies, as well as academic and research institutions and government agencies. We face significant competition from organizations, particularly fully integrated pharmaceutical companies, that are pursuing pharmaceuticals that are competitive with JAKAFI, ICLUSIG and our drug candidates.

Many companies and institutions, either alone or together with their collaborative partners, have substantially greater financial resources, larger drug discovery, development and commercial staffs and significantly greater experience than we do in:

- drug discovery;
- developing products;
- undertaking preclinical testing and clinical trials;
- obtaining FDA and other regulatory approvals of products; and
- manufacturing, marketing, distributing and selling products.

Accordingly, our competitors may succeed in obtaining patent protection, receiving FDA and other regulatory approval or commercializing products that compete with JAKAFI, ICLUSIG or our drug candidates.

In addition, any drug candidate that we successfully develop may compete with existing therapies that have long histories of safe and effective use. Competition may also arise from:

- other drug development technologies and methods of preventing or reducing the incidence of disease;
- new small molecules; or
- other classes of therapeutic agents.

We face and will continue to face intense competition from other companies for collaborative arrangements with pharmaceutical and biotechnology companies, for establishing relationships with academic and research institutions and for licenses to drug candidates or proprietary technology. These competitors, either alone or with their collaborative partners, may succeed in developing products that are more effective than ours.

Our ability to compete successfully will depend, in part, on our ability to:

- develop proprietary products;
- develop and maintain products that reach the market first, are technologically superior to and/or are of lower cost than other products in the market;
- attract and retain scientific, product development and sales and marketing personnel;
- obtain patent or other proprietary protection for our products and technologies;
- obtain required regulatory approvals; and
- manufacture, market, distribute and sell any products that we develop.

In a number of countries, including in particular, developing countries, government officials and other groups have suggested that pharmaceutical companies should make drugs available at a low cost. In some cases, governmental authorities have indicated that where pharmaceutical companies do not do so, their patents might not be enforceable to prevent generic competition. Some major pharmaceutical companies have greatly reduced prices for their drugs in certain developing countries. If certain countries do not permit enforcement of any of our patents, sales of our products in those countries, and in other countries by importation from low-price countries, could be reduced by generic competition or by parallel importation of our product. Alternatively, governments in those countries could require that we grant compulsory

licenses to allow competitors to manufacture and sell their own versions of our products in those countries, thereby reducing our product sales, or we could respond to governmental concerns by reducing prices for our products. In all of these situations, our results of operations could be adversely affected.

Government Regulation

Our ongoing research and development activities and any manufacturing and marketing of our approved drug products and our drug candidates are subject to extensive regulation by numerous governmental authorities in the United States and other countries. Before marketing in the United States, any drug developed by us must undergo rigorous preclinical testing, clinical trials, and an extensive regulatory clearance process implemented by the FDA under the United States Food, Drug and Cosmetic Act and its implementing regulations and, in the case of biologics, the Public Health Service Act. The FDA regulates, among other things, the research, development, testing, manufacture, safety, efficacy, record-keeping, labeling, storage, approval, advertising, promotion, sale and distribution and import and export, of these products.

FDA Review and Approval Process

The regulatory review and approval process is lengthy, expensive and uncertain. The steps generally required before a drug may be marketed in the United States include:

- preclinical laboratory tests, animal studies and formulation studies in compliance with the FDA's Good Laboratory Practice and Good Manufacturing Practice regulations;
- submission to the FDA of an Investigational New Drug application (IND) for human clinical testing, which must become effective before human clinical trials may commence;
- performance of adequate and well-controlled clinical trials in three phases, as described below, to establish the safety and efficacy of the drug for each indication;
- submission of an NDA or Biologics License Application (BLA) to the FDA for review;
- random inspections of clinical sites to ensure validity of clinical safety and efficacy data;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities at which the drug is produced to assess compliance with current good manufacturing practices;
- FDA approval of the NDA or BLA; and
- payment of user and establishment fees, if applicable.

Similar requirements exist within foreign agencies as well. The time required to satisfy FDA requirements or similar requirements of foreign regulatory agencies may vary substantially based on the type, complexity and novelty of the product or the targeted disease.

Preclinical testing includes laboratory evaluation of product pharmacology, drug metabolism, and toxicity which includes animal studies, to assess potential safety and efficacy as well as product chemistry, stability, formulation, development, and testing. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an IND. An IND will automatically become effective 30 days after receipt by the FDA, unless before that time, the FDA raises safety concerns or questions about the conduct of the clinical trial(s) included in the IND. In the latter case, the IND sponsor and the FDA must resolve any outstanding FDA concerns or questions before clinical trials can proceed. We cannot be sure that submission of an IND will result in the FDA allowing clinical trials to commence.

Clinical trials involve the administration of the investigational drug to human subjects under the supervision of qualified investigators and in accordance with good clinical practices regulations covering the protection of human subjects. These regulations require all research subjects to provide informed consent. Clinical trials are conducted under protocols detailing the objectives of the study, the parameters to be used in monitoring safety, and the effectiveness criteria to be evaluated. Each protocol must be submitted to the FDA as part of the IND and each trial must be reviewed and approved by an institutional review board (IRB) before it can begin.

Clinical trials typically are conducted in three sequential phases, but the phases may overlap or be combined. Phase I usually involves the initial introduction of the investigational drug into healthy volunteers to evaluate its safety, dosage tolerance, absorption, metabolism, distribution and excretion. Phase II usually involves clinical trials in a limited patient population to evaluate dosage tolerance and optimal dosage, identify possible adverse effects and safety risks, and evaluate and gain preliminary evidence of the efficacy of the drug for specific indications. Phase III clinical trials usually further evaluate clinical efficacy and safety by testing the drug in its final form in an expanded patient population, providing statistical evidence of efficacy and safety, and providing an adequate basis for labeling. We cannot guarantee that Phase I, Phase II or Phase III testing will be completed successfully within any specified period of time, if at all. Furthermore, we, the IRB, or the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

As a separate amendment to an IND, a clinical trial sponsor may submit to the FDA a request for an SPA. Under the SPA procedure, a sponsor may seek the FDA's agreement on the design and size of a clinical trial intended to form the primary basis of an effectiveness claim. If the FDA agrees in writing, its agreement may not be changed after the trial begins, except when agreed by FDA or in limited circumstances, such as when a substantial scientific issue essential to determining the safety and effectiveness of a drug candidate is identified after a Phase III clinical trial is commenced and agreement is obtained with the FDA. If the outcome of the trial is successful, the sponsor will ordinarily be able to rely on it as the primary basis for approval with respect to effectiveness. However, additional trials could also be requested by the FDA to support approval, and the FDA may make an approval decision based on a number of factors, including the degree of clinical benefit as well as safety. The FDA is not obligated to approve an NDA or BLA as a result of an SPA agreement, even if the clinical outcome is positive.

Even after initial FDA approval has been obtained, post-approval trials, or Phase IV studies, may be required to provide additional data, and will be required to obtain approval for the sale of a product as a treatment for a clinical indication other than that for which the product was initially tested and approved. Also, the FDA will require post-approval safety reporting to monitor the side effects of the drug. Results of post-approval programs may limit or expand the indication or indications for which the drug product may be marketed. Further, if there are any requests for modifications to the initial FDA approval for the drug, including changes in indication, manufacturing process, manufacturing facilities, or labeling, a supplemental NDA or BLA may be required to be submitted to the FDA.

The length of time and related costs necessary to complete clinical trials varies significantly and may be difficult to predict. Clinical results are frequently susceptible to varying interpretations that may delay, limit or prevent regulatory approvals. Additional factors that can cause delay or termination of our clinical trials, or cause the costs of these clinical trials to increase, include:

- slow patient enrollment due to the nature of the protocol, the proximity of patients to clinical sites, the eligibility criteria for the study, competition with clinical trials for other drug candidates or other factors;
- inadequately trained or insufficient personnel at the study site to assist in overseeing and monitoring clinical trials;
- delays in approvals from a study site's IRB;
- longer than anticipated treatment time required to demonstrate effectiveness or determine the appropriate product dose;
- lack of sufficient supplies of the drug candidate for use in clinical trials;

- adverse medical events or side effects in treated patients; and
- lack of effectiveness of the drug candidate being tested.

Any drug is likely to produce some toxicities or undesirable side effects in animals and in humans when administered at sufficiently high doses and/or for sufficiently long periods of time. Unacceptable toxicities or side effects may occur at any dose level, and at any time in the course of animal studies designed to identify unacceptable effects of a drug candidate, known as toxicological studies, or in clinical trials of our drug candidates. The appearance of any unacceptable toxicity or side effect could cause us or regulatory authorities to interrupt, limit, delay or abort the development of any of our drug candidates, and could ultimately prevent their marketing approval by the FDA or foreign regulatory authorities for any or all targeted indications.

The FDA's fast track, breakthrough therapy, accelerated approval, and priority review designation programs are intended to facilitate the development and expedite the review and approval of drug candidates intended for the treatment of serious or life-threatening conditions and that demonstrate the potential to address unmet medical needs for these conditions. Under these programs, FDA can, for example, review portions of an NDA or BLA for a drug candidate before the entire application is complete, thus potentially beginning the review process at an earlier time.

We cannot guarantee that the FDA will grant any of our requests for any of these expedited program designations, that any such designations would affect the time of review or that the FDA will approve the NDA or BLA submitted for any of our drug candidates, whether or not these designations are granted. Additionally, FDA approval of a product can include restrictions on the product's use or distribution (such as permitting use only for specified medical conditions or limiting distribution to physicians or facilities with special training or experience). Approval of such designated products can be conditioned on additional clinical trials after approval.

Sponsors submit the results of preclinical studies and clinical trials to the FDA as part of an NDA or BLA. NDAs and BLAs must also contain extensive product manufacturing information and proposed labeling. Upon receipt, the FDA initially reviews the NDA or BLA to determine whether it is sufficiently complete to initiate a substantive review. If the FDA identifies deficiencies that would preclude substantive review, the FDA will refuse to accept the NDA or BLA and will inform the sponsor of the deficiencies that must be corrected prior to resubmission. If the FDA accepts the submission for review (then deemed a "filing"), the FDA typically completes the NDA or BLA review within a pre-determined time frame. Under the Prescription Drug User Fee Act, the FDA agrees to review NDAs and BLAs under either a standard review or priority review. FDA procedures provide for priority review of NDAs and BLAs submitted for drugs that, compared to currently marketed products, if any, offer a significant improvement in the treatment, diagnosis or prevention of a disease. The FDA seeks to review NDAs and BLAs that are granted priority status more quickly than NDAs and BLAs given standard review status. The FDA's stated policy is to act on 90% of priority NDAs and BLAs within eight months of receipt (or six months after filing, which occurs within 60 days after NDA or BLA submission). Although the FDA historically has not met these goals, the agency has made significant improvements in the timeliness of the review process. NDA and BLA review often extends beyond anticipated completion dates due to FDA requests for additional data or clarification, the FDA's decision to have an advisory committee review, and difficulties in scheduling an advisory committee meeting. The recommendations of an advisory committee are not binding on the FDA.

To obtain FDA approval to market a product, we must demonstrate that the product is safe and effective for the patient population that will be treated. If regulatory approval of a product is granted, the approval will be limited to those disease states and conditions for which the product is safe and effective, as demonstrated through clinical trials. Marketing or promoting a drug for an unapproved indication is prohibited. Furthermore, approval may entail requirements for post-marketing studies or risk evaluation and mitigation strategies, including the need for patient and/or physician education, patient registries, medication or similar guides, or other restrictions on the distribution of the product. If an NDA or BLA does not satisfy applicable regulatory criteria, the FDA may deny approval of an NDA or BLA or may issue a complete response, and require, among other things, additional clinical data or analyses.

The Orphan Drug Act provides incentives to manufacturers to develop and market drugs for rare diseases and conditions affecting fewer than 200,000 persons in the United States at the time of application for orphan drug designation. The first developer to receive FDA marketing approval for an orphan drug is entitled to a seven year exclusive marketing

period in the United States for the orphan drug indication. However, a drug that the FDA considers to be clinically superior to, or different from, another approved orphan drug, even though for the same indication, may also obtain approval in the United States during the seven year exclusive marketing period.

Regulation of Manufacturing Process

Even when NDA or BLA approval is obtained, a marketed product, such as JAKAFI, its manufacturer and its manufacturing facilities are subject to continual review and periodic inspections by the FDA. The manufacturing process for pharmaceutical products is highly regulated and regulators may shut down manufacturing facilities that they believe do not comply with regulations. Discovery of previously unknown problems with a product, manufacturer or facility may result in restrictions on the product, manufacturer or facility, including costly recalls or withdrawal of the product from the market. Manufacturing facilities are always subject to inspection by the applicable regulatory authorities.

We and our third-party manufacturers are subject to current Good Manufacturing Practices, which are extensive regulations governing manufacturing processes, including but not limited to stability testing, record keeping and quality standards as defined by the FDA and the European Medicines Agency. Similar regulations are in effect in other countries. Manufacturing facilities are subject to inspection by the applicable regulatory authorities. These facilities, whether our own or our contract manufacturers, must be inspected before we can use them in commercial manufacturing of our related products. We or our contract manufacturers may not be able to comply with applicable Good Manufacturing Practices and FDA or other regulatory requirements. If we or our contract manufacturers fail to comply, we or our contract manufacturers may be subject to legal or regulatory action, such as suspension of manufacturing, seizure of product, or voluntary recall of product. Furthermore, continued compliance with applicable Good Manufacturing Practices will require continual expenditure of time, money and effort on the part of us or our contract manufacturers in the areas of production and quality control and record keeping and reporting, in order to ensure full compliance.

Post-Approval Regulation

Any products manufactured or distributed by us pursuant to FDA approvals are subject to pervasive and continuing regulation by the FDA, including record-keeping requirements, reporting of adverse experiences with the drug and other reporting, advertising and promotion restrictions. The FDA's rules for advertising and promotion require, among other things, that our promotion be fairly balanced and adequately substantiated by clinical studies, and that we not promote our products for unapproved uses. We must also submit appropriate new and supplemental applications and obtain FDA approval for certain changes to the approved product, product labeling or manufacturing process. On its own initiative, the FDA may require changes to the labeling of an approved drug if it becomes aware of new safety information that the agency believes should be included in the approved drug's labeling. The FDA also enforces the requirements of the Prescription Drug Marketing Act, or PDMA, which, among other things, imposes various requirements in connection with the distribution of product samples to physicians.

In addition to inspections related to manufacturing, we are subject to periodic unannounced inspections by the FDA and other regulatory bodies related to the other regulatory requirements that apply to marketed drugs manufactured or distributed by us. The FDA also may conduct periodic inspections regarding our review and reporting of adverse events, or related to compliance with the requirements of the PDMA concerning the handling of drug samples. When the FDA conducts an inspection, the inspectors will identify any deficiencies they believe exist in the form of a notice of inspectional observations. The observations may be more or less significant. If we receive a notice of inspectional observations, we likely will be required to respond in writing, and may be required to undertake corrective and preventive actions in order to address the FDA's concerns.

There are a variety of state laws and regulations that apply in the states or localities where JAKAFI and our drug candidates are or may be marketed. For example, we must comply with state laws that require the registration of manufacturers and wholesale distributors of pharmaceutical products in that state, including, in certain states, manufacturers and distributors who ship products into the state even if such manufacturers or distributors have no place of business within the state. Some states also impose requirements on manufacturers and distributors to establish the pedigree of product in the chain of distribution, including some states that require manufacturers and others to adopt new

technology capable of tracking and tracing product as it moves through the distribution chain. Any applicable state or local regulations may hinder our ability to market, or increase the cost of marketing, our products in those states or localities.

The FDA's policies may change and additional government regulations may be enacted which could impose additional burdens or limitations on our ability to market products after approval. Moreover, increased attention to the containment of health care costs in the United States and in foreign markets could result in new government regulations which could have a material adverse effect on our business. We cannot predict the likelihood, nature or extent of adverse governmental regulation which might arise from future legislative or administrative action, either in the United States or abroad.

Marketing Exclusivity

The FDA may grant five years of exclusivity in the United States for the approval of NDAs for new chemical entities, and three years of exclusivity for supplemental NDAs, for among other things, new indications, dosages or dosage forms of an existing drug if new clinical investigations that were conducted or sponsored by the applicant are essential to the approval of the supplemental application. Additionally, six months of marketing exclusivity in the United States is available if, in response to a written request from the FDA, a sponsor submits and the agency accepts requested information relating to the use of the approved drug in the pediatric population. The six month pediatric exclusivity is added to any existing patent or non-patent exclusivity period for which the drug is eligible. Orphan drug products are also eligible for pediatric exclusivity if the FDA requests and the company completes pediatric clinical trials. Under the Biologics Price Competition and Innovation Act, the FDA may grant 12 years of data exclusivity for innovative biological products.

Foreign Regulation

Outside the United States, our ability to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. The requirements governing the conduct of clinical trials, marketing authorization, pricing and reimbursement vary widely from country to country. At present, foreign marketing authorizations are applied for at a national level, although within the European Union (EU) registration procedures are available to companies wishing to market a product in more than one EU member state. If the competent regulatory authority is satisfied that adequate evidence of safety, quality and efficacy has been presented, a marketing authorization may be granted. This foreign regulatory approval process involves all of the risks associated with FDA approval discussed above and may also include additional risks.

Whether or not we obtain FDA approval for a product, we must obtain the requisite approvals from regulatory authorities in non-US countries prior to the commencement of clinical trials or marketing of the product in those countries. Certain countries outside of the United States have a process that requires the submission of a clinical trial application, or CTA, much like an IND prior to the commencement of human clinical trials. In Europe, a CTA must be submitted to the competent national health authority and to independent ethics committees in each country in which a company plans to conduct clinical trials. Once the CTA is approved in accordance with a country's requirements, clinical trial development may proceed in that country and are conducted in accordance with GCP and other applicable regulatory requirements.

To obtain regulatory approval of an investigational drug under EU regulatory systems, we must submit a marketing authorization application (MAA). This application is similar to the NDA in the United States, with the exception of, among other things, country-specific document requirements. Drugs can be authorized in the EU by using (i) the centralized authorization procedure, (ii) the mutual recognition procedure, (iii) the decentralized procedure or (iv) national authorization procedures.

The European Medicines Agency (EMA) implemented the centralized procedure for the approval of human drugs to facilitate marketing authorizations that are valid throughout the EU. This procedure results in a single marketing authorization granted by the European Commission that is valid across the EU. Under the centralized procedure, the maximum timeframe for the evaluation of a marketing authorization application by the EMA is 210 days (excluding clock stops, when additional written or oral information is to be provided by the applicant in response to questions asked by the Committee for Medicinal Products for Human Use (CHMP)). A positive opinion on the MAA by the CHMP then needs to be endorsed by the European Commission. Accelerated assessment might be granted by the CHMP in exceptional cases,

in which case the EMA ensures that the evaluation for the opinion of the CHMP is completed within 150 days and the opinion issued thereafter.

The mutual recognition procedure (MRP) for the approval of human drugs is an alternative approach to facilitate individual national marketing authorizations within the EU. The MRP may be applied for all human drugs for which the centralized procedure is not obligatory. The MRP is based on the principle of the mutual recognition by EU member states of their respective national marketing authorizations. Based on a marketing authorization in the reference member state, the applicant may apply for marketing authorizations in other member states. In such case, the reference member state shall update its existing assessment report about the drug. After the assessment is completed, copies of the report are sent to all member states, together with the approved summary of product characteristics, labeling and package leaflet. The concerned member states then recognize the decision of the reference member state and the summary of product characteristics, labeling and package leaflet. National marketing authorizations shall be granted within 30 days after acknowledgement of the agreement.

Should any Member State refuse to recognize the marketing authorization by the reference member state the member states shall make all efforts to reach a consensus. If this fails, the procedure is submitted to an EMA scientific committee for arbitration. The opinion of this EMA Committee is then forwarded to the Commission, for the start of the decision making process. As in the centralized procedure, this process entails consulting various European Commission Directorates General and the Standing Committee on Human Medicinal Products or Veterinary Medicinal Products, as appropriate.

Legislation similar to the Orphan Drug Act has been enacted in other countries outside of the United States, including the EU. The orphan legislation in the EU is available for therapies addressing conditions that affect five or fewer out of 10,000 persons, are life-threatening or chronically debilitating conditions and for which no satisfactory treatment is authorized. The market exclusivity period is for ten years, although that period can be reduced to six years if, at the end of the fifth year, available evidence establishes that the product does not justify maintenance of market exclusivity.

For other countries outside of the EU, such as countries in Eastern Europe, Latin America or Asia, the requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary from country to country. In all cases, again, the clinical trials are conducted in accordance with GCP and the other applicable regulatory requirements.

If we fail to comply with applicable foreign regulatory requirements, we may be subject to, among other things, fines, suspension of clinical trials, suspension or withdrawal of regulatory approvals, product recalls, seizure of products, operating restrictions and criminal prosecution.

Manufacturing

Our manufacturing strategy is to contract with third parties to manufacture the raw materials, our active pharmaceutical ingredients, or API, and finished dosage form for clinical and commercial uses. We currently do not operate manufacturing facilities for clinical or commercial production of JAKAFI, ICLUSIG, or our drug candidates. In addition, we expect for the foreseeable future to continue to rely on third parties for the manufacture of commercial supplies of the raw materials, API and finished drug product for any drugs that we successfully develop and are approved for commercial sale. In this manner, we continue to build and maintain our supply chain and quality assurance resources.

Manufacturing of our Products

Our supply chain for manufacturing raw materials, API and drug product ready for distribution and commercialization is a multi-step international process. Establishing and managing the supply chain requires a significant financial commitment and the creation and maintenance of numerous third-party contractual relationships.

We contract with third parties to manufacture JAKAFI, ICLUSIG, and our drug candidates for clinical and commercial purposes. Third-party manufacturers supply us with raw materials, and other third-party manufacturers convert these raw materials into API or convert the API into final dosage form. For most of our drug candidates, once our

raw materials are produced, we rely on one third party to manufacture the API, another to make finished drug product and a third to package and label the finished product. For ruxolitinib phosphate, the API for JAKAFI, we have two qualified third-party contract manufacturers from which we can source drug substance. The API and primary packaged drug product for ICLUSIG is sourced from ARIAD pursuant to our agreement with ARIAD.

We also rely on third-party contract manufacturers to tablet or capsule all of our active pharmaceutical ingredients for clinical and commercial uses. For JAKAFI, we have two qualified third-party manufacturers from which we can source commercial product. For ICLUSIG we are in the process of qualifying a second manufacturing site. Secondary packaging of ICLUSIG is performed by a qualified third-party manufacturer. Primary packaged product for ICLUSIG can be used for clinical and commercial purposes.

We may not be able to obtain sufficient quantities of any of our raw materials, drug candidates, API, or finished goods if our designated manufacturers do not have the capacity or capability to manufacture our products according to our schedule and specifications. If any of these single source suppliers were to become unable or unwilling to supply us with API or finished product that complies with applicable regulatory requirements, we could incur significant delays in our clinical trials or interruption of commercial supply which could have a material adverse effect on our business.

We have established a quality assurance program intended to ensure that our third-party manufacturers and service providers produce materials and provide services, as applicable, in accordance with the FDA and EMA's current Good Manufacturing Practices and other applicable regulations. Our quality assurance program extends to our licensed facilities that oversee the manufacturing and distribution activities.

For our future products, we intend to continue to establish third-party suppliers to manufacture sufficient quantities of our drug candidates to undertake clinical trials and to manufacture sufficient quantities of any product that is approved for commercial sale. If we are unable to contract for large scale manufacturing with third parties on acceptable terms for our future products or develop manufacturing capabilities internally, our ability to conduct large scale clinical trials and meet customer demand for commercial products will be adversely affected.

Third-party Manufacturers

Our third-party manufacturers are independent entities, under contract with us, who are subject to their own unique operational and financial risks which are out of our control. If we or any of our third-party manufacturers fail to perform as required, this could impair our ability to deliver our products on a timely basis or cause delays in our clinical trials and applications for regulatory approval. To the extent these risks materialize and affect their performance obligations to us, our financial results may be adversely affected.

We believe the technology used to manufacture our products is proprietary. For products manufactured by our third-party manufacturers, we have licensed the necessary aspects of this manufacturing technology that we believe is proprietary to us to enable them to manufacture the products for us. We have agreements with these third-party manufacturers that are intended to restrict these manufacturers from using or revealing our technology, but we cannot be certain that these third-party manufacturers will comply with these restrictions.

While we believe there are multiple third parties capable of providing most of the materials and services we need in order to manufacture API and distribute finished goods, and that supply of materials that cannot be second sourced can be managed with inventory planning, there is always a risk that we may underestimate demand, and that our manufacturing capacity through third party manufacturers may not be sufficient. In addition, because of the significant lead times involved in our supply chain for ruxolitinib phosphate, we may have less flexibility to adjust our supply in response to changes in demand than if we had shorter lead times. For ICLUSIG, our strategy is to maintain 24 months of safety stock of API to be able to respond to changes in demand to provide on-time supply of drug product.

Access to Supplies and Materials

Our third-party manufacturers need access to certain supplies and products to manufacture JAKAFI, ICLUSIG, and our drug candidates. If delivery of material from their suppliers were interrupted for any reason or if they are unable

to purchase sufficient quantities of raw materials used to manufacture JAKAFI, ICLUSIG, and our drug candidates, they may be unable to ship JAKAFI and ICLUSIG for commercial supply or to supply our drug candidates in development for clinical trials. For example, currently raw materials used to manufacture ruxolitinib phosphate, the API in JAKAFI, are supplied by Chinese-based companies. As a result, an international trade dispute between China and the United States or any other actions by the Chinese government that would limit or prevent Chinese companies from supplying these materials would adversely affect our ability to manufacture and supply our products to meet market needs and have a material and adverse effect on our operating results.

Agenus

Under our collaboration with Agenus, Agenus had primary responsibility for manufacturing activities, including selecting and monitoring third-party manufacturers. Under the February 2017 amendment to our collaboration agreement, we assumed primary responsibility for manufacturing activities, including selecting and monitoring third party manufacturers, of all products from royalty-bearing programs under the collaboration. Manufacturing antibodies and products containing antibodies is a more complex process than manufacturing small molecule drugs and subject to additional risks. The process of manufacturing antibodies and products containing antibodies is highly susceptible to product loss due to contamination, equipment failure or improper installation or operation of equipment, vendor or operator error, inconsistency in yields, variability in product characteristics, and difficulties in scaling the production process. Even minor deviations from normal manufacturing processes could result in reduced production yields, product defects and other supply disruptions. If microbial, viral or other contaminations are discovered in our product candidates or in the manufacturing facilities in which our product candidates are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination.

Research and Development

Since our inception, we have made substantial investments in research and technology development. During the years ended December 31, 2016, 2015 and 2014, we incurred research and development expenses of \$581.9 million, \$479.5 million and \$347.5 million, respectively.

Human Resources

As of December 31, 2016, we had 980 employees, including 527 in research and development, 70 in medical affairs, 213 in sales and marketing and 170 in operations support, finance and administrative positions. Geographically, 824 employees were based in the United States and 156 employees were based in Europe. None of our employees are covered by collective bargaining agreements, and management considers relations with our employees to be good.

Available Information

We were incorporated in Delaware in 1991 and our website is located at www.incyte.com. We make available free of charge on our website our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and amendments to those reports, as soon as reasonably practicable after we electronically file or furnish such materials to the Securities and Exchange Commission. Our website and the information contained therein or connected thereto are not intended to be incorporated into this Annual Report on Form 10-K.

Item 1A. Risk Factors

RISKS RELATING TO COMMERCIALIZATION OF OUR PRODUCTS

We depend heavily on our lead product, JAKAFI (ruxolitinib), which is marketed as JAKAVI outside the United States. If we are unable to successfully commercialize JAKAFI in its approved indications or to successfully obtain regulatory approval for and commercialize ruxolitinib for the treatment of additional indications, or if we are significantly delayed or limited in doing so, our business may be materially harmed.

JAKAFI is our first and, currently, only product approved for sale in the United States. It was approved by the U.S. Food and Drug Administration, or FDA, in November 2011 for the treatment of patients with intermediate or high-risk myelofibrosis and in December 2014 for the treatment of patients with polycythemia vera who have had an inadequate response to or are intolerant of hydroxyurea, which we refer to as uncontrolled polycythemia vera. Although we have received regulatory approval for these indications, such approval does not guarantee future revenues. While we recently acquired exclusive rights to develop and commercialize ICLUSIG in the European Union, or EU, and other countries, we anticipate that JAKAFI product sales will continue to contribute a significant percentage of our total revenues over the next several years.

The commercial success of JAKAFI and our ability to generate and maintain revenues from the sale of JAKAFI will depend on a number of factors, including:

- the number of patients with intermediate or high-risk myelofibrosis or uncontrolled polycythemia vera who are diagnosed with the disease and the number of such patients that may be treated with JAKAFI;
- the acceptance of JAKAFI by patients and the healthcare community;
- whether physicians, patients and healthcare payors view JAKAFI as therapeutically effective and safe relative to cost and any alternative therapies;
- the ability to obtain and maintain sufficient coverage or reimbursement by third-party payors;
- the ability of our third-party manufacturers to manufacture JAKAFI in sufficient quantities with acceptable quality;
- the ability of our company and our third-party providers to provide marketing and distribution support for JAKAFI;
- the label and promotional claims allowed by the FDA;
- the maintenance of regulatory approval for the approved indications in the United States; and
- our ability to develop, obtain regulatory approval for and commercialize ruxolitinib in the United States for additional indications.

If we are not successful in commercializing JAKAFI in the United States, or are significantly delayed or limited in doing so, our business may be materially harmed and we may need to delay other drug discovery and development initiatives or even significantly curtail operations.

In addition, our receipt of royalties under our collaboration agreement with Novartis for sales of JAKAVI outside the United States will depend on factors similar to those listed above for jurisdictions outside the United States.

If we are unable to obtain, or maintain at anticipated levels, reimbursement for our products from government health administration authorities, private health insurers and other organizations, our pricing may be affected or our product sales, results of operations or financial condition could be harmed.

We may not be able to sell our products on a profitable basis or our profitability may be reduced if we are required to sell our products at lower than anticipated prices or reimbursement is unavailable or limited in scope or amount. JAKAFI and ICLUSIG are expensive and almost all patients will require some form of third party coverage to afford their cost. Our future revenues and profitability will be adversely affected if we cannot depend on government and other third-party payors to defray the cost of our products to the patient. Reimbursement systems in international markets vary significantly by country and by region, and reimbursement approvals must be obtained on a country-by-country basis. Reimbursement in the EU must be negotiated on a country-by-country basis and in many countries the product cannot be commercially launched until reimbursement is approved. The timing to complete the negotiation process in each country is highly uncertain, and in some countries, we expect that it may exceed 12 months. Risks related to pricing and reimbursement are described below under “—Other Risks Relating to our Business— Health care reform measures could impact the pricing and profitability of pharmaceuticals, and adversely affect the commercial viability of our drug candidates. Our ability to generate revenues will be diminished if we are unable to obtain an adequate level of reimbursement from private insurers, government insurance programs or other third party payors of health care costs, which could be affected by recent healthcare reform legislation.” If government and other third-party payors refuse to provide coverage and reimbursement with respect to our products, determine to provide a lower level of coverage and reimbursement than anticipated, or reduce previously approved levels of coverage and reimbursement, then our pricing or reimbursement for our products may be affected and our product sales, results of operations or financial condition could be harmed.

We depend upon a limited number of specialty pharmacies and wholesalers for a significant portion of any revenues from JAKAFI, and the loss of, or significant reduction in sales to, any one of these specialty pharmacies or wholesalers could adversely affect our operations and financial condition.

We sell JAKAFI primarily to specialty pharmacies and wholesalers. Specialty pharmacies dispense JAKAFI to patients in fulfillment of prescriptions and wholesalers sell JAKAFI to hospitals and physician offices. We do not promote JAKAFI to specialty pharmacies or wholesalers, and they do not set or determine demand for JAKAFI. Our ability to successfully commercialize JAKAFI will depend, in part, on the extent to which we are able to provide adequate distribution of JAKAFI to patients. Although we have contracted with a number of specialty pharmacies and wholesalers, they are expected generally to carry a very limited inventory and may be reluctant to be part of our distribution network in the future if demand for the product does not increase. Further, it is possible that these specialty pharmacies and wholesalers could decide to change their policies or fees, or both, at some time in the future. This could result in their refusal to carry smaller volume products such as JAKAFI, or lower margins or the need to find alternative methods of distributing our product. Although we believe we can find alternative channels to distribute JAKAFI on relatively short notice, our revenue during that period of time may suffer and we may incur additional costs to replace any such specialty pharmacy or wholesaler. The loss of any large specialty pharmacy or wholesaler as part of our distribution network, a significant reduction in sales we make to specialty pharmacies or wholesalers, or any failure to pay for the products we have shipped to them could materially and adversely affect our results of operations and financial condition.

If we are unable to establish and maintain effective sales, marketing and distribution capabilities, or to enter into agreements with third parties to do so, we will not be able to successfully commercialize our products.

Prior to our commercialization of JAKAFI, we had no experience selling and marketing drug products and with pricing and obtaining adequate third-party reimbursement for drug products. Under our collaboration and license agreement with Novartis, we have retained commercialization rights to JAKAFI in the United States. We have established commercial capabilities in the United States, but cannot guarantee that we will be able to enter into and maintain any marketing, distribution or third-party logistics agreements with third-party providers on acceptable terms, if at all. In connection with our recent acquisition from ARIAD Pharmaceuticals, Inc. we licensed rights to develop and commercialize ICLUSIG in certain countries and we acquired the European sales, marketing and distribution operations of ARIAD. We may not be able to maintain those operations or retain their personnel or distribution arrangements. We may not be able to correctly judge the size and experience of the sales and marketing force and the scale of distribution capabilities necessary to successfully market and sell our products. Establishing and maintaining sales, marketing and distribution capabilities are expensive and time consuming. Competition for personnel with experience in sales and marketing can be high. Our expenses associated with building and maintaining the sales force and distribution capabilities may be disproportional compared to the revenues we may be able to generate on sales of our products.

If we fail to comply with applicable laws and regulations, we could lose our approval to market our products or be subject to other governmental enforcement activity.

We cannot guarantee that we will be able to maintain regulatory approval to market our products in the jurisdictions in which they are currently marketed. If we do not maintain our regulatory approval to market our products, in particular JAKAFI, our results of operations will be materially harmed. We and our collaborators, third-party manufacturers and suppliers are subject to rigorous and extensive regulation by the FDA and other federal and state agencies as well as foreign governmental agencies. These regulations continue to apply after product marketing approval, and cover, among other things, testing, manufacturing, quality control, labeling, advertising, promotion, risk mitigation, and adverse event reporting requirements.

The commercialization of our products is subject to post-regulatory approval product surveillance, and our products may have to be withdrawn from the market or subject to restrictions if previously unknown problems occur. Regulatory agencies may also require additional clinical trials or testing for our products, and our products may be recalled or may be subject to reformulation, additional studies, changes in labeling, warnings to the public and negative publicity. For example, from late 2013 through 2014, ICLUSIG was subject to review by the European Medicines Agency, or EMA, of the benefits and risks of ICLUSIG to better understand the nature, frequency and severity of events obstructing the arteries or veins, the potential mechanism that leads to these side effects and whether there needed to be a revision in the dosing recommendation, patient monitoring and a risk management plan for ICLUSIG. This review was completed in January 2015, with additional warnings in the product information but without any change in the approved indications. The EMA could take additional actions in the future that reduce the commercial potential of ICLUSIG.

Failure to comply with the laws and regulations administered by the FDA or other agencies could result in:

- administrative and judicial sanctions, including warning letters;
- fines and other civil penalties;
- withdrawal of regulatory approval to market our products;
- interruption of production;
- operating restrictions;
- product recall or seizure;

- injunctions; and
- criminal prosecution.

The occurrence of any such event may have a material adverse effect on our business.

If the use of our products harms patients, or is perceived to harm patients even when such harm is unrelated to our products, our regulatory approvals could be revoked or otherwise negatively impacted or we could be subject to costly and damaging product liability claims.

The testing of JAKAFI and ICLUSIG, the manufacturing, marketing and sale of JAKAFI and the marketing and sale of ICLUSIG expose us to product liability and other risks. Side effects and other problems experienced by patients from the use of our products could:

- lessen the frequency with which physicians decide to prescribe our products;
- encourage physicians to stop prescribing our products to their patients who previously had been prescribed our products;
- cause serious harm to patients that may give rise to product liability claims against us; and
- result in our need to withdraw or recall our products from the marketplace.

If our products are used by a wide patient population, new risks and side effects may be discovered, the rate of known risks or side effects may increase, and risks previously viewed as less significant could be determined to be significant.

Previously unknown risks and adverse effects of our products may also be discovered in connection with unapproved, or off-label, uses of our products. We are prohibited by law from promoting or in any way supporting or encouraging the promotion of our products for off-label uses, but physicians are permitted to use products for off-label purposes. In addition, we are studying and expect to continue to study JAKAFI in diseases for potential additional indications in controlled clinical settings, and independent investigators are doing so as well. In the event of any new risks or adverse effects discovered as new patients are treated for intermediate or high-risk myelofibrosis or uncontrolled polycythemia vera and as JAKAFI is studied in or used by patients for off-label indications, regulatory authorities may delay or revoke their approvals, we may be required to conduct additional clinical trials, make changes in labeling of JAKAFI, reformulate JAKAFI or make changes and obtain new approvals. We may also experience a significant drop in the sales of JAKAFI, experience harm to our reputation and the reputation of JAKAFI in the marketplace or become subject to lawsuits, including class actions. Any of these results could decrease or prevent sales of JAKAFI or substantially increase the costs and expenses of commercializing JAKAFI. Similar results could occur with respect to our commercialization of ICLUSIG.

Patients who have been enrolled in our clinical trials or who may use our products in the future often have severe and advanced stages of disease and known as well as unknown significant pre-existing and potentially life-threatening health risks. During the course of treatment, patients may suffer adverse events, including death, for reasons that may or may not be related to our products. Such events could subject us to costly litigation, require us to pay substantial amounts of money to injured patients, delay, negatively impact or end our opportunity to receive or maintain regulatory approval to market our products, or require us to suspend or abandon our commercialization efforts. Even in a circumstance in which we do not believe that an adverse event is related to our products, the investigation into the circumstance may be time consuming or inconclusive. These investigations may interrupt our sales efforts, impact and limit the type of regulatory approvals our products receive or maintain, or delay the regulatory approval process in other countries.

Factors similar to those listed above also apply to our collaboration partner Novartis and to ICLUSIG for jurisdictions outside the United States.

If we market our products in a manner that violates various laws and regulations, we may be subject to civil or criminal penalties.

In addition to FDA and related regulatory requirements, we are subject to health care “fraud and abuse” laws, such as the federal False Claims Act, the anti-kickback provisions of the federal Social Security Act, and other state and federal laws and regulations. Federal and state anti-kickback laws prohibit, among other things, knowingly and willfully offering, paying, soliciting or receiving remuneration to induce, or in return for purchasing, leasing, ordering or arranging for the purchase, lease or order of any health care item or service reimbursable under Medicare, Medicaid, or other federally- or state-financed health care programs. Federal false claims laws prohibit any person from knowingly presenting, or causing to be presented, a false claim for payment to the federal government, or knowingly making, or causing to be made, a false statement to get a false claim paid. Pharmaceutical companies have been prosecuted under these laws for a variety of alleged promotional and marketing activities.

Although physicians are permitted, based on their medical judgment, to prescribe products for indications other than those approved by the FDA, manufacturers are prohibited from promoting their products for such off-label uses. We market JAKAFI for intermediate or high-risk myelofibrosis and uncontrolled polycythemia vera and provide promotional materials to physicians regarding the use of JAKAFI for these indications. Although we believe that our promotional materials for physicians do not constitute off-label promotion of JAKAFI, the FDA or other agencies may disagree. If the FDA or another agency determines that our promotional materials or other activities constitute off-label promotion of JAKAFI, it could request that we modify our promotional materials or other activities or subject us to regulatory enforcement actions, including the issuance of a warning letter, injunction, seizure, civil fine and criminal penalties. It is also possible that other federal, state or foreign enforcement authorities might take action if they believe that the alleged improper promotion led to the submission and payment of claims for an unapproved use, which could result in significant fines or penalties under other statutory authorities, such as laws prohibiting false claims for reimbursement. Even if it is later determined we are not in violation of these laws, we may be faced with negative publicity, incur significant expenses defending our position and have to divert significant management resources from other matters.

The European Union and member countries impose similar strict restrictions on the promotion and marketing of drug products. The off-label promotion of medicinal products is prohibited in the EU and in other territories. The promotion of medicinal products that are not subject to a marketing authorization is also prohibited in the EU. Violations of the rules governing the promotion of medicinal products in the EU and in other territories could be penalized by administrative measures, fines and imprisonment.

The majority of states also have statutes or regulations similar to the federal anti-kickback law and false claims laws, which apply to items and services reimbursed under Medicaid and other state programs, or, in several states, apply regardless of the payor. In recent years, several states and localities, including California, Connecticut, the District of Columbia, Massachusetts, Minnesota, Nevada, New Mexico, Texas, Vermont, and West Virginia, have enacted legislation requiring pharmaceutical companies to establish marketing compliance programs, file periodic reports with the state or make periodic public disclosures on sales, marketing, pricing, clinical trials, and other activities. Similar legislation is being considered in other states. Additionally, as part of the Patient Protection and Affordable Care Act, the federal government has enacted the Physician Payment Sunshine provisions. The Sunshine provisions require manufacturers to publicly report certain payments or other transfers of value made to physicians and teaching hospitals. Many of these requirements are new and uncertain, and the penalties for failure to comply with these requirements are unclear. Nonetheless, if we are found not to be in full compliance with these laws, we could face enforcement action and fines and other penalties, and could receive adverse publicity. See also “—Other Risks Relating to our Business—If we fail to comply with the extensive legal and regulatory requirements affecting the health care industry, we could face increased costs, penalties and a loss of business” below.

Competition for our products could harm our business and result in a decrease in our revenue.

Present and potential competitors for JAKAFI could include major pharmaceutical and biotechnology companies, as well as specialty pharmaceutical firms. For example, Gilead Sciences, Inc. has a drug candidate in Phase III clinical trials for the treatment of myelofibrosis. See “—Other Risks Relating to our Business— We face significant competition for our drug discovery and development efforts, and if we do not compete effectively, our commercial opportunities will

be reduced or eliminated” for a description of risks relating to this type of competition. In addition, JAKAFI could face competition from generic products. As a result of the Drug Price Competition and Patent Term Restoration Act of 1984, commonly known as the Hatch-Waxman Act, in the United States, generic manufacturers may seek approval of a generic version of an innovative pharmaceutical by filing with the FDA an Abbreviated New Drug Application, or ANDA. The Hatch-Waxman Act provides significant incentives to generic manufacturers to challenge U.S. patents on successful innovative pharmaceutical products. In February 2016, we received a notice letter regarding an ANDA that requested approval to market a generic version of JAKAFI and purported to challenge patents covering ruxolitinib phosphate and its use that expire in 2028. There can be no assurance that our patents will be upheld or that any litigation in which we might engage with any such generic manufacturer would be successful in protecting JAKAFI’s exclusivity. The entry of a generic version of JAKAFI could result in a decrease in JAKAFI sales and materially harm our business, operating results and financial condition.

ICLUSIG currently competes with existing therapies that are approved for the treatment of patients with chronic myeloid leukemia, or CML, who are resistant or intolerant to prior tyrosine kinase inhibitor, or TKI, therapies, on the basis of, among other things, efficacy, cost, breadth of approved use and the safety and side-effect profile. In addition, a generic version of imatinib was launched in the United States in February 2016, and generic versions are expected to be launched in other markets. Although we currently believe that generic versions of imatinib will not materially impact our commercialization of ICLUSIG, given ICLUSIG’s various indication statements globally that are currently focused on resistant or intolerant CML, we cannot be certain how physicians, payors, patients, regulatory authorities and other market participants will respond to the availability of generic versions of imatinib.

OTHER RISKS RELATING TO OUR BUSINESS

We may be unsuccessful in our efforts to discover and develop drug candidates and commercialize drug products.

None of our drug candidates, other than JAKAFI/JAKAVI, has received regulatory approval. Our ability to discover and develop drug candidates and to commercialize additional drug products will depend on our ability to:

- hire and retain key employees;
- identify high quality therapeutic targets;
- identify potential drug candidates;
- develop products internally or license drug candidates from others;
- identify and enroll suitable human subjects, either in the United States or abroad, for our clinical trials;
- complete laboratory testing;
- commence, conduct and complete safe and effective clinical trials on humans;
- obtain and maintain necessary intellectual property rights to our products;
- obtain and maintain necessary regulatory approvals for our products, both in the United States and abroad;
- enter into arrangements with third parties to provide services or to manufacture our products on our behalf;
- deploy sales and marketing resources effectively or enter into arrangements with third parties to provide these functions in compliance with all applicable laws;
- obtain appropriate coverage and reimbursement levels for the cost of our products from governmental authorities, private health insurers and other third-party payors;

- lease facilities at reasonable rates to support our growth; and
- enter into arrangements with third parties to license and commercialize our products.

We have limited experience with many of the activities listed above and may not be successful in discovering, developing, or commercializing additional drug products. Discovery and development of drug candidates are expensive, uncertain and time-consuming, and we do not know if our efforts will lead to discovery of any drug candidates that can be successfully developed and marketed. Of the compounds or biologics that we identify as potential drug products or that we may in-license from other companies, including potential products for which we are conducting clinical trials, only a few, if any, are likely to lead to successful drug development programs and commercialized drug products.

We depend heavily on the success of our most advanced drug candidates. We might not be able to commercialize any of our drug candidates successfully, and we may spend significant time and money attempting to do so.

We have invested significant resources in the development of our most advanced drug candidates. Ruxolitinib recently entered into a pivotal Phase II clinical trial for the treatment of patients with steroid-refractory acute graft-versus-host disease and is in other clinical trials. Epacadostat commenced Phase III clinical trials in late 2016. Further, we have a number of drug candidates in Phase I and Phase II clinical trials. Our ability to generate product revenues will depend on the successful development and eventual commercialization of our most advanced drug candidates. We, or our collaborators or licensees, may decide to discontinue development of any or all of our drug candidates at any time for commercial, scientific or other reasons. For example, in early 2016, we decided to discontinue the studies of ruxolitinib in pancreatic cancer and solid tumors and INCB 39110 in pancreatic cancer. If a product is developed but not approved or marketed, we may have spent significant amounts of time and money on it, which could adversely affect our operating results and financial condition as well as our business plans.

If we are unable to obtain regulatory approval for our drug candidates in the United States and foreign jurisdictions, we will not be permitted to commercialize products resulting from our research.

In order to commercialize drug products in the United States, our drug candidates will have to obtain regulatory approval from the FDA. Satisfaction of regulatory requirements typically takes many years. To obtain regulatory approval, we must first show that our drug candidates are safe and effective for target indications through preclinical testing (animal testing) and clinical trials (human testing). Preclinical testing and clinical development are long, expensive and uncertain processes, and we do not know whether the FDA will allow us to undertake clinical trials of any drug candidates in addition to our compounds currently in clinical trials. If regulatory approval of a product is granted, this approval will be limited to those disease states and conditions for which the product is demonstrated through clinical trials to be safe and effective.

Completion of clinical trials may take several years and failure may occur at any stage of testing. The length of time required varies substantially according to the type, complexity, novelty and intended use of the drug candidate. Interim results of a preclinical test or clinical trial do not necessarily predict final results, and acceptable results in early clinical trials may not be repeated in later clinical trials. For example, a drug candidate that is successful at the preclinical level may cause harmful or dangerous side effects when tested at the clinical level. Our rate of commencement and completion of clinical trials may be delayed, and our existing clinical trials may be stopped, due to many potential factors, including:

- the high degree of risk and uncertainty associated with drug development;
- our inability to formulate or manufacture sufficient quantities of materials for use in clinical trials;
- variability in the number and types of patients available for each study;
- difficulty in maintaining contact with patients after treatment, resulting in incomplete data;
- unforeseen safety issues or side effects;

- poor or unanticipated effectiveness of drug candidates during the clinical trials; or
- government or regulatory delays.

Data obtained from clinical trials are susceptible to varying interpretation, which may delay, limit or prevent regulatory approval. Many companies in the pharmaceutical and biopharmaceutical industry, including our company, have suffered significant setbacks in advanced clinical trials, even after achieving promising results in earlier clinical trials. In addition, regulatory authorities may refuse or delay approval as a result of other factors, such as changes in regulatory policy during the period of product development and regulatory agency review. For example, the FDA has in the past required and could in the future require that we conduct additional trials of any of our drug candidates, which would result in delays.

Compounds or biologics developed by us or with or by our collaborators and licensees may not prove to be safe and effective in clinical trials and may not meet all of the applicable regulatory requirements needed to receive marketing approval. For example, in January 2016, a Phase II trial that was evaluating ruxolitinib in combination with regorafenib in patients with relapsed or refractory metastatic colorectal cancer and high C-reactive protein was stopped early after a planned analysis of interim efficacy data determined that the likelihood of the trial meeting its efficacy endpoint was insufficient. In addition, in February 2016, we made a decision to discontinue our JANUS 1 study, our JANUS 2 study, our other studies of ruxolitinib in colorectal, breast and lung cancer, and our study of INCB39110 in pancreatic cancer after a planned analysis of interim efficacy data of JANUS 1 demonstrated that ruxolitinib plus capecitabine did not show a sufficient level of efficacy to warrant continuation. If clinical trials of any of our compounds or biologics are stopped for safety, efficacy or other reasons or fail to meet their respective endpoints, our overall development plans, business, prospects, expected operating results and financial condition could be materially harmed and the value of our company could be negatively affected. Outside the United States, our ability to market a product is contingent upon receiving a marketing authorization from the appropriate regulatory authorities. This foreign regulatory approval process typically includes all of the risks associated with the FDA approval process described above and may also include additional risks. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country and may require us to perform additional testing and expend additional resources. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one foreign regulatory authority does not ensure approval by regulatory authorities in other countries or by the FDA.

Health care reform measures could impact the pricing and profitability of pharmaceuticals, and adversely affect the commercial viability of our drug candidates. Our ability to generate revenues will be diminished if we are unable to obtain an adequate level of reimbursement from private insurers, government insurance programs or other third-party payors of health care costs, which could be affected by recent healthcare reform legislation.

Our ability to commercialize our drug candidates successfully will depend in part on the extent to which adequate reimbursement levels for the cost of our products and related treatment are obtained from third-party payors, such as private insurers, government insurance programs, including Medicare and Medicaid, health maintenance organizations (HMOs) and other health care related organizations.

In recent years, through legislative and regulatory actions, the federal government has made substantial changes to various payment systems under the Medicare and other federal health care programs. Comprehensive reforms to the U.S. healthcare system were recently enacted, including changes to the methods for, and amounts of, Medicare reimbursement. These reforms could significantly reduce payments from Medicare and Medicaid. Reforms or other changes to these payment systems, may change the availability, methods and rates of reimbursements from Medicare, private insurers and other third-party payors for our drug candidates. Some of these changes and proposed changes could result in reduced reimbursement rates or in eliminating dual sources of payment, which could reduce the price that we or any of our collaborators or licensees receive for any products, if commercialized, in the future, and which would adversely affect our business strategy, operations and financial results. Further federal and state proposals to regulate prices of pharmaceutical products and other health care reforms are possible, which could limit the prices that can be charged for any of our drug candidates and may further limit the commercial viability of our drug candidates. In certain foreign markets, pricing or profitability of prescription pharmaceuticals is subject to government control. If reimbursement for our products, if commercialized, is unavailable, limited in scope or amount, or if pricing is set at unsatisfactory levels, our

business could be materially harmed. There may be future changes that result in reductions in current coverage and reimbursement levels for our drug candidates, and we cannot predict the scope of any future changes or the impact that those changes would have on our operations.

Third-party payors are increasingly challenging the prices charged for medical products and services. Also, the trend toward managed health care in the United States, the organizations for which could control or significantly influence the purchase of health care services and products, as well as legislative proposals to reform health care or reduce government insurance programs, may all result in lower prices for or rejection of our products. Adoption of our drug candidates by the medical community may be limited without adequate reimbursement for our products. Cost control initiatives may decrease coverage and payment levels for our drug candidates and, in turn, the price that we will be able to charge for any product, if commercialized. Our drug candidates may not be considered cost-effective, and coverage and reimbursement may not be available or sufficient to allow us to sell our products on a profitable basis. We are unable to predict all changes to the coverage or reimbursement methodologies that will be applied by private or government payors to our drug candidates.

The continuing efforts of third-party payors to contain or reduce the costs of health care, any denial of private or government payor coverage or inadequate reimbursement for our drug candidates could materially and adversely affect our business strategy, operations, future revenues and profitability, and the future revenues and profitability of our potential customers, suppliers, collaborators and licensees and the availability of capital.

We depend on our collaborators and licensees for the future development and commercialization of some of our drug candidates. Conflicts may arise between our collaborators and licensees and us, or our collaborators and licensees may choose to terminate their agreements with us, which may adversely affect our business.

We have licensed to Novartis rights to ruxolitinib outside of the United States and worldwide rights to our c-MET inhibitor compounds and licensed to Lilly worldwide rights to baricitinib. We have also licensed to Pfizer our portfolio of CCR2 antagonist compounds. Under the terms of our agreements with these collaborators, we have no or limited control over the further clinical development of these drug candidates and any revenues we may receive if these drug candidates receive regulatory approval and are commercialized will depend primarily on the development and commercialization efforts of others.

Conflicts may arise with our collaborators and licensees if they pursue alternative technologies or develop alternative products either on their own or in collaboration with others as a means for developing treatments for the diseases that we have targeted. Competing products and product opportunities may lead our collaborators and licensees to withdraw their support for our drug candidates. Any failure of our collaborators and licensees to perform their obligations under our agreements with them or otherwise to support our drug candidates could negatively impact the development of our drug candidates, lead to our loss of potential revenues from product sales and milestones and delay our achievement, if any, of profitability. Additionally, conflicts may arise if, among other things, there is a dispute about the achievement and payment of a milestone amount or the ownership of intellectual property that is developed during the course of a collaborative relationship.

Our existing collaborative and license agreements can be terminated by our collaborators and licensees for convenience, among other circumstances. If any of our collaborators or licensees terminates its agreement with us, or terminates its rights with respect to certain indications or drug candidates, we may not be able to find a new collaborator for them, and our business could be adversely affected. Should an agreement be terminated before we have realized the benefits of the collaboration or license, our reputation could be harmed, we may not obtain revenues that we anticipated receiving, and our business could be adversely affected.

The success of our drug discovery and development efforts may depend on our ability to find suitable collaborators to fully exploit our capabilities. If we are unable to establish collaborations or if these future collaborations are unsuccessful in the development and commercialization of our drug candidates, our research, development and commercialization efforts may be unsuccessful, which could adversely affect our results of operations and financial condition.

An important element of our business strategy is to enter into collaborative or license arrangements with other parties, under which we license our drug candidates to those parties for development and commercialization or under which we study our drug candidates in combination with other parties' compounds or biologics. For example, in addition to our Novartis, Lilly and Pfizer collaborations, we have entered into clinical study relationships with respect to epacadostat and are evaluating strategic relationships with respect to several of our other programs. However, because collaboration and license arrangements are complex to negotiate, we may not be successful in our attempts to establish these arrangements. Also, we may not have drug candidates that are desirable to other parties, or we may be unwilling to license a drug candidate to a particular party because such party interested in it is a competitor or for other reasons. The terms of any such arrangements that we establish may not be favorable to us. Alternatively, potential collaborators may decide against entering into an agreement with us because of our financial, regulatory or intellectual property position or for scientific, commercial or other reasons. If we are not able to establish collaboration or license arrangements, we may not be able to develop and commercialize a drug product, which could adversely affect our business and our revenues.

We will likely not be able to control the amount and timing of resources that our collaborators or licensees devote to our programs or drug candidates. If our collaborators or licensees prove difficult to work with, are less skilled than we originally expected, do not devote adequate resources to the program, pursue alternative technologies or develop alternative products, or do not agree with our approach to development or manufacturing of the drug candidate, the relationship could be unsuccessful. If a business combination involving a collaborator or licensee and a third party were to occur, the effect could be to terminate or cause delays in development of a drug candidate.

If we fail to enter into additional licensing agreements or if these arrangements are unsuccessful, our business and operations might be adversely affected.

In addition to establishing collaborative or license arrangements under which other parties license our drug candidates for development and commercialization or under which we study our drug candidates in combination with such parties' compounds or biologics, we may explore opportunities to develop our clinical pipeline by in-licensing drug candidates that fit within our focus on oncology, such as our collaborations with Agenus, Merus N.V., and Jiangsu Hengrui Medicine Co., Ltd., or explore additional opportunities to further develop and commercialize existing drug candidates in specific jurisdictions, such as our recent acquisition of the development and commercialization rights to ICLUSIG in certain countries. We may be unable to enter into any additional in-licensing agreements because suitable drug candidates that are within our expertise may not be available to us on terms that are acceptable to us or because competitors with greater resources seek to in-license the same drug candidates. Drug candidates that we would like to develop or commercialize may not be available to us because they are controlled by competitors who are unwilling to license the rights to the drug candidate to us. In addition, we may enter into license agreements that are unsuccessful and our business and operations might be adversely affected if we are unable to realize the expected economic benefits of a collaboration or other licensing arrangement, by the termination of a drug candidate and termination and winding down of the related license agreement, or due to other business or regulatory issues that may adversely affect a licensor's ability to continue to perform its obligations under an in-license agreement. As discussed above under "We depend on our collaborators and licensees for the future development and commercialization of some of our drug candidates. Conflicts may arise between our collaborators and licensees and us, or our collaborators and licensees may choose to terminate their agreements with us, which may adversely affect our business," conflicts or other issues may arise with our licensors. Those conflicts could result in delays in our plans to develop drug candidates or result in the expenditure of additional funds to resolve those conflicts that could have an adverse effect on our results of operations. We may also need to license drug delivery or other technology in order to continue to develop our drug candidates. If we are unable to enter into additional agreements to license drug candidates, drug delivery technology or other technology or if these arrangements are unsuccessful, our research and development efforts could be adversely affected.

Even if a drug candidate that we develop receives regulatory approval, we may decide not to commercialize it if we determine that commercialization of that product would require more money and time than we are willing to invest.

Even if any of our drug candidates receives regulatory approval, it could be subject to post-regulatory surveillance, and may have to be withdrawn from the market or subject to restrictions if previously unknown problems occur. Regulatory agencies may also require additional clinical trials or testing, and the drug product may be recalled or may be subject to reformulation, additional studies, changes in labeling, warnings to the public and negative publicity. As a result, we may not continue to commercialize a product even though it has obtained regulatory approval. Further, we may decide not to continue to commercialize a product if the market does not accept the product because it is too expensive or because third parties such as insurance companies or Medicare have not approved it for substantial reimbursement. In addition, we may decide not to continue to commercialize a product if competitors develop and commercialize similar or superior products or have proprietary rights that preclude us from ultimately marketing our products.

Any approved drug product that we bring to the market may not gain market acceptance by physicians, patients, healthcare payors and others in the medical community.

Even if we are successful in gaining regulatory approval of any of our drug candidates in addition to JAKAFI or acquire rights to approved drug products in addition to ICLUSIG, we may not generate significant product revenues and we may not become profitable if these drug products do not achieve an adequate level of acceptance. Physicians may not recommend our drug products until longer-term clinical data or other factors demonstrate the safety and efficacy of our drug products as compared to other alternative treatments. Even if the clinical safety and efficacy of our drug products is established, physicians may elect not to prescribe these drug products for a variety of reasons, including the reimbursement policies of government and other third-party payors and the effectiveness of our competitors in marketing their products.

Market acceptance of our drug products, if approved for commercial sale, will depend on a number of factors, including:

- the willingness and ability of patients and the healthcare community to use our drug products;
- the ability to manufacture our drug products in sufficient quantities with acceptable quality and to offer our drug products for sale at competitive prices;
- the perception of patients and the healthcare community, including third-party payors, regarding the safety, efficacy and benefits of our drug products compared to those of competing products or therapies;
- the label and promotional claims allowed by the FDA;
- the pricing and reimbursement of our drug products relative to existing treatments; and
- marketing and distribution support for our drug products.

We have limited capacity to conduct preclinical testing and clinical trials, and our resulting dependence on other parties could result in delays in and additional costs for our drug development efforts.

We have limited internal resources and capacity to perform preclinical testing and clinical trials. As part of our development strategy, we often hire clinical research organizations, or CROs, to perform preclinical testing and clinical trials for drug candidates. If the CROs that we hire to perform our preclinical testing and clinical trials do not meet deadlines, do not follow proper procedures, or a conflict arises between us and our CROs, our preclinical testing and clinical trials may take longer than expected, may cost more, may be delayed or may be terminated. If we were forced to find a replacement entity to perform any of our preclinical testing or clinical trials, we may not be able to find a suitable entity on favorable terms, or at all. Even if we were able to find another company to perform a preclinical test or clinical trial, the delay in the test or trial may result in significant additional expenditures. Events such as these may result in delays

in our obtaining regulatory approval for our drug candidates or our ability to commercialize our products and could result in increased expenditures that would adversely affect our operating results.

We face significant competition for our drug discovery and development efforts, and if we do not compete effectively, our commercial opportunities will be reduced or eliminated.

The biotechnology and pharmaceutical industries are intensely competitive and subject to rapid and significant technological change. Our drug discovery and development efforts may target diseases and conditions that are already subject to existing therapies or that are being developed by our competitors, many of which have substantially greater resources, larger research and development staffs and facilities, more experience in completing preclinical testing and clinical trials, and formulation, marketing and manufacturing capabilities. As a result of these resources, our competitors may develop drug products that render our products obsolete or noncompetitive by developing more effective drugs, developing their products more efficiently or pricing their products more competitively. Our ability to develop competitive products would be limited if our competitors succeeded in obtaining regulatory approvals for drug candidates more rapidly than we were able to or in obtaining patent protection or other intellectual property rights that limited our drug development efforts. Any drug products resulting from our research and development efforts, or from our joint efforts with collaborators or licensees, might not be able to compete successfully with our competitors' existing and future products, or obtain regulatory approval in the United States or elsewhere. The development of products or processes by our competitors with significant advantages over those that we are developing could harm our future revenues and profitability.

Our reliance on other parties to manufacture our drug products and drug candidates could result in a short supply of the drugs, delays in clinical trials or drug development, increased costs, and withdrawal or denial of a regulatory authority's approval.

We do not currently operate manufacturing facilities for clinical or commercial production of JAKAFI and our other drug candidates or for ICLUSIG. We currently hire third parties to manufacture the raw materials, active pharmaceutical ingredient, or API, and finished drug product of JAKAFI and our other drug candidates for clinical trials. Under our license agreement with ARIAD, we receive our supply of ICLUSIG from ARIAD. In addition, we expect to continue to rely on third parties for the manufacture of commercial supplies of raw materials, API and finished drug product for any drugs that we successfully develop. We also hire third parties to package and label the finished product. The FDA requires that the raw materials, API and finished product for JAKAFI and our other drug candidates be manufactured according to its current Good Manufacturing Practices regulations and regulatory authorities in other countries have similar requirements. There are only a limited number of manufacturers that comply with these requirements. Failure to comply with current Good Manufacturing Practices and the applicable regulatory requirements of other countries in the manufacture of our drug candidates and products could result in the FDA or a foreign regulatory authority halting our clinical trials, withdrawing or denying regulatory approval of our drug product, enforcing product recalls or other enforcement actions, which could have a material adverse effect on our business.

We may not be able to obtain sufficient quantities of our drug candidates or any drug products we may develop if our designated manufacturers do not have the capacity or capability to manufacture them according to our schedule and specifications. Manufacturers of pharmaceutical products often encounter difficulties in production, especially in scaling up initial production. These problems include difficulties with production costs and yields, quality control and assurance and shortages of qualified personnel. In addition, we may not be able to arrange for our drug candidates or any drug products that we may develop to be manufactured by one of these parties on reasonable terms, if at all. We generally have a single source or a limited number of suppliers that are qualified to supply each of the API and finished product of JAKAFI and our other drug candidates and, in the case of JAKAFI, we only have a single source for its raw materials. If any of these suppliers were to become unable or unwilling to supply us with raw materials, API or finished product that complies with applicable regulatory requirements, we could incur significant delays in our clinical trials or interruption of commercial supply that could have a material adverse effect on our business. If we have promised delivery of a drug candidate or drug product and are unable to meet the delivery requirement due to manufacturing difficulties, our development programs could be delayed, we may have to expend additional sums in order to ensure that manufacturing capacity is available when we need it even if we do not use all of the manufacturing capacity, and our business and operating results could be harmed.

We may not be able to adequately manage and oversee the manufacturers we choose, they may not perform as agreed or they may terminate their agreements with us. Foreign manufacturing approval processes typically include all of the risks associated with the FDA approval process for manufacturing and may also include additional risks.

Two of our collaborations involve the manufacture of antibodies. Under our collaboration with Agenus, Agenus had primary responsibility for manufacturing activities, including selecting and monitoring third-party manufacturers. Under the February 2017 amendment to our collaboration agreement, we assumed primary responsibility for manufacturing activities, including selecting and monitoring third party manufacturers, of all products from royalty-bearing programs under the collaboration. Under our collaboration with Hengrui, Hengrui currently has primary responsibility for manufacturing activities, and we are in the process of transferring manufacturing activities to a third party contract manufacturing organization. Manufacturing antibodies and products containing antibodies is a more complex process than manufacturing small molecule drugs and subject to additional risks. The process of manufacturing antibodies and products containing antibodies is highly susceptible to product loss due to contamination, equipment failure or improper installation or operation of equipment, vendor or operator error, inconsistency in yields, variability in product characteristics, and difficulties in scaling the production process. Even minor deviations from normal manufacturing processes could result in reduced production yields, product defects and other supply disruptions. If microbial, viral or other contaminations are discovered in our product candidates or in the manufacturing facilities in which our product candidates are made, such manufacturing facilities may need to be closed for an extended period of time to investigate and remedy the contamination.

If we fail to comply with the extensive legal and regulatory requirements affecting the health care industry, we could face increased costs, penalties and a loss of business.

Our activities, and the activities of our collaborators, partners and third-party providers, are subject to extensive government regulation and oversight both in the United States and in foreign jurisdictions. The FDA and comparable agencies in other jurisdictions directly regulate many of our most critical business activities, including the conduct of preclinical and clinical studies, product manufacturing, advertising and promotion, product distribution, adverse event reporting and product risk management. States increasingly have been placing greater restrictions on the marketing practices of healthcare companies. In addition, pharmaceutical and biotechnology companies have been the target of lawsuits and investigations alleging violations of government regulations, including claims asserting submission of incorrect pricing information, impermissible off-label promotion of pharmaceutical products, payments intended to influence the referral of federal or state healthcare business, submission of false claims for government reimbursement, antitrust violations, violations of the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act and similar anti-bribery or anti-corruption laws, or violations related to environmental matters. Violations of governmental regulation may be punishable by criminal and civil sanctions, including fines and civil monetary penalties and exclusion from participation in government programs, including Medicare and Medicaid. In addition to penalties for violation of laws and regulations, we could be required to repay amounts we received from government payors, or pay additional rebates and interest if we are found to have miscalculated the pricing information we have submitted to the government. We cannot ensure that our compliance controls, policies, and procedures will in every instance protect us from acts committed by our employees, collaborators, partners or third-party providers that would violate the laws or regulations of the jurisdictions in which we operate. Whether or not we have complied with the law, an investigation into alleged unlawful conduct could increase our expenses, damage our reputation, divert management time and attention and adversely affect our business.

As our drug discovery and development operations are conducted at our headquarters in Wilmington, Delaware, the loss of access to this facility would negatively impact our business.

Our facility in Wilmington, Delaware is our headquarters and is also where we conduct all of our drug discovery, research, development and marketing activities. In addition, natural disasters or actions of activists opposed to aspects of pharmaceutical research may disrupt our experiments or our ability to access or use our facility. The loss of access to or use of our Wilmington, Delaware, facility, either on a temporary or permanent basis would result in an interruption of our business and, consequently, would adversely affect our overall business.

We depend on key employees in a competitive market for skilled personnel, and the loss of the services of any of our key employees or our inability to attract and retain additional personnel would affect our ability to expand our drug discovery and development programs and achieve our objectives.

We are highly dependent on the members of our executive management team and principal members of our commercial, development, medical, operations and scientific staff. We experience intense competition for qualified personnel. Our future success also depends in part on the continued service of our executive management team and key personnel and our ability to recruit, train and retain essential personnel for our drug discovery and development programs, and for our medical affairs and commercialization activities. If we lose the services of any of these people or if we are unable to recruit sufficient qualified personnel, our research and product development goals, and our commercialization efforts could be delayed or curtailed. We do not maintain “key person” insurance on any of our employees.

If we fail to manage our growth effectively, our ability to develop and commercialize products could suffer.

We expect that if our drug discovery efforts continue to generate drug candidates, our clinical drug candidates continue to progress in development, and we continue to build our development, medical and commercial organizations, we will require significant additional investment in personnel, management and resources. Our ability to achieve our research, development and commercialization objectives depends on our ability to respond effectively to these demands and expand our internal organization, systems, controls and facilities to accommodate additional anticipated growth. If we are unable to manage our growth effectively, our business could be harmed and our ability to execute our business strategy could suffer.

We may acquire businesses or assets, form joint ventures or make investments in other companies that may be unsuccessful, divert our management’s attention and harm our operating results and prospects.

As part of our business strategy, we may pursue additional acquisitions of what we believe to be complementary businesses or assets or seek to enter into joint ventures. We also may pursue strategic alliances in an effort to leverage our existing infrastructure and industry experience to expand our product offerings or distribution, or make investments in other companies. For example, in June 2016, we completed the acquisition of the European operations of ARIAD and obtained the exclusive license to develop and commercialize ICLUSIG in Europe and other countries. The success of our acquisitions, joint ventures, strategic alliances and investments will depend on our ability to identify, negotiate, complete and, in the case of acquisitions, integrate those transactions and, if necessary, obtain satisfactory debt or equity financing to fund those transactions. We may not realize the anticipated benefits of any acquisition, joint venture, strategic alliance or investment. We may not be able to integrate acquisitions successfully into our existing business, maintain the key business relationships of businesses we acquire, or retain key personnel of an acquired business, and we could assume unknown or contingent liabilities or incur unanticipated expenses. Integration of acquired companies or businesses also may require management resources that otherwise would be available for ongoing development of our existing business. Any acquisitions or investments made by us also could result in significant write-offs or the incurrence of debt and contingent liabilities, any of which could harm our operating results. For example, in the years ended December 31, 2016 and December 31, 2015, we recorded unrealized losses related to our investment in Agenus Inc., and we may in the future experience additional losses related to our investments. In addition, if we choose to issue shares of our stock as consideration for any acquisition, dilution to our stockholders could result.

ARIAD recently announced its pending acquisition by Takeda Pharmaceutical Company Limited. Our license agreement with ARIAD contains a limited buy-back option for the acquirer of ARIAD to reacquire the rights to ICLUSIG in exchange for repayment to us of our initial purchase price and any milestone payments and development costs previously paid by us to ARIAD, together with an additional payment based upon the last 12 months of ICLUSIG sales booked by us and potential royalties. If the buy-back option is exercised, the buy-back will not become effective until June 1, 2019. We do not know whether the buy-back option will be exercised. If the buy-back option is exercised, we will not recognize any further product revenues from ICLUSIG from the effective date of the buy-back, and it is possible that we will have an established European commercial infrastructure without any products to sell as of that effective date.

Risks associated with the expansion of our operations outside of the United States could adversely affect our business.

Our acquisition of ARIAD's European operations significantly expanded our operations in Europe, and we plan to continue to expand our operations and conduct certain development activities outside of the United States. We have limited experience with conducting activities outside of the United States. International operations and business expansion plans are subject to numerous additional risks, including:

- multiple, conflicting and changing laws and regulations such as tax laws, privacy regulations, tariffs, export and import restrictions, employment, immigration and labor laws, regulatory requirements, and other governmental approvals, permits and licenses;
- difficulties in staffing and managing foreign operations and difficulties in connection with assimilating and integrating the ARIAD operations and personnel, and any other operations and personnel we might acquire into our company;
- risks associated with obtaining and maintaining, or the failure to obtain or maintain, regulatory approvals for the sale or use of our products in various countries;
- complexities associated with managing government payor systems, multiple payor-reimbursement regimes or patient self-pay systems;
- financial risks, such as longer payment cycles, difficulty obtaining financing in foreign markets, difficulty enforcing contracts and intellectual property rights, difficulty collecting accounts receivable and exposure to foreign currency exchange rate fluctuations;
- general political and economic conditions in the countries in operate, including terrorism and political unrest, curtailment of trade and other business restrictions, and uncertainties associated with the future relationship between the United Kingdom and the European Union; and
- regulatory and compliance risks that relate to maintaining accurate information and control over activities that may fall within the purview of the U.S. Foreign Corrupt Practices Act, its books and records provisions or its anti-bribery provisions, or similar anti-bribery or anti-corruption laws and regulations.

Although we conducted due diligence of ARIAD's European operations prior to the acquisition, we may discover or identify deficiencies or non-compliance with such laws and regulations as we complete the integration of the ARIAD business and conduct our European operations. Any of the risks described above, if encountered, could significantly increase our costs of operating internationally, prevent us from operating in certain jurisdictions, or otherwise significantly harm our future international expansion and operations, which could have a material adverse effect on our business, financial condition and results of operations.

If product liability lawsuits are brought against us, we could face substantial liabilities and may be required to limit commercialization of our products and our results of operations could be harmed.

In addition to the risks described above under “—Risks Relating to Commercialization of Our Products—If the use of our products harms patients, or is perceived to harm patients even when such harm is unrelated to our products, our regulatory approvals could be revoked or otherwise negatively impacted or we could be subject to costly and damaging product liability claims,” the conduct of clinical trials of medical products that are intended for human use entails an inherent risk of product liability. If any product that we or any of our collaborators or licensees develops causes or is alleged to cause injury during clinical trials or commercialization, we may be held liable. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities, including substantial damages to be paid to the plaintiffs and legal costs, or we may be required to limit further development and commercialization of our products. Additionally, any product liability lawsuit could cause injury to our reputation, participants and investigators to withdraw

from clinical trials, and potential collaborators or licensees to seek other partners, any of which could impact our results of operations.

Our product liability insurance policy may not fully cover our potential liabilities. In addition, we may determine that we should increase our coverage, and this insurance may be prohibitively expensive to us or our collaborators or licensees and may not fully cover our potential liabilities. Our inability to obtain sufficient product liability insurance at an acceptable cost to protect against potential product liability claims could prevent or inhibit the development or commercialization of our drug candidates and products.

Because our activities involve the use of hazardous materials, we may be subject to claims relating to improper handling, storage or disposal of these materials that could be time consuming and costly.

We are subject to various environmental, health and safety laws and regulations governing, among other things, the use, handling, storage and disposal of regulated substances and the health and safety of our employees. Our research and development processes involve the controlled use of hazardous and radioactive materials and biological waste resulting in the production of hazardous waste products. We cannot completely eliminate the risk of accidental contamination or discharge and any resultant injury from these materials. If any injury or contamination results from our use or the use by our collaborators or licensees of these materials, we may be sued and our liability may exceed our insurance coverage and our total assets. Further, we may be required to indemnify our collaborators or licensees against all damages and other liabilities arising out of our development activities or products produced in connection with these collaborations or licenses. Compliance with the applicable environmental and workplace laws and regulations is expensive. Future changes to environmental, health, workplace and safety laws could cause us to incur additional expense or may restrict our operations or impair our research, development and production efforts.

RISKS RELATING TO OUR FINANCIAL RESULTS

We may incur losses in the future and we may not achieve or maintain profitability in the future.

We had net losses from inception in 1991 through 1996 and in 1999 through December 31, 2014. Because of those losses, we had an accumulated deficit of \$1.7 billion as of December 31, 2016. We intend to continue to spend significant amounts on our efforts to discover and develop drugs. As a result, we may incur losses in future periods.

We anticipate that our drug discovery and development efforts and related expenditures will increase as we focus on the studies, including preclinical tests and clinical trials prior to seeking regulatory approval, that are required before we can sell a drug product.

The development of drug products will require us to spend significant funds on research, development, testing, obtaining regulatory approvals, manufacturing and marketing. To date, we do not have any drug products that have generated significant revenues other than from sales of JAKAFI and we cannot assure you that we will generate significant revenues from the drug candidates that we license or develop, including ICLUSIG, for several years, if ever.

We cannot be certain whether or when we will achieve profitability because of the significant uncertainties relating to our ability to generate commercially successful drug products. Even if we are successful in obtaining regulatory approvals for manufacturing and commercializing drug products in addition to JAKAFI and ICLUSIG, we may incur losses if our drug products do not generate significant revenues. If we achieve profitability, we may not be able to sustain or increase profitability.

We may need additional capital in the future. If we are unable to generate sufficient funds from operations, the capital markets may not permit us to raise additional capital at the time that we require it, which could result in limitations on our research and development or commercialization efforts or the loss of certain of our rights in our technologies or drug candidates.

Our future funding requirements will depend on many factors and we anticipate that we may need to raise additional capital to fund our business plan and research and development efforts going-forward and to repay our indebtedness.

Additional factors that may affect our future funding requirements include:

- the amount of revenues generated from our business activities;
- any changes in the breadth of our research and development programs;
- the results of research and development, preclinical testing and clinical trials conducted by us or our current or future collaborators or licensees, if any;
- our exercise of any co-development options with collaborators that may require us to fund future development;
- the acquisition of businesses, technologies, or drug candidates, or the licensing of technologies or drug candidates, if any;
- costs for future facility requirements;
- our ability to maintain and establish new corporate relationships and research collaborations;
- competing technological and market developments;
- the time and costs involved in filing, prosecuting, defending and enforcing patent and intellectual property claims;
- the receipt of contingent licensing or milestone fees or royalties on product sales from our current or future collaborative and license arrangements, if established; and
- the timing of regulatory approvals, if any.

If we require additional capital at a time when investment in companies such as ours, or in the marketplace generally, is limited due to the then prevailing market or other conditions, we may have to scale back our operations, eliminate one or more of our research or development programs, or attempt to obtain funds by entering into an agreement with a collaborator or licensee that would result in terms that are not favorable to us or relinquishing our rights in certain of our proprietary technologies or drug candidates. If we are unable to raise funds at the time that we desire or at any time thereafter on acceptable terms, we may not be able to continue to develop our drug candidates. The sale of equity or additional convertible debt securities in the future may be dilutive to our stockholders, and debt financing arrangements may require us to pledge certain assets or enter into covenants that could restrict our operations or our ability to incur further indebtedness.

We have a large amount of debt and our debt service obligations may prevent us from taking actions that we would otherwise consider to be in our best interests.

As of December 31, 2016, the aggregate principal amount of our total consolidated debt was \$749.8 million and our stockholders' equity was \$419.5 million. Our substantial leverage could have significant negative consequences for our future operations, including:

- increasing our vulnerability to general adverse economic and industry conditions;
- limiting our ability to obtain additional financing for working capital, capital and research and development expenditures, and general corporate purposes;
- requiring the dedication of a substantial portion of our expected cash flow or our existing cash to service our indebtedness, thereby reducing the amount of our cash available for other purposes, including working capital, capital expenditures and research and development expenditures;
- limiting our flexibility in planning for, or reacting to, changes in our business and the industry in which we compete; or
- placing us at a possible competitive disadvantage compared to less leveraged competitors and competitors that have better access to capital resources.

We may not generate sufficient cash flow from our operations in the future to enable us to meet our anticipated fixed charges, including our obligations with respect to our outstanding convertible senior notes. As of December 31, 2016, \$375.0 million aggregate principal amount of our 0.375% convertible senior notes due 2018 was outstanding and due in November 2018. Annual interest payments for our 0.375% convertible senior notes through 2018, assuming that none of these notes are converted, repurchased or exchanged, are \$1.4 million. As of December 31, 2016, \$374.8 million aggregate principal amount of our 1.25% convertible senior notes due 2020 was outstanding and due in November 2020. Annual interest payments for our 1.25% convertible senior notes through 2020, assuming that none of these notes are converted, repurchased or exchanged, are \$4.7 million. If we are unable to generate cash from our operations or raise additional cash through financings sufficient to meet the remaining obligations under our convertible senior notes, we will need to use existing cash or liquidate marketable securities in order to fund these obligations, which may delay or curtail our research, development and commercialization programs.

Our marketable securities and long term investments are subject to risks that could adversely affect our overall financial position.

We invest our cash in accordance with an established internal policy and customarily in instruments, corporate bonds and money market funds which historically have been highly liquid and carried relatively low risk. In recent periods, similar types of investments and money market funds have experienced losses in value or liquidity issues that differ from their historical pattern.

Should a portion of our cash or marketable securities lose value or have their liquidity impaired, it could adversely affect our overall financial position by imperiling our ability to fund our operations and forcing us to seek additional financing sooner than we would otherwise. Such financing, if available, may not be available on commercially attractive terms.

As discussed under “Other Risks Relating to Our Business— We may acquire businesses or assets, form joint ventures or make investments in other companies that may be unsuccessful, divert our management’s attention and harm our operating results and prospects,” any investments that we may make in companies with which we have strategic alliances, such as Agenesis and Merus, could result in our recognition of losses on those investments. In addition, to the extent we may seek to sell or otherwise monetize those investments, we may not be able to do so at our desired price or valuation levels, or at all, due to the limited liquidity of some or all of those investments.

Any loss in value of our long term investments could adversely affect our financial position on the consolidated balance sheets and consolidated statements of operations.

Our current revenues are derived from JAKAFI and ICLUSIG product sales, JAKAFI product royalties, collaborations and from licensing our intellectual property. If we are unable to achieve milestones, develop products or renew or enter into new collaborations, our revenues may decrease, and future milestone and royalty payments may not contribute significantly to revenues for several years, and may never result in revenues.

We derived substantially all of our revenues for the year ended December 31, 2016 from JAKAFI and ICLUSIG product revenues, JAKAFI product royalties and our collaborations and licensing our intellectual property to others. Future revenues from research and development collaborations depend upon continuation of the collaborations, the achievement of milestones and royalties we earn from any future products developed from our research. If we are unable to successfully achieve milestones or our collaborators fail to develop successful products, we will not earn the future revenues contemplated under our collaborative agreements.

RISKS RELATING TO INTELLECTUAL PROPERTY AND LEGAL MATTERS

If we are subject to arbitration, litigation and infringement claims, they could be costly and disrupt our drug discovery and development efforts.

The technology that we use to make and develop our drug products, the technology that we incorporate in our products, and the products we are developing may be subject to claims that they infringe the patents or proprietary rights of others. The success of our drug discovery and development efforts will also depend on our ability to develop new compounds, drugs and technologies without infringing or misappropriating the proprietary rights of others. We are aware of patents and patent applications filed in certain countries claiming intellectual property relating to some of our drug discovery targets and drug candidates. While the validity of issued patents, patentability of pending patent applications and applicability of any of them to our programs are uncertain, if any of these patents are asserted against us or if we choose to license any of these patents, our ability to commercialize our products could be harmed or the potential return to us from any product that may be successfully commercialized could be diminished.

From time to time we have received, and we may in the future receive, notices from third parties offering licenses to technology or alleging patent, trademark, or copyright infringement, claims regarding trade secrets or other contract claims. Receipt of these notices could result in significant costs as a result of the diversion of the attention of management from our drug discovery and development efforts. Parties sending these notices may have brought and in the future may bring litigation against us or seek arbitration relating to contract claims.

We may be involved in future lawsuits or other legal proceedings alleging patent infringement or other intellectual property rights or contract violations. In addition, litigation or other legal proceedings may be necessary to:

- assert claims of infringement;
- enforce our patents or trademarks;
- protect our trade secrets or know-how; or
- determine the enforceability, scope and validity of the proprietary rights of others.

We may be unsuccessful in defending or pursuing these lawsuits, claims or other legal proceedings. Regardless of the outcome, litigation or other legal proceedings can be very costly and can divert management's efforts. An adverse determination may subject us to significant liabilities or require us or our collaborators or licensees to seek licenses to other parties' patents or proprietary rights. We or our collaborators or licensees may also be restricted or prevented from manufacturing or selling a drug or other product that we or they develop. Further, we or our future collaborators or licensees

may not be able to obtain any necessary licenses on acceptable terms, if at all. If we are unable to develop non-infringing technology or license technology on a timely basis or on reasonable terms, our business could be harmed.

We may be unable to adequately protect or enforce our proprietary information, which may result in its unauthorized use, a loss of revenue under a collaboration agreement or loss of sales to generic versions of our products or otherwise reduce our ability to compete in developing and commercializing products.

Our business and competitive position depends in significant part upon our ability to protect our proprietary technology, including any drug products that we create. Despite our efforts to protect this information, unauthorized parties may attempt to obtain and use information that we regard as proprietary. For example, one of our collaborators may disclose proprietary information pertaining to our drug discovery efforts. In addition, while we have filed numerous patent applications with respect to ruxolitinib and our drug candidates in the United States and in foreign countries, our patent applications may fail to result in issued patents. In addition, because patent applications can take several years to issue as patents, there may be pending patent applications of others that may later issue as patents that cover some aspect of ruxolitinib and our drug candidates. Our existing patents and any future patents we may obtain may not be broad enough to protect our products or all of the potential uses of our products, or otherwise prevent others from developing competing products or technologies. In addition, our patents may be challenged and invalidated or may fail to provide us with any competitive advantages if, for example, others were first to invent or first to file a patent application for the technologies and products covered by our patents. As noted above under “—Risks Relating to Commercialization of Our Products—Competition for our products could potentially harm our business and result in a decrease in our revenue,” a potential generic drug company competitor has challenged certain patents relating to JAKAFI.

Additionally, when we do not control the prosecution, maintenance and enforcement of certain important intellectual property, such as a drug candidate in-licensed to us or subject to a collaboration with a third party, the protection of the intellectual property rights may not be in our hands. If we do not control the intellectual property rights in-licensed to us with respect to a drug candidate and the entity that controls the intellectual property rights does not adequately protect those rights, our rights may be impaired, which may impact our ability to develop, market and commercialize the in-licensed drug candidate.

Our means of protecting our proprietary rights may not be adequate, and our competitors may:

- independently develop substantially equivalent proprietary information, products and techniques;
- otherwise gain access to our proprietary information; or
- design around patents issued to us or our other intellectual property.

We pursue a policy of having our employees, consultants and advisors execute proprietary information and invention agreements when they begin working for us. However, these agreements may not provide meaningful protection for our trade secrets or other proprietary information in the event of unauthorized use or disclosure. If we fail to maintain trade secret and patent protection, our potential, future revenues may be decreased.

If the effective term of our patents is decreased due to changes in the United States patent laws or if we need to refile some of our patent applications, the value of our patent portfolio and the revenues we derive from it may be decreased.

The value of our patents depends in part on their duration. A shorter period of patent protection could lessen the value of our rights under any patents that we obtain and may decrease the revenues we derive from our patents. The United States patent laws were amended in 1995 to change the term of patent protection from 17 years from patent issuance to 20 years from the earliest effective filing date of the application. Because the time from filing to issuance of biotechnology applications may be more than three years depending on the subject matter, a 20-year patent term from the filing date may result in substantially shorter patent protection.

Additionally, United States patent laws were amended in 2011 with the enactment of the America Invents Act and third parties are now able to challenge the validity of issued U.S. patents through various review proceedings; thus

rendering the validity of U.S. patents more uncertain. We may be obligated to participate in review proceedings to determine the validity of our U.S. patents. We cannot predict the ultimate outcome of these proceedings, the conduct of which could result in substantial costs and diversion of our efforts and resources. If we are unsuccessful in these proceedings some or all of our claims in the patents may be narrowed or invalidated and the patent protection for our products and drug candidates in the United States could be substantially shortened. Further, if all of the patents covering one of our products are invalidated, the FDA could approve requests to manufacture a generic version of that product prior to the expiration date of those patents.

Other changes in the United States patent laws or changes in the interpretation of patent laws could diminish the value of our patents or narrow the scope of our patent protection. For example, the Supreme Court of the United States recently ruled that isolated DNA sequences cannot be patented. Although we no longer receive significant revenues generated from our former information products business, the majority of our gene patent portfolio from that business consists of patents on isolated DNA sequences, and this ruling limits our ability to derive additional revenues from our gene patent portfolio. Additionally, the Supreme Court recently resolved a split among the circuit courts of appeals regarding antitrust challenges to settlements of patent infringement lawsuits under the Hatch-Waxman Act between brand-name drug companies and generic drug companies. The Court rejected the “scope of the patent” test and ruled that settlements involving “reverse payments” from brand-name drug companies to generic drug companies should be analyzed under the rule of reason. This ruling may create uncertainty and make it more difficult to settle patent litigation if a company seeking to manufacture a generic version of one of our products challenges the patents covering that product prior to the expiration date of those patents.

International patent protection is particularly uncertain and costly, and our involvement in opposition proceedings in foreign countries may result in the expenditure of substantial sums and management resources.

Biotechnology and pharmaceutical patent law outside the United States is even more uncertain and costly than in the United States and is currently undergoing review and revision in many countries. Further, the laws of some foreign countries may not protect our intellectual property rights to the same extent as United States laws. For example, certain countries do not grant patent claims that are directed to the treatment of humans. We have participated, and may in the future participate, in opposition proceedings to determine the validity of our foreign patents or our competitors’ foreign patents, which could result in substantial costs and diversion of our efforts. For example, there is a patent opposition proceeding in India against our Indian patent that covers the composition of matter and use of certain Janus Kinase inhibitors, including ruxolitinib phosphate, for the treatment of myeloid proliferative disorders, cancer, immune-related diseases, skin disorders, and other diseases. Successful challenges to our patent or other intellectual property rights through these proceedings could result in a loss of rights in the relevant jurisdiction and allow third parties to use our proprietary technologies without a license from us or our collaborators, which may also result in loss of future royalty payments. In addition, successful challenges may jeopardize or delay our ability to enter into new collaborations or commercialize potential products, which could harm our business and results of operations.

RISKS RELATING TO INFORMATION TECHNOLOGY

Significant disruptions of information technology systems or breaches of data security could adversely affect our business.

Our business is increasingly dependent on critical, complex, and interdependent information technology (IT) systems, including Internet-based systems, to support business processes as well as internal and external communications. The size and complexity of our IT systems make us potentially vulnerable to IT system breakdowns, malicious intrusion, and computer viruses, which may result in the impairment of our ability to operate our business effectively.

In addition, our systems are potentially vulnerable to data security breaches—whether by employees or others—which may expose sensitive data to unauthorized persons. Such data security breaches could lead to the loss of trade secrets or other intellectual property, or could lead to the public exposure of personal information (including sensitive personal information) of our employees, clinical trial patients, customers, business partners and others.

Any such disruption or security breach could result in legal proceedings, liability under laws that protect the

privacy of personal information, regulatory penalties, disruptions to our operations and collaborations, and damage to our reputation, which could harm our business and results of operations.

Increasing use of social media could give rise to liability, breaches of data security, or reputational damage.

We and our employees are increasingly utilizing social media tools as a means of communication both internally and externally. Despite our efforts to monitor evolving social media communication guidelines and comply with applicable rules, there is risk that the use of social media by us or our employees to communicate about our products or business may cause us to be found in violation of applicable requirements. In addition, our employees may knowingly or inadvertently make use of social media in ways that may not comply with our social media policy or other legal or contractual requirements, which may give rise to liability, lead to the loss of trade secrets or other intellectual property, or result in public exposure of personal information of our employees, clinical trial patients, customers, and others. Furthermore, negative posts or comments about us or our products in social media could seriously damage our reputation, brand image, and goodwill.

Item 1B. *Unresolved Staff Comments* .

None.

Item 2. *Properties*

Our global headquarters is in Wilmington, Delaware, which is where our drug discovery and development operations are also located. In April 2016, we completed our purchase of the previously leased land and building at 1801 Augustine Cut-off in Wilmington, Delaware comprising approximately 190,000 square feet of laboratory and office space.

We lease approximately 160,000 square feet of office space in Chadds Ford, Pennsylvania and approximately 28,000 square feet of additional office space in Wilmington, Delaware.

In September 2016, we entered into two agreements to purchase land and two buildings at 1701 Augustine Cut-off in Wilmington, Delaware for approximately \$7.9 million. Pursuant to the terms of the agreements, we have up to a 120-day due diligence period to review specified documents and perform building inspections prior to closing. The closing date is to be no later than 30 days after the due diligence period.

We conduct our European clinical development options from our leased offices in Geneva, Switzerland and Lausanne, Switzerland.

Item 3. *Legal Proceedings*

None

Item 4. *Mine Safety Disclosure*

Not applicable.

Executive Officers of the Registrant

Our executive officers are as follows:

Hervé Hoppenot, age 57, joined Incyte as President and Chief Executive Officer and a Director, in January 2014 and was appointed Chairman of the Board in May 2015. Mr. Hoppenot served as the President of Novartis Oncology, Novartis Pharmaceuticals Corporation, the U.S. subsidiary of Novartis AG, a pharmaceutical company, from January 2010 to January 2014. Prior to that, Mr. Hoppenot served in other executive positions at Novartis Pharmaceuticals Corporation, serving from September 2006 to January 2010 as Executive Vice President, Chief Commercial Officer of Novartis Oncology and Head of Global Product Strategy & Scientific Development of Novartis Pharmaceuticals Corporation and

from 2003 to September 2006 as Senior Vice President, Head of Global Marketing of Novartis Oncology. Prior to joining Novartis, Mr. Hoppenot served in various increasingly senior roles at Aventis S.A. (formerly Rhône-Poulenc S.A.), a pharmaceutical company, including as Vice President Oncology US of Aventis Pharmaceuticals, Inc. from 2000 to 2003 and Vice President US Oncology Operations of Rhone-Poulenc Rorer Pharmaceuticals, Inc. from 1998 to 2000. Mr. Hoppenot holds a Diploma from ESSEC International Business School.

Barry P. Flannelly, age 59, has served as Executive Vice President and General Manager US since June 2015 and joined Incyte as Executive Vice President, Business Development and Strategic Planning in August 2014. Prior to joining Incyte, he served as Chief Executive Officer of OSS Healthcare Inc., a biotechnology start-up company, from August 2013 to July 2014. He served as Vice President, Global Product Strategy and Commercial Planning of Nektar Therapeutics, a biopharmaceutical company, from April 2011 until April 2013 and as Senior Vice President, Commercial, of Onyx Pharmaceuticals, Inc., a biopharmaceutical company, from August 2008 until January 2011. Prior thereto, Dr. Flannelly held key positions at biopharmaceutical and pharmaceutical companies such as Abraxis BioScience, Inc. and Novartis. Dr. Flannelly earned his doctorate in pharmacy from the University of Maryland, School of Pharmacy, his master's degree in business administration from the University of Baltimore, and his B.S. degree in Pharmacy from Massachusetts College of Pharmacy.

David W. Gryska, age 60, joined Incyte as Executive Vice President and Chief Financial Officer in October 2014. Prior to joining Incyte, Mr. Gryska served as an independent consultant and as a member of several public company boards of directors. Mr. Gryska served as the Chief Operating Officer and a Director of Myrexis, Inc., a biotechnology company, from May 2012 to December 2012. From December 2006 to October 2010, Mr. Gryska served as Senior Vice President and Chief Financial Officer of Celgene Corporation, a biopharmaceutical company. From October 2004 to December 2006, Mr. Gryska was a principal at Strategic Consulting Group. Previously, Mr. Gryska served at Scios, Inc., a biopharmaceutical company, as Senior Vice President and Chief Financial Officer from 2000 to 2004, and as Vice President of Finance and Chief Financial Officer from 1998 to 2000. From 1993 to 1998, Mr. Gryska served as Vice President, Finance and Chief Financial Officer at Cardiac Pathways. Prior to Cardiac Pathways, Mr. Gryska served as a partner at Ernst & Young LLP. Mr. Gryska is a CPA, and Mr. Gryska holds a B.A. in Accounting and Finance from Loyola University and an M.B.A. from Golden Gate University.

Reid M. Huber, age 45, has served as Executive Vice President, Chief Scientific Officer since April 2014. Dr. Huber joined Incyte as Associate Director, Applied Technology in January 2002 and held roles of increasing responsibility in both drug discovery and clinical development at Incyte. Prior to joining Incyte, Dr. Huber held scientific research positions with DuPont Pharmaceuticals Company from 1998 to 2002. Dr. Huber held intramural pre-doctoral and post-doctoral fellowships at the National Institutes of Health from 1997-1998. Dr. Huber received his B.S. in biochemistry/molecular genetics from Murray State University and his Ph.D. in molecular genetics from Washington University.

Vijay Iyengar, age 44, joined Incyte in May 2016 as Executive Vice President, Global Strategy and Corporate Development. Prior to joining Incyte, from April 2014 to April 2016, he was the President of Genoptix Corporation, a Novartis Company. From December 2011 to March 2014 he was the Vice President and Rare Diseases Franchise Head at Novartis Oncology and from July 2009 to December 2011 he was the Vice President and Oncology General Manager of Novartis Greece. From October 2007 to June 2009 he was the Global Brand Executive Director at Novartis Pharmaceuticals and from January 2006 to October 2007 he was the Global Brand Director, Oncology at Novartis Pharmaceuticals. Dr. Iyengar received his B.S. degree in Biology from Stanford University and earned his M.D. from Harvard Medical School.

Eric H. Siegel, age 52, has served as Executive Vice President and General Counsel since August 2011 and joined Incyte as the Chief Compliance Officer in October 2010. Prior to joining Incyte, from April 2009 to October 2011, he was Chief Compliance Officer at EMD Serono, Inc., a privately-held biotechnology company. From 2007 to 2009 he served as General Counsel for Solstice Neurosciences, Inc., also a privately-held biotechnology company. He was Vice President, Deputy General Counsel and Chief Compliance Officer at Cephalon, Inc. from 2004 to 2007. Mr. Siegel holds a B.A. from Franklin and Marshall College, his M.B.A. from Temple University and his J.D. from the University of Pennsylvania.

Steven Stein, age 50, has served as Executive Vice President and Chief Medical Officer since May 2016 and joined Incyte as Senior Vice President and Chief Medical Officer in March 2015. Prior to joining Incyte, from May 2011 to February 2015, he was the Senior Vice President, US Clinical Development & Medical Affairs at Novartis Pharmaceuticals. From February 2004 to April 2011, Dr. Stein was the Vice President, Global Oncology, Clinical Development and the Head of Medicines Development for Hematology and Supportive Care for GlaxoSmithKline. Dr. Stein held a post-doctoral fellowship in hematology/oncology at the University of Pennsylvania from 1998 – 2001 and earned his M.D. from the University of Witwatersrand in Johannesburg, South Africa in 1990.

Paula J. Swain, age 59, has served as Executive Vice President, Human Resources since August 2002 and joined Incyte as Senior Vice President of Human Resources in January 2002. Ms. Swain served as Senior Vice President of Human Resources at Bristol-Myers Squibb Company from October 2001 to January 2002, after it acquired DuPont Pharmaceuticals Company. From July 1998 to October 2001, Ms. Swain was Senior Vice President of Human Resources at DuPont Pharmaceuticals. From October 1992 to July 1998, Ms. Swain held a variety of human resources positions of increasing responsibility at DuPont Pharmaceuticals. Ms. Swain received her B.A. in Psychology and Industrial Relations from Rockhurst University.

Wenqing Yao, age 54, has served as Executive Vice President, Head of Discovery Chemistry since October 2014. Dr. Yao joined Incyte as Director, Chemistry in February 2002 and held roles of increasing responsibility at Incyte. Prior to joining Incyte, Dr. Yao held scientific research positions with DuPont Pharmaceuticals and Bristol-Myers Squibb Company from 1996 to 2002. Dr. Yao received his B.S. in chemistry from Xuzhou Normal University, his M.S. in organic chemistry from NanKai University and his Ph.D. in organic/medicinal chemistry from the University of Pennsylvania.

PART II

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

Our common stock, \$.001 par value per share, is traded on The NASDAQ Global Select Market (Nasdaq) under the symbol "INCY." The following table sets forth, for the periods indicated, the range of high and low sales prices for our common stock on Nasdaq as reported in its consolidated transaction reporting system.

	High	Low
2015		
First Quarter	\$ 99.00	\$ 69.05
Second Quarter	113.55	87.18
Third Quarter	133.62	89.21
Fourth Quarter	131.33	90.33
2016		
First Quarter	\$ 103.80	\$ 63.05
Second Quarter	87.71	68.69
Third Quarter	94.29	76.11
Fourth Quarter	108.10	83.28

As of December 31, 2016, our common stock was held by 176 stockholders of record. We have never declared or paid dividends on our capital stock and do not anticipate paying any dividends in the foreseeable future.

Item 6. Selected Financial Data
**Selected Consolidated Financial Data
(in thousands, except per share data)**

The data set forth below should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in Item 7 and the Consolidated Financial Statements and related Notes included in Item 8 of this Report.

	Year Ended December 31,				
	2016	2015	2014	2013	2012
Consolidated Statements of Operations Data:					
Revenues:					
Product revenues, net(1)	\$ 882,404	\$ 601,015	\$ 357,562	\$ 235,443	\$ 136,001
Product royalty revenues(2)	110,711	74,821	48,966	28,251	3,652
Contract revenues(3)	112,512	77,857	104,857	91,047	156,948
Other revenues	92	58	110	206	458
Total revenues	<u>1,105,719</u>	<u>753,751</u>	<u>511,495</u>	<u>354,947</u>	<u>297,059</u>
Costs and expenses:					
Cost of product revenues (including definite-lived intangible amortization)	58,187	26,972	3,004	630	157
Research and development	581,861	479,514	347,523	260,436	210,391
Selling, general and administrative	303,251	196,614	165,772	109,983	85,363
Change in fair value of acquisition-related contingent consideration	17,422	—	—	—	—
Total costs and expenses	<u>960,721</u>	<u>703,100</u>	<u>516,299</u>	<u>371,049</u>	<u>295,911</u>
Income (loss) from operations	144,998	50,651	(4,804)	(16,102)	1,148
Interest and other income, net	4,412	7,089	3,350	1,324	764
Interest expense	(38,745)	(45,603)	(46,828)	(38,652)	(46,058)
Unrealized gain (loss) on long term investment	(3,261)	(4,581)	—	—	—
Debt exchange expense on senior note conversions	—	—	(265)	(11,484)	—
Loss on repurchase of convertible senior notes	—	—	—	(17,934)	—
Income (loss) before provision for income taxes	107,404	7,556	(48,547)	(82,848)	(44,146)
Provision (benefit) for income taxes	3,182	1,025	(66)	299	174
Net income (loss)	<u>\$ 104,222</u>	<u>\$ 6,531</u>	<u>\$ (48,481)</u>	<u>\$ (83,147)</u>	<u>\$ (44,320)</u>
Net income (loss) per share:					
Basic	\$ 0.55	\$ 0.04	\$ (0.29)	\$ (0.56)	\$ (0.34)
Diluted	\$ 0.54	\$ 0.03	\$ (0.29)	\$ (0.56)	\$ (0.34)
Shares used in computing net income (loss) per share:					
Basic	187,873	179,601	167,947	148,403	129,747
Diluted	194,125	187,302	167,947	148,403	129,747

(1) 2016 product revenues, net, relate to our product sales of JAKAFI and product sales of ICLUSIG from the date of acquisition on June 1, 2016. 2015, 2014, 2013 and 2012 product revenues, net, relate to our product sales of JAKAFI.

(2) Product royalty revenues relate to Novartis net sales of JAKAVI outside the United States.

(3) Contract revenues relate to our collaborative research and license agreements with Novartis and Lilly.

	December 31,				
	2016	2015	2014	2013	2012
Consolidated Balance Sheets Data:					
Cash, cash equivalents, and marketable securities	\$ 808,546	\$ 707,783	\$ 600,263	\$ 509,004	\$ 228,418
Working capital	720,677	674,368	458,512	446,862	173,440
Total assets	1,638,597	1,007,440	796,477	611,589	324,337
Convertible senior notes	651,481	619,893	675,167	644,483	315,961
Convertible subordinated notes	—	—	—	—	9,033
Stockholders' equity (deficit)	419,467	171,155	(81,628)	(193,108)	(174,957)

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

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with "Selected Consolidated Financial Data" and the Consolidated Financial Statements and related Notes included elsewhere in this Report.

Overview

Incyte is a biopharmaceutical company focused on the discovery, development and commercialization of proprietary therapeutics. Our global headquarters is located in Wilmington, Delaware and we conduct our European clinical development operations from our offices in Geneva, Switzerland and Lausanne, Switzerland.

JAKAFI (ruxolitinib) is our first product to be approved for sale in the United States. It is an oral JAK1 and JAK2 inhibitor and was approved by the U.S. Food and Drug Administration (FDA) in November 2011 for the treatment of patients with intermediate or high-risk myelofibrosis and in December 2014 for the treatment of patients with polycythemia vera who have had an inadequate response to or are intolerant of hydroxyurea. Myelofibrosis and polycythemia vera are both rare blood cancers.

Under our collaboration agreement with Novartis International Pharmaceutical Ltd., Novartis received exclusive development and commercialization rights to ruxolitinib outside of the United States for all hematologic and oncologic indications and sells ruxolitinib outside of the United States under the name JAKAVI. In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the graft-versus-host-disease field.

We have a second oral JAK1 and JAK2 inhibitor, baricitinib, which is subject to a collaboration agreement with Eli Lilly and Company in which Lilly received exclusive worldwide development and commercialization rights for the compound for inflammatory and autoimmune diseases. In January 2016, Lilly submitted a new drug application (NDA) to the FDA and a Marketing Authorization Application (MAA) to the European Medicines Agency for baricitinib as treatment for mild-to-moderately severe rheumatoid arthritis. In March 2016, we entered into an amendment to the agreement with Lilly that amended the non-compete provision of the agreement to allow us to engage in the development and commercialization of ruxolitinib in the graft-versus-host-disease field. In January 2017, the FDA extended the review period for the new drug application (NDA) for baricitinib by three months. In February 2017, the European Commission approved baricitinib, which will be marketed as OLUMIANT®, for the treatment of moderate to severe active rheumatoid arthritis in adult patients who have responded inadequately to, or who are intolerant to, one or more disease-modifying antirheumatic drugs.

In June 2016, we acquired (the "Acquisition") from ARIAD Pharmaceuticals, Inc. all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l., the parent company of ARIAD's European subsidiaries responsible for the development and commercialization of ICLUSIG in the European Union and other countries, including Switzerland, Norway, Turkey, Israel and Russia. We obtained an exclusive license to develop and commercialize ICLUSIG in those countries. ICLUSIG is approved in the European Union for the treatment of patients with chronic myeloid leukemia and

Philadelphia-positive acute lymphoblastic leukemia who are resistant to or intolerant of certain second generation BCR-ABL inhibitors and all patients who have the T3151 mutation.

Since we began our drug-discovery and development activities in early 2002, we have filed Investigational New Drug (IND) applications and progressed multiple internally developed proprietary compounds into clinical development. As of February 14, 2017, our development portfolio, including ruxolitinib, was comprised of 17 candidates against 13 molecular targets.

License Agreements and Business Relationships

As part of our business strategy, we establish business relationships, including collaborative arrangements with other companies and medical research institutions to assist in the clinical development and/or commercialization of certain of our drugs and drug candidates and to provide support for our research programs. We also evaluate opportunities for acquiring products or rights to products and technologies that are complementary to our business from other companies and medical research institutions.

Below is a brief description of our significant business relationships and collaborations and related license agreements that expand our pipeline and provide us with certain rights to existing and potential new products and technologies.

Novartis

In November 2009, we entered into a Collaboration and License Agreement with Novartis. Under the terms of the agreement, Novartis received exclusive development and commercialization rights outside of the United States to our JAK inhibitor ruxolitinib and certain back-up compounds for hematologic and oncology indications, including all hematological malignancies, solid tumors and myeloproliferative diseases. We retained exclusive development and commercialization rights to JAKAFI (ruxolitinib) in the United States and in certain other indications. Novartis also received worldwide exclusive development and commercialization rights to our c-MET inhibitor compound capmatinib and certain back-up compounds in all indications. We retained options to co-develop and to co-promote capmatinib in the United States.

Under this agreement, we received an upfront payment and immediate milestone payment totaling \$210.0 million and were initially eligible to receive additional payments of up to approximately \$1.2 billion if defined development and commercialization milestones are achieved. In 2016, 2015, and 2014, we received \$45.0 million, \$65.0 million, and \$92.0 million, respectively, in milestone payments under this agreement. We are also eligible to receive tiered, double-digit royalties ranging from the upper-teens to the mid-twenties on future ruxolitinib net sales outside of the United States, and tiered, worldwide royalties on future capmatinib net sales that range from 12% to 14%. In addition, Novartis has received reimbursement and pricing approval for ruxolitinib in a specified number of countries, and we are now obligated to pay to Novartis tiered royalties in the low single digits on future ruxolitinib net sales within the United States. During the years ended December 31, 2016, 2015 and 2014, such royalties payable to Novartis on net sales within the United States totaled \$36.8 million, \$24.4 million and \$2.2 million, respectively, and are reflected in cost of product revenues on the consolidated statements of operations. Each company is responsible for costs relating to the development and commercialization of ruxolitinib in its respective territories, with costs of collaborative studies shared equally. Novartis is also responsible for all costs relating to the development and commercialization of capmatinib. JAKAFI is sold outside of the United States by Novartis under the name JAKAVI. For the years ended December 31, 2016, 2015 and 2014, we recorded \$110.7 million, \$74.8 million and \$49.0 million, respectively, of product royalty revenues related to Novartis net sales of JAKAVI.

In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the graft-versus-host-disease (“GVHD”) field. Under this amendment, we received a \$5.0 million payment in exchange for the development and commercialization rights to ruxolitinib in GVHD outside of the United States and became eligible to receive up to \$75.0 million of additional potential development and regulatory milestones relating to GVHD.

The Novartis agreement will continue on a program-by-program basis until Novartis has no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. Royalties are payable by Novartis on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Novartis or its affiliates or sublicensees. The agreement may be terminated in its entirety or on a program-by-program basis by Novartis for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach.

Lilly

In December 2009, we entered into a License, Development and Commercialization Agreement with Lilly. Under the terms of the agreement, Lilly received exclusive worldwide development and commercialization rights to baricitinib and certain back-up compounds for inflammatory and autoimmune diseases. We received an initial payment of \$90.0 million, and were initially eligible to receive additional payments of up to \$665.0 million based on the achievement of defined development, regulatory and commercialization milestones. In 2016, we received \$55.0 million in milestone payments under this agreement. In February 2017, the European Commission approved baricitinib for the treatment of moderate to severe active rheumatoid arthritis in adult patients and we will record a \$65.0 million regulatory milestone payment in the first quarter of 2017. We are entitled to a \$100.0 million milestone payment upon regulatory approval of baricitinib for the treatment of adults with moderate to severely active rheumatoid arthritis by the FDA, which we expect to occur in 2017.

We retained options to co-develop our JAK1/JAK2 inhibitors with Lilly on a compound-by-compound and indication-by-indication basis. Lilly is responsible for all costs relating to the development and commercialization of the compounds unless we elect to co-develop any compounds or indications. If we elect to co-develop any compounds and/or indications, we would be responsible for funding 30% of the associated future global development costs from the initiation of a Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. We would receive an incremental royalty rate increase across all tiers resulting in effective royalty rates ranging up to the high twenties on potential future global net sales for compounds and/or indications that we elect to co-develop. For indications that we elect not to co-develop, we would receive tiered, double digit royalty payments on future global net sales with rates ranging up to 20% if the product is successfully commercialized. We previously had retained an option to co-promote products in the United States but, in March 2016, we waived our co-promotion option as part of an amendment to the agreement.

In July 2010, we elected to co-develop baricitinib with Lilly in rheumatoid arthritis and we are responsible for funding 30% of the associated future global development costs for this indication from the initiation of the Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. In January 2017, we elected to co-develop baricitinib with Lilly in psoriatic arthritis. We have also exercised our co-development options in both atopic dermatitis and axial spondyloarthritis, should Lilly decide to progress into a pivotal program in these indications.

In March 2016, we entered into an amendment to the agreement with Lilly that allows us to engage in the development and commercialization of ruxolitinib in the GVHD field. We paid Lilly an upfront payment of \$35.0 million and Lilly is eligible to receive up to \$40.0 million in additional regulatory milestone payments relating to ruxolitinib in the GVHD field.

The Lilly agreement will continue until Lilly no longer has any royalty payment obligations or, if earlier, the termination of the agreement in accordance with its terms. Royalties are payable by Lilly on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Lilly or its affiliates or sublicensees. The agreement may be terminated by Lilly for convenience, and may also be terminated under certain other circumstances, including material breach.

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG (now known as Agenus Switzerland Inc.), which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno-therapeutics using Agenus' antibody discovery platforms. In February 2017, we and Agenus amended this agreement.

Under the terms of this agreement, as amended, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added. Targets may be designated profit-share programs, where all costs and profits are shared equally by us and Agenus, or royalty-bearing programs, where we are responsible for all costs associated with discovery, preclinical, clinical development and commercialization activities. The programs relating to GITR and OX40 and two of the undisclosed targets were profit-share programs until February 2017, while the other targets currently under collaboration are royalty-bearing programs. The February 2017 amendment converted the programs relating to GITR and OX40 to royalty-bearing programs and removed from the collaboration the profit-share programs relating to the two undisclosed targets, with one reverting to us and one reverting to Agenus. Should any of those removed programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. There are currently no profit-share programs. For each royalty-bearing product other than GITR and OX40, Agenus will be eligible to receive tiered royalties on global net sales ranging from 6% to 12%. For GITR and OX40, Agenus will be eligible to receive 15% royalties on global net sales. Under the February 2017 amendment, we paid Agenus \$20 million in accelerated milestones relating to the clinical development of the GITR and OX40 programs. Agenus is eligible to receive up to an additional \$510 million in future contingent development, regulatory and commercialization milestones across all programs in the collaboration. The agreement may be terminated by us for convenience upon 12 months' notice and may also be terminated under certain other circumstances, including material breach.

In connection with entering into the Agenus agreement, in January 2015, we purchased approximately 7.76 million shares of Agenus Inc. common stock for an aggregate purchase price of \$35.0 million in cash, or approximately \$4.51 per share. We agreed to certain standstill provisions under the license agreement as described in Note 6 of Notes to Consolidated Financial Statements. In February 2017, in connection with amending the Agenus agreement, we purchased 10.0 million shares of Agenus Inc. common stock for an aggregate purchase price of \$60.0 million in cash, or \$6.00 per share.

Hengrui

In September 2015, we entered into a License and Collaboration Agreement with Jiangsu Hengrui Medicine Co., Ltd. Under the terms of this agreement, we received exclusive development and commercialization rights worldwide, with the exception of Mainland China, Hong Kong, Macau and Taiwan, to INCSHR1210, an investigational PD-1 monoclonal antibody, and certain back-up compounds. We paid to Hengrui an upfront payment of \$25.0 million. Hengrui is also eligible to receive potential milestone payments of up to \$770.0 million, consisting of \$90.0 million for regulatory approval milestones, \$530.0 million for commercial performance milestones, and \$150.0 million for a clinical superiority milestone. Also, Hengrui may be eligible to receive tiered royalties in the high-single digits to mid-double digits based on net sales in our territories. Each company will be responsible for costs relating to the development and commercialization of the PD-1 monoclonal antibody in its respective territories. The dose-escalation portion of the proof-of-concept clinical trial of INCSHR1210 in patients with advanced solid tumors has been completed. Enrollment of new subjects into the trial has been suspended in order to perform a thorough assessment of the compound's profile before proceeding to enroll any additional subjects.

The agreement will continue on a country-by-country basis until we have no royalty payment obligations with respect to such country or, if earlier, the termination of the agreement in accordance with its terms. The agreement may be terminated in its entirety by us for convenience, and may also be terminated under certain other circumstances, including material breach.

Merus

In December 2016, we entered into a Collaboration and License Agreement with Merus N.V. Under this agreement, which became effective in January 2017, the parties have agreed to collaborate with respect to the research, discovery and development of bispecific antibodies utilizing Merus' technology platform. The collaboration encompasses up to eleven independent programs, including two of Merus' current preclinical immuno-oncology discovery programs. We received exclusive development and commercialization rights outside of the United States to products and product candidates resulting from one of Merus' current preclinical discovery programs, referred to as "Program 1." We also received worldwide exclusive development and commercialization rights to products and product candidates resulting from the other current Merus preclinical discovery program that is subject to the collaboration and to up to nine additional programs. Merus retained exclusive development and commercialization rights in the United States to products and product candidates resulting from Program 1 and options, subject to certain conditions, to co-fund development of products resulting from two other programs in exchange for a share of profits in the United States. Merus will also have the right to participate in a specified proportion of detailing activities in the United States for one of those co-developed programs. Should Program 1 fail to successfully complete IND-enabling toxicology studies, Merus would be granted an additional option to co-fund development of a program in exchange for a share of profits in the United States. All costs related to the collaboration are subject to joint research and development plans. Each party will share equally the costs of mutually agreed global development activities for Program 1, and fund itself any independent development activities in its territory. We will be responsible for all research, development and commercialization costs relating to all other programs, subject to Merus' election to co-fund development and co-detail described above. If Merus exercises its co-funding option for a program, Merus would be responsible for funding 35% of the associated future global development costs and, for certain of such programs, would be responsible for reimbursing us for certain development costs incurred prior to the option exercise. All products as to which Merus has exercised its option to co-fund development would be subject to joint development plans and overseen by a joint development committee, but we will have final determination as to such plans in cases of dispute.

We have agreed to pay Merus an upfront non-refundable payment of \$120.0 million. For each program as to which Merus does not have commercialization or co-development rights, Merus will be eligible to receive up to \$100.0 million in future contingent development and regulatory milestones and up to \$250.0 million in commercialization milestones as well as tiered royalties ranging from 6% to 10% of global net sales. For each program as to which Merus exercises its option to co-fund development, Merus will be eligible to receive a 50% share of profits (or sustain 50% of any losses) in the United States and be eligible to receive tiered royalties ranging from 6% to 10% of net sales of products outside of the United States. If Merus opts to cease co-funding a program as to which it exercised its co-development option, then Merus will no longer receive a share of profits in the United States but will be eligible to receive the same milestones from the co-funding termination date and the same tiered royalties described above with respect to non-co-developed programs and, depending on the stage at which Merus chose to cease co-funding development costs, additional royalties ranging up to 4% of net sales in the United States. For Program 1, we and Merus will each be eligible to receive tiered royalties on net sales in the other party's territory at rates ranging from 6% to 10%.

The Merus agreement will continue on a program-by-program basis until we have no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. The agreement may be terminated in its entirety or on a program-by-program basis by us for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the agreement. If the agreement is terminated with respect to one or more programs, all rights in the terminated programs revert to Merus, subject to payment to us of a reverse royalty of up to 4% on sales of future products, if Merus elects to pursue development and commercialization of products arising from the terminated programs.

In addition, in December 2016, we entered into a Share Subscription Agreement with Merus, pursuant to which in January 2017 we purchased 3,200,000 common shares of Merus for an aggregate purchase price of \$80.0 million in cash, or \$25.00 per share. We agreed to certain standstill provisions under the Share Subscription Agreement as described in Note 18 to Notes to Consolidated Financial Statements.

Calithera

In January 2017, we entered into a Collaboration and License Agreement with Calithera Biosciences, Inc. Under this agreement, we received an exclusive, worldwide license to develop and commercialize small molecule arginase inhibitors, including CB-1158, which is currently in phase I clinical trials, for hematology and oncology indications. We have agreed to co-fund 70% of the global development costs for the development of the licensed products for hematology and oncology indications. Calithera will have the right to conduct certain clinical development under the collaboration, including combination studies of a licensed product with a proprietary compound of Calithera. We will be entitled to 60% of the profits and losses from net sales of licensed product in the United States, and Calithera will have the right to co-detail licensed products in the United States, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products outside the United States. Calithera may opt out of its co-funding obligation, in which case the U.S. profit sharing will no longer be in effect, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products both in the United States and outside the United States, and additional royalties to reimburse Calithera for previously incurred development costs.

Calithera retains rights to certain arginase inhibitors that are not part of the collaboration for specific orphan indications outside of hematology and oncology, subject to our rights to negotiate a license for any such programs under specified circumstances if Calithera elects to out-license them.

In January 2017, we paid Calithera an upfront license fee of \$45.0 million and have agreed to pay potential development, regulatory and sales milestone payments of over \$430.0 million if the profit share is in effect, or \$750.0 million if the profit share terminates.

The Calithera agreement will continue on a product-by-product and country-by-country basis for so long as we are developing or commercializing products in the United States (if the parties are sharing profits in the United States) and until we have no further royalty payment obligations, unless earlier terminated according to the terms of the agreement. The agreement may be terminated in its entirety or on a product-by-product and/or a country-by-country basis by us for convenience. The agreement may also be terminated by us for Calithera's uncured material breach, by Calithera for our uncured material breach and by either party for bankruptcy or patent challenge. If the agreement is terminated early with respect to one or more products or countries, all rights in the terminated products and countries revert to Calithera.

In addition, in January 2017, we entered into a Stock Purchase Agreement with Calithera for the purchase of 1,720,430 common shares of Calithera for an aggregate purchase price of \$8.0 million in cash, or \$4.65 per share. Under the Stock Purchase Agreement, we have certain rights to participate in future stock issuances and have agreed to certain standstill provisions and transfer restrictions as described in Note 18 of Notes to Consolidated Financial Statements.

Pfizer

In January 2006, we entered into a Collaborative Research and License Agreement with Pfizer Inc. for the pursuit of our CCR2 antagonist program. Pfizer gained worldwide development and commercialization rights to our portfolio of CCR2 antagonist compounds. Pfizer's rights extend to the full scope of potential indications, with the exception of multiple sclerosis and autoimmune nephritides, where we retained worldwide rights, along with certain compounds. We do not have obligations to Pfizer on pre-clinical development candidates we select for pursuit in these indications. The agreement will terminate upon the expiration of the last to expire of patent rights licensed under the agreement. Prior to such expiration, either party can terminate the agreement for the uncured material breach of the agreement by the other party or for the insolvency of the other party. In addition, Pfizer may terminate the agreement at any time upon 90 days' notice. We received an upfront nonrefundable, non-creditable payment of \$40.0 million in January 2006 and were initially eligible to receive up to \$743.0 million of additional future development and commercialization milestone payments. We are also eligible to receive tiered royalties based upon net sales of any potential products ranging from the high single digits to the mid-teens. We received a \$3.0 million milestone payment from Pfizer in 2010.

ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. Acquisition

In June 2016, we completed the Acquisition and acquired all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l., since renamed Incyte Biosciences (Luxembourg) S.à.r.l., in exchange for an upfront payment of \$147.5 million, including customary working capital adjustments. We obtained an exclusive license to develop and commercialize ICLUSIG in Europe and other select countries. ARIAD will be eligible to receive from us tiered royalties on net sales of ICLUSIG in our territory and up to \$135.0 million in potential future oncology development and regulatory approval milestone payments, together with additional milestone payments for non-oncology indications, if approved, in our territory. Under our agreement with ARIAD, we have agreed to fund a portion of the ongoing clinical development of ICLUSIG through cost-sharing payments of up to \$7.0 million in each of 2016 and 2017.

Our license agreement with ARIAD contains a limited buy-back option for the acquirer of ARIAD to reacquire the rights to ICLUSIG in exchange for repayment to us of our initial purchase price and any milestone payments and development costs previously paid by us to ARIAD, together with an additional payment based upon the last 12 months of ICLUSIG sales booked by us. We would also be eligible to receive royalties of between 20% to 25% from an ARIAD acquirer on future sales of ICLUSIG in our territory.

Critical Accounting Policies and Significant Estimates

The preparation of financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets, liabilities, revenues and expenses, and related disclosures of contingent assets and liabilities. On an on-going basis, we evaluate our estimates. We base our estimates on historical experience and various other assumptions that we believe to be reasonable under the circumstances, the results of which form our basis for making judgments about the carrying values of assets and liabilities that are not readily apparent from other sources. Actual results may differ from those estimates under different assumptions or conditions.

We believe the following critical accounting policies affect the more significant judgments and estimates used in the preparation of our consolidated financial statements:

- Revenue recognition;
- Research and development costs;
- Stock compensation;
- Convertible debt accounting;
- Income taxes;
- Business combinations; and
- Contingent consideration.

Revenue Recognition. Revenues are recognized when (1) persuasive evidence of an arrangement exists, (2) delivery has occurred or services have been rendered, (3) the price is fixed or determinable and (4) collectability is reasonably assured. Revenues are deferred for fees received before earned or until no further obligations exist. We exercise judgment in determining that collectability is reasonably assured or that services have been delivered in accordance with the arrangement. We assess whether the fee is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. We assess collectability based primarily on the customer's payment history and on the creditworthiness of the customer.

Product Revenues

Our product revenues consist of U.S. sales of JAKAFI and European sales of ICLUSIG. Product revenues are recognized once we meet all four revenue recognition criteria described above. In November 2011, we began shipping JAKAFI to our customers in the U.S., which include specialty pharmacies and wholesalers. In June 2016, we acquired the right to and began shipping ICLUSIG to our customers in the European Union and certain other jurisdictions, which include retail pharmacies, hospital pharmacies and distributors.

We recognize revenues for product received by our customers net of allowances for customer credits, including estimated rebates, chargebacks, discounts, returns, distribution service fees, patient assistance programs, and government rebates, such as Medicare Part D coverage gap reimbursements in the U.S. Product shipping and handling costs are included in cost of product revenues.

Customer Credits: Our customers are offered various forms of consideration, including allowances, service fees and prompt payment discounts. We expect our customers will earn prompt payment discounts and, therefore, we deduct the full amount of these discounts from total product sales when revenues are recognized. Service fees are also deducted from total product sales as they are earned.

Rebates and Discounts: Allowances for rebates include mandated discounts under the Medicaid Drug Rebate Program in the U.S. and mandated discounts in Europe in markets where government-sponsored healthcare systems are the primary payers for healthcare. Rebate amounts are based upon contractual agreements or legal requirements with public sector benefit providers. Rebates are amounts owed after the final dispensing of the product to a benefit plan participant and are based upon contractual agreements or legal requirements with public sector benefit providers. The accrual for rebates is based on statutory discount rates and expected utilization as well as historical data we have accumulated since product launch. Our estimates for expected utilization of rebates are based on data received from our customers. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Chargebacks: Chargebacks are discounts that occur when certain contracted customers, which currently consist primarily of group purchasing organizations, Public Health Service institutions, non-profit clinics, and Federal government entities purchasing via the Federal Supply Schedule, purchase directly from our wholesalers. Contracted customers generally purchase the product at a discounted price. The wholesalers, in turn, charges back to us the difference between the price initially paid by the wholesalers and the discounted price paid by the contracted customers. In addition to actual chargebacks received, we maintain an accrual for chargebacks based on the estimated contractual discounts on the inventory levels on hand in our distribution channel. If actual future chargebacks vary from these estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Medicare Part D Coverage Gap: Medicare Part D prescription drug benefit mandates manufacturers to fund 50% of the Medicare Part D insurance coverage gap for prescription drugs sold to eligible patients. Our estimates for the expected Medicare Part D coverage gap are based on historical invoices received and in part from data received from our customers. Funding of the coverage gap is generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters. If actual future funding varies from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Co-payment Assistance: Patients who have commercial insurance and meet certain eligibility requirements may receive co-payment assistance. We accrue a liability for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators.

Product Royalty Revenues

Royalty revenues on commercial sales for JAKAVI by Novartis are estimated based on information provided by Novartis. We exercise judgment in determining whether the information provided is sufficiently reliable for us to base our royalty revenue recognition thereon. If actual royalties vary from estimates, we may need to adjust the prior period which would affect royalty revenue in the period of adjustment.

Cost of Product Revenues

Cost of product revenues includes all JAKAFI related product as well as ICLUSIG related product costs. The acquired ICLUSIG inventories were recorded at fair value less costs to sell in connection with the Acquisition, and will result in a higher cost of ICLUSIG product revenues over the period in which this inventory is sold, which is expected to be over a one year period from the acquisition date. In addition, cost of product revenues include low single digit royalties under our collaboration and license agreement to Novartis on all future sales of JAKAFI in the United States. Subsequent to the Acquisition on June 1, 2016, cost of product revenues also includes the amortization of our licensed intellectual property for ICLUSIG using the straight-line method over the estimated useful life of 12.5 years.

Contract and License Revenues

Under agreements involving multiple deliverables, services and/or rights to use assets that we entered into prior to January 1, 2011, the multiple elements are divided into separate units of accounting when certain criteria are met, including whether the delivered items have stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. When separate units of accounting exist, consideration is allocated among the separate elements based on their respective fair values. The determination of fair value of each element is based on objective evidence from historical sales of the individual elements by us to other customers. If such evidence of fair value for each undelivered element of the arrangement does not exist, all revenue from the arrangement is deferred until such time that evidence of fair value for each undelivered element does exist or until all elements of the arrangement are delivered. When elements are specifically tied to a separate earnings process, revenue is recognized when the specific performance obligation tied to the element is completed. When revenues for an element are not specifically tied to a separate earnings process, they are recognized ratably over the term of the agreement. We assess whether a substantive milestone exists at the inception of our agreements. For all milestones within our arrangements that are considered substantive, we recognize revenue upon the achievement of the associated milestone. If a milestone is not considered substantive, we would recognize the applicable milestone payment over the remaining period of performance under the arrangement. As of December 31, 2016, all remaining potential milestones under our collaborative arrangements are considered substantive.

On January 1, 2011, updated guidance on the recognition of revenues for agreements with multiple deliverables became effective and applies to any agreements we may enter into on or after January 1, 2011. This updated guidance (i) relates to whether multiple deliverables exist, how the deliverables in a revenue arrangement should be separated and how the consideration should be allocated; (ii) requires companies to allocate revenues in an arrangement using estimated selling prices of deliverables if a vendor does not have vendor-specific objective evidence or third-party evidence of selling price; and (iii) eliminates the use of the residual method and requires companies to allocate revenues using the relative selling price method. During the years ended December 31, 2016, 2015, and 2014, we did not enter into any agreements that are subject to this updated guidance. If we enter into an agreement with multiple deliverables after January 1, 2011 or amend existing agreements, this updated guidance could have a material effect on our financial statements.

Our collaborations often include contractual milestones, which typically relate to the achievement of pre-specified development, regulatory and commercialization events. These three categories of milestone events reflect the three stages of the life-cycle of our drugs, which we describe in more detail in the following paragraphs.

The regulatory review and approval process, which includes preclinical testing and clinical trials of each drug candidate, is lengthy, expensive and uncertain. Securing approval by the U.S. Food and Drug Administration (FDA) requires the submission of extensive preclinical and clinical data and supporting information to the FDA for each indication to establish a drug candidate's safety and efficacy. The approval process takes many years, requires the expenditure of

substantial resources, involves post-marketing surveillance and may involve ongoing requirements for post-marketing studies. Before commencing clinical investigations of a drug candidate in humans, we must submit an Investigational New Drug application (IND), which must be reviewed by the FDA.

The steps generally required before a drug may be marketed in the United States include preclinical laboratory tests, animal studies and formulation studies, submission to the FDA of an IND for human clinical testing, performance of adequate and well-controlled clinical trials in three phases, as described below, to establish the safety and efficacy of the drug for each indication, submission of a new drug application (NDA) or biologics license application (BLA) to the FDA for review and FDA approval of the NDA or BLA.

Similar requirements exist within foreign regulatory agencies as well. The time required satisfying the FDA requirements or similar requirements of foreign regulatory agencies may vary substantially based on the type, complexity and novelty of the product or the targeted disease.

Preclinical testing includes laboratory evaluation of product pharmacology, drug metabolism, and toxicity, which includes animal studies, to assess potential safety and efficacy as well as product chemistry, stability, formulation, development, and testing. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an IND. The FDA may raise safety concerns or questions about the conduct of the clinical trials included in the IND, and any of these concerns or questions must be resolved before clinical trials can proceed. We cannot be sure that submission of an IND will result in the FDA allowing clinical trials to commence. Clinical trials involve the administration of the investigational drug or the marketed drug to human subjects under the supervision of qualified investigators and in accordance with good clinical practices regulations covering the protection of human subjects. Clinical trials typically are conducted in three sequential phases, but the phases may overlap or be combined. Phase I usually involves the initial introduction of the investigational drug into healthy volunteers to evaluate its safety, dosage tolerance, absorption, metabolism, distribution and excretion. Phase II usually involves clinical trials in a limited patient population to evaluate dosage tolerance and optimal dosage, identify possible adverse effects and safety risks, and evaluate and gain preliminary evidence of the efficacy of the drug for specific indications. Phase III clinical trials usually further evaluate clinical efficacy and safety by testing the drug in its final form in an expanded patient population, providing statistical evidence of efficacy and safety, and providing an adequate basis for labeling. We cannot guarantee that Phase I, Phase II or Phase III testing will be completed successfully within any specified period of time, if at all. Furthermore, we, the institutional review board for a trial, or the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

Generally, the milestone events contained in our collaboration agreements coincide with the progression of our drugs from development, to regulatory approval and then to commercialization. The process of successfully discovering a new development candidate, having it approved and successfully commercialized is highly uncertain. As such, the milestone payments we may earn from our partners involve a significant degree of risk to achieve. Therefore, as a drug candidate progresses through the stages of its life-cycle, the value of the drug candidate generally increases.

Research and Development Costs. Our policy is to expense research and development costs as incurred. We often contract with clinical research organizations (CROs) to facilitate, coordinate and perform agreed upon research and development of a new drug. To ensure that research and development costs are expensed as incurred, we record monthly accruals for clinical trials and preclinical testing costs based on the work performed under the contract.

These CRO contracts typically call for the payment of fees for services at the initiation of the contract and/or upon the achievement of certain clinical trial milestones. In the event that we prepay CRO fees, we record the prepayment as a prepaid asset and amortize the asset into research and development expense over the period of time the contracted research and development services are performed. Most professional fees, including project and clinical management, data management, monitoring, and medical writing fees are incurred throughout the contract period. These professional fees are expensed based on their percentage of completion at a particular date. Our CRO contracts generally include pass through fees. Pass through fees include, but are not limited to, regulatory expenses, investigator fees, travel costs, and other miscellaneous costs, including shipping and printing fees. We expense the costs of pass through fees under our CRO contracts as they are incurred, based on the best information available to us at the time. The estimates of the pass through fees incurred are based on the amount of work completed for the clinical trial and are monitored through correspondence

with the CROs, internal reviews and a review of contractual terms. The factors utilized to derive the estimates include the number of patients enrolled, duration of the clinical trial, estimated patient attrition, screening rate and length of the dosing regimen. CRO fees incurred to set up the clinical trial are expensed during the setup period.

Under our clinical trial collaboration agreements, we may be reimbursed for certain development costs incurred. Such costs are recorded as a reduction of research and development expense in the period in which the related expense is incurred.

Stock Compensation. Share-based payment transactions with employees, which include stock options, restricted stock units (RSUs) and performance shares (PSUs), are recognized as compensation expense over the requisite service period based on their estimated fair values as well as expected forfeiture rates. The stock compensation process requires significant judgment and the use of estimates, particularly surrounding Black-Scholes assumptions such as stock price volatility over the option term and expected option lives, as well as expected forfeiture rates and the probability of PSUs vesting. The fair value of stock options, which are subject to graded vesting, are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of RSUs that are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of PSUs are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement, over the remaining requisite service period. We recorded \$96.2 million, \$69.9 million and \$62.2 million of stock compensation expense for the years ended December 31, 2016, 2015 and 2014, respectively.

Convertible Debt Accounting. We perform an assessment of all embedded features of a debt instrument to determine if (1) such features should be bifurcated and separately accounted for, and (2) if bifurcation requirements are met, whether such features should be classified and accounted for as equity or liability instruments. If the embedded feature meets the requirements to be bifurcated and accounted for as a liability, the fair value of the embedded feature is measured initially, included as a liability on the consolidated balance sheets, and re-measured to fair value at each reporting period. Any changes in fair value are recorded in the consolidated statement of operations. We monitor, on an ongoing basis, whether events or circumstances could give rise to a change in our classification of embedded features.

We determined the embedded conversion options in the 0.375% convertible senior notes due 2018 (the 2018 Notes) and the 1.25% convertible senior notes due 2020 (the 2020 Notes) are not required to be separately accounted for as derivatives. However, since the 2018 Notes and the 2020 Notes can be settled in cash or common shares or a combination of cash and common shares at our option, we are required to separate the 2018 Notes and 2020 Notes into a liability and equity component. The carrying amount of the liability component is calculated by measuring the fair value of a similar liability that does not have an associated equity component. The carrying amount of the equity component representing the embedded conversion option is determined by deducting the fair value of the liability component from the initial proceeds. The excess of the principal amount of the liability component over its carrying amount is amortized to interest expense over the expected life of the 2018 Notes and 2020 Notes using the effective interest method. The equity component is not re-measured as long as it continues to meet the conditions for equity classification for contracts in an entity's own equity.

The fair value of the liability component of the 2018 Notes was estimated at \$299.4 million at issuance. Therefore, the difference between the \$375.0 million face value of the 2018 Notes at issuance and the \$299.4 million estimated fair value of the liability component will be amortized to interest expense over the term of the 2018 Notes through November 15, 2018 using the effective interest method.

The fair value of the liability component of the 2020 Notes was estimated at \$274.8 million at issuance. Therefore, the difference between the \$375.0 million face value of the 2020 Notes at issuance and the \$274.8 million estimated fair value of the liability component will be amortized to interest expense over the term of the 2020 Notes through November 15, 2020 using the effective interest method.

The estimated fair value of the liability components at the date of issuance for the 2018 Notes and 2020 Notes were determined using valuation models and are complex and subject to judgment. Significant assumptions within the

valuation models included an implied credit spread, the expected volatility and dividend yield of our common stock and the risk free interest rate for notes with a similar term.

Prior to May 14, 2014, the 2018 Notes and 2020 Notes were not convertible except in connection with a make-whole fundamental change, as defined in the respective indentures. Beginning on, and including, May 15, 2014, the 2018 Notes and 2020 Notes are convertible prior to the close of business on the business day immediately preceding May 15, 2018, in the case of the 2018 Notes, and May 15, 2020, in the case of the 2020 Notes, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2014 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or equal to 130% of the conversion price for the 2018 Notes or 2020 Notes, as applicable, on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the measurement period) in which the trading price per \$1,000 principal amount of 2018 Notes or 2020 Notes, as applicable, for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate for the 2018 Notes or 2020 Notes, as applicable, on each such trading day; or (3) upon the occurrence of specified corporate events. On or after May 15, 2018, in the case of the 2018 Notes, and May 15, 2020, in the case of the 2020 Notes, until the close of business on the second scheduled trading day immediately preceding the relevant maturity date, the Notes are convertible at any time, regardless of the foregoing circumstances. Upon conversion we will pay or deliver, as the case may be, cash, shares of common stock or a combination of cash and shares of common stock, at our election.

On a quarterly basis, we perform an assessment in order to determine whether the 2018 Notes or 2020 Notes have become convertible at the option of the holder, based on meeting any of the conversion criteria described above. Should either the 2018 Notes or the 2020 Notes become convertible, we then assess our intent and ability to settle the 2018 Notes or the 2020 Notes in cash, shares of common stock, or a combination of cash and shares of common stock, in order to determine the appropriate classification of the 2018 Notes and the 2020 Notes at the balance sheet date. On January 1, 2017, the 2018 Notes and 2020 Notes became convertible through at least March 31, 2017, based on meeting the conversion criteria related to the sale price of our common stock during the calendar quarter ended December 31, 2016 as described above. Management's intent is to settle any conversions of 2018 Notes or 2020 Notes in common shares and, therefore, the 2018 and 2020 Notes are reflected in long term liabilities on the consolidated balance sheet as of December 31, 2016.

Income Taxes. We account for income taxes using an asset and liability approach to financial accounting for income taxes. Under this method, deferred tax assets and liabilities are determined based on the difference between the financial statement carrying amounts and tax bases of assets and liabilities using enacted tax rates in effect for years in which the basis differences are expected to reverse. We periodically assess the likelihood of the realization of deferred tax assets, and reduce the carrying amount of these deferred tax assets to an amount that is considered to be more-likely-than-not realizable. Our assessment considers recent cumulative earnings experience, projections of future taxable income (losses) and ongoing prudent and feasible tax planning strategies. When performing our assessment on projections of future taxable income (losses), we consider factors such as the likelihood of regulatory approval and commercial success of products currently under development, among other factors. Significant judgment is required in making this assessment and, to the extent that a reversal of any portion of our valuation allowance against our deferred tax assets is deemed appropriate, a tax benefit will be recognized against our income tax provision in the period of such reversal.

We do not recognize a tax benefit for an uncertain tax position unless it is more-likely-than-not that the position will be sustained upon examination based on the technical merits of the position. The tax benefit that is recorded for these positions is measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon ultimate settlement. We adjust the level of the liability to reflect any subsequent changes in the relevant facts surrounding the uncertain positions. Any interest and penalties on uncertain tax positions are included within the tax provision.

All tax effects associated with intercompany transfers of assets within our consolidated group are recorded as a prepaid tax or deferred charge and recognized through the consolidated statement of operations when the asset is sold to a third party or otherwise recovered through amortization of the asset's remaining economic life.

Business combinations. Acquired businesses are accounted for using the acquisition method of accounting, which requires that assets acquired and liabilities assumed be recorded at fair value, with limited exceptions. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. Transaction costs are expensed as incurred. The operating results of the acquired business are reflected in our consolidated financial statements after the date of acquisition. Acquired in-process research and development (“IPR&D”) is recognized at fair value and initially characterized as an indefinite-lived intangible asset, irrespective of whether the acquired IPR&D has an alternative future use. When the related research and development is completed, the asset will be assigned a useful life and amortized. Acquired intellectual property rights are recognized at fair value and amortized over the estimated useful life.

The fair value of an IPR&D intangible asset acquired in the Acquisition was determined using an income approach. The assumptions used to estimate the cash flows of the IPR&D (which relates to the potential approval of ICLUSIG as a second line treatment) included a probability of technical success (“PTS”) of 25%, discount rate of 16%, estimated gross margins of 98%, income tax rates ranging from 7.8% in periods in which we have established tax holidays to 13.8% thereafter, and operating expenses consisting of direct costs based on the anticipated level of revenues as well as probability weighted milestone payments estimated for 2020 related to the clinical results and potential approval of ICLUSIG in second line.

The fair value of licensed intellectual property rights acquired in the Acquisition was determined using an income approach. The assumptions used to estimate the cash flows of the licensed intellectual property from the Acquisition included a discount rate of 15%, estimated gross margins of 98%, income tax rates ranging from 7.8% in periods in which we have established tax holidays to 13.8% thereafter, and operating expenses consisting of direct costs based on the anticipated level of revenues as well as the \$7.0 million of research and development cost sharing payments we have agreed to fund in 2016 and 2017.

Indefinite-lived intangible assets, including IPR&D, are tested for impairment annually or more frequently if events or changes in circumstances between annual tests indicate that the asset may be impaired. Impairment losses on indefinite-lived intangible assets are recognized based solely on a comparison of the fair value of the asset to its carrying value.

Long-lived assets, including licensed intellectual property rights, with finite lives are tested for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If indicators of impairment are present, the asset is tested for recoverability by comparing the carrying value of the asset to the related estimated undiscounted future cash flows expected to be derived from the asset. If the expected cash flows are less than the carrying value of the asset, then the asset is considered to be impaired and its carrying value is written down to fair value, based on the related estimated discounted future cash flows.

Goodwill is calculated as the difference between the acquisition date fair value of the consideration transferred and the values assigned to the assets acquired and liabilities assumed. Goodwill is not amortized but is tested for impairment at least annually at the reporting unit level. A reporting unit is the same as, or one level below, an operating segment. Our operations are currently comprised of a single, entity wide reporting unit.

Acquisition-related contingent consideration. Acquisition-related contingent consideration, which consists of our future royalty and certain potential milestone obligations to ARIAD, is recorded on the acquisition date at the estimated fair value of the obligation, in accordance with the acquisition method of accounting. The fair value measurement is based on significant inputs that are unobservable in the market and thus represents a Level 3 measurement.

The preliminary fair value of contingent consideration was determined using an income approach based on estimated ICLUSIG revenues in our licensed territory for both the approved third line treatment, as well as the second line treatment which is currently under development and is therefore contingent on future clinical results and European Medicines Agency approval. The PTS of the second line indication was estimated at 25% based on the early stage of development and competitive market landscape, and the estimated future cash flows for the second line indication were probability weighted accordingly. The total projected cash flows of the third line and second line indications were estimated over 18 years, and discounted to present value using a discount rate of 10%. In addition, based on the believed limited effectiveness of ICLUSIG beyond the existing oncology indications, the fact that no development is currently

ongoing for any new oncology or any non-oncology indications, and the lack of intention by us and ARIAD to develop ICLUSIG in additional oncology or non-oncology indications, the fair value of any cash flows for any new oncology or non-oncology was determined to be nil.

The fair value of the acquisition-related contingent consideration is remeasured each reporting period, with changes in fair value recorded in the consolidated statements of operations. Changes in the fair value of the acquisition-related contingent consideration can result from changes to one or multiple inputs including projected revenues, discount rates and the PTS of the second line indication for ICLUSIG. These inputs are analyzed on a quarterly basis as changes to the inputs could have a material impact on the amount of acquisition-related contingent consideration recorded during the reporting period.

Results of Operations

Years Ended December 31, 2016 and 2015

We recorded net income for the year ended December 31, 2016 of \$104.2 million and net income for the year ended December 31, 2015 of \$6.5 million. On a per share basis, basic net income was \$0.55 and diluted net income was \$0.54 for the year ended December 31, 2016. On a per share basis, basic net income was \$0.04 and diluted net income was \$0.03 for the year ended December 31, 2015.

Revenues

	For the Year Ended, December 31,	
	2016	2015
	(in millions)	
JAKAFI revenues, net	\$ 852.8	\$ 601.0
ICLUSIG revenues, net	29.6	—
Total product revenues, net	\$ 882.4	\$ 601.0
Product royalty revenues	110.7	74.8
Contract revenues	112.5	77.9
Other revenues	0.1	0.1
Total revenues	\$ 1,105.7	\$ 753.8

Our product revenues, net for the years ended December 31, 2016 and 2015, were \$882.4 million and \$601.0 million, respectively. The increase in JAKAFI product revenues was comprised of a volume increase of \$195.5 million and a price increase of \$56.3 million. ICLUSIG product revenues commenced in June 2016 following the Acquisition. Product revenues are recorded net of estimated product returns, pricing discounts including rebates offered pursuant to mandatory federal and state government programs and chargebacks, prompt pay discounts and distribution fees and co-pay assistance. Our revenue recognition policies require estimates of the aforementioned sales allowances each period.

The following table provides a summary of activity with respect to our sales allowances and accruals for the year ended December 31, 2016:

Year Ended December 31, 2016	Discounts and Distribution Fees	Government Rebates and Chargebacks	Co-Pay Assistance and Other Discounts	Product Returns	Total
Balance at January 1, 2016	\$ 3,069	\$ 10,766	\$ 247	\$ 1,815	\$ 15,897
ARIAD balances acquired on June 1, 2016	32	4,683	—	65	4,780
Allowances for current period sales	24,059	89,324	2,865	1,612	117,860
Allowances for prior period sales	199	387	(5)	(1,815)	(1,234)
Credits/payments for current period sales	(22,663)	(73,425)	(2,779)	(32)	(98,899)
Credits/payments for prior period sales	(1,878)	(9,323)	(129)	(434)	(11,764)
Balance at December 31, 2016	\$ 2,818	\$ 22,412	\$ 199	\$ 1,211	\$ 26,640

Government rebates and chargebacks are the most significant component of our sales allowances. Increases in certain government reimbursement rates are limited to a measure of inflation, and when the price of a drug increases faster than this measure of inflation it will result in a penalty adjustment factor that causes a larger sales allowance to those government related entities. We expect government rebates and chargebacks as a percentage of our gross product sales will continue to increase in connection with any future JAKAFI price increases greater than the rate of inflation, and any such increase in these government rebates and chargebacks will have a negative impact on our reported product revenues, net. We adjust our estimates for government rebates and chargebacks based on new information regarding actual rebates as it becomes available. Claims by third-party payors for rebates and chargebacks are frequently submitted after the period in which the related sales occurred, which may result in adjustments to prior period accrual balances in the period in which the new information becomes available. We also adjust our allowance for product returns based on new information regarding actual returns as it becomes available.

We expect our sales allowances to fluctuate from quarter to quarter as a result of the Medicare Part D Coverage Gap, the volume of purchases eligible for government mandated discounts and rebates as well as changes in discount percentages which are impacted by potential future price increases, rate of inflation, and other factors.

Product royalty revenues on commercial sales of JAKAFI by Novartis are based on net sales of licensed products in licensed territories as provided by Novartis. Our net product royalty revenues for the years ended December 31, 2016 and 2015, were \$110.7 million and \$74.8 million, respectively.

Our contract revenues were \$112.5 million and \$77.9 million for the years ended December 31, 2016 and 2015, respectively. For the years ended December 31, 2016 and 2015, contract revenues were derived from the straight line recognition of revenue associated with the Lilly upfront fees over the estimated performance period as well as milestone payments from Lilly and Novartis earned during the periods. The upfront fees related to the Lilly agreement consisted of a \$90.0 million upfront payment received in 2010. The increase in contract revenues from 2015 to 2016 primarily relates to the recognition of \$65.0 million in milestone payments from Novartis in 2015 compared to the recognition of \$45.0 million in milestone payments from Novartis and \$55.0 million in milestone payments from Lilly in 2016.

Cost of Product Revenues

	For the Year Ended, December 31,	
	2016	2015
	(in millions)	
Product costs	\$ 8.8	\$ 2.6
Royalty expense	36.8	24.4
Amortization of definite-lived intangible assets	12.6	—
Total cost of product revenues	\$ 58.2	\$ 27.0

We began capitalizing inventory in mid-November 2011 once the FDA approved JAKAFI as the related costs were expected to be recoverable through the commercialization of the product. Costs incurred prior to FDA approval of \$9.6 million were recorded as research and development expenses in our statements of operations prior to commercialization of JAKAFI. At December 31, 2016, inventory with \$0.8 million of product costs incurred prior to FDA approval had not yet been sold. We expect to sell the pre-commercialization inventory over the next 3 to 6 months. As a result, cost of product revenues for the next 3 to 6 months will reflect a lower average per unit cost of materials. The acquired ICLUSIG inventories were recorded at fair value less costs to sell in connection with the Acquisition, and will result in a higher cost of ICLUSIG product revenues over the period in which this inventory is sold, which is expected to be over a one year period from the acquisition date. In addition, cost of product revenues includes low single digit royalties to Novartis on all sales of JAKAFI in the United States. Subsequent to the acquisition on June 1, 2016 of ARIAD's European operations, cost of product revenues also includes the amortization of our licensed intellectual property for ICLUSIG using the straight-line method over the estimated useful life of 12.5 years.

Cost of product revenues was \$58.2 million and \$27.0 million for the years ended December 31, 2016 and 2015, respectively. Cost of product revenues increased from 2015 to 2016 due primarily to an increase of \$12.4 million in royalties to Novartis on all JAKAFI sales in the United States and amortization of \$12.6 million of our licensed intellectual property acquired on June 1, 2016.

Operating Expenses

Research and development expenses

	For the Years Ended, December 31,	
	2016	2015
	(in millions)	
Salary and benefits related	\$ 138.1	\$ 109.2
Stock compensation	59.6	39.9
Clinical research and outside services	328.0	287.0
Occupancy and all other costs	56.2	43.4
Total research and development expenses	\$ 581.9	\$ 479.5

We currently account for research and development costs by natural expense line and not costs by project. Salary and benefits related expense increased from 2015 to 2016 due primarily to increased development headcount to sustain our development pipeline. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation.

The increase in clinical research and outside services expense from 2015 to 2016 was primarily the result of increased development costs to advance our clinical pipeline and the \$35.0 million payment to acquire the rights from Lilly to develop ruxolitinib for the treatment of patients with graft-versus-host-disease, as well as an additional \$27.3 million of research and development costs incurred under the Agenus and Hengrui arrangements through December 31, 2016. Research and development expenses for the years ended December 31, 2016 and 2015 were net of \$13.4 million and \$6.8 million, respectively, of costs reimbursed by our collaborative partners. Research and development expenses may fluctuate from period to period depending upon the stage of certain projects and the level of pre-clinical and clinical trial related activities. Many factors can affect the cost and timing of our clinical trials, including requests by regulatory agencies for more information, inconclusive results requiring additional clinical trials, slow patient enrollment, adverse side effects among patients, insufficient supplies for our clinical trials and real or perceived lack of effectiveness or safety of our investigational drugs in our clinical trials. In addition, the development of all of our products will be subject to extensive governmental regulation. These factors make it difficult for us to predict the timing and costs of the further development and approval of our products.

In July 2010, we elected to co-develop baricitinib with Lilly in rheumatoid arthritis and we are responsible for funding 30% of the associated future global development costs for this indication from the initiation of the Phase IIb trial

through regulatory approval. Research and development expenses recorded under the Lilly agreement representing 30% of the global development costs for baricitinib for the treatment of rheumatoid arthritis were \$27.3 million and \$36.0 million for the years ended December 31, 2016 and 2015, respectively. We have retained certain mechanisms to give us cost protection as baricitinib advances in clinical development. We can defer our portion of co-development study costs by indication if they exceed a predetermined level. This deferment would be credited against future milestones or royalties and we would still be eligible for the full incremental royalties related to the co-development option. In addition, even if we have started co-development funding for any indication, we can at any time opt out, which will stop future co-development cost sharing. If we elect to do this we would still be eligible for our base royalties plus an incremental pro-rated royalty commensurate with our contribution to the total co-development cost for those indications for which we contributed funding.

Selling, general and administrative expenses

	For the Years Ended, December 31,	
	2016	2015
	(in millions)	
Salary and benefits related	\$ 80.8	\$ 60.1
Stock compensation	36.6	29.9
Other contract services and outside costs	185.9	106.6
Total selling, general and administrative expenses	<u>\$ 303.3</u>	<u>\$ 196.6</u>

Salary and benefits related expense increased from 2015 to 2016 due to increased headcount. This increased headcount was due primarily to the ongoing commercialization efforts related to JAKAFI for intermediate or high-risk myelofibrosis and uncontrolled polycythemia vera, as well as increased headcount related to the Acquisition on June 1, 2016. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation. The increase in other contract services and outside costs was primarily the result of marketing activities for JAKAFI for intermediate or high-risk myelofibrosis and uncontrolled polycythemia vera in addition to an increase in donations to independent non-profit patient assistance organizations in the United States. Selling, general and administrative expenses for the year ended December 31, 2016 includes expenses related to the Acquisition on June 1, 2016.

Change in fair value of acquisition-related contingent consideration

Acquisition-related contingent consideration, which consists of our future royalty and certain potential milestone obligations to ARIAD, was recorded on the acquisition date, June 1, 2016, at the estimated fair value of the obligation, in accordance with the acquisition method of accounting. The fair value of the acquisition-related contingent consideration was remeasured as of December 31, 2016, resulting in a change in fair value of \$17.4 million which is recorded in change in fair value of acquisition-related contingent consideration on the consolidated statements of operations. The change in fair value of the contingent consideration as of December 31, 2016 is primarily due to the time value of money as there were no other significant changes in the key assumptions used in the fair value calculation at the date of acquisition, including the discount rate utilized and the estimated future projections of ICLUSIG revenues.

Other income (expense)

Interest and other income, net. Interest and other income, net, for the years ended December 31, 2016 and 2015 was \$4.4 million and \$7.1 million, respectively.

Interest expense. Interest expense for the years ended December 31, 2016 and 2015, was \$38.7 million and \$45.6 million, respectively. Included in interest expense for the year ended December 31, 2016 was \$31.6 million of non-cash charges to amortize the discounts on the 2018 Notes and the 2020 Notes. Included in interest expense for the year ended December 31, 2015 was \$33.8 million of non-cash charges to amortize the discounts on our 4.75% convertible senior notes due 2015 (the 2015 Notes), the 2018 Notes and the 2020 Notes.

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Unrealized loss on long term investment. The unrealized loss on our long term investment in Agenus for the years ended December 31, 2016 and 2015, was \$3.3 million and \$4.6 million, respectively. The unrealized loss on long term investment is based on the change in fair value of Agenus' common stock during the period.

Provision for income taxes. The provision for income taxes for the years ended December 31, 2016 and 2015, was \$3.2 million and \$1.0 million, respectively. The increase in provision for income taxes primarily relates to an increase in state taxes due to higher income in 2016 sourced to certain states and foreign tax expense on acquired ARIAD operations.

Years Ended December 31, 2015 and 2014

We recorded net income for the year ended December 31, 2015 of \$6.5 million and net loss for the year ended December, 31 2014 of \$48.5 million. On a per share basis, basic net income was \$0.04 and diluted net income was \$0.03 for the year ended December 31, 2015 and basic and diluted net loss was \$0.29 for the year ended 2014.

Revenues

	For the Year Ended, December 31,	
	2015	2014
	(in millions)	
JAKAFI revenues, net	\$ 601.0	\$ 357.6
Product royalty revenues	74.8	49.0
Contract revenues	77.9	104.8
Other revenues	0.1	0.1
Total revenues	\$ 753.8	\$ 511.5

Our product revenues, net from JAKAFI for the years ended December 31, 2015 and 2014, were \$601.0 million and \$357.6 million, respectively. This increase was comprised of a volume increase of \$187.5 million and a price increase of \$55.9 million.

The following table provides a summary of activity with respect to our sales allowances and accruals for the year ended December 31, 2015:

Year Ended December 31, 2015	Discounts and Distribution Fees	Government Rebates and Chargebacks	Co-Pay		Total
			Assistance and Other Discounts	Product Returns	
Balance at January 1, 2015	\$ 2,057	\$ 7,906	\$ 119	\$ 399	\$ 10,481
Allowances for current period sales	17,817	48,570	1,767	1,874	70,028
Allowances for prior period sales	(215)	(1,979)	—	—	(2,194)
Credits/payments for current period sales	(14,852)	(37,804)	(1,578)	(386)	(54,620)
Credits/payments for prior period sales	(1,738)	(5,927)	(61)	(72)	(7,798)
Balance at December 31, 2015	<u>\$ 3,069</u>	<u>\$ 10,766</u>	<u>\$ 247</u>	<u>\$ 1,815</u>	<u>\$ 15,897</u>

Government rebates and chargebacks are the most significant component of our sales allowances. Increases in certain government reimbursement rates are limited to a measure of inflation, and when the price of a drug increases faster than this measure of inflation it will result in a penalty adjustment factor that causes a larger sales allowance to those government related entities.

Product royalty revenues on commercial sales of JAKAVI by Novartis are based on net sales of licensed products in licensed territories as provided by Novartis. Our net product royalty revenues for the years ended December 31, 2015 and 2014, were \$74.8 million and \$49.0 million, respectively.

Our contract revenues were \$77.9 million and \$104.8 million for the years ended December 31, 2015 and 2014, respectively. For the years ended December 31, 2015 and 2014, contract revenues were derived from the straight line recognition of revenue associated with the Lilly upfront fees over the estimated performance period as well as milestone

payments earned during the periods. The upfront fees related to the Lilly agreement consisted of a \$90.0 million upfront payment received in 2010. The decrease in contract revenues from 2014 to 2015 primarily relates to the recognition of \$92.0 million in milestone payments from Novartis in 2014 compared to the recognition of \$65.0 million in milestone payments from Novartis in 2015.

Cost of Product Revenues

We began capitalizing inventory in mid-November 2011 once the FDA approved JAKAFI as the related costs were expected to be recoverable through the commercialization of the product. Costs incurred prior to FDA approval of \$9.6 million were recorded as research and development expenses in our statements of operations prior to commercialization of JAKAFI. At December 31, 2015, inventory with \$1.5 million of product costs incurred prior to FDA approval had not yet been sold. Commencing in October 2014, we became obligated to pay tiered, low-single digit royalties to Novartis on all sales of JAKAFI in the United States, which is included in cost of product revenues.

Cost of product revenues was \$27.0 million and \$3.0 million for the years ended December 31, 2015 and 2014, respectively. Cost of product revenues increased from 2014 to 2015 due to an increase of \$22.2 million for our obligation that commenced in October 2014 to pay royalties to Novartis on all JAKAFI sales in the United States and an increase of \$1.8 million related to manufacturing costs for JAKAFI sales.

Operating Expenses

Research and development expenses

	For the Years Ended, December 31,	
	2015	2014
	(in millions)	
Salary and benefits related	\$ 109.2	\$ 92.5
Stock compensation	39.9	33.9
Clinical research and outside services	287.0	186.1
Occupancy and all other costs	43.4	35.0
Total research and development expenses	<u>\$ 479.5</u>	<u>\$ 347.5</u>

Salary and benefits related expense increased from 2014 to 2015 due primarily to increased development headcount to sustain our development pipeline. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation. The increase in clinical research and outside services expense from 2014 to 2015 was primarily the result of increased development costs to advance our clinical pipeline, the \$25.0 million upfront payment to Hengrui pursuant to our global license and collaboration agreement, and the \$20.2 million charge related to the upfront payment made to Agenus pursuant to our license, development and commercialization agreement, as well as an additional \$14.9 million of research and development costs incurred under these arrangements through December 31, 2015.

Research and development expenses recorded under the Lilly agreement representing 30% of the global development costs for baricitinib for the treatment of rheumatoid arthritis were \$36.0 million and \$49.3 million for the years ended December 31, 2015 and 2014, respectively.

Selling, general and administrative expenses

	For the Years Ended, December 31,	
	2015	2014
	(in millions)	
Salary and benefits related	\$ 60.1	\$ 52.7
Stock compensation	29.9	28.3
Other contract services and outside costs	106.6	84.8
Total selling, general and administrative expenses	<u>\$ 196.6</u>	<u>\$ 165.8</u>

Salary and benefits related expense increased from 2014 to 2015 due to increased headcount. This increased headcount was due primarily to the ongoing commercialization efforts related to JAKAFI for intermediate or high-risk myelofibrosis and preparation for the commercial launch of JAKAFI for uncontrolled polycythemia vera that occurred in December 2014. Stock compensation expense may fluctuate from period to period based on the number of awards granted, stock price volatility and expected award lives, as well as expected award forfeiture rates which are used to value equity-based compensation. The increase in other contract services and outside costs was primarily the result of marketing activities for JAKAFI for intermediate or high-risk myelofibrosis and uncontrolled polycythemia vera.

Other income (expense)

Interest and other income, net. Interest and other income, net, for the years ended December 31, 2015 and 2014 was \$7.1 million and \$3.4 million, respectively.

Interest expense. Interest expense for the years ended December 31, 2015 and 2014, was \$45.6 million and \$46.8 million, respectively. Included in interest expense for the years ended December 31, 2015 and 2014, were \$33.8 million and \$35.7 million, respectively, of non-cash charges to amortize the discounts on the 2015 Notes, the 2018 Notes and the 2020 Notes.

Debt exchange expense on senior note conversions. Debt exchange expense on senior note conversions for the year ended December 31, 2014 was \$0.3 million and was related to the exchange of \$4.9 million in aggregate principal amount of the 2015 Notes for the underlying shares of common stock and cash.

Liquidity and Capital Resources

	2016	2015	2014
	(in millions)		
December 31:			
Cash, cash equivalents, and marketable securities	\$ 808.5	\$ 707.8	\$ 600.3
Working capital	\$ 720.7	\$ 674.4	\$ 458.5
Year ended December 31:			
Cash provided by (used in):			
Operating activities	\$ 304.8	\$ 86.5	\$ 26.3
Investing activities	\$ (232.5)	\$ (105.0)	\$ (138.4)
Financing activities	\$ 58.6	\$ 87.6	\$ 93.1
Capital expenditures (included in investing activities above)	\$ (120.3)	\$ (26.0)	\$ (27.9)

Sources and Uses of Cash.

We had net losses from inception in 1991 through 1996 and in 1999 through December 31, 2014. Because of those losses, we had an accumulated deficit of \$1.7 billion as of December 31, 2016. We have funded our research and development operations through sales of equity securities, the issuance of convertible notes, cash received from customers, and collaborative arrangements. At December 31, 2016, we had available cash, cash equivalents and marketable securities of \$808.5 million. Our cash and marketable securities balances are held in a variety of interest-bearing instruments,

including money market accounts, corporate debt securities and U.S. government securities. Available cash is invested in accordance with our investment policy's primary objectives of liquidity, safety of principal and diversity of investments.

Cash provided by operating activities. The \$218.3 million increase in cash provided by operating activities from 2015 to 2016 was due primarily to net income in 2016 which was driven in part by the recognition of milestones from Novartis of \$45.0 million and Eli Lilly of \$55.0 million, increased non-cash depreciation and amortization and changes in working capital. The \$60.2 million increase in cash provided by operating activities from 2014 to 2015 was due primarily to net income and changes in working capital.

Cash used in investing activities. Our investing activities, other than purchases, sales and maturities of marketable securities, have consisted predominantly of capital expenditures, cash used to acquire the ARIAD business and sales and purchases of long-term investments. During 2016, net cash used in investing activities was \$232.5 million, which represents purchases of marketable securities of \$57.4 million, capital expenditures of \$120.3 million, and acquisition of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. for net cash of \$142.9 million, offset in part by the sale and maturity of marketable securities of \$88.0 million. During 2015, net cash used in investing activities was \$105.0 million, which represents purchases of marketable securities of \$108.2 million, capital expenditures of \$26.0 million, and our long term investment in Agenus of \$39.8 million offset in part by the sale and maturity of marketable securities of \$69.0 million. During 2014, net cash used in investing activities was \$138.4 million, which represents purchases of marketable securities of \$134.1 million and capital expenditures of \$27.9 million offset in part by sale and maturities of marketable securities of \$23.5 million. In the future, net cash used by investing activities may fluctuate significantly from period to period due to the timing of strategic equity investments, acquisitions, capital expenditures and maturities/sales and purchases of marketable securities.

Cash provided by financing activities. During 2016, net cash provided by financing activities was \$58.6 million, consisting primarily of proceeds from issuance of common stock under our stock plans and employee stock purchase plan. During 2015, net cash provided by financing activities was \$87.6 million, consisting primarily of proceeds from issuance of common stock under our stock plans and employee stock purchase plan. During 2014, net cash provided by financing activities was \$93.1 million, consisting primarily of proceeds from issuance of common stock under our stock plans and employee stock purchase plan.

The following summarizes our significant contractual obligations as of December 31, 2016 and the effect those obligations are expected to have on our liquidity and cash flow in future periods (in millions):

	Total	Less Than 1 Year	Years 2 - 3	Years 4 - 5	Over 5 Years
Contractual Obligations:					
Principal on convertible senior debt	\$ 749.8	\$ —	\$ 375.0	\$ 374.8	\$ —
Interest on convertible senior debt	21.0	6.1	10.6	4.3	—
Non-cancelable lease obligations	19.9	8.4	8.0	1.6	1.9
Total contractual obligations	\$ 790.7	\$ 14.5	\$ 393.6	\$ 380.7	\$ 1.9

We have entered into and may in the future seek to license additional rights relating to technologies or drug development candidates in connection with our drug discovery and development programs. Under these licenses, we may be required to pay up-front fees, milestone payments, and royalties on sales of future products, which are not reflected in the table above.

In September 2016, we entered into two agreements to purchase land and two buildings in Wilmington, Delaware for approximately \$7.9 million. Pursuant to the terms of the agreements, we have up to a 120-day due diligence period to review specified documents and perform building inspections prior to closing. The closing date is to be no later than 30 days after the due diligence period.

We believe that our cash, cash equivalents and marketable securities will be adequate to satisfy our capital needs for at least the next twelve months. Our cash requirements depend on numerous factors, including our expenditures in connection with our drug discovery and development programs and commercialization operations; expenditures in connection with litigation or other legal proceedings; competing technological and market developments; the cost of filing,

prosecuting, defending and enforcing patent claims and other intellectual property rights; costs for future facility requirements; our receipt of any milestone or other payments under any collaborative agreements we may enter into, including the agreements with Novartis and Lilly; expenditures in connection with potential exchanges of our outstanding convertible senior notes; and expenditures in connection with strategic relationships and license agreements, including our agreements with Agenus, ARIAD, Calithera, Hengrui and Merus, strategic equity investments or potential acquisitions. Changes in our research and development or commercialization plans or other changes affecting our operating expenses may result in changes in the timing and amount of expenditures of our capital resources.

Off Balance Sheet Arrangements

We have no off-balance sheet arrangements other than those that are discussed above.

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

Our investments in marketable securities, which are composed of corporate debt securities and U.S. government securities, are subject to default, changes in credit rating and changes in market value. These investments are also subject to interest rate risk and will decrease in value if market rate interest rates increase. As of December 31, 2016, marketable securities were \$156.2 million. Due to the nature of these investments, if market interest rates were to increase immediately and uniformly by 10% from levels as of December 31, 2016, the decline in fair value would not be material.

Item 8. Financial Statements and Supplementary Data

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders of Incyte Corporation

We have audited the accompanying consolidated balance sheets of Incyte Corporation as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these 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 financial statements referred to above present fairly, in all material respects, the consolidated financial position of Incyte Corporation, at December 31, 2016 and 2015, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2016, in conformity with U.S. generally accepted accounting principles.

As discussed in Note 1 to the consolidated financial statements, Incyte Corporation changed its method of accounting for share-based payments to employees as a result of the adoption of the amendments to the FASB Accounting Standards Codification resulting from Accounting Standards Update No. 2016-09, "Improvements to Employee Share-Based Payment Accounting," effective January 1, 2016.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), Incyte Corporation's internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) and our report dated February 14, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
February 14, 2017

INCYTE CORPORATION
CONSOLIDATED BALANCE SHEETS
(in thousands, except number of shares and par value)

	December 31,	
	2016	2015
ASSETS		
Current assets:		
Cash and cash equivalents	\$ 652,343	\$ 521,439
Marketable securities—available-for-sale	156,203	186,344
Restricted cash and investments	16	516
Accounts receivable	148,758	114,450
Inventory	4,106	1,783
Prepaid expenses and other current assets	32,752	17,843
Total current assets	994,178	842,375
Restricted cash and investments	886	13,977
Long term investment	31,987	35,248
Inventory	15,193	17,555
Property and equipment, net	167,679	86,006
Other intangible assets, net	258,437	—
In-process research and development	12,000	—
Goodwill	155,593	—
Other assets, net	2,644	12,279
Total assets	\$ 1,638,597	\$ 1,007,440
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	\$ 75,599	\$ 30,085
Accrued compensation	50,904	38,117
Interest payable	762	762
Accrued and other current liabilities	126,697	86,531
Deferred revenue—collaborative agreements	—	12,512
Acquisition-related contingent consideration	19,539	—
Total current liabilities	273,501	168,007
Convertible senior notes	651,481	619,893
Acquisition-related contingent consideration	281,461	—
Other liabilities	12,687	48,385
Total liabilities	1,219,130	836,285
Stockholders' equity:		
Preferred stock, \$0.001 par value; 5,000,000 shares authorized; none issued or outstanding as of December 31, 2016 and December 31, 2015	—	—
Common stock, \$0.001 par value; 400,000,000 shares authorized; 188,848,752 and 186,650,249 shares issued and outstanding as of December 31, 2016 and December 31, 2015, respectively	189	187
Additional paid-in capital	2,096,929	1,950,764
Accumulated other comprehensive loss	(2,886)	(809)
Accumulated deficit	(1,674,765)	(1,778,987)
Total stockholders' equity	419,467	171,155
Total liabilities and stockholders' equity	\$ 1,638,597	\$ 1,007,440

See accompanying notes.

INCYTE CORPORATION
CONSOLIDATED STATEMENTS OF OPERATIONS
(in thousands, except per share amounts)

	Year Ended December 31,		
	2016	2015	2014
Revenues:			
Product revenues, net	\$ 882,404	\$ 601,015	\$ 357,562
Product royalty revenues	110,711	74,821	48,966
Contract revenues	112,512	77,857	104,857
Other revenues	92	58	110
Total revenues	1,105,719	753,751	511,495
Costs and expenses:			
Cost of product revenues (including definite-lived intangible amortization)	58,187	26,972	3,004
Research and development	581,861	479,514	347,523
Selling, general and administrative	303,251	196,614	165,772
Change in fair value of acquisition-related contingent consideration	17,422	—	—
Total costs and expenses	960,721	703,100	516,299
Income (loss) from operations	144,998	50,651	(4,804)
Interest and other income, net	4,412	7,089	3,350
Interest expense	(38,745)	(45,603)	(46,828)
Unrealized loss on long term investment	(3,261)	(4,581)	—
Debt exchange expense on senior note conversions	—	—	(265)
Income (loss) before provision for income taxes	107,404	7,556	(48,547)
Provision (benefit) for income taxes	3,182	1,025	(66)
Net income (loss)	\$ 104,222	\$ 6,531	\$ (48,481)
Net income (loss) per share:			
Basic	0.55	0.04	(0.29)
Diluted	0.54	0.03	(0.29)
Shares used in computing net income (loss) per share:			
Basic	187,873	179,601	167,947
Diluted	194,125	187,302	167,947

See accompanying notes.

INCYTE CORPORATION
CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)
(in thousands)

	<u>Year Ended December 31,</u>		
	<u>2016</u>	<u>2015</u>	<u>2014</u>
Net income (loss)	\$ 104,222	\$ 6,531	\$ (48,481)
Other comprehensive income:			
Foreign currency translation	(9)	—	(6)
Unrealized gain (loss) on restricted investments and marketable securities, net of tax	504	(794)	(172)
Reclassification adjustment for realized (gain) loss on marketable securities	178	(1,830)	—
Defined benefit pension obligation, net of tax	<u>(2,750)</u>	<u>—</u>	<u>—</u>
Other comprehensive income loss	<u>(2,077)</u>	<u>(2,624)</u>	<u>(178)</u>
Comprehensive income (loss)	<u>\$ 102,145</u>	<u>\$ 3,907</u>	<u>\$ (48,659)</u>

See accompanying notes.

INCYTE CORPORATION
CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY (DEFICIT)
(in thousands, except number of shares)

	Common Stock	Additional Paid-in Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total Stockholders' Equity (Deficit)
Balances at December 31, 2013	\$ 163	\$ 1,541,773	\$ 1,993	\$ (1,737,037)	\$ (193,108)
Issuance of 7,044,844 shares of Common Stock upon exercise of stock options and 193,657 shares of Common Stock under the ESPP	7	92,837	—	—	92,844
Issuance of 653,438 shares of Common Stock upon conversion of Convertibles Senior Notes due 2015	1	5,160	—	—	5,161
Excess tax benefit from stock based compensation	—	(22)	—	—	(22)
Stock compensation expense	—	62,156	—	—	62,156
Other comprehensive loss	—	—	(178)	—	(178)
Net loss	—	—	—	(48,481)	(48,481)
Balances at December 31, 2014	\$ 171	\$ 1,701,904	\$ 1,815	\$ (1,785,518)	\$ (81,628)
Issuance of 5,220,474 shares of Common Stock upon exercise of stock options and restricted stock units and 194,453 shares of Common Stock under the ESPP	5	86,755	—	—	86,760
Issuance of 10,352,784 shares of Common Stock upon conversion of Convertibles Senior Notes due 2015	11	88,963	—	—	88,974
Issuance of 3,902 shares of Common Stock upon conversion of Convertible Senior Notes due 2020	—	180	—	—	180
Issuance of 2,017 shares of Common Stock for services rendered	—	218	—	—	218
Excess tax provision from stock based compensation	—	2,872	—	—	2,872
Stock compensation expense	—	69,872	—	—	69,872
Other comprehensive loss	—	—	(2,624)	—	(2,624)
Net income	—	—	—	6,531	6,531
Balances at December 31, 2015	\$ 187	\$ 1,950,764	\$ (809)	\$ (1,778,987)	\$ 171,155
Issuance of 2,068,226 shares of Common Stock upon exercise of stock options and restricted stock units and 126,648 shares of Common Stock under the ESPP	2	49,661	—	—	49,663
Issuance of 77 shares of Common Stock upon conversion of Convertible Senior Notes due 2020	—	4	—	—	4
Issuance of 114 shares of Common Stock upon conversion of Convertible Senior Notes due 2018	—	5	—	—	5
Issuance of 3,438 shares of Common Stock for services rendered	—	294	—	—	294
Stock compensation expense	—	96,201	—	—	96,201
Other comprehensive loss	—	—	(2,077)	—	(2,077)
Net income	—	—	—	104,222	104,222
Balances at December 31, 2016	\$ 189	\$ 2,096,929	\$ (2,886)	\$ (1,674,765)	\$ 419,467

See accompanying notes.

INCYTE CORPORATION
CONSOLIDATED STATEMENTS OF CASH FLOWS
(in thousands)

	Year Ended December 31,		
	2016	2015	2014
Cash flows from operating activities :			
Net income (loss)	\$ 104,222	\$ 6,531	\$ (48,481)
Adjustments to reconcile net income (loss) to net cash used in operating activities:			
Depreciation and amortization	58,425	44,883	41,413
Stock-based compensation	96,201	69,872	62,156
Debt exchange expense on senior note conversions	—	—	265
Other, net	472	(1,612)	—
Unrealized (gain) loss on long term investment	3,261	4,581	—
Excess tax provision from stock-based compensation	—	(2,872)	22
Change in fair value of acquisition-related contingent consideration	17,422	—	—
Changes in operating assets and liabilities:			
Accounts receivable	(23,947)	(56,517)	(22,559)
Prepaid expenses and other assets	(13,069)	3,583	(30,489)
Inventory	4,047	98	(4,093)
Accounts payable	43,758	5,623	5,360
Accrued and other liabilities	26,476	25,245	35,530
Deferred revenue—collaborative agreements	(12,512)	(12,879)	(12,868)
Net cash provided by operating activities	<u>304,756</u>	<u>86,536</u>	<u>26,256</u>
Cash flows from investing activities :			
Acquisition of business, net of cash acquired	(142,856)	—	—
Long term investment	—	(39,829)	—
Capital expenditures	(120,277)	(26,003)	(27,876)
Purchases of marketable securities	(57,372)	(108,152)	(134,091)
Sale and maturities of marketable securities	88,017	68,974	23,528
Net cash used in investing activities	<u>(232,488)</u>	<u>(105,010)</u>	<u>(138,439)</u>
Cash flows from financing activities :			
Restricted investments, net	14,023	7	500
Proceeds from issuance of common stock under stock plans	49,973	86,436	92,844
Direct financing arrangements repayments	(445)	(1,699)	—
Excess tax provision from stock-based compensation	—	2,872	(22)
Cash paid in connection with exchange of 4.75% convertible senior notes due 2015	—	—	(265)
Payment of contingent consideration	(4,906)	—	—
Net cash provided by financing activities	<u>58,645</u>	<u>87,616</u>	<u>93,057</u>
Effect of exchange rates on cash and cash equivalents	(9)	—	(6)
Net increase (decrease) in cash and cash equivalents	130,904	69,142	(19,132)
Cash and cash equivalents at beginning of period	521,439	452,297	471,429
Cash and cash equivalents at end of period	<u>\$ 652,343</u>	<u>\$ 521,439</u>	<u>\$ 452,297</u>
Supplemental Schedule of Cash Flow Information			
Interest paid	\$ 7,218	\$ 12,746	\$ 11,290
Income taxes paid	\$ 927	\$ 62	\$ 37
Reclassification to additional paid in capital in connection with conversions or exchanges of 4.75% convertible senior notes due 2015	\$ —	\$ 88,974	\$ 5,161
Reclassification to common stock and additional paid in capital in connection with conversions of 0.375% convertible senior notes due 2018	\$ 5	\$ —	\$ —
Reclassification to common stock and additional paid in capital in connection with conversions of 1.25% convertible senior notes due 2020	\$ 4	\$ 180	\$ —
Purchase of property and equipment financed by direct financing lease	\$ —	\$ —	\$ 31,495

See accompanying notes.

Note 1. Organization and Summary of Significant Accounting Policies

Organization and Business. Incyte Corporation (including its subsidiaries, “Incyte,” “we,” “us,” or “our”) is a biopharmaceutical company focused on developing and commercializing proprietary therapeutics. Our portfolio includes compounds in various stages, ranging from preclinical to late stage development, and a commercialized products JAKAFI® (ruxolitinib) and ICLUSIG® (ponatinib). Our operations are treated as one operating segment.

On June 1, 2016, we acquired (the “Acquisition”), pursuant to a Share Purchase Agreement dated as of May 9, 2016 (the “Share Purchase Agreement”), all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l., since renamed Incyte Biosciences Luxembourg S.à.r.l., the parent company of certain European subsidiaries of ARIAD Pharmaceuticals, Inc. (“ARIAD”). Refer to Note 2 for further information regarding the Acquisition.

Principles of Consolidation. The consolidated financial statements include the accounts of Incyte Corporation and our wholly owned subsidiaries. All inter-company accounts, transactions, and profits have been eliminated in consolidation.

Acquisitions . Acquired businesses are accounted for using the acquisition method of accounting, which requires that assets acquired and liabilities assumed be recorded at fair value, with limited exceptions. Any excess of the purchase price over the fair value of the net assets acquired is recorded as goodwill. Transaction costs are expensed as incurred. The operating results of the acquired business are reflected in our consolidated financial statements after the date of acquisition. Acquired in-process research and development (“IPR&D”) is recognized at fair value and initially characterized as an indefinite-lived intangible asset, irrespective of whether the acquired IPR&D has an alternative future use.

Foreign Currency Translation . Operations in non-U.S. entities are recorded in the functional currency of each entity. For financial reporting purposes, the functional currency of an entity is determined by a review of the source of an entity's most predominant cash flows. The results of operations for any non-U.S. dollar functional currency entities are translated from functional currencies into U.S. dollars using the average currency rate during each month. Assets and liabilities are translated using currency rates at the end of the period. Adjustments resulting from translating the financial statements of our foreign entities that use their local currency as the functional currency into the U.S. dollars are reflected as a component of other comprehensive income (loss). Transaction gains and losses are recorded in interest and other income, net in the consolidated statements of operations. To date, both the translation gains or losses in other comprehensive income (loss) and the transaction gains or losses in foreign exchange gain (loss) have been immaterial.

Use of Estimates. The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the amounts reported in the financial statements and accompanying notes. Actual results could differ from those estimates.

Concentrations of Credit Risk. Cash, cash equivalents, marketable securities, trade receivables and restricted investments are financial instruments which potentially subject us to concentrations of credit risk. The estimated fair value of financial instruments approximates the carrying value based on available market information. We primarily invest our excess available funds in debt securities and, by policy, limit the amount of credit exposure to any one issuer and to any one type of investment, other than securities issued or guaranteed by the U.S. government and money market funds that meet certain guidelines. Our receivables mainly relate to our product sales of JAKAFI, ICLUSIG and collaborative agreements with pharmaceutical companies. We have not experienced any significant credit losses on cash, cash equivalents, marketable securities, trade receivables or restricted investments to date and do not require collateral on receivables.

Cash and Cash Equivalents. Cash and cash equivalents are held in banks or in custodial accounts with banks. Cash equivalents are defined as all liquid investments and money market funds with maturity from date of purchase of 90 days or less that are readily convertible into cash.

Marketable Securities—Available-for-Sale. All marketable securities are classified as available -for-sale. Available-for-sale securities are carried at fair value, based on quoted market prices and observable inputs, with unrealized

gains and losses, net of tax, reported as a separate component of stockholders' equity. We classify marketable securities that are available for use in current operations as current assets on the consolidated balance sheets. Realized gains and losses and declines in value judged to be other than temporary for available-for-sale securities are included in "Interest and other income, net." The cost of securities sold is based on the specific identification method.

Accounts Receivable. As of December 31, 2016 and 2015, we had no allowance for doubtful accounts. We provide an allowance for doubtful accounts based on experience and specifically identified risks. Accounts receivable are carried at fair value and charged off against the allowance for doubtful accounts when we determine that recovery is unlikely and we cease collection efforts.

Inventory. Inventories are determined at the lower of cost or market value with cost determined under the specific identification method and may consist of raw materials, work in process and finished goods. We began capitalizing inventory in mid-November 2011 once the U.S. Food and Drug Administration ("FDA") approved JAKAFI as the related costs were expected to be recoverable through the commercialization of the product. Costs incurred prior to approval of JAKAFI have been recorded as research and development expense in our statements of operations. As a result, cost of JAKAFI revenues for the next 3 to 6 months will reflect a lower average per unit cost of materials. The ICLUSIG inventories were recorded at fair value less costs to sell in connection with the Acquisition, and will result in a higher cost of ICLUSIG product revenues over the period in which this inventory is sold, which is expected to be over a one year period from the acquisition date.

JAKAFI raw materials and work-in-process inventory is not subject to expiration and the shelf life of finished goods inventory is 36 months from the start of manufacturing of the finished goods. ICLUSIG finished goods inventory has a shelf life of 24 months from the start of manufacturing of the finished goods. We evaluate for potential excess inventory by analyzing current and future product demand relative to the remaining product shelf life. We build demand forecasts by considering factors such as, but not limited to, overall market potential, market share, market acceptance and patient usage. We classify inventory as current on the consolidated balance sheets when we expect inventory to be consumed for commercial use within the next twelve months.

Variable Interest Entities. We perform an initial and on-going evaluation of the entities with which we have variable interests, such as equity ownership, in order to identify entities (i) that do not have sufficient equity investment at risk to permit the entity to finance its activities without additional subordinated financial support or (ii) in which the equity investors lack an essential characteristic of a controlling financial interest as variable interest entities ("VIE" or "VIEs"). If an entity is identified as a VIE, we perform an assessment to determine whether we have both (i) the power to direct activities that most significantly impact the VIE's economic performance and (ii) have the obligation to absorb losses from or the right to receive benefits of the VIE that could potentially be significant to the VIE. If both of these criteria are satisfied, we are identified as the primary beneficiary of the VIE. As of December 31, 2016, there were no entities in which we held a variable interest which we determined to be VIEs.

Equity Method Investments. In circumstances where we have the ability to exercise significant influence over the operating and financial policies of a company in which we have an investment, the investment is accounted for either (i) under the equity method of accounting or (ii) at fair value by electing the fair value option under U.S. GAAP. In assessing whether we exercise significant influence, we consider the nature and magnitude of our investment, any voting and protective rights we hold, any participation in the governance of the other company, and other relevant factors such as the presence of a collaboration or other business relationship. Under the equity method of accounting, we record within our results of operations our share of income or loss of the investee company. Under the fair value option, our investment is carried at fair value on our consolidated balance sheets as a long term investment and all changes in fair value are reported in our consolidated statements of operations as an unrealized gain (loss) on long term investment.

Property and Equipment. Property and equipment is stated at cost, less accumulated depreciation and amortization. Depreciation is recorded using the straight-line method over the estimated useful lives of the respective assets. Leasehold improvements are amortized over the shorter of the estimated useful life of the assets or lease term.

Management continually reviews the estimated useful lives of technologically sensitive equipment and believes that those estimates appropriately reflect the current useful life of our assets. In the event that a currently unknown

significantly advanced technology became commercially available, we would re-evaluate the value and estimated useful lives of our existing equipment, possibly having a material impact on the financial statements.

Lease Accounting. We account for operating leases by recording rent expense on a straight-line basis over the expected life of the lease, commencing on the date we gain possession of leased property. We include tenant improvement allowances and rent holidays received from landlords and the effect of any rent escalation clauses as adjustments to straight-line rent expense over the expected life of the lease.

Capital leases are reflected as a liability at the inception of the lease based on the present value of the minimum lease payments or, if lower, the fair value of the property. Assets under capital leases are recorded in property and equipment, net on the consolidated balance sheets and depreciated in a manner similar to other property and equipment.

Certain construction projects may be accounted for as direct financing arrangements, whereby we record, over the construction period, the full cost of the asset in property and equipment, net on the consolidated balance sheets. A corresponding liability is also recorded, net of leasehold improvements paid for by us, and is amortized over the expected lease term through monthly rental payments using the effective interest method.

In April 2016, we completed our purchase of the previously leased land and building of approximately 190,000 square feet of laboratory and office space in Wilmington, Delaware. Refer to Note 7 for further information regarding the purchase.

Other Intangible Assets, net. Other intangible assets, net consist of licensed intellectual property rights acquired in business combinations, which are reported at fair value, less accumulated amortization. Intangible assets with finite lives are amortized over their estimated useful lives using the straight-line method.

In-Process Research and Development. The fair value of in-process research and development (“IPR&D”) acquired through business combinations is capitalized as an indefinite-lived intangible asset until the completion or abandonment of the related research and development activities. When the related research and development is completed, the asset will be assigned a useful life and amortized.

Impairment of Long-Lived Assets. Long-lived assets with finite lives are tested for impairment whenever events or changes in circumstances indicate that the carrying value of an asset may not be recoverable. If indicators of impairment are present, the asset is tested for recoverability by comparing the carrying value of the asset to the related estimated undiscounted future cash flows expected to be derived from the asset. If the expected cash flows are less than the carrying value of the asset, then the asset is considered to be impaired and its carrying value is written down to fair value, based on the related estimated discounted future cash flows.

Indefinite-lived intangible assets, including IPR&D, are tested for impairment annually as of October 1 or more frequently if events or changes in circumstances between annual tests indicate that the asset may be impaired. Impairment losses on indefinite-lived intangible assets are recognized based solely on a comparison of the fair value of the asset to its carrying value. We completed our required annual impairment test as of October 1, 2016 based on a qualitative assessment and determined the carrying value of the indefinite-lived intangible assets was not impaired.

Goodwill. Goodwill is calculated as the difference between the acquisition date fair value of the consideration transferred and the values assigned to the assets acquired and liabilities assumed. Goodwill is not amortized but is tested for impairment at the reporting unit level at least annually as of October 1 or when a triggering event occurs that could indicate a potential impairment by assessing qualitative factors or performing a quantitative analysis in determining whether it is more likely than not that the fair value of net assets are below their carrying amounts. A reporting unit is the same as, or one level below, an operating segment. Our operations are currently comprised of a single, entity wide reporting unit. We completed our required annual impairment test as of October 1, 2016 and determined that the carrying value of our reporting unit was not impaired.

Income Taxes. We account for income taxes using the asset and liability approach which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of temporary differences between the carrying

amount of assets and liabilities for financial reporting purposes and amounts reportable for income tax purposes. Deferred tax assets are reduced by a valuation allowance when, in the opinion of management, it is more-likely-than-not that some portion or all of the deferred tax assets will not be realized.

In addition, we follow the guidance related to accounting for uncertainty in income taxes. This guidance creates a single model to address uncertainty in tax positions and clarifies the accounting for income taxes by prescribing the minimum recognition threshold a tax position is required to meet before it is recognized in the financial statements.

Financing Costs Related to Long-term Debt. Costs associated with obtaining long-term debt are deferred and amortized over the term of the related debt using the effective interest method. Such costs are presented as a direct deduction from the carrying amount of the long-term debt liability, consistent with debt discounts, on the consolidated balance sheets.

Grant Accounting. Grant amounts received from government agencies for operations are deferred and are amortized into income over the service period of the grant. Grant amounts received for purchases of capital assets are deferred and amortized into interest and other income, net over the useful life of the related capital assets. Such amounts are recorded in other liabilities on the consolidated balance sheets.

Net Income (Loss) Per Share. Our basic and diluted net income (loss) per share is calculated by dividing the net income (loss) by the weighted average number of shares of common stock outstanding during all periods presented. Options to purchase stock and shares issuable upon the conversion of convertible debt are included in diluted earnings per share calculations, unless the effects are anti-dilutive.

Accumulated Other Comprehensive Income (Loss). Accumulated other comprehensive income (loss) consists of realized and unrealized gains or losses on marketable securities and restricted cash and investments, net of tax, foreign currency translation gains or losses and defined benefit pension obligation, net of tax.

Revenue Recognition. Revenues are recognized when (1) persuasive evidence of an arrangement exists, (2) delivery has occurred or services have been rendered, (3) the price is fixed or determinable and (4) collectability is reasonably assured. Revenues are deferred for fees received before earned or until no further obligations exist. We exercise judgment in determining that collectability is reasonably assured or that services have been delivered in accordance with the arrangement. We assess whether the fee is fixed or determinable based on the payment terms associated with the transaction and whether the sales price is subject to refund or adjustment. We assess collectability based primarily on the customer's payment history and on the creditworthiness of the customer.

Product Revenues

Our product revenues consist of U.S. sales of JAKAFI and European sales of ICLUSIG. Product revenues are recognized once we meet all four revenue recognition criteria described above. In November 2011, we began shipping JAKAFI to our customers in the U.S., which include specialty pharmacies and wholesalers. In June 2016, we acquired the right to and began shipping ICLUSIG to our customers in the European Union and certain other jurisdictions (Note 2), which include retail pharmacies, hospital pharmacies and distributors.

We recognize revenues for product received by our customers net of allowances for customer credits, including estimated rebates, chargebacks, discounts, returns, distribution service fees, patient assistance programs, and government rebates, such as Medicare Part D coverage gap reimbursements in the U.S. Product shipping and handling costs are included in cost of product revenues.

Customer Credits: Our customers are offered various forms of consideration, including allowances, service fees and prompt payment discounts. We expect our customers will earn prompt payment discounts and, therefore, we deduct the full amount of these discounts from total product sales when revenues are recognized. Service fees are also deducted from total product sales as they are earned.

Rebates and Discounts: Allowances for rebates include mandated discounts under the Medicaid Drug Rebate Program in the U.S. and mandated discounts in Europe in markets where government-sponsored healthcare systems are the primary payers for healthcare. Rebates are amounts owed after the final dispensing of the product to a benefit plan participant and are based upon contractual agreements or legal requirements with public sector benefit providers. The accrual for rebates is based on statutory discount rates and expected utilization as well as historical data we have accumulated since product launches. Our estimates for expected utilization of rebates are based on data received from our customers. Rebates are generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters' unpaid rebates. If actual future rebates vary from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Chargebacks: Chargebacks are discounts that occur when certain contracted customers, which currently consist primarily of group purchasing organizations, Public Health Service institutions, non-profit clinics, and Federal government entities purchasing via the Federal Supply Schedule, purchase directly from our wholesalers. Contracted customers generally purchase the product at a discounted price. The wholesalers, in turn, charges back to us the difference between the price initially paid by the wholesalers and the discounted price paid by the contracted customers. In addition to actual chargebacks received we maintain an accrual for chargebacks based on the estimated contractual discounts on the inventory levels on hand in our distribution channel. If actual future chargebacks vary from these estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Medicare Part D Coverage Gap: Medicare Part D prescription drug benefit mandates manufacturers to fund 50% of the Medicare Part D insurance coverage gap for prescription drugs sold to eligible patients. Our estimates for the expected Medicare Part D coverage gap are based on historical invoices received and in part from data received from our customers. Funding of the coverage gap is generally invoiced and paid in arrears so that the accrual balance consists of an estimate of the amount expected to be incurred for the current quarter's activity, plus an accrual balance for known prior quarters. If actual future funding varies from estimates, we may need to adjust prior period accruals, which would affect revenue in the period of adjustment.

Co-payment Assistance: Patients who have commercial insurance and meet certain eligibility requirements may receive co-payment assistance. We accrue a liability for co-payment assistance based on actual program participation and estimates of program redemption using data provided by third-party administrators.

Product Royalty Revenues

Royalty revenues on commercial sales for ruxolitinib (marketed as JAKAVI[®] outside the United States) by Novartis Pharmaceutical International Ltd. ("Novartis") are based on net sales of licensed products in licensed territories as provided by Novartis. We recognize royalty revenues in the period the sales occur.

Cost of Product Revenues

Cost of product revenues includes all JAKAFI related product costs as well as ICLUSIG related product costs. The acquired ICLUSIG inventories were recorded at fair value less costs to sell in connection with the Acquisition, and will result in a higher cost of ICLUSIG product revenues over the period in which this inventory is sold, which is expected to be over a one year period from the acquisition date. In addition, cost of product revenues include low single digit royalties under our collaboration and license agreement to Novartis on all future sales of JAKAFI in the United States. Subsequent to the Acquisition on June 1, 2016, cost of product revenues also includes the amortization of our licensed intellectual property for ICLUSIG using the straight-line method over the estimated useful life of 12.5 years.

Contract and License Revenues

Under agreements involving multiple deliverables, services and/or rights to use assets that we entered into prior to January 1, 2011, the multiple elements are divided into separate units of accounting when certain criteria are met, including whether the delivered items have stand-alone value to the customer and whether there is objective and reliable evidence of the fair value of the undelivered items. When separate units of accounting exist, consideration is allocated

among the separate elements based on their respective fair values. The determination of fair value of each element is based on objective evidence from historical sales of the individual elements by us to other customers. If such evidence of fair value for each undelivered element of the arrangement does not exist, all revenue from the arrangement is deferred until such time that evidence of fair value for each undelivered element does exist or until all elements of the arrangement are delivered. When elements are specifically tied to a separate earnings process, revenue is recognized when the specific performance obligation tied to the element is completed. When revenues for an element are not specifically tied to a separate earnings process, they are recognized ratably over the term of the agreement. We assess whether a substantive milestone exists at the inception of our agreements. For all milestones within our arrangements that are considered substantive, we recognize revenue upon the achievement of the associated milestone. If a milestone is not considered substantive, we would recognize the applicable milestone payment over the remaining period of performance under the arrangement. As of December 31, 2016, all remaining potential milestones under our collaborative arrangements are considered substantive.

On January 1, 2011, updated guidance on the recognition of revenues for agreements with multiple deliverables became effective and applies to any agreements we may enter into on or after January 1, 2011. This updated guidance (i) relates to whether multiple deliverables exist, how the deliverables in a revenue arrangement should be separated and how the consideration should be allocated; (ii) requires companies to allocate revenues in an arrangement using estimated selling prices of deliverables if a vendor does not have vendor-specific objective evidence or third-party evidence of selling price; and (iii) eliminates the use of the residual method and requires companies to allocate revenues using the relative selling price method. During the years ended December 31, 2016, 2015 and 2014, we did not enter into any agreements that are subject to this updated guidance. If we enter into an agreement with multiple deliverables after January 1, 2011 or amend existing agreements, this updated guidance could have a material effect on our financial statements.

Our collaborations often include contractual milestones, which typically relate to the achievement of pre-specified development, regulatory and commercialization events. These three categories of milestone events reflect the three stages of the life-cycle of our drugs, which we describe in more detail in the following paragraphs.

The regulatory review and approval process, which includes preclinical testing and clinical trials of each drug candidate, is lengthy, expensive and uncertain. Securing approval by the FDA requires the submission of extensive preclinical and clinical data and supporting information to the FDA for each indication to establish a drug candidate's safety and efficacy. The approval process takes many years, requires the expenditure of substantial resources, involves post-marketing surveillance and may involve ongoing requirements for post-marketing studies. Before commencing clinical investigations of a drug candidate in humans, we must submit an Investigational New Drug application ("IND"), which must be reviewed by the FDA.

The steps generally required before a drug may be marketed in the United States include preclinical laboratory tests, animal studies and formulation studies, submission to the FDA of an IND for human clinical testing, performance of adequate and well-controlled clinical trials in three phases, as described below, to establish the safety and efficacy of the drug for each indication, submission of a new drug application ("NDA") or biologics license application ("BLA") to the FDA for review and FDA approval of the NDA or BLA.

Similar requirements exist within foreign regulatory agencies as well. The time required satisfying the FDA requirements or similar requirements of foreign regulatory agencies may vary substantially based on the type, complexity and novelty of the product or the targeted disease.

Preclinical testing includes laboratory evaluation of product pharmacology, drug metabolism, and toxicity, which includes animal studies, to assess potential safety and efficacy as well as product chemistry, stability, formulation, development, and testing. The results of the preclinical tests, together with manufacturing information and analytical data, are submitted to the FDA as part of an IND. The FDA may raise safety concerns or questions about the conduct of the clinical trials included in the IND, and any of these concerns or questions must be resolved before clinical trials can proceed. We cannot be sure that submission of an IND will result in the FDA allowing clinical trials to commence. Clinical trials involve the administration of the investigational drug or the marketed drug to human subjects under the supervision of qualified investigators and in accordance with good clinical practices regulations covering the protection of human subjects. Clinical trials typically are conducted in three sequential phases, but the phases may overlap or be combined.

Phase I usually involves the initial introduction of the investigational drug into healthy volunteers to evaluate its safety, dosage tolerance, absorption, metabolism, distribution and excretion. Phase II usually involves clinical trials in a limited patient population to evaluate dosage tolerance and optimal dosage, identify possible adverse effects and safety risks, and evaluate and gain preliminary evidence of the efficacy of the drug for specific indications. Phase III clinical trials usually further evaluate clinical efficacy and safety by testing the drug in its final form in an expanded patient population, providing statistical evidence of efficacy and safety, and providing an adequate basis for labeling. We cannot guarantee that Phase I, Phase II or Phase III testing will be completed successfully within any specified period of time, if at all. Furthermore, we, the institutional review board for a trial, or the FDA may suspend clinical trials at any time on various grounds, including a finding that the subjects or patients are being exposed to an unacceptable health risk.

Generally, the milestone events contained in our collaboration agreements coincide with the progression of our drugs from development, to regulatory approval and then to commercialization. The process of successfully discovering a new development candidate, having it approved and successfully commercialized is highly uncertain. As such, the milestone payments we may earn from our partners involve a significant degree of risk to achieve. Therefore, as a drug candidate progresses through the stages of its life-cycle, the value of the drug candidate generally increases.

Research and Development Costs. Our policy is to expense research and development costs as incurred. We often contract with clinical research organizations (“CROs”) to facilitate, coordinate and perform agreed upon research and development of a new drug. To ensure that research and development costs are expensed as incurred, we record monthly accruals for clinical trials and preclinical testing costs based on the work performed under the contract.

These CRO contracts typically call for the payment of fees for services at the initiation of the contract and/or upon the achievement of certain clinical trial milestones. In the event that we prepay CRO fees, we record the prepayment as a prepaid asset and amortize the asset into research and development expense over the period of time the contracted research and development services are performed. Most professional fees, including project and clinical management, data management, monitoring, and medical writing fees are incurred throughout the contract period. These professional fees are expensed based on their percentage of completion at a particular date. Our CRO contracts generally include pass through fees. Pass through fees include, but are not limited to, regulatory expenses, investigator fees, travel costs, and other miscellaneous costs, including shipping and printing fees. We expense the costs of pass through fees under our CRO contracts as they are incurred, based on the best information available to us at the time. The estimates of the pass through fees incurred are based on the amount of work completed for the clinical trial and are monitored through correspondence with the CROs, internal reviews and a review of contractual terms. The factors utilized to derive the estimates include the number of patients enrolled, duration of the clinical trial, estimated patient attrition, screening rate and length of the dosing regimen. CRO fees incurred to set up the clinical trial are expensed during the setup period.

Under our clinical trial collaboration agreements we may be reimbursed for certain development costs incurred. Such costs are recorded as a reduction of research and development expense in the period in which the related expense is incurred.

Stock Compensation. Share-based payment transactions with employees, which include stock options, restricted stock units (“RSUs”) and performance shares (“PSUs”), are recognized as compensation expense over the requisite service period based on their estimated fair values as well as expected forfeiture rates. The stock compensation process requires significant judgment and the use of estimates, particularly surrounding Black-Scholes assumptions such as stock price volatility over the option term and expected option lives, as well as expected forfeiture rates and the probability of PSUs vesting. The fair value of stock options, which are subject to graded vesting, are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of RSUs that are subject to cliff vesting are recognized as compensation expense over the requisite service period using the straight line attribution method, and the fair value of RSUs that are subject to graded vesting are recognized as compensation expense over the requisite service period using the accelerated attribution method. The fair value of PSUs are recognized as compensation expense beginning at the time in which the performance conditions are deemed probable of achievement, over the remaining requisite service period. We recorded \$96.2 million, \$69.9 million and \$62.2 million of stock compensation expense for the years ended December 31, 2016, 2015 and 2014, respectively.

Recent Accounting Pronouncements

In May 2014, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2014-09, “Revenue from Contracts with Customers”, which will replace numerous requirements in U.S. GAAP, including industry-specific requirements. This guidance provides a five step model to be applied to all contracts with customers, with an underlying principle that an entity will recognize revenue to depict the transfer of goods or services to customers at an amount that the entity expects to be entitled to in exchange for those goods or services. ASC No. 2014-09 requires extensive quantitative and qualitative disclosures covering the nature, amount, timing and uncertainty of revenue and cash flows arising from customer contracts, including disclosures on significant judgments made when applying the guidance. This guidance is effective for annual reporting periods beginning after December 15, 2017 and interim periods therein. Early adoption is permitted for reporting periods and interim periods therein, beginning after December 15, 2016. An entity can elect to apply the guidance under one of the following two methods: (i) retrospectively to each prior reporting period presented – referred to as the full retrospective method or (ii) retrospectively with the cumulative effect of initially applying the standard recognized at the date of initial application in retained earnings – referred to as the modified retrospective method.

We have substantially completed an initial impact assessment of the potential changes from adopting ASU 2014-09. The impact assessment consisted of a review of a representative sample of contracts, discussions with key stakeholders, and a cataloging of potential impacts on our financial statements, accounting policies, financial controls, and operations. We currently do not anticipate a material impact on our revenue recognition practices for product and royalty revenues. We do anticipate that the adoption of ASU 2014-09 will have primarily two impacts on our contract revenues generated by our collaborative research and license agreements:

- (i) Changes in the model for distinct licenses of functional intellectual property which may result in a timing difference of revenue recognition. Whereas revenue from these arrangements was previously recognized over a period of time pursuant to revenue recognition guidance that was in place for our arrangements at the time such arrangements commenced, revenue from these arrangements may now be recognized at point in time under the new guidance.
- (ii) Assessments of milestone payments, which are linked to events that are in our control, will result in variable consideration that may be recognized at an earlier point in time under the new guidance, when it is probable that the milestone will be achieved without a significant future reversal of cumulative revenue expected.

We have not yet completed our final review of the impact of this guidance including the new disclosure requirements, as we are continuing to evaluate the impacts of adoption and the implementation approach to be used. We plan to adopt the new standard effective January 1, 2018. We continue to monitor additional changes, modifications, clarifications or interpretations being undertaken by the FASB, which may impact our current conclusions.

In August 2014, the FASB issued ASU No. 2014-15, “Presentation of Financial Statements—Going Concern,” to provide guidance on management’s responsibility in evaluating whether there is substantial doubt about a company’s ability to continue as a going concern and about related footnote disclosures. For each reporting period, management will be required to evaluate whether there are conditions or events that raise substantial doubt about our ability to continue as a going concern within one year from the date the financial statements are issued. This guidance is effective for the annual period ending after December 15, 2016, and for annual periods and interim periods thereafter. Early application is permitted. We have adopted ASU No. 2014-15 and the adoption had no impact on our consolidated financial statements.

In February 2015, the FASB issued ASU No. 2015-02, “Amendments to the Consolidation Analysis,” which affects reporting entities that are required to evaluate whether they should consolidate certain legal entities. The amendments place more emphasis in the consolidation evaluation on variable interests other than fee arrangements such as principal investment risk (including debt or equity interests), guarantees of the value of the assets or liabilities of the variable interest entity (“VIE”), written put options on the assets of the VIE, or similar obligations. Additionally, the amendments reduce the extent to which related party arrangements cause an entity to be considered a primary beneficiary. This guidance is to be applied using a modified retrospective approach by recording a cumulative-effect adjustment to equity as of the beginning of the fiscal year of adoption. The amendments are effective for fiscal years beginning after

December 15, 2015, and interim periods therein. We have adopted ASU No. 2015-02 and the adoption had no impact on our consolidated financial statements.

In February 2016, the FASB issued ASU No. 2016-02, "Leases," that requires lessees to recognize assets and liabilities on the balance sheet for most leases including operating leases. Lessees now classify leases as either finance or operating leases and lessors classify all leases as sales-type, direct financing or operating leases. The statement of operations presentation and expense recognition for lessees for finance leases is similar to that of capital leases under Accounting Standards Codification ("ASC") 840 with separate interest and amortization expense with higher periodic expense in the earlier periods of a lease. For operating leases, the statement of operations presentation and expense recognition is similar to that of operating leases under ASC 840 with single lease cost recognized on a straight-line basis. This guidance is to be applied using a modified retrospective approach at the beginning of the earliest comparative period presented in the financial statements and is effective for annual periods beginning after December 15, 2018 and interim periods therein. Early adoption is permitted. We are currently analyzing the impact of ASU No. 2016-02 and, at this time, are unable to determine the impact of the new standard, if any, on our consolidated financial statements.

In March 2016, the FASB issued ASU No. 2016-09, "Improvements to Employee Share-Based Payment Accounting," which changes the accounting for certain aspects of share-based payments to employees. The new guidance requires excess tax benefits and tax deficiencies to be recorded in the statement of operations when the awards vest or are settled. In addition, cash flows related to excess tax benefits will no longer be separately classified as a financing activity apart from other income tax cash flows. The standard also clarifies that all cash payments made on an employee's behalf for withheld shares should be presented as a financing activity on the statement of cash flows, and provides an accounting policy election to account for forfeitures as they occur. The new standard is effective for our calendar year beginning January 1, 2017. Early adoption is permitted however all of the guidance must be adopted in the same period.

We elected to early adopt ASU No. 2016-09 as of the first quarter of 2016 which required us to reflect any adjustments as of January 1, 2016, the beginning of the annual period that includes the interim period of adoption. The primary impact of adoption was the recognition of \$325.6 million of accumulated excess tax benefits as deferred tax assets that under the previous guidance could not be recognized until the benefits were realized through a reduction in cash taxes paid. This part of the guidance was applied using a modified retrospective method with a cumulative-effect adjustment to the accumulated deficit for the excess tax benefits not previously recognized. However, given the full valuation allowance placed on the additional \$325.6 million of deferred tax assets, the recognition upon adoption had no impact to our accumulated deficit as of January 1, 2016.

Adoption of the standard also resulted in the recognition of excess tax benefits in our income tax provision rather than as paid-in capital. This guidance is to be applied prospectively and resulted in the recognition of \$1.2 million of excess tax benefits in our income tax provision rather than paid-in capital for the year ended December 31, 2016. Amendments to the minimum statutory withholding tax requirements had no impact to the accumulated deficit as of January 1, 2016. In addition, we have elected to continue to estimate forfeitures expected to occur when determining the amount of compensation cost to be recognized in each period.

We elected to apply the presentation requirements for cash flows related to excess tax benefits prospectively which resulted in classification within operating cash flows of the excess tax benefits recognized during the three months ended March 31, 2016. This classification is now consistent with all other cash flow impacts from income taxes. In addition, the amendments to the cash flow statement presentation to classify cash payments made on behalf of employees for shares withheld as a financing activity had no impact on our previously reported cash flows, as this requirement is consistent with our previous presentation of these cash flows.

In August 2016, the FASB issued ASU No. 2016-15, "Classification of Certain Cash Receipts and Cash Payments," which clarifies how entities should classify certain cash receipts and cash payments on the statement of cash flows to eliminate diversity in practice. Specifically relating to contingent consideration payments made after a business combination, an entity should classify cash payments that are not made within a relatively short period of time after a business combination to settle a contingent consideration liability as financing and operating activities. The portion of cash payment up to the acquisition date fair value of the contingent consideration liability (including measurement period adjustments) is classified as a financing activity and the portion paid in excess of the acquisition date fair value is classified

as an operating activity. The new standard is effective for fiscal years beginning after December 15, 2017 and interim periods therein. Early adoption is permitted however all of the amendments must be adopted in the same period and interim period adoption requires adjustments to be reflected as of the beginning of the fiscal year. The guidance is to be applied on a retrospective basis with relevant disclosures under ASC 250. We elected to early adopt ASU No. 2016-15 as of the third quarter of 2016. No retrospective adjustments were recorded as the first contingent consideration payment related to the Acquisition was made pursuant to the new guidance during the three months ended September 30, 2016.

In October 2016, the FASB issued ASU No. 2016-16, “Intra-Entity Transfers of Assets Other Than Inventory,” which requires companies to account for the income tax effects of intercompany sales and transfers of assets other than inventory in the period in which the transfer occurs. The new standard is effective for public business entities for annual periods beginning after December 15, 2017 (i.e. 2018 for a calendar-year entity). Early adoption is permitted for all entities as of the beginning of an annual period. The guidance is to be applied using a modified retrospective approach with a cumulative catch-up adjustment to opening retained earnings in the period of adoption. We are currently analyzing the impact of ASU No. 2016-16 on our consolidated financial statements.

In November 2016, the FASB issued ASU No. 2016-18, “Restricted Cash,” which requires entities to show the changes in total of cash, cash equivalents, restricted cash and restricted cash equivalents in the statement of cash flows. As a result, entities will no longer present transfers between cash and cash equivalents and restricted cash in the statement of cash flows. When cash, cash equivalents, restricted cash and restricted cash equivalents are presented in more than one line item on the balance sheet, the new guidance requires a reconciliation of the totals in the statement of cash flows to the related captions on the balance sheet. The reconciliation can either be presented either on the face of the statement of cash flows or in the notes to the financial statements. The new standard is effective for public business entities for fiscal years beginning after December 15, 2017 and interim periods therein and is to be applied retrospectively. Early adoption is permitted. We are currently analyzing the impact of ASU No. 2016-18 on our consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-01, “Business Combinations,” which requires entities to evaluate if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or a group of similar identifiable assets; if so, the set of transferred assets and activities is not a business. The new standard is to be applied prospectively to any transactions occurring within the period of adoption and is effective for public business entities for fiscal years beginning after December 15, 2017. Early adoption is permitted, including annual periods in which the financial statements have not been issued. We elected to early adopt ASU No. 2017-01 for the annual period ending December 31, 2016. The adoption had no impact on our consolidated financial statements.

Note 2. Business Combination

Description of the Transaction

On June 1, 2016, pursuant to the Share Purchase Agreement, we completed the Acquisition, and acquired all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l., since renamed Incyte Biosciences Luxembourg S.à.r.l., the parent company of ARIAD’s European subsidiaries responsible for the development and commercialization of ICLUSIG (ponatinib) in the European Union (“EU”) and other countries including Switzerland, Norway, Turkey, Israel and Russia (the “Territory”) in exchange for an upfront payment of \$147.5 million, including customary working capital adjustments (the “Upfront Payment”). ICLUSIG is approved in Europe for the treatment of patients with chronic myeloid leukemia and Philadelphia-positive acute lymphoblastic leukemia who are resistant to or intolerant of certain second generation BCR-ABL inhibitors and all patients who have the T3151 mutation. The acquisition of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. includes a fully integrated and established pan-European team including medical, sales and marketing personnel. The existing platform and infrastructure acquired is expected to further our strategic plan and accelerate the establishment of our operations in Europe.

Under the Share Purchase Agreement, and subject to certain limitations and exceptions, each party has also agreed to indemnify the other for breaches of representations and warranties and certain other matters to a maximum amount of \$14.0 million. The Share Purchase Agreement also includes a standstill provision restricting our ability for a specified period of time to acquire shares of ARIAD’s common stock above a certain percentage or take certain other actions without ARIAD board approval, subject to certain customary exceptions.

In connection with the closing of the Acquisition, we entered into an Amended and Restated Buy-in License Agreement with ARIAD (the “License Agreement”). Under the terms of the License Agreement, we were granted an exclusive license to develop and commercialize ICLUSIG in the Territory. ARIAD is eligible to receive from us tiered royalties ranging between 32% and 50% on net sales of ICLUSIG in the Territory. The royalties are subject to reduction for certain events related to exclusivity and, if necessary, any third-party patent rights. In addition, ARIAD is eligible to receive up to \$135.0 million in potential future development and regulatory approval milestone payments for ICLUSIG in new oncology indications in the Territory (the “Milestones”), together with additional milestone payments for non-oncology indications, if approved, in the Territory. Under our agreement with ARIAD, we have agreed to fund a portion of the ongoing ICLUSIG clinical studies OPTIC and OPTIC 2L, which are being conducted by ARIAD, by paying up to \$7.0 million in both 2016 and 2017 (the “Development Costs”).

The terms of the License Agreement also include a limited option for a potential future acquirer of ARIAD to purchase the European development and commercialization rights to ICLUSIG from us (the “Buy-Back Provision”). Under these purchase terms, we would retain all EU infrastructure and be financially compensated. Our financial compensation would include the repayment of the Upfront Payment and any Milestone or Development Costs payments made by us to ARIAD and an additional payment based upon the last 12 months of ICLUSIG sales booked by us. We would also be eligible to receive royalties of between 20% to 25% from an ARIAD acquirer on future sales of ICLUSIG in the Territory. The Buy-Back Provision cannot be exercised before two years nor after the sixth year from the effective date of the License Agreement. Following exercise of the Buy-Back Provision, there is a further transition period of one year before the provision can be made effective. We concluded the Buy-Back Provision is not a derivative as it does not provide for explicit or implicit net settlement, cannot be readily settled net by a means outside of the contract, and does not provide for delivery of an asset that puts the recipient in a position that is not substantially different from net settlement. We also consider the probability of a potential future buyer exercising the Buy-Back Provision to be near zero and have concluded that any fair value assigned to this provision is de minimis.

Unless terminated earlier in accordance with its provisions, our obligations to pay full royalties under the License Agreement will continue to be in effect on a country-by-country basis until the latest to occur of (1) the expiration date of the composition patent in the relevant country, (2) the expiration of any regulatory marketing exclusivity period or other statutory designation that provides similar exclusivity for the commercialization of ICLUSIG in such country and (3) the seventh anniversary of the first commercial sale of ICLUSIG in such country. We will be obligated to pay royalties at a reduced rate for a specified period of time following such full royalty term. The License Agreement may be terminated in its entirety by us for convenience on 12 months’ notice after the third anniversary of the effective date of the License Agreement. The License Agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the License Agreement.

Fair Value of Consideration Transferred

The preliminary fair value of consideration transferred totaled \$440.5 million, which consisted of \$147.5 million in cash pursuant to the Share Purchase Agreement, including net working capital adjustments, and \$293.0 million of contingent consideration related to the License Agreement. Contingent consideration includes the future payments that we may pay to ARIAD for our royalty obligations on future net sales of ICLUSIG, as well as for any future potential milestone payments related to new oncology or non-oncology indications for ICLUSIG.

The preliminary fair value of contingent consideration was determined using an income approach based on estimated ICLUSIG revenues in the Territory for both the approved third line treatment, as well as the second line treatment that is currently under development and is therefore contingent on future clinical results and European Medicines Agency (“EMA”) approval. The probability of technical success (“PTS”) of the second line indication was estimated at 25% based on the early stage of development and competitive market landscape, and the estimated future cash flows for the second line indication were probability weighted accordingly. The total projected cash flows of the third line and second line indications were estimated over 18 years, and discounted to present value using a discount rate of 10%. In addition, based on the believed limited effectiveness of ICLUSIG beyond the existing oncology indications, the fact that no development is currently ongoing for any new oncology or any non-oncology indications, and the lack of intention by us, ARIAD, or another market participant, to develop ICLUSIG in additional oncology or non-oncology indications, the fair value of any

cash flows for any new oncology or non-oncology indication was determined to be nil. The present value of the contingent consideration was \$293.0 million as of the Acquisition date.

Assets Acquired and Liabilities Assumed

The Acquisition has been accounted for as a business combination under the acquisition method of accounting. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed as of the acquisition date. Due to the timing of the Acquisition, certain amounts are provisional and subject to change. The provisional amounts consist primarily of the estimates relating to income taxes. We will finalize these amounts as we obtain the information necessary to complete the measurement process. Any changes resulting from facts and circumstances that existed as of the acquisition date may result in adjustments to the provisional amounts recognized at the acquisition date. These changes could be significant. We will finalize these amounts no later than one year from the acquisition date.

(estimated in thousands)	Amounts Recognized as of Acquisition Date(a)	Measurement Period Adjustments(b)	Amounts Recognized as of December 31, 2016
Current assets	\$ 21,413	\$ (50)	\$ 21,363
Property and equipment	850	—	850
Restricted cash	432	—	432
Intangible assets ^(c)	283,000	—	283,000
Total identifiable assets	305,695	(50)	305,645
Current liabilities	(15,720)	182	(15,538)
Other long term liabilities	(5,226)	—	(5,226)
Total liabilities assumed	(20,946)	182	(20,764)
Goodwill ^(d)	155,725	(132)	155,593
Total fair value of consideration transferred	\$ 440,474	\$ —	\$ 440,474

^(a) As previously reported in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2016.

^(b) The measurement period adjustments primarily reflect a change in working capital.

^(c) As of the effective date of the Acquisition, identifiable intangible assets are required to be measured at fair value. The fair value measurement is based on significant inputs that are unobservable in the market and thus represents a Level 3 measurement. We used an income approach to estimate the preliminary fair value of the intangibles which includes licensed intellectual property and IPR&D. The assumptions used to estimate the cash flows of the licensed intellectual property included a discount rate of 15%, estimated gross margins of 98%, income tax rates ranging from 7.8% in periods in which we have established tax holidays to 13.8% thereafter, and operating expenses consisting of direct costs based on the anticipated level of revenues as well as the \$7.0 million of research and development cost sharing payments we owe in 2016 and 2017. The assumptions used to estimate the cash flows of the IPR&D (which relates to the potential approval of ICLUSIG as a second line treatment) included a PTS of 25%, discount rate of 16%, estimated gross margins of 98%, income tax rates ranging from 7.8% in periods in which we have established tax holidays to 13.8% thereafter, and operating expenses consisting of direct costs based on the anticipated level of revenues as well as probability weighted milestone payments estimated for 2020 related to the clinical results and potential approval of ICLUSIG as a second line treatment. The licensed intellectual property has a weighted-average useful life of approximately 12.5 years and will be amortized using the straight-line method. Amortization expense of the licensed intellectual property is recorded in cost of product revenues on the consolidated statement of operations. The IPR&D is an indefinite-lived intangible and will not be amortized until the completion or abandonment of the related research and development activities.

^(d) Goodwill is calculated as the difference between the estimated acquisition date fair value of the consideration transferred and the estimated fair values of the assets acquired and liabilities assumed. The Goodwill is related to the existing platform, infrastructure, and workforce which is expected to generate synergies and further our strategic plan in Europe. Goodwill is not amortized and none of the goodwill is expected to be deductible for tax purposes.

Acquisition-Related Costs

We have incurred to date \$1.6 million of transaction costs directly related to the Acquisition, which includes expenditures for advisory, legal, valuation, accounting and other similar services. These costs have been expensed in selling, general and administrative costs on the consolidated statements of operations during the year ended December 31, 2016.

Revenue and Net Loss of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l.

The revenues of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. for the period from the acquisition date to December 31, 2016 were \$29.6 million and net loss was \$48.7 million. The net loss includes the effects of the Acquisition accounting adjustments and acquisition-related costs.

Pro Forma Impact of Business Combination

The following unaudited pro forma information presents condensed consolidated results of operations for the years ended December 31, 2016 and 2015, as if the Acquisition had occurred as of January 1, 2015 (in thousands).

	For the Year Ended	
	December 31,	
	2016	2015
Pro forma revenues	\$ 1,148,006	\$ 780,758
Pro forma net income (loss)	\$ 102,619	\$ (69,892)

The unaudited pro forma condensed consolidated results of operations were prepared using the acquisition method of accounting and are based on the historical financial information of our company and the acquired business which has been adjusted for events that are (1) directly attributable to the Acquisition, (2) factually supportable, and (3) expected to have continuing impact on the combined results. The unaudited pro forma information reflects primarily the following adjustments:

- To record amortization expense related to fair value adjustments recorded on the acquired definite lived intangibles;
- To eliminate ARIAD Europe's interest expense on the intercompany loan in accordance with the terms of the Acquisition;
- To remove balances attributable to the ARIAD Australia entity which are not material. This entity was previously consolidated by ARIAD Europe; however it was not included in the Acquisition; and
- To remove the recognition of revenue relating to distribution agreements in historic periods for those arrangements in which we have no continuing performance obligation and, therefore, the fair value of the assumed deferred revenue balance was zero.

The unaudited pro forma information is not necessarily indicative of the results that would have been obtained if the Acquisition had occurred as of the beginning of the period presented or that may occur in the future, and does not reflect future synergies, integration costs, or other such costs or savings. The unaudited pro forma information for the year ended December 31, 2016 includes \$24.4 million of revenue recognized by ARIAD prior to the Acquisition that had been deferred in historic periods relating to the conclusion of pricing and reimbursement negotiations with the French National Health Authority.

Note 3. Marketable Securities

The following is a summary of our marketable security portfolio as of December 31, 2016 and 2015, respectively.

	Amortized Cost	Net Unrealized Gains	Net Unrealized Losses	Estimated Fair Value
(in thousands)				
December 31, 2016				
Debt securities (corporate and government)	\$ 156,330	\$ —	\$ (127)	\$ 156,203
December 31, 2015				
Debt securities (corporate and government)	\$ 187,153	\$ —	\$ (809)	\$ 186,344

Our debt securities generally have contractual maturity dates of between 12 to 18 months.

Fair Value Measurements

FASB accounting guidance defines fair value as the price that would be received to sell an asset or paid to transfer a liability (“the exit price”) in an orderly transaction between market participants at the measurement date. The standard outlines a valuation framework and creates a fair value hierarchy in order to increase the consistency and comparability of fair value measurements and the related disclosures. In determining fair value we use quoted prices and observable inputs. Observable inputs are inputs that market participants would use in pricing the asset or liability based on market data obtained from sources independent of us. 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.

Level 2—Valuations based on observable inputs and quoted prices in active markets for similar assets and liabilities.

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

Recurring Fair Value Measurements

Our marketable securities consist of investments in corporate debt securities and U.S. government securities that are classified as available-for-sale.

At December 31, 2016 and 2015 our Level 2 debt securities were valued using readily available pricing sources which utilize market observable inputs, including the current interest rate and other characteristics for similar types of investments.

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The following fair value hierarchy table presents information about each major category of our financial assets measured at fair value on a recurring basis as of December 31, 2016 (in thousands):

	Fair Value Measurement at Reporting Date Using:			Balance as of December 31, 2016
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Cash and cash equivalents	\$ 652,343	\$ —	\$ —	\$ 652,343
Debt securities (corporate and government)	—	156,203	—	156,203
Long term investment (Note 6)	31,987	—	—	31,987
Total assets	<u>\$ 684,330</u>	<u>\$ 156,203</u>	<u>\$ —</u>	<u>\$ 840,533</u>

The following fair value hierarchy table presents information about each major category of our financial liabilities measured at fair value on a recurring basis as of December 31, 2016 (in thousands):

	Fair Value Measurement at Reporting Date Using:			Balance as of December 31, 2016
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Contingent consideration (Note 2)	\$ —	\$ —	\$ 301,000	\$ 301,000
Total liabilities	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 301,000</u>	<u>\$ 301,000</u>

The following is a rollforward of our Level 3 liabilities (in thousands):

	Level 3
Balance at January 1, 2016	\$ —
Initial recognition of contingent consideration	293,000
Contingent consideration earned during the period but not yet paid	(4,139)
Payments made during the period	(5,283)
Change in fair value of contingent consideration	17,422
Balance at December 31, 2016	<u>\$ 301,000</u>

The fair value of the contingent consideration was determined using an income approach based on estimated ICLUSIG revenues in the Territory for both the approved third line treatment, as well as the second line treatment that is currently under development and is therefore contingent on future clinical results and EMA approval. The fair value of the contingent consideration is remeasured each reporting period, with changes in fair value recorded in the consolidated statements of operations. The change in fair value of the contingent consideration during the period ending December 31, 2016 is due primarily to the passage of time as there were no other significant changes in the key assumptions used in the fair value calculation at the date of acquisition, including the discount rate utilized and the estimated future projections of ICLUSIG revenues.

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The following fair value hierarchy table presents information about each major category of our financial assets measured at fair value on a recurring basis as of December 31, 2015 (in thousands):

	Fair Value Measurement at Reporting Date Using:			Balance as of December 31, 2015
	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Unobservable Inputs (Level 3)	
Cash and cash equivalents	\$ 521,439	\$ —	\$ —	\$ 521,439
Debt securities (corporate and government)	—	186,344	—	186,344
Long term investment (Note 6)	35,248	—	—	35,248
Total assets	\$ 556,687	\$ 186,344	\$ —	\$ 743,031

Net realized loss of \$0.2 million and net realized gain of \$1.8 million from the sale of marketable securities were included in “Interest and other income, net” on the consolidated statements of operations for the years ended December 31, 2016 and 2015, respectively.

Non-Recurring Fair Value Measurements

Non-recurring fair value measurements during the year ended December 31, 2016 relate to the fair value of intangible assets and inventory acquired in the Acquisition which are discussed in further detail in Note 2.

Note 4. Concentrations of Credit Risk

In December 2009, we entered into a license, development and commercialization agreement with Eli Lilly and Company (“Lilly”). In November 2009, we entered into a collaboration and license agreement with Novartis. The concentration of credit risk related to our collaborative partners is as follows:

	Percentage of Total Contract Revenues for the Years Ended, December 31,		
	2016	2015	2014
Collaboration Partner A	40 %	83 %	88 %
Collaboration Partner B	60 %	17 %	12 %

Collaboration Partner A and Collaboration Partner B comprised in the aggregate 23% and 39% of the accounts receivable balance as of December 31, 2016 and 2015, respectively.

In November 2011, we began commercialization and distribution of JAKAFI to a number of customers. Our product revenues are concentrated in a number of these customers. The concentration of credit risk related to our JAKAFI product revenues is as follows:

	Percentage of Total Net Product Revenues for the Years Ended, December 31,		
	2016	2015	2014
Customer A	25 %	28 %	29 %
Customer B	17 %	19 %	22 %
Customer C	13 %	13 %	10 %
Customer D	9 %	9 %	9 %

We are exposed to risks associated with extending credit to customers related to the sale of products. Customer A, Customer B, Customer C and Customer D comprised in the aggregate 41% and 40% of the accounts receivable balance as of December 31, 2016 and 2015, respectively.

The concentration of credit risk relating to ICLUSIG product revenues or accounts receivable is not significant.

Note 5. Inventory

Our inventory balance consists of the following:

	December 31,	
	2016	2015
	(in thousands)	
Raw materials	\$ 109	\$ —
Work-in-process	15,084	17,555
Finished goods	4,106	1,783
	19,299	19,338
Inventories-current	4,106	1,783
Inventories-non-current	\$ 15,193	\$ 17,555

Inventories, stated at the lower of cost or market, consist of raw materials, work in process and finished goods. The ICLUSIG inventories acquired on June 1, 2016 totaling \$4.0 million were recorded at fair value less costs to sell, and therefore, will result in a higher cost of ICLUSIG revenues over the period in which this inventory is sold, which is expected to be over a one year period from the acquisition date. At December 31, 2016, \$4.1 million of inventory was classified as current on the consolidated balance sheets as we expect this inventory to be consumed for commercial use within the next twelve months. At December 31, 2016, \$15.2 million of inventory was classified as non-current on the consolidated balance sheets as we did not expect this inventory to be consumed for commercial use within the next twelve months. We obtain some inventory components from a limited number of suppliers due to technology, availability, price, quality or other considerations. The loss of a supplier, the deterioration of our relationship with a supplier, or any unilateral violation of the contractual terms under which we are supplied components by a supplier could adversely affect our total revenues and gross margins.

JAKAFI raw materials and work-in-process inventory is not subject to expiration and the shelf life for finished goods inventory is 36 months from the start of manufacturing of the finished goods. ICLUSIG finished goods inventory has a shelf life of 24 months from the start of manufacturing of the finished goods. We evaluate for potential excess inventory by analyzing current and future product demand relative to the remaining product shelf life. We build demand forecasts by considering factors such as, but not limited to, overall market potential, market share, market acceptance and patient usage.

Note 6. License Agreements

Novartis

In November 2009, we entered into a Collaboration and License Agreement with Novartis. Under the terms of the agreement, Novartis received exclusive development and commercialization rights outside of the United States to our JAK inhibitor ruxolitinib and certain back-up compounds for hematologic and oncology indications, including all hematological malignancies, solid tumors and myeloproliferative diseases. We retained exclusive development and commercialization rights to JAKAFI (ruxolitinib) in the United States and in certain other indications. Novartis also received worldwide exclusive development and commercialization rights to our c-MET inhibitor compound capmatinib and certain back-up compounds in all indications. We retained options to co-develop and to co-promote capmatinib in the United States.

Under this agreement, we received an upfront payment and immediate milestone payment totaling \$210.0 million and were initially eligible to receive up to \$1.2 billion in milestone payments across multiple indications upon the achievement of pre-specified events, including up to \$174.0 million for the achievement of development milestones, up to \$495.0 million for the achievement of regulatory milestones and up to \$500.0 million for the achievement of commercialization milestones. In April 2016, we amended this agreement to provide that Novartis has exclusive research, development and commercialization rights outside of the United States to ruxolitinib (excluding topical formulations) in the graft-versus-host-disease (“GVHD”) field. We became eligible to receive up to \$75.0 million of additional potential

development and regulatory milestones relating to GVHD. Exclusive of the upfront payment of \$150.0 million received in 2009 and the immediate milestone of \$60.0 million earned in 2010, we have recognized and received in the aggregate \$107.0 million for the achievement of development milestones, \$215.0 million for the achievement of regulatory milestones and \$20.0 million for the achievement of sales milestones through December 31, 2016.

During the year ended December 31, 2016, we recognized a \$5.0 million payment in exchange for the development and commercialization rights to ruxolitinib in GVHD outside of the United States pursuant to the April 2016 amendment of this agreement and a \$40.0 million regulatory milestone for the reimbursement of JAKAVI in Europe for the treatment of patients with polycythemia vera. In 2015, we recognized a \$5.0 million development milestone based on the formal initiation by Novartis of a Phase II clinical trial evaluating capmatinib for a third indication, a \$25.0 million regulatory milestone triggered by the Committee for Medicinal Products for Human Use of the European Medicines Agency adopting a positive opinion for JAKAVI (ruxolitinib) for the treatment of adult patients with polycythemia vera who are resistant to or intolerant of hydroxyurea, a \$15.0 million regulatory milestone for the approval of JAKAVI in Japan for the treatment of patients with polycythemia vera, and a \$20.0 million sales milestone for Novartis achieving annual net sales of a JAK licensed product of \$300.0 million. In 2014, we recognized a \$60.0 million regulatory milestone related to reimbursement of JAKAVI in Europe, a \$25.0 million regulatory milestone for the approval of JAKAVI in Japan for the treatment of patients with myelofibrosis and a \$7.0 million development milestone based on the formal initiation by Novartis of a Phase II clinical trial evaluating capmatinib in non-small cell lung cancer. In 2013, we recognized a \$25.0 million development milestone under this agreement based on the formal initiation by Novartis of a Phase II clinical trial evaluating capmatinib. In 2012, we recognized a \$40.0 million regulatory milestone payment under this agreement for the achievement of a predefined milestone for the European Union regulatory approval of JAKAVI. In 2011, we recognized a \$15.0 million development milestone under this agreement for the achievement of a predefined milestone in the Phase I dose-escalation trial for capmatinib in patients with solid tumors and a \$10.0 million regulatory milestone for the approval of JAKAVI in the United States. In 2010, we recognized \$50.0 million in development milestones for the initiation of the global phase III trial, RESPONSE, in patients with polycythemia vera. We determined that each of these milestones were substantive as their achievement required substantive efforts by us and was at risk until the milestones were ultimately achieved.

We also are eligible to receive tiered, double-digit royalties ranging from the upper-teens to the mid-twenties on future JAKAVI net sales outside of the United States, and tiered, worldwide royalties on future capmatinib net sales that range from 12% to 14%. Since the achievement of the \$60.0 million regulatory milestone related to reimbursement of JAKAVI in Europe in September 2014, we are obligated to pay to Novartis tiered royalties in the low single digits on future JAKAVI net sales within the United States. During the years ended December 31, 2016, 2015 and 2014, such royalties payable to Novartis on net sales within the United States totaled \$36.8 million, \$24.4 million and \$2.2 million, respectively, and are reflected in cost of product revenues on the consolidated statements of operations. Each company is responsible for costs relating to the development and commercialization of ruxolitinib in its respective territories, with costs of collaborative studies shared equally. Novartis is also responsible for all costs relating to the development and commercialization of capmatinib.

The Novartis agreement will continue on a program-by-program basis until Novartis has no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. Royalties are payable by Novartis on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Novartis or its affiliates or sublicensees. The agreement may be terminated in its entirety or on a program-by-program basis by Novartis for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach.

We determined that there were two deliverables under the agreement: (i) the ex-U.S. license for ruxolitinib and (ii) our obligations in connection with our participation on the joint development committee for myelofibrosis and polycythemia vera/essential thrombocythemia. We concluded that these deliverables should be accounted for as a single unit of accounting and the \$150.0 million upfront payment received in December 2009 and the immediate \$60.0 million milestone payment received in January 2010 should be recognized on a straight line basis through December 2013, when we estimated we would complete our obligations in connection with our participation on the joint development committee

for myelofibrosis and polycythemia vera, our estimated performance period under the agreement. We completed this substantive performance obligation related to this arrangement in December 2013.

At December 31, 2009, we recorded \$10.9 million of reimbursable costs incurred prior to the effective date of the agreement as deferred revenue on the consolidated balance sheet. These costs were recognized on a straight line basis through December 2013 consistent with the aforementioned upfront and milestone payments. Future reimbursable costs incurred after the effective date of the agreement with Novartis are recorded net against the related research and development expenses. At December 31, 2016 and December 31, 2015, \$0.6 million and \$0.3 million, respectively, of reimbursable costs were included in accounts receivable on the consolidated balance sheets. Research and development expenses for the years ended December 31, 2016, 2015 and 2014 were net of \$0.7 million, \$1.6 million, and \$3.1 million respectively, of costs reimbursed by Novartis.

Contract revenue under the Novartis agreement was \$45.0 million, \$65.0 million and \$92.0 million, respectively, for the years ended December 31, 2016, 2015 and 2014. Included in the amounts for December 31, 2016, 2015 and 2014, were \$45.0 million, \$65.0 million and \$92.0 million, respectively, in milestone payments received from Novartis. At December 31, 2015, the \$20.0 million sales milestone for annual net sales of a JAK licensed product was included in accounts receivable on the consolidated balance sheets. In addition, for the years ended December 31, 2016, 2015 and 2014, respectively, we recorded \$110.7 million, \$74.8 million and \$49.0 million, of product royalty revenues related to Novartis net sales of JAKAVI outside the United States. At December 31, 2016 and 2015, \$33.3 million and \$23.8 million, respectively, of product royalties were included in accounts receivable on the consolidated balance sheets.

Lilly - Baricitinib

In December 2009, we entered into a License, Development and Commercialization Agreement with Lilly. Under the terms of the agreement, Lilly received exclusive worldwide development and commercialization rights to our JAK inhibitor baricitinib, and certain back-up compounds for inflammatory and autoimmune diseases. We received an upfront payment of \$90.0 million, and were initially eligible to receive up to \$665.0 million in substantive milestone payments across multiple indications upon the achievement of pre-specified events, including up to \$150.0 million for the achievement of development milestones, up to \$365.0 million for the achievement of regulatory milestones and up to \$150.0 million for the achievement of commercialization milestones. Exclusive of the upfront payment of \$90.0 million received in 2009, we have recognized and received in the aggregate \$99.0 million for the achievement of development milestones and \$55.0 million for the achievement of regulatory milestones through December 31, 2016.

During the year ended December 31, 2016, we recognized a \$35.0 million regulatory milestone for the submission of an NDA to the FDA for the approval of oral once-daily baricitinib for the treatment of moderately-to-severely active rheumatoid arthritis and a \$20.0 million regulatory milestone for the submission of a Marketing Authorization Application to the Europe Medicines Agency for the approval of oral once-daily baricitinib for the treatment of moderately-to-severely active rheumatoid arthritis. In 2012, we recognized a \$50.0 million development milestone under this agreement for the achievement of a predefined milestone for the initiation of the rheumatoid arthritis Phase III program for baricitinib. In 2010, we recognized a \$30.0 million development milestone payment based upon the initial three month data in the Phase IIa clinical trial of baricitinib for the treatment of rheumatoid arthritis and a \$19.0 million development milestone payment for the Phase IIb clinical trial initiation of baricitinib for the treatment of rheumatoid arthritis. We determined that each of these milestones were substantive as their achievement required substantive efforts by us and was at risk until the milestones were ultimately achieved. In July 2010, we elected to co-develop baricitinib with Lilly in rheumatoid arthritis and we are responsible for funding 30% of the associated future global development costs for this indication from the initiation of the Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority.

We retained options to co-develop our JAK1/JAK2 inhibitors with Lilly on a compound-by-compound and indication-by-indication basis. Lilly is responsible for all costs relating to the development and commercialization of the compounds unless we elect to co-develop any compounds or indications. If we elect to co-develop any compounds and/or indications, we would be responsible for funding 30% of the associated future global development costs from the initiation of a Phase IIb trial through regulatory approval, including post-launch studies required by a regulatory authority. We would receive an incremental royalty rate increase across all tiers resulting in effective royalty rates ranging up to the high twenties

on potential future global net sales for compounds and/or indications that we elect to co-develop. For indications that we elect not to co-develop, we would receive tiered, double-digit royalty payments on future global net sales with rates ranging up to 20% if the product is successfully commercialized. We previously had retained an option to co-promote products in the United States but, in March 2016, we waived our co-promotion option as part of an amendment to the agreement.

Research and development expenses recorded under the Lilly agreement representing 30% of the global development costs for baricitinib for the treatment of rheumatoid arthritis were \$27.3 million, \$36.0 million and \$49.3 million for the years ended December 31, 2016, 2015 and 2014, respectively. We have retained certain mechanisms to give us cost protection as baricitinib advances in clinical development. We can defer our portion of co-development study costs by indication if they exceed a predetermined level. This deferment would be credited against future milestones or royalties and we would still be eligible for the full incremental royalties related to the co-development option. In addition, even if we have started co-development funding for any indication, we can at any time opt out and stop future co-development cost sharing. If we elect to do this we would still be eligible for our base royalties plus an incremental pro-rated royalty commensurate with our contribution to the total co-development cost for those indications for which we co-funded. The Lilly agreement will continue until Lilly no longer has any royalty payment obligations or, if earlier, the termination of the agreement in accordance with its terms. Royalties are payable by Lilly on a product-by-product and country-by-country basis until the latest to occur of (1) the expiration of the last valid claim of the licensed patent rights covering the licensed product in the relevant country, (2) the expiration of regulatory exclusivity for the licensed product in such country and (3) a specified period from first commercial sale in such country of the licensed product by Lilly or its affiliates or sublicensees. The agreement may be terminated by Lilly for convenience, and may also be terminated under certain other circumstances, including material breach.

We determined that there were two deliverables under the agreement: (i) the worldwide license and (ii) our obligations in connection with a co-development option. We concluded that these deliverables should be accounted for as a single unit of accounting and the \$90.0 million upfront payment should be recognized on a straight line basis as revenue through December 2016, our estimated performance period under the agreement. We completed our substantive performance obligation related to this arrangement in December 2016.

Contract revenue under the Lilly agreement was \$67.5 million, \$12.9 million and \$12.9 million for the years ended December 31, 2016, 2015 and 2014, respectively.

Lilly – Ruxolitinib

In March 2016, we entered into an amendment to the agreement with Lilly that amended the non-compete provision of the agreement to allow us to engage in the development and commercialization of ruxolitinib in the GVHD field. We paid Lilly an upfront payment of \$35.0 million and Lilly is eligible to receive up to \$40.0 million in additional regulatory milestone payments relating to ruxolitinib in the GVHD field. During the year ended December 31, 2016, the \$35.0 million upfront payment was recorded in research and development expense in our consolidated statements of operations.

Pfizer

In January 2006, we entered into a Collaborative Research and License Agreement with Pfizer for the pursuit of our CCR2 antagonist program. Pfizer gained worldwide development and commercialization rights to our portfolio of CCR2 antagonist compounds. Pfizer's rights extend to the full scope of potential indications, with the exception of multiple sclerosis and autoimmune nephritides, where we retained worldwide rights, along with certain compounds. We do not have obligations to Pfizer on pre-clinical development candidates we select for pursuit in these indications. The agreement will terminate upon the expiration of the last to expire of patent rights licensed under the agreement. Prior to such expiration, either party can terminate the agreement for the uncured material breach of the agreement by the other party or for the insolvency of the other party. In addition, Pfizer may terminate the agreement at any time upon 90 days' notice. We received an upfront nonrefundable, non-creditable payment of \$40.0 million in January 2006 and were initially eligible to receive additional future development and milestone payments, including up to \$138.0 million for the achievement of development milestones, up to \$455.0 million for the achievement of regulatory milestones and up to \$150.0 million for

the achievement of commercialization milestones. We are also eligible to receive tiered royalties based upon net sales of any potential products ranging from the high single digits to the mid-teens .

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG (now known as Agenus Switzerland Inc.), which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno therapeutics using Agenus' antibody discovery platforms. The agreement became effective on February 18, 2015, upon the expiration of the waiting period under the Hart Scott Rodino Antitrust Improvements Act of 1976.

Under the terms of this agreement, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added. Targets may be designated profit-share programs, where all costs and profits are shared equally by us and Agenus, or royalty-bearing programs, where we will be responsible for all costs associated with discovery, preclinical activities, clinical development and commercialization activities. The programs relating to GITR and OX40 and two of the undisclosed targets are profit-share programs while the other targets currently under collaboration are royalty-bearing programs. All costs related to the collaboration are subject to a joint research plan. For each royalty-bearing product, Agenus will be eligible to receive up to \$155.0 million in future contingent development, regulatory and commercialization milestones as well as tiered royalties on global net sales ranging from 6% to 12%. For each profit share product, Agenus will be eligible to receive up to \$20.0 million in future contingent development milestones. Additionally, Agenus retains co-promotion participation rights in the United States on any profit share product. For each royalty bearing product, Agenus has reserved the right to elect to co fund 30% of development costs for a commensurate increase in royalties. The agreement may be terminated by us for convenience upon 12 months' notice and may also be terminated under certain other circumstances, including material breach. We agreed to certain standstill provisions that allow us to acquire up to 15% of Agenus Inc.'s outstanding voting stock, including shares acquired pursuant to the Stock Purchase Agreement described below, solely for investment purposes.

In January 2015, we also entered into a Stock Purchase Agreement with Agenus Inc. pursuant to which we agreed to purchase approximately 7.76 million shares of Agenus Inc. common stock for an aggregate purchase price of \$35.0 million in cash, or approximately \$4.51 per share. We completed the purchase of the shares on February 18, 2015. On February 18, 2015 the closing price of Agenus Inc. common shares on The NASDAQ Stock Market was \$5.13 per share and, therefore, the value of the 7.76 million shares acquired by us was \$39.8 million. We agreed not to dispose of any of the shares of common stock for a period of 12 months and Agenus Inc. has agreed to certain registration rights with respect to the shares of common stock.

Upon closing of the Agenus transaction on February 18, 2015, we paid total consideration of \$60.0 million to Agenus Inc. Of the \$60.0 million, \$39.8 million was allocated to our stock purchase in Agenus Inc. and was recorded as a long term investment on the consolidated balance sheets and \$20.2 million was allocated to research and development expense on the consolidated statement of operations.

We have concluded Agenus Inc. is not a VIE because it has sufficient equity to finance its activities without additional subordinated financial support and its at-risk equity holders have the characteristics of a controlling financial interest. We own approximately 9% of the outstanding shares of Agenus Inc. common stock and conclude that we have the ability to exercise significant influence, but not control, over Agenus Inc. based primarily on our ownership interest, the level of intra-entity transactions between us and Agenus related to development expenses, as well as other qualitative factors. We have elected the fair value option to account for our long term investment in Agenus Inc. whereby the investment is marked to market through earnings in each reporting period. We believe the fair value option to be the most appropriate accounting method to account for securities in publicly held collaborators for which we have significant influence. For the years ended December 31, 2016 and 2015, we recorded an unrealized loss of \$3.3 million and \$4.6 million, respectively, based on the change in the market price of Agenus Inc.'s common stock from the date of purchase. For the nine months ended September 30, 2016, Agenus Inc. reported total revenues of \$17.0 million and a net loss of \$100.9 million within their consolidated financial statements. As of September 30, 2016, Agenus reported current assets

of \$109.5 million, noncurrent assets of \$65.3 million, current liabilities of \$34.8 million, and noncurrent liabilities of \$161.0 million.

Research and development expenses for the years ended December 31, 2016 and 2015, also included \$17.5 million and \$14.4 million, respectively, of development costs incurred pursuant to the Agenus arrangement. At December 31, 2016, a total of \$11.4 million of such costs were included in accrued and other liabilities on the consolidated balance sheet.

Hengrui

In September 2015, we entered into a License and Collaboration Agreement with Jiangsu Hengrui Medicine Co., Ltd. (“Hengrui”). Under the terms of this agreement, we received exclusive development and commercialization rights worldwide, with the exception of Mainland China, Hong Kong, Macau and Taiwan, to INCSHR1210, an investigational PD-1 monoclonal antibody, and certain back-up compounds. INCSHR1210 is currently in clinical development.

Under the terms of this agreement, we paid Hengrui an upfront payment of \$25.0 million in 2015 which was recorded in research and development expense on the consolidated statement of operations. Hengrui is also eligible to receive potential milestone payments of up to \$770.0 million, consisting of \$90.0 million for regulatory approval milestones, \$530.0 million for commercial performance milestones, and \$150.0 million for a clinical superiority milestone. Also, Hengrui may be eligible to receive tiered royalties in the high-single digits to mid-double digits based on net sales in our territories. Each company will be responsible for costs relating to the development and commercialization of the PD-1 monoclonal antibody in their respective territories. The agreement will continue on a country-by-country basis until we have no royalty payment obligations with respect to such country or, if earlier, the termination of the agreement in accordance with its terms. The agreement may be terminated in its entirety by us for convenience, and may also be terminated under certain other circumstances, including material breach.

Research and development expenses for the years ended December 31, 2016 and 2015, also included \$9.8 million and \$0.5 million, respectively, of development costs incurred pursuant to the Hengrui agreement.

Note 7. Property and Equipment

Property and equipment consists of the following:

	December 31,	
	2016	2015
	(in thousands)	
Office equipment	\$ 9,243	\$ 6,753
Laboratory equipment	37,203	31,296
Computer equipment	38,184	22,491
Land	4,125	—
Building and leasehold improvements	<u>130,734</u>	<u>70,729</u>
	219,489	131,269
Less accumulated depreciation and amortization	<u>(51,810)</u>	<u>(45,263)</u>
Property and equipment, net	<u>\$ 167,679</u>	<u>\$ 86,006</u>

Depreciation expense, including amortization expense of leasehold improvements, was \$14.2 million, \$11.3 million and \$5.1 million for 2016, 2015 and 2014, respectively.

In April 2016, we completed our purchase of the previously leased land and building comprising approximately 190,000 square feet of laboratory and office space located in Wilmington, Delaware. We previously accounted for the lease as a direct financing arrangement. In total, upon completion of the purchase, we paid \$81.3 million, including closing costs, for the purchase of the land and building and our direct financing obligation related to the lease was relieved. We recorded the difference between the amount paid for the purchase of the land and building (\$81.3 million) and the

remaining direct financing obligation on the purchase date (\$45.9 million) as property and equipment. A total of \$3.8 million was allocated to land and the remaining \$31.6 million was allocated to buildings and leasehold improvements, which we estimated using the assistance of a third party valuation specialist. The land is not being amortized and we are depreciating the building over its estimated useful life of 40 years. In addition, the restricted investments related to the direct financing lease were released upon closing of the agreement of sale.

In September 2016, we entered into two agreements to purchase land and two buildings in Wilmington, Delaware for approximately \$7.9 million. Pursuant to the terms of the agreements, we have up to a 120-day due diligence period to review specified documents and perform building inspections prior to closing. The closing date is to be no later than 30 days after the due diligence period.

Note 8. Intangible Assets and Goodwill

Intangible Assets, Net

The components of intangible assets as of December 31, 2016 were as follows (in thousands, except for useful life):

	<u>Weighted- Average Useful Lives (Years)</u>	<u>Gross Carrying Amount</u>	<u>Accumulated Amortization</u>	<u>Net Carrying Amount</u>
Finite-lived intangible assets:				
Licensed IP ⁽¹⁾	12.5	\$ 271,000	\$ 12,563	\$ 258,437
Indefinite-lived intangible assets:				
Acquired IPR&D ⁽¹⁾	N/A	12,000	—	12,000
		<u>\$ 283,000</u>	<u>\$ 12,563</u>	<u>\$ 270,437</u>

⁽¹⁾ We acquired certain intangible assets as part of the Acquisition, as described further in Note 2.

Amortization expense was \$12.6 million for the year ended December 31, 2016 and is recorded in cost of product revenues on the consolidated statement of operations. Estimated aggregate amortization expense based on the current carrying value of amortizable intangible assets, excluding any possible future amortization associated with acquired IPR&D is as follows (in thousands):

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>Thereafter</u>
Amortization expense	\$ 21,536	\$ 21,536	\$ 21,536	\$ 21,536	\$ 21,536	\$ 150,757

Goodwill

The changes to the carrying amount of goodwill for year ended December 31, 2016 were as follows (in thousands):

	<u>Goodwill</u>
Balance, January 1, 2016	\$ —
Additions	155,725
Adjustments	(132)
Balance, December 31, 2016	<u>\$ 155,593</u>

As described in Note 2, the allocations of the goodwill balance associated with the Acquisition and certain other adjustments are provisional and subject to the completion of the valuation of the assets acquired and liabilities assumed.

Note 9. Convertible Notes

The components of the convertible notes are as follows (in thousands):

Debt	Interest Rates		Carrying Amount	
	December 31, 2016	Maturities	2016	2015
0.375% Convertible Senior Notes due 2018	0.375 %	2018	\$ 340,916	\$ 324,031
1.25% Convertible Senior Notes due 2020	1.25 %	2020	310,565	295,862
			651,481	619,893
Less current portion			—	—
			<u>\$ 651,481</u>	<u>\$ 619,893</u>

Annual maturities of all convertible notes are as follows (in millions):

2017	\$ —
2018	375.0
2019	—
2020	374.8
2021	—
Thereafter	—
	<u>\$ 749.8</u>

The carrying amount and fair value of our convertible notes are as follows (in thousands):

	December 31,			
	2016		2015	
	Carrying Amount	Fair Value	Carrying Amount	Fair Value
0.375% Convertible Senior Notes due 2018	\$ 340,916	\$ 749,988	\$ 324,031	\$ 807,422
1.25% Convertible Senior Notes due 2020	310,565	761,300	295,862	816,123
	<u>\$ 651,481</u>	<u>\$ 1,511,288</u>	<u>\$ 619,893</u>	<u>\$ 1,623,545</u>

The fair values of the 0.375% Convertible Senior Notes due 2018 (the “2018 Notes”) and the 1.25% Convertible Senior Notes due 2020 (the “2020 Notes”) are based on data from readily available pricing sources which utilize market observable inputs and other characteristics for similar types of instruments, and, therefore, these convertible senior notes are classified within Level 2 in the fair value hierarchy.

On November 14, 2013, we issued, in a private placement, \$375.0 million aggregate principal amount of the 2018 Notes and \$375.0 million aggregate principal amount of the 2020 Notes (together with the 2018 Notes, the “Notes”). Entities affiliated with Julian C. Baker, one of our directors and principal stockholders (the “Baker Entities”), purchased \$250.0 million aggregate principal amount of the 2018 Notes and \$250.0 million aggregate principal amount of the 2020 Notes in this private placement. As of December 31, 2016 and 2015, the Baker Entities owned \$259.0 million and \$274.5 million aggregate principal amounts of the 2018 and 2020 Notes, respectively. The 2018 Notes bear interest at a rate of 0.375% per annum and the 2020 Notes bear interest at a rate of 1.25% per annum, in each case payable semi-annually in arrears in cash on May 15 and November 15 of each year, beginning on May 15, 2014. The 2018 Notes will mature on November 15, 2018 and the 2020 Notes will mature on November 15, 2020, in each case unless earlier purchased or converted. We may not redeem the Notes prior to their relevant scheduled maturity dates.

Prior to May 14, 2014, the Notes were not convertible except in connection with a make whole fundamental change, as defined in the respective indentures. Beginning on, and including, May 15, 2014, the Notes are convertible prior to the close of business on the business day immediately preceding May 15, 2018, in the case of the 2018 Notes, and May 15, 2020, in the case of the 2020 Notes, only under the following circumstances: (1) during any calendar quarter commencing after the calendar quarter ending on March 31, 2014 (and only during such calendar quarter), if the last reported sale price of our common stock for at least 20 trading days (whether or not consecutive) during a period of 30 consecutive trading days ending on the last trading day of the immediately preceding calendar quarter is greater than or

equal to 130% of the conversion price for the 2018 Notes or 2020 Notes, as applicable, on each applicable trading day; (2) during the five business day period after any five consecutive trading day period (the “measurement period”) in which the trading price per \$1,000 principal amount of 2018 Notes or 2020 Notes, as applicable, for each trading day of the measurement period was less than 98% of the product of the last reported sale price of our common stock and the conversion rate for the 2018 Notes or 2020 Notes, as applicable, on each such trading day; or (3) upon the occurrence of specified corporate events. On or after May 15, 2018, in the case of the 2018 Notes, and May 15, 2020, in the case of the 2020 Notes, until the close of business on the second scheduled trading day immediately preceding the relevant maturity date, the Notes are convertible at any time, regardless of the foregoing circumstances. Upon conversion we will pay or deliver, as the case may be, cash, shares of common stock or a combination of cash and shares of common stock, at our election.

On January 1, 2017, the Notes became convertible through at least March 31, 2017, based on the meeting the conversion criteria related to the sale price of our common stock during the calendar quarter ended December 31, 2016 as described in (1) above. Management’s intent is to settle any conversions of the Notes during this period in shares of our common stock and, therefore, the Notes are reflected in long term liabilities on the consolidated balance sheet at December 31, 2016.

The initial conversion rate for the 2018 Notes is 19.3207 shares of common stock per \$1,000 principal amount, equivalent to an initial conversion price of approximately \$51.76 per share. The initial conversion rate for the 2020 Notes is 19.3207 shares of common stock per \$1,000 principal amount, equivalent to an initial conversion price of approximately \$51.76 per share. The conversion rate for each series of the Notes will be subject to adjustment for certain events but will not be adjusted for any accrued and unpaid interest. Upon the occurrence of certain fundamental changes, the holders of the Notes may require us to purchase all or a portion of their Notes for cash at a price equal to 100% of the principal amount of the Notes, plus accrued and unpaid interest, including additional interest, if any, to, but excluding, the fundamental change purchase date. In addition, if, and to the extent, a holder elects to convert any Note in connection with a make-whole fundamental change transaction, as defined in the indenture, we will, under certain circumstances, increase the applicable conversion rate by a number of additional shares of our common stock.

Since the Notes can be settled in cash or common shares or a combination of cash and common shares at our option, we determined the embedded conversion options in the Notes are not required to be separately accounted for as a derivative. However, since the Notes are within the scope of the accounting guidance for cash convertible instruments, we are required to separate the Notes into a liability and equity component. The carrying amount of the liability component is calculated by measuring the fair value of a similar liability that does not have an associated equity component. The carrying amount of the equity component representing the embedded conversion option is determined by deducting the fair value of the liability component from the initial proceeds. The excess of the principal amount of the liability component over its carrying amount is amortized to interest expense over the expected life of a similar liability that does not have an associated equity component using the effective interest method. The equity component is not re-measured as long as it continues to meet the conditions for equity classification in the accounting guidance for contracts in an entity’s own equity.

The liability component of the 2018 Notes on the date of issuance was estimated at \$299.4 million, and accordingly, the equity component on the date of issuance was \$75.6 million. The discount on the 2018 Notes is being amortized to interest expense over the term of the 2018 Notes, using the effective interest method. The carrying value of the 2018 Notes was \$340.9 million and \$324.0 million, respectively (net of \$34.1 million and \$51.0 million of debt discount and issuance costs, respectively) at December 31, 2016 and December 31, 2015.

The liability component of the 2020 Notes on the date of issuance was estimated at \$274.8 million, and accordingly, the equity component on the date of issuance was \$100.2 million. The discount on the 2020 Notes is being amortized to interest expense over the term of the 2020 Notes, using the effective interest method. The carrying value of the 2020 Notes was \$310.6 million and \$295.9 million, respectively, (net of \$64.2 million and \$78.9 million debt discount and issuance costs, respectively) at December 31, 2016 and December 31, 2015.

The 4.75% Convertible Senior Notes due 2015 (the “2015 Notes”) became due on October 1, 2015 and prior to maturity bore interest at the rate of 4.75% per year, payable semi-annually on April 1 and October 1. The remaining de minimis principal balance of the 2015 Notes that were not converted into common stock were repaid on their due date. We

could not redeem the 2015 Notes prior to their scheduled maturity date. If we underwent a fundamental change, as defined in the indenture, subject to certain conditions, holders could have required us to repurchase their 2015 Notes at a purchase price equal to 100% of the principal amount being purchased, plus accrued and unpaid interest, up to the date of purchase. The 2015 Notes were convertible into shares of our common stock at an initial conversion rate of 113.9601 shares per \$1,000 principal amount, equivalent to an initial conversion price of approximately \$8.78 per share. In addition, if, and to the extent, a holder elected to convert any 2015 Notes in connection with a make-whole fundamental change transaction, as defined in the indenture, we would, under certain circumstances, have been required to increase the applicable conversion rate by a number of additional shares of our common stock.

In addition, during 2015, certain holders of the 2015 Notes converted a total of \$90.8 million in aggregate principal amount of the 2015 Notes for the shares of our common stock into which the 2015 Notes were convertible, aggregating 10.4 million shares. The Baker Entities converted \$43.3 million in aggregate principal amount of the 2015 Notes for 4.9 million shares.

Note 10. Stockholders’ Deficit

Preferred Stock. We are authorized to issue 5,000,000 shares of preferred stock, none of which was outstanding as of December 31, 2016 and 2015. The Board of Directors may determine the rights, preferences and privileges of any preferred stock issued in the future.

Common Stock. We are authorized to issue 400,000,000 shares of common stock.

Stock Compensation Plans. As of December 31, 2016, we had reserved a total of 14,102,319 shares of our common stock for future issuance related to our stock plans as described below.

2010 Stock Incentive Plan. In May 2010 the Board of Directors adopted the 2010 Stock Incentive Plan, which was amended and restated in April 2013 (the “2010 Plan”) for issuance of common stock to employees, non-employee directors, consultants, and scientific advisors. Options are granted to employees, consultants, and scientific advisors under the 2010 Plan, pursuant to a formula determined by our Board of Directors. All options are exercisable at the fair market value of the stock on the date of grant. Non-employee director options expire after ten years.

In May 2012, our stockholders approved an increase in the number of shares of common stock reserved for issuance under the 2010 Plan from 12,553,475 to 16,553,475. In May 2013, our stockholders approved an increase in the number of shares of common stock reserved for issuance under the 2010 Plan from 16,553,475 to 21,753,475. In May 2014, our stockholders approved an increase in the number of shares of common stock reserved for issuance under the 2010 Plan from 21,753,475 to 24,753,475. In May 2016, our stockholders approved an increase in the number of shares of common stock reserved for issuance under the 2010 Plan from 24,753,475 to 30,753,475.

Option activity under the 2010 Stock Plan was as follows:

	Shares Available for Grant	Shares Subject to Outstanding Options	
		Shares	Weighted Average Exercise Price
Balance at December 31, 2015	3,846,717	11,052,279	\$ 33.55
Additional authorization	5,000,000	—	—
Options granted	(2,726,303)	2,726,303	\$ 89.78
Options exercised	—	(2,065,452)	\$ 20.54
Options cancelled	208,558	(208,558)	\$ 77.99
Options expired	(1,834)	—	—
Balance at December 31, 2016	6,327,138	11,504,572	\$ 48.40

In July 2016, we revised the terms of our annual stock option grants to provide that new option grants would generally have a 10-year term and vest over four years, with 25% vesting after one year and the remainder vesting in 36

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equal monthly installments. Previously, our option grants generally had 7-year terms and vested over three years, with 33% vesting after one year and the remainder vesting in 24 equal monthly installments.

Options to purchase a total of 7,995,735, 8,239,929 and 10,486,757 shares as of December 31, 2016, 2015 and 2014, respectively, were exercisable and vested. The aggregate intrinsic value of options exercised for the years ended December 31, 2016, 2015 and 2014 were \$137.0 million, \$416.3 million and \$359.7 million, respectively. At December 31, 2016 the aggregate intrinsic value of options outstanding and vested options are \$599.5 million and \$596.5 million, respectively.

The following table summarizes information about stock options outstanding as of December 31, 2016 for the 2010 Plan:

Range of Exercise Prices	Options Outstanding			Options Exercisable		
	Number Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number Exercisable	Weighted Average Exercise Price	
\$2.80 - \$14.72	1,221,654	1.11	\$ 12.91	1,221,654	\$ 12.91	
\$14.74 - \$17.50	170,353	2.07	16.44	170,353	16.44	
\$17.79 - \$17.79	1,263,344	2.00	17.79	1,263,344	17.79	
\$17.89 - \$18.30	136,235	2.49	18.11	136,235	18.11	
\$18.32 - \$18.32	2,199,881	3.01	18.32	2,199,881	18.32	
\$18.97 - \$52.31	1,221,333	3.74	33.14	1,195,831	32.81	
\$52.59 - \$72.86	1,048,148	4.25	64.41	922,536	63.95	
\$73.21 - \$73.21	1,250,405	5.66	73.21	607,603	73.21	
\$73.29 - \$84.53	1,167,246	9.06	82.56	60,177	77.08	
\$85.00 - \$128.21	1,825,973	6.87	97.01	218,121	104.77	
	11,504,572			7,995,735		

Restricted Stock Units and Performance Stock Units .

In January 2014, we began granting RSUs and PSUs to our employees at the share price on the date of grant. Each RSU represents the right to acquire one share of our common stock. Each RSU granted prior to July 2016 was subject to cliff vesting after three years. In July 2016, we revised the terms of our RSU grants to provide that the awards will vest 25% annually over four years.

Also, in January 2014, Hervé Hoppenot, our President and Chief Executive Officer, was granted a one-time grant of 400,000 RSUs outside of our 2010 Stock Incentive Plan. Vesting of the RSUs will be subject to Mr. Hoppenot's continued employment on the applicable vesting dates, with one-sixth of the RSUs vesting at the end of each of the calendar years 2014 through 2019, subject to earlier acceleration of vesting upon the occurrence of certain events in accordance with the terms of his employment agreement. As of December 31, 2016, a total of 133,333 RSUs granted to Mr. Hoppenot vested and were released, leaving 266,667 RSUs outstanding.

We did not grant any PSUs during the year ended December 31, 2016. We granted a total of 55,326 PSUs during the year ended December 31, 2014. At December 31, 2016, we have recognized stock compensation expense for these awards if the performance conditions were deemed probable of achievement at that date. For PSUs containing performance conditions which have not been deemed probable of achievement at December 31, 2016, no stock compensation expense has been recognized for these awards. The actual number of shares of our common stock into which each PSU will convert is at a multiplier of 100% based on the performance conditions achieved as of December 31, 2016.

Based on our historical experience of employee turnover, we have assumed an annualized forfeiture rate of 5% for our options, PSUs and RSUs. Under the true-up provisions of the stock compensation guidance, we will record additional expense as the awards vest if the actual forfeiture rate is lower than we estimated, and will record a recovery of prior expense if the actual forfeiture is higher than we estimated.

RSU and PSU award activity under the 2010 Stock Plan was as follows:

	Shares Available for Grant	Shares Subject to Outstanding Awards	
		Shares	Grant Date Value
Balance at December 31, 2015	834,433	565,567	—
Additional authorization	1,000,000	—	—
RSUs granted	(739,076)	739,076	\$ 85.70
RSUs cancelled	48,847	(48,847)	\$ 76.11
PSUs cancelled	1,948	(1,948)	\$ 64.55
RSUs released	—	(7,278)	\$ 78.49
Balance at December 31, 2016	1,146,152	1,246,570	—

Employee Stock Purchase Plan. On May 21, 1997, our stockholders adopted the 1997 Employee Stock Purchase Plan (the “ESPP”). Each regular full-time and part-time employee working 20 hours or more per week is eligible to participate after one month of employment. We issued 126,648, 194,453 and 193,657 shares under the ESPP in 2016, 2015 and 2014, respectively. For the years ended December 31, 2016, 2015 and 2014 we recorded stock compensation expense of \$2.4 million, \$2.4 million and \$1.9 million, respectively, as the ESPP is considered compensatory under the FASB stock compensation rules. As of December 31, 2016, 1,084,510 shares remain available for issuance under the ESPP.

Note 11. Stock Compensation

We recorded \$96.2 million, \$69.9 million and \$62.2 million, respectively, of stock compensation expense for the years ended December 31, 2016, 2015 and 2014. We utilized the Black-Scholes valuation model for estimating the fair value of the stock options granted, with the following weighted-average assumptions:

	Employee Stock Options For the Year Ended			Employee Stock Purchase Plan For the Year Ended		
	December 31,			December 31,		
	2016	2015	2014	2016	2015	2014
Average risk-free interest rates	1.30 %	1.35 %	1.21 %	0.90 %	0.81 %	0.55 %
Average expected life (in years)	4.99	5.03	4.54	0.50	0.50	0.50
Volatility	50 %	49 %	51 %	48 %	55 %	48 %
Weighted-average fair value (in dollars)	39.35	34.55	25.65	18.82	16.26	9.56

The risk-free interest rate is derived from the U.S. Federal Reserve rate in effect at the time of grant. The expected life calculation is based on the observed and expected time to the exercise of options by our employees based on historical exercise patterns for similar type options. Expected volatility is based on the historical volatility of our common stock over the period commensurate with the expected life of the options. A dividend yield of zero is assumed based on the fact that we have never paid cash dividends and have no present intention to pay cash dividends.

Total compensation cost of options granted but not yet vested, as of December 31, 2016, was \$62.9 million, which is expected to be recognized over the weighted average period of 1.3 years. Total compensation cost of RSUs granted but not yet vested, as of December 31, 2016, was \$51.1 million, which is expected to be recognized over the weighted average period of 1.6 years.

Note 12. Income Taxes

We are subject to U.S. federal, state and foreign corporate income taxes. The provision for income taxes is based on income (loss) before provision for income taxes as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
U.S.	\$ 272,574	\$ 110,560	\$ (48,506)
Non-U.S.	(165,170)	(103,004)	(41)

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Income (loss) before income taxes	\$ 107,404	\$ 7,556	\$ (48,547)
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Our provision (benefit) for income taxes consists of the following (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Current:			
State	\$ 2,700	\$ 1,025	\$ (66)
Foreign	482	—	—
Total provision (benefit) for income taxes	<u>\$ 3,182</u>	<u>\$ 1,025</u>	<u>\$ (66)</u>

A reconciliation of income taxes at the U.S. federal statutory rate to the provision (benefit) for income taxes is as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Provision (benefit) at U.S. federal statutory rate	\$ 37,591	\$ 2,645	\$ (16,992)
Unbenefitted net operating losses and tax credits	(47,410)	(29,424)	13,432
Non-deductible amortization of debt discount	—	1,087	2,294
Non-deductible interest expense	—	122	1
Excess tax benefits related to share-based compensation	(29,541)	—	—
Foreign tax rate differential	39,975	21,443	—
Non-deductible officer compensation	2,061	4,696	830
Other	506	456	369
Provision (benefit) for income taxes	<u>\$ 3,182</u>	<u>\$ 1,025</u>	<u>\$ (66)</u>

The foreign tax rate differential in the table above reflects the impact of operations in jurisdictions with tax rates that differ from the U.S. federal statutory rate. Due to the adoption of ASU No. 2016-09, excess tax benefits from share-based award activity for the year ended December 31, 2016 are reflected as a reduction of the provision for income taxes, whereas they previously were recognized in equity.

Significant components of our deferred tax assets and liabilities are as follows (in thousands):

	December 31,	
	2016	2015
Deferred tax assets:		
Net operating loss carry forwards	\$ 481,155	\$ 329,984
Federal and state research credits	250,324	201,151
Capitalized research and development	18,618	13,017
Deferred revenue and accruals	9,882	11,212
Non-cash compensation	56,370	39,034
Contingent consideration	32,500	—
Deferred financing obligation	—	20,328
Other	19,533	3,125
Total gross deferred tax assets	<u>868,382</u>	<u>617,851</u>
Less valuation allowance for deferred tax assets	(820,233)	(542,936)
Net deferred tax assets	<u>\$ 48,149</u>	<u>\$ 74,915</u>
Deferred tax liabilities:		
Property and equipment	\$ (7,761)	\$ (25,787)
Intangibles, net	(5,337)	—
Equity component of 2018 Notes and 2020 Notes	(35,051)	(49,128)
Total gross deferred tax liabilities	<u>(48,149)</u>	<u>(74,915)</u>
Net deferred income taxes	<u>\$ —</u>	<u>\$ —</u>

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As of December 31, 2016, the Company has NOL carryforwards, research and development credit carryforwards and orphan drug tax credit carryforwards as follows (in thousands):

	<u>Amount</u>	<u>Expiring if not utilized</u>
Net operating loss carryforwards		
Federal	\$ 1,234,332	2024 through 2036
State	503,400	2024 through 2036
Foreign	252,614	2020 through 2023
Research and development credit carryforwards		
Federal	122,579	2018 through 2036
State	21,253	Indefinite
Orphan drug tax credit carryforwards	126,172	2029 through 2036

Our ability to utilize our federal and state NOLs may be limited under Internal Revenue Code Section 382 (“Section 382”). Section 382 imposes annual limitations on the utilization of NOL carryforwards and other tax attributes upon an ownership change. In general terms, an ownership change may result from transactions that increase the aggregate ownership of certain stockholders in our stock by more than 50 percentage points over a testing period (generally three years). We have completed a Section 382 analysis through the year ended December 31, 2015. Based on this analysis, our NOLs and other tax attributes accumulated through 2015 should not be limited under Section 382. We have not updated our analysis through 2016.

In January 2015, we licensed certain intellectual property rights related to our non-partnered clinical programs to our wholly-owned subsidiary in Switzerland. Although the license of intellectual property rights did not result in any gain or loss in the condensed consolidated statements of operations, the transaction generated a taxable gain in the U.S., and we are utilizing available federal and state net operating loss, or NOL, carryforwards to offset the majority of this gain. Any taxes incurred related to intercompany transactions are treated as prepaid tax in our condensed consolidated balance sheets and amortized to income tax expense over the life of the intellectual property. Cash taxes paid related to this intercompany transaction were immaterial.

In January 2016, the Delaware Competes Act (the “Act”) was enacted by the State of Delaware, which changes the corporate income tax apportionment formula to a single sales factor apportionment formula by 2020. As a qualified Delaware headquarter company under the Act, we plan to elect single sales factor beginning in 2017. Our Delaware deferred tax assets have been reduced by \$55.1 million as of December 31, 2016 to reflect this election, with a corresponding decrease in the valuation allowance on these deferred tax assets. However the election has no impact on the gross amount of NOL carryforwards available for future use in Delaware.

The valuation allowance for deferred tax assets increased by approximately \$277.3 million during the year ended December 31, 2016, decreased by approximately \$126.2 million during the year ended December 31, 2015 and increased by approximately \$42.2 million during the year ended December 31, 2014. During 2016, the valuation allowance increased by \$325.6 million related to the creation of a valuation allowance against deferred tax assets associated with the accumulated excess tax benefits from stock compensation upon the early adoption of ASU No. 2016-09 in the first quarter of 2016. This increase was partially offset by a reduction of \$55.1 million related to the valuation allowance against Delaware deferred tax assets, which were reduced due to the law change discussed above.

Valuation allowances require an assessment of both positive and negative evidence when determining whether it is more likely than not that deferred tax assets are recoverable. Such assessment is required on a jurisdiction-by-jurisdiction basis. The ultimate realization of deferred tax assets is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible.

Based upon the Company’s analysis of its historical operating results, as well as projections of the Company’s future taxable income (losses) during the periods in which the temporary differences will be recoverable, management believes the uncertainty regarding the realization of its U.S. and Swiss net deferred tax assets requires a full valuation allowance against such net assets as of December 31, 2016. When performing our assessment on projections of future

taxable income (losses), we consider factors such as the likelihood of regulatory approval and commercial success of products currently under development, among other factors.

The financial statement recognition of the benefit for a tax position is dependent upon the benefit being more likely than not to be sustainable upon audit by the applicable taxing authority. If this threshold is met, the tax benefit is then measured and recognized at the largest amount that is greater than 50% likely of being realized upon ultimate settlement. If such unrecognized tax benefits were realized and not subject to valuation allowances, we would recognize a tax benefit of \$10.8 million. The following table summarizes the gross amounts of unrecognized tax benefits (in thousands):

	Year Ended December 31,	
	2016	2015
Balance at beginning of year	\$ 836	\$ —
Additions related to prior periods tax positions	6,740	—
Additions related to current period tax positions	2,652	836
Acquisitions	570	—
Balance at end of year	<u>\$ 10,798</u>	<u>\$ 836</u>

Our policy is to recognize interest and penalties related to uncertain tax positions, if any, as a component of income tax expense. As of December 31, 2016 and 2015, we accrued interest and penalties of \$0.3 million and \$0.0 million, respectively. Due to NOL and tax credit carry forwards that remain unutilized, U.S. federal and state income tax returns remain subject to examination for three years after utilization of that year's NOL carryforward. The earliest year which generated an NOL included in our current NOL carryforward is 2004 for U.S. federal tax purposes. All tax years for our foreign subsidiaries are open to audit in their respective jurisdictions.

Note 13. Net Income (Loss) Per Share

Our basic net income (loss) per share is computed by dividing the net income (loss) by the number of weighted average common shares outstanding during the period. Our diluted net income (loss) per share is computed by dividing net income (loss) by the weighted average common shares outstanding during the period assuming potentially dilutive common shares of stock options, RSUs and common shares issuable upon conversion of the 2015 Notes, 2018 Notes and 2020 Notes using the if-converted method. Common shares issuable upon conversion of the 2015 Notes, 2018 Notes and 2020 Notes were excluded from the diluted net income (loss) per share computation for all periods presented as their share effect was anti-dilutive.

Net income (loss) per share was calculated as follows for the periods indicated:

(in thousands, except per share data)	Year Ended December 31,		
	2016	2015	2014
Basic Net Income (Loss) Per Share			
Basic net income (loss)	\$ 104,222	\$ 6,531	\$ (48,481)
Weighted average common shares outstanding	187,873	179,601	167,947
Basic net income (loss) per share	\$ 0.55	\$ 0.04	\$ (0.29)
Diluted Net Income (Loss) Per Share			
Diluted net income (loss)	\$ 104,222	\$ 6,531	\$ (48,481)
Weighted average common shares outstanding	187,873	179,601	167,947
Dilutive stock options and RSU's	6,252	7,701	—
Weighted average shares used to compute diluted net income (loss) per share	194,125	187,302	167,947
Diluted net income (loss) per share	\$ 0.54	\$ 0.03	\$ (0.29)

The potential common shares that were excluded from the diluted net income (loss) per share computation are as follows:

	2016	2015	2014
Outstanding stock options and awards	2,792,424	494,468	15,453,520
Common shares issuable upon conversion of the 2015 Notes (1)	—	—	10,353,416
Common shares issuable upon conversion of the 2018 Notes	7,245,149	7,245,263	7,245,263
Common shares issuable upon conversion of the 2020 Notes	7,241,284	7,241,361	7,245,263
Total potential common shares excluded from diluted net loss per share computation	17,278,857	14,981,092	40,297,462

(1) In October 2015, the remaining 2015 Notes were due and all but a de minimus principal amount were converted into common stock.

Note 14. Employee Benefit Plans

Defined Contribution Plans

We have a defined contribution plan qualified under Section 401(k) of the Internal Revenue Code covering all domestic employees and defined contribution plans for other Incyte employees in Europe. Employees may contribute a portion of their compensation, which is then matched by us, subject to certain limitations. Defined contribution expense was \$6.6 million, \$2.9 million and \$2.4 million for the years ended December 31, 2016, 2015 and 2014, respectively. Included in the 2016 defined contribution expense is \$0.3 million of expense related to matching contributions under the European defined contribution plans.

Defined Benefit Pension Plans

In connection with the Acquisition, we assumed a defined benefit pension plan for the former ARIAD employees. In addition, we established another defined benefit pension plan for other Incyte employees in Europe. The pension plans provide benefits to employees upon retirement, death or disability. The assets of the pension plans are held in collective investment accounts represented by the cash surrender value of an insurance policy and are classified as Level 2 within

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the fair value hierarchy.

The pension plans assumptions reflect the expected investment return and discount rate on plan assets and disability rate probabilities. The benefit obligation at December 31, 2016 for the plans was determined using a discount rate of 0.75% and rate of compensation increase of 1.50%. The 2016 net periodic benefit cost for the plans was determined using a discount rate of 0.75%, rate of compensation increase of 1.50% and long-term expected return on plan assets of 0.75%.

Summarized information regarding changes in the obligations and plan assets, the funded status and the amounts recorded as of December 31, 2016 were as follows (in thousands):

	<u>2016</u>
Benefit obligation, beginning of year	\$ —
Benefit obligations acquired / established	17,591
Employer service cost	1,225
Interest cost	76
Plan participants' contributions	536
Actuarial loss	2,249
Benefit payments from fund	2,548
Expenses paid from assets	(20)
Translation gain	(418)
Benefit obligation, end of year	<u>23,787</u>
Fair value of plan assets, beginning of year	—
Fair value of plan assets acquired / established	12,598
Actual return on plan assets	100
Employer contributions	1,323
Plan participants' contributions	536
Benefit payments from fund	2,548
Expenses paid from assets	(20)
Translation gain	(386)
Fair value of plan assets, end of year	<u>16,699</u>
Unfunded liability, end of year	<u>\$ 7,088</u>

The unfunded liability is reported in other liabilities on the consolidated balance sheet as of December 31, 2016.

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The net periodic benefit cost for the year ended December 31, 2016 was as follows (in thousands):

	2016	
Service cost	\$	1,225
Interest cost		76
Expected return on plan assets		(59)
Net periodic benefit cost	\$	<u>1,242</u>

Other changes in the plans assets and the benefit obligation that is recognized in accumulated other comprehensive income (loss) for the year ended December 31, 2016 were as follows (in thousands):

	2016	
Pension liability in other comprehensive income (loss), beginning of year	\$	—
Plan change		506
Net loss		2,244
Pension liability in other comprehensive income (loss), end of year	\$	<u>2,750</u>

The prior service cost for the pension plans that will be amortized from accumulated other comprehensive income (loss) into net periodic benefit cost over the next fiscal year is \$0.2 million.

We expect to contribute a total of \$1.9 million to the pension plans in 2017. The following benefit payments, which reflect expected future service, as appropriate, are expected to be paid (in thousands):

2017	\$	925
2018		977
2019		1,014
2020		1,037
2021		1,198
2022-2026		6,071
Total	\$	<u>11,222</u>

Note 15. Commitments and Contingencies

Rent expense for all leases for the years ended December 31, 2016, 2015 and 2014, was approximately \$5.4 million, \$1.3 million and \$7.0 million, respectively.

As of December 31, 2016, future non-cancelable minimum payments under operating, direct financing and capital leases, were as follows:

Year Ended December 31,	Operating Leases		Capital Lease	
	(in millions)		(in millions)	
2017	\$	7.9	\$	0.5
2018		5.6		0.5
2019		1.8		0.1
2020		1.0		—
2021		0.6		—
Thereafter		1.9		—
Total minimum lease payments	\$	<u>18.8</u>	\$	<u>1.1</u>

We lease approximately 160,000 square feet of office space in Chadds Ford, Pennsylvania and approximately 28,000 square feet of additional office space in Wilmington, Delaware.

We have entered into and may in the future seek to license additional rights relating to technologies or drug development candidates in connection with our drug discovery and development programs. Under these licenses, we may be required to pay upfront fees, milestone payments, and royalties on sales of future products, which are not reflected in the table above.

Note 16. Segment Information

We currently operate in one operating business segment focused on the discovery, development and commercialization of proprietary therapeutics. Our chief operating decision-maker manages the operations of our company as a single operating segment. We do not operate in any material separate lines of business or separate business entities with respect to our products or product development.

During the year ended December 31, 2016, total revenues generated by subsidiaries in the United States was \$1.1 billion and total revenues generated from subsidiaries in Europe was \$29.6 million. All revenues were generated in the United States in 2015 and 2014. For the year ended December 31, 2016, product revenues, net consisted of \$852.8 million of JAKAFI product revenues, net and \$29.6 million of ICLUSIG product revenues, net. As of December 31, 2016, property and equipment, net was approximately \$165.0 million in the United States and approximately \$2.7 million in Europe. As of December 31, 2015, property and equipment, net in Europe was immaterial.

Note 17. Interim Consolidated Financial Information (Unaudited)

(in thousands, except per share data)	Fiscal 2016 Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
Revenues(1)	\$ 263,464	\$ 246,288	\$ 269,469	\$ 326,498
Net income	\$ 24,047	\$ 34,425	\$ 36,877	\$ 8,873
Basic net income per share	\$ 0.13	\$ 0.18	\$ 0.20	\$ 0.05
Diluted net income per share	\$ 0.12	\$ 0.18	\$ 0.19	\$ 0.05
Shares used in computation of basic net income per share	187,184	187,682	188,029	188,598
Shares used in computation of diluted net income per share	192,625	193,015	194,265	195,187

(in thousands, except per share data)	Fiscal 2015 Quarter Ended			
	March 31,	June 30,	September 30,	December 31,
Revenues(2)	\$ 159,275	\$ 162,984	\$ 187,611	\$ 243,881
Net income (loss)	\$ (18,359)	\$ 9,294	\$ (39,582)	\$ 55,178
Basic net income (loss) per share	\$ (0.11)	\$ 0.05	\$ (0.22)	\$ 0.30
Diluted net income (loss) per share	\$ (0.11)	\$ 0.05	\$ (0.22)	\$ 0.29
Shares used in computation of basic net income (loss) per share	172,070	178,676	181,387	186,269
Shares used in computation of diluted net income (loss) per share	172,070	186,493	181,387	193,367

(1) The quarter ended March 31, 2016 includes \$183.3 million of product revenues, net, relating to JAKAFI. The quarters ended June 30, 2016, September 30, 2016 and December 31, 2016 include \$212.1 million, \$236.6 million and \$250.4 million, respectively, of product revenues, net, relating to JAKAFI and ICLUSIG. The quarters ended March 31, 2016, June 30, 2016, September 30, 2016 and December 31, 2016 include \$21.9 million, \$26.0 million, \$29.6 million and \$33.2 million, respectively of product royalty revenues related to the sale of JAKAVI outside the United States. In November 2009 and December 2009, we entered into collaborative research and license agreements with Novartis and Lilly, respectively. The quarters ended March 31, 2016, June 30, 2016, September 30, 2016 and December 31, 2016 include \$58.2 million, \$8.2 million, \$3.2 million and \$42.9 million, respectively of contract revenues relating to these agreements.

(2) The quarters ended March 31, 2015, June 30, 2015, September 30, 2015 and December 31, 2015 include \$115.3 million, \$142.4 million, \$161.3 million and \$182.0 million, respectively of product revenues, net, relating to JAKAFI. The quarters ended March 31, 2015, June 30, 2015, September 30, 2015 and December 31, 2015 include

\$15.7 million, \$17.4 million, \$18.1 million and \$23.6 million, respectively of product royalty revenues related to the sale of JAKAVI outside the United States. In November 2009 and December 2009, we entered into collaborative research and license agreements with Novartis and Lilly, respectively. The quarters ended March 31, 2015, June 30, 2015, September 30, 2015 and December 31, 2015 include \$28.2 million, \$3.2 million, \$8.2 million and \$38.2 million, respectively of contract revenues relating to these agreements.

Note 18. Subsequent Events

Merus

In December 2016, we entered into a Collaboration and License Agreement with Merus N.V. Under this agreement, which became effective in January 2017, the parties have agreed to collaborate with respect to the research, discovery and development of bispecific antibodies utilizing Merus' technology platform. The collaboration encompasses up to eleven independent programs, including two of Merus' current preclinical immuno-oncology discovery programs. We received exclusive development and commercialization rights outside of the United States to products and product candidates resulting from one of Merus' current preclinical discovery programs, referred to as "Program 1." We also received worldwide exclusive development and commercialization rights to products and product candidates resulting from the other current Merus preclinical discovery program that is subject to the collaboration and to up to nine additional programs. Merus retained exclusive development and commercialization rights in the United States to products and product candidates resulting from Program 1 and options, subject to certain conditions, to co-fund development of products resulting from two other programs in exchange for a share of profits in the United States. Merus will also have the right to participate in a specified proportion of detailing activities in the United States for one of those co-developed programs. Should Program 1 fail to successfully complete IND-enabling toxicology studies, Merus would be granted an additional option to co-fund development of a program in exchange for a share of profits in the United States. All costs related to the collaboration are subject to joint research and development plans. Each party will share equally the costs of mutually agreed global development activities for Program 1, and fund itself any independent development activities in its territory. We will be responsible for all research, development and commercialization costs relating to all other programs, subject to Merus' election to co-fund development and co-detail described above. If Merus exercises its co-funding option for a program, Merus would be responsible for funding 35% of the associated future global development costs and, for certain of such programs, would be responsible for reimbursing us for certain development costs incurred prior to the option exercise. All products as to which Merus has exercised its option to co-fund development would be subject to joint development plans and overseen by a joint development committee, but we will have final determination as to such plans in cases of dispute.

We have agreed to pay Merus an upfront non-refundable payment of \$120 million. For each program as to which Merus does not have commercialization or co-development rights, Merus will be eligible to receive up to \$100 million in future contingent development and regulatory milestones and up to \$250 million in commercialization milestones as well as tiered royalties ranging from 6% to 10% of global net sales. For each program as to which Merus exercises its option to co-fund development, Merus will be eligible to receive a 50% share of profits (or sustain 50% of any losses) in the United States and be eligible to receive tiered royalties ranging from 6% to 10% of net sales of products outside of the United States. If Merus opts to cease co-funding a program as to which it exercised its co-development option, then Merus will no longer receive a share of profits in the United States but will be eligible to receive the same milestones from the co-funding termination date and the same tiered royalties described above with respect to non-co-developed programs and, depending on the stage at which Merus chose to cease co-funding development costs, additional royalties ranging up to 4% of net sales in the United States. For Program 1, we and Merus will each be eligible to receive tiered royalties on net sales in the other party's territory at rates ranging from 6% to 10%.

The Merus agreement will continue on a program-by-program basis until we have no royalty payment obligations with respect to such program or, if earlier, the termination of the agreement or any program in accordance with the terms of the agreement. The agreement may be terminated in its entirety or on a program-by-program basis by us for convenience. The agreement may also be terminated by either party under certain other circumstances, including material breach, as set forth in the agreement. If the agreement is terminated with respect to one or more programs, all rights in the terminated programs revert to Merus, subject to payment to us of a reverse royalty of up to 4% on sales of future products, if Merus elects to pursue development and commercialization of products arising from the terminated programs.

In addition, in December 2016, we entered into a Share Subscription Agreement with Merus, pursuant to which in January 2017 we purchased 3,200,000 common shares of Merus for an aggregate purchase price of \$80 million in cash, or \$25.00 per share. We agreed to certain standstill provisions whereby we are obligated to refrain from taking certain actions with respect to Merus or Merus' common shares. The standstill provisions are subject to certain exceptions, including an exception that allows us to maintain our percentage ownership following equity financings by Merus. We also agreed, subject to limited exceptions, not to sell or otherwise transfer any of our Merus shares for a period, referred to as the Lock-Up Period, ending on the earlier of 18 months after the closing date of the sale of the Shares or the end of the standstill period. In addition, if the standstill period has not been terminated earlier upon the occurrence of certain events, for a period of three years after the Lock-Up Period, we will be restricted from selling or otherwise transferring more than one-third of our Merus shares during any 12-month period or 10% of our Merus shares during any three-month period, unless Merus consents otherwise. We have further agreed that during the standstill period, we will vote all of our Merus shares in accordance with the recommendation of a majority of Merus' supervisory board. However, we may vote our Merus shares at our own discretion for certain extraordinary matters, including a change in control of Merus. Merus has agreed to customary resale registration rights with respect to our Merus shares; however, any such resales will be subject to the Lock-Up Period and volume limitations on sale and transfer described above.

Calithera

In January 2017, we entered into a Collaboration and License Agreement with Calithera Biosciences, Inc. Under this agreement, we received an exclusive, worldwide license to develop and commercialize small molecule arginase inhibitors, including CB-1158, which is currently in phase I clinical trials, for hematology and oncology indications. We have agreed to co-fund 70% of the global development costs for the development of the licensed products for hematology and oncology indications. Calithera will have the right to conduct certain clinical development under the collaboration, including combination studies of a licensed product with a proprietary compound of Calithera. We will be entitled to 60% of the profits and losses from net sales of licensed product in the United States, and Calithera will have the right to co-detail licensed products in the United States, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products outside the United States. Calithera may opt out of its co-funding obligation, in which case the U.S. profit sharing will no longer be in effect, and we have agreed to pay Calithera tiered royalties ranging from the low to mid-double digits on net sales of licensed products both in the United States and outside the United States, and additional royalties to reimburse Calithera for previously incurred development costs.

Calithera retains rights to certain arginase inhibitors that are not part of the collaboration for specific orphan indications outside of hematology and oncology, subject to our rights to negotiate a license for any such programs under specified circumstances if Calithera elects to out-license them.

In January 2017, we paid Calithera an upfront license fee of \$45.0 million and have agreed to pay potential development, regulatory and sales milestone payments of over \$430.0 million if the profit share is in effect, or \$750.0 million if the profit share terminates.

The Calithera agreement will continue on a product-by-product and country-by-country basis for so long as we are developing or commercializing products in the United States (if the parties are sharing profits in the United States) and until we have no further royalty payment obligations, unless earlier terminated according to the terms of the agreement. The agreement may be terminated in its entirety or on a product-by-product and/or a country-by-country basis by us for convenience. The agreement may also be terminated by us for Calithera's uncured material breach, by Calithera for our uncured material breach and by either party for bankruptcy or patent challenge. If the agreement is terminated early with respect to one or more products or countries, all rights in the terminated products and countries revert to Calithera.

In addition, in January 2017, we entered into a Stock Purchase Agreement with Calithera for the purchase of 1,720,430 common shares of Calithera for an aggregate purchase price of \$8.0 million in cash, or \$4.65 per share. Under the Stock Purchase Agreement, we have certain rights to participate in future stock issuances. Incyte will have this participation right until the earlier of (i) January 27, 2019 or (ii) expiration of the Term (as defined in the Collaboration and License Agreement). Incyte has also agreed not to sell or otherwise transfer any of the shares for a period ending 180 days after the closing date of the sale of the Shares, subject to customary exceptions.

Lilly

In January 2017, we exercised our co-development option in psoriatic arthritis to fund 30% of future global development costs through regulatory approval, including post-launch studies required by a regulatory authority, in exchange for increased tiered royalties. We also exercised our co-development options in both atopic dermatitis and axial spondyloarthritis, should Lilly decide to progress into a pivotal program in these indications.

In February 2017, the European Commission approved baricitinib for the treatment of moderate to severe active rheumatoid arthritis in adult patients and we will record a \$65.0 million regulatory milestone payment in the first quarter of 2017.

Agenus

In January 2015, we entered into a License, Development and Commercialization Agreement with Agenus Inc. and its wholly-owned subsidiary, 4-Antibody AG, which we collectively refer to as Agenus. Under this agreement, the parties have agreed to collaborate on the discovery of novel immuno-therapeutics using Agenus' antibody discovery platforms. In February 2017, we and Agenus amended this agreement.

Under the terms of this agreement, as amended, we received exclusive worldwide development and commercialization rights to four checkpoint modulators directed against GITR, OX40, LAG-3 and TIM-3. In addition to the initial four program targets, we and Agenus have the option to jointly nominate and pursue additional targets within the framework of the collaboration, and in November 2015, three more targets were added. Targets may be designated profit-share programs, where all costs and profits are shared equally by us and Agenus, or royalty-bearing programs, where we are responsible for all costs associated with discovery, preclinical, clinical development and commercialization activities. The programs relating to GITR and OX40 and two of the undisclosed targets were profit-share programs until February 2017, while the other targets currently under collaboration are royalty-bearing programs. The February 2017 amendment converted the programs relating to GITR and OX40 to royalty-bearing programs and removed from the collaboration the profit-share programs relating to the two undisclosed targets, with one reverting to us and one reverting to Agenus. Should any of those removed programs be successfully developed by a party, the other party will be eligible to receive the same milestone payments as the royalty-bearing programs and royalties at a 15% rate on global net sales. There are currently no profit-share programs. For each royalty-bearing product other than GITR and OX40, Agenus will be eligible to receive tiered royalties on global net sales ranging from 6% to 12%. For GITR and OX40, Agenus will be eligible to receive 15% royalties on global net sales. Under the February 2017 amendment, we paid Agenus \$20.0 million in accelerated milestones relating to the clinical development of the GITR and OX40 programs. Agenus is eligible to receive up to an additional \$510.0 million in future contingent development, regulatory and commercialization milestones across all programs in the collaboration. The agreement may be terminated by us for convenience upon 12 months' notice and may also be terminated under certain other circumstances, including material breach.

In connection with entering into the Agenus agreement, in January 2015, we purchased approximately 7.76 million shares of Agenus Inc. common stock for an aggregate purchase price of \$35.0 million in cash, or approximately \$4.51 per share. We agreed to certain standstill provisions under the license agreement as described in Note 6 of Notes to Consolidated Financial Statements. In February 2017, in connection with amending the Agenus agreement, we purchased 10.0 million shares of Agenus Inc. common stock for an aggregate purchase price of \$60.0 million in cash, or \$6.00 per share.

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

Not applicable.

Item 9A. Controls and Procedures

Evaluation of disclosure controls and procedures. We maintain “disclosure controls and procedures,” as such term is defined in Rule 13a-15(e) under the Securities Exchange Act of 1934 (the “Exchange Act”), that are designed to ensure that information required to be disclosed by us in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in Securities and Exchange Commission rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating our disclosure controls and procedures, management recognized that disclosure controls and procedures, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the disclosure controls and procedures are met. Our disclosure controls and procedures have been designed to meet reasonable assurance standards. Additionally, in designing disclosure controls and procedures, our management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible disclosure controls and procedures. The design of any disclosure controls and procedures also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions.

Based on their evaluation as of the end of the period covered by this Annual Report on Form 10-K, our Chief Executive Officer and Chief Financial Officer concluded that, as of such date, our disclosure controls and procedures were effective at the reasonable assurance level.

Changes in internal control over financial reporting. On June 1, 2016, we acquired all of the outstanding shares of ARIAD Pharmaceuticals (Luxembourg) S.a.r.l. We are in the process of integrating the acquired ARIAD entities and our management is in the process of evaluating any related changes to our internal control over financial reporting as a result of this integration. Except for any changes relating to this integration, there has been no change in our internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) for the quarter ended December 31, 2016, that materially affected or are reasonably likely to materially affect our internal control over financial reporting.

Management’s annual report on internal control over financial reporting. Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f). Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Projections of any evaluation of the 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. Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, 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 (2013 framework). Based on our evaluation under the framework in *Internal Control—Integrated Framework*, our management concluded that our internal control over financial reporting was effective as of December 31, 2016. We excluded ARIAD Pharmaceuticals (Luxembourg) S.à.r.l., since renamed Incyte Biosciences Luxembourg S.à.r.l., from our assessment of internal control over financial reporting as of December 31, 2016 because it was acquired in a business combination during 2016. Incyte Biosciences Luxembourg S.à.r.l. is a wholly owned subsidiary whose total assets represent approximately 28% of consolidated total assets as of December 31, 2016, and whose total revenues represent approximately 3% of consolidated total revenues for the year ended December 31, 2016. This exclusion is in accordance with the SEC’s general guidance that an assessment of a recently acquired business may be omitted from the scope in the year of acquisition.

The effectiveness of our internal control over financial reporting as of December 31, 2016 has been audited by Ernst & Young LLP, an independent registered public accounting firm, as stated in their report which is included herein.

Report of Independent Registered Public Accounting Firm

The Board of Directors and Stockholders of Incyte Corporation

We have audited Incyte Corporation's internal control over financial reporting as of December 31, 2016, based on criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework) (the COSO criteria). Incyte Corporation's management is responsible for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Annual Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on the company's internal control over financial reporting based on our audit.

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

As indicated in the accompanying Management's Annual Report on Internal Control Over Financial Reporting, management's assessment of and conclusion on the effectiveness of internal control over financial reporting did not include the internal controls of ARIAD Pharmaceuticals (Luxembourg) S.à.r.l., since renamed Incyte Biosciences Luxembourg S.à.r.l., which is included in the 2016 consolidated financial statements of Incyte Corporation and constituted 28% of total assets as of December 31, 2016 and 3% of total revenues for the year then ended. Our audit of internal control over financial reporting of Incyte Corporation also did not include an evaluation of the internal control over financial reporting of ARIAD Pharmaceuticals (Luxembourg) S.à.r.l.

In our opinion, Incyte Corporation maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on the COSO criteria.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated balance sheets of Incyte Corporation as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive income (loss), stockholders' equity (deficit) and cash flows for each of the three years in the period ended December 31, 2016 of Incyte Corporation and our report dated February 14, 2017 expressed an unqualified opinion thereon.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania

February 14, 2017

Item 9B. Other Information

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance

The information required by this item (with respect to Directors) is incorporated by reference from the information under the caption “Election of Directors” contained in our Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2017 Annual Meeting of Stockholders to be held on May 26, 2017 (the “Proxy Statement”). Certain information required by this item concerning executive officers is set forth in Part I of this Report under the caption “Executive Officers of the Registrant” and is incorporated herein by reference.

Item 405 of Regulation S-K calls for disclosure of any known late filing or failure by an insider to file a report required by Section 16(a) of the Exchange Act. This disclosure is contained in the section entitled “Section 16(a) Beneficial Ownership Reporting Compliance” in the Proxy Statement and is incorporated herein by reference.

We have adopted a Code of Business Conduct and Ethics that applies to all of our officers and employees, including our Chief Executive Officer, Chief Financial Officer, Corporate Controller and other employees who perform financial or accounting functions. The Code of Business Conduct and Ethics sets forth the basic principles that guide the business conduct of our employees. We have also adopted a Senior Financial Officers’ Code of Ethics that specifically applies to our Chief Executive Officer, Chief Financial Officer, Corporate Controller, and others providing similar functions. Stockholders may request a free copy of our Code of Business Conduct and Ethics and our Senior Financial Officers’ Code of Ethics by contacting Incyte Corporation, Attention: Investor Relations, 1801 Augustine Cut-Off, Wilmington, DE 19803.

To date, there have been no waivers under our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics. We intend to disclose future amendments to certain provisions of our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics or any waivers, if and when granted, of our Code of Business Conduct and Ethics or Senior Financial Officers’ Code of Ethics on our website at <http://www.incyte.com> within four business days following the date of such amendment or waiver.

Our Board of Directors has appointed an Audit Committee of three directors, currently comprised of Mr. Paul J. Clancy, as Chairman, Mr. Paul A. Brooke, and Ms. Wendy Dixon. The Board of Directors has also determined that Mr. Clancy and Mr. Brooke are each qualified as an Audit Committee Financial Expert under the definition outlined by the Securities and Exchange Commission. In addition, each of the members of the Audit Committee qualifies as an “independent director” under the applicable standards of The NASDAQ Stock Market.

Item 11. Executive Compensation

The information required by this item is incorporated by reference from the information under the captions “Election of Directors—Compensation of Directors” and “Executive Compensation” contained in the Proxy Statement.

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

The information required by this item is incorporated by reference from the information under the captions “Security Ownership of Certain Beneficial Owners and Management” and “Equity Compensation Plan Information” contained in the Proxy Statement.

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

The information required by this item is incorporated by reference from the information under the captions “Certain Relationships and Related Transactions” and “Election of Directors—Director Independence” contained in the Proxy Statement.

Item 14. *Principal Accountant Fees and Services*

The information required by this item is incorporated by reference from the information under the caption “Principal Accountant Fees and Services” contained in the Proxy Statement.

PART IV

Item 15. *Exhibits, Financial Statement Schedules*

(a) Documents filed as part of this report:

- (1) Financial Statements

Reference is made to the Index to Consolidated Financial Statements of Incyte Corporation under Item 8 of Part II hereof.

- (2) Financial Statement Schedules

All financial statement schedules have been omitted because they are not applicable or not required or because the information is included elsewhere in the Consolidated Financial Statements or the Notes thereto.

- (3) Exhibits

See Item 15(b) below. Each management contract or compensatory plan or arrangement required to be filed has been identified.

(b) Exhibits

Exhibit Number	Description of Document
3(i)	Integrated copy of the Restated Certificate of Incorporation, as amended, of the Company (incorporated by reference to Exhibit 3(i) to the Company’s Annual Report on Form 10-K for the year ended December 31, 2009).
3(ii)	Bylaws of the Company amended and restated as of July 31, 2015 (incorporated by reference to Exhibit 3.1 to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2015).
4.1	Form of Common Stock Certificate (incorporated by reference to the exhibit of the same number to the Company’s Annual Report on Form 10-K for the year ended December 31, 2002).
4.2	Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company’s Current Report on Form 8-K filed November 14, 2013).
4.3	Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company’s Current Report on Form 8-K filed November 14, 2013).
10.1#	1991 Stock Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.1 to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2009).

Exhibit Number	Description of Document
10.2#	Form of Incentive Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.3#	Form of Nonstatutory Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.4#	1993 Directors' Stock Option Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009).
10.5#	Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 27, 2016).
10.6#	Form of Stock Option Agreement for Executive Officers under the Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016).
10.7#	Form of Nonstatutory Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
10.8#	Form of Incentive Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
10.9#	Form of Nonstatutory Stock Option Agreement for Outside Directors under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.24 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013).
10.10#	Form of Restricted Stock Unit Award Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
10.11#	Form of Performance Share Award Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2014).
10.12#	Form of Indemnity Agreement between the Company and its directors and officers (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.13#	1997 Employee Stock Purchase Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed May 27, 2016).
10.14#	Form of Employment Agreement between the Company and Barry P. Flannelly (effective as of August 11, 2014), David W. Gyska (effective as of October 31, 2014), Steven H. Stein (effective as of March 2, 2015), and Vijay K. Iyengar (effective as of May 9, 2016) (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the year ended December 31, 2012).
10.15#	Form of Amended and Restated Employment Agreement, effective as of April 18, 2012, between the Company and Reid M. Huber, Richard S. Levy, Eric H. Siegel, Paula J. Swain and Wenqing Yao (incorporated by reference to Exhibit 10.14 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2012).
10.16#	Offer of Employment Letter, dated as of January 3, 2014, from the Company to Hervé Hoppenot (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed January 13, 2014).
10.16.1#	Employment Agreement between the Company and Hervé Hoppenot dated as of January 11, 2014 (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed January 13, 2014).
10.16.2#	Amendment, dated as of April 13, 2015, to Employment Agreement between the Company and Hervé Hoppenot, dated as of January 11, 2014 (incorporated by reference to Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015).
10.17#	Restricted Stock Unit Award Agreement between the Company and Hervé Hoppenot dated January 13, 2014 (incorporated by reference to Exhibit 10.3 to the Company's Current Report on Form 8-K filed January 13, 2014).

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Exhibit Number	Description of Document
10.18†	Collaborative Research and License Agreement dated as of November 18, 2005, by and between the Company and Pfizer Inc. (incorporated by reference to Exhibit 10.49 to the Company's Annual Report on Form 10-K for the year ended December 31, 2005).
10.19†	Collaboration and License Agreement entered into as of November 24, 2009, by and between the Company and Novartis International Pharmaceutical Ltd. (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009).
10.20†	Amendment, dated as of April 5, 2016, to Collaboration and License Agreement entered into as of November 24, 2009, by and between the Company and Novartis International Pharmaceutical Ltd. (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016).
10.20.1†	License, Development and Commercialization Agreement, entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009).
10.20.2†	Amendment, dated June 22, 2010, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010).
10.20.3†	Third Amendment, entered into effective March 31, 2016, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016).
10.20.4†*	Fourth Amendment, entered into effective December 13, 2016, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company.
10.21†	License, Development and Commercialization Agreement, entered into as of January 9, 2015, by and between the Company, Incyte Europe S.a.r.l. (a wholly owned subsidiary of the Company), Agenus, Inc. and 4-Antibody AG (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015).
10.22	Stock Purchase Agreement, entered into as of January 9, 2015, between the Company and Agenus, Inc. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2015).
10.23†	License and Collaboration Agreement, dated as of September 1, 2015, by and between Incyte Europe S.à.r.l. and Jiangsu Hengrui Medicine Co., Ltd. (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2015).
10.24†	Share Purchase Agreement, dated as of May 9, 2016, by and among Incyte Europe S.à.r.l., ARIAD Pharmaceuticals (Cayman) L.P., ARIAD Pharmaceuticals, Inc., as guarantor, and the Company, as guarantor (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016).
10.25†	Amended and Restated Buy-In License Agreement, dated as of June 1, 2016, between ARIAD Pharmaceuticals, Inc., ARIAD Pharmaceuticals (Europe) S.à.r.l. and the Company, as guarantor (incorporated by reference to Exhibit 10.3 to the Company's Amendment No. 1 to Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2016).
10.26†*	Collaboration and License Agreement, dated December 20, 2016, by and between the Company and Merus N.V.
10.27†*	Share Subscription Agreement, dated December 20, 2016, by and between the Company and Merus N.V.
10.28	Letter Agreement dated September 24, 2009 among the Company and the entities named therein (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed September 30, 2009).
10.29	Letter Agreement dated November 7, 2013 among the Company and the entities named therein (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed November 14, 2013).

<u>Exhibit Number</u>	<u>Description of Document</u>
10.30	Registration Rights Agreement, dated as of February 12, 2016, between the Company and 667, L.P., Baker Brothers Life Sciences, L.P. and 14159, L.P. (incorporated by reference to Exhibit 10.28 to the Company's Annual Report on Form 10-K for the year ended December 31, 2015).
10.31†	Lease Agreement by and between the Company and Augustine Land I, L.P., effective October 4, 2013 (incorporated by reference to Exhibit 10.27 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013).
10.32	Agreement of Sale between Incyte Corporation and Augustine Land II, L.P., dated August 21, 2015 (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed August 25, 2015).
12.1*	Computation of Ratios of Earnings to Fixed Charges.
21.1*	Subsidiaries of the Company.
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney (see page 129 of this Form 10-K).
31.1*	Rule 13a-14(a) Certification of the Chief Executive Officer.
31.2*	Rule 13a-14(a) Certification of the Chief Financial Officer.
32.1**	Statement of the Chief Executive Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350).
32.2**	Statement of the Chief Financial Officer under Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C Section 1350).
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema Document
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	XBRL Taxonomy Presentation Linkbase Document
101.DEF*	XBRL Taxonomy Definition Linkbase Document

* Filed herewith.

** In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management's Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-K and will not be deemed "filed" for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

† Confidential treatment has been requested with respect to certain portions of these agreements.

Indicates management contract or compensatory plan or arrangement.

Copies of above exhibits not contained herein are available to any stockholder upon written request to: Investor Relations, Incyte Corporation, 1801 Augustine Cut-Off, Wilmington, DE 19803.

(c) Financial Statements and Schedules

Reference is made to Item 15(a)(2) above.

Item 16. Form 10-K Summary .

Not applicable.

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.

INCYTE CORPORATION

By: /s/Hervé Hoppenot

Hervé Hoppenot

Chairman, President, and Chief Executive Officer

Date: February 14, 2017

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints Hervé Hoppenot, David W. Gryska, and Eric H. Siegel, and each of them, his true and lawful attorneys-in-fact, each with full power of substitution, for him or her in any and all capacities, to sign any amendments to this report on Form 10-K and to file the same, with exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, hereby ratifying and confirming all that each of said attorneys-in-fact or their substitute or substitutes may do or cause to be done by virtue hereof.

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

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Hervé Hoppenot</u> Hervé Hoppenot	Chairman, President, and Chief Executive Officer (Principal Executive Officer) and Director	February 14, 2017
<u>/s/ David W. Gryska</u> David W. Gryska	Chief Financial Officer (Principal Financial Officer)	February 14, 2017
<u>/s/ Paul Trower</u> Paul Trower	VP, Finance (Principal Accounting Officer)	February 14, 2017
<u>/s/ Julian C. Baker</u> Julian C. Baker	Director	February 14, 2017
<u>/s/ Jean-Jacques Bienaime</u> Jean-Jacques Bienaimé	Director	February 14, 2017
<u>/s/ Paul A. Brooke</u> Paul A. Brooke	Director	February 14, 2017
<u>/s/ Paul J. Clancy</u> Paul J. Clancy	Director	February 14, 2017
<u>/s/ Wendy L. Dixon</u> Wendy L. Dixon	Director	February 14, 2017
<u>/s/ Paul A. Friedman</u> Paul A. Friedman	Director	February 14, 2017

EXHIBIT INDEX

Exhibit Number	Description of Document
3(i)	Integrated copy of the Restated Certificate of Incorporation, as amended, of the Company (incorporated by reference to Exhibit 3(i) to the Company's Annual Report on Form 10-K for the year ended December 31, 2009).
3(ii)	Bylaws of the Company amended and restated as of July 31, 2015 (incorporated by reference to Exhibit 3.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2015).
4.1	Form of Common Stock Certificate (incorporated by reference to the exhibit of the same number to the Company's Annual Report on Form 10-K for the year ended December 31, 2002).
4.2	Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.1 to the Company's Current Report on Form 8-K filed November 14, 2013).
4.3	Indenture, dated as of November 14, 2013, between the Company and U.S. Bank National Association, as trustee (incorporated by reference to Exhibit 4.2 to the Company's Current Report on Form 8-K filed November 14, 2013).
10.1#	1991 Stock Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009).
10.2#	Form of Incentive Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.3#	Form of Nonstatutory Stock Option Agreement under the 1991 Plan (incorporated by reference to the exhibit of the same number to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.4#	1993 Directors' Stock Option Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2009).
10.5#	Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.1 to the Company's Current Report on Form 8-K filed May 27, 2016).
10.6#	Form of Stock Option Agreement for Executive Officers under the Incyte Corporation Amended and Restated 2010 Stock Incentive Plan, as amended (incorporated by reference to Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2016).
10.7#	Form of Nonstatutory Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
10.8#	Form of Incentive Stock Option Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
10.9#	Form of Nonstatutory Stock Option Agreement for Outside Directors under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.24 to the Company's Annual Report on Form 10-K for the year ended December 31, 2013).
10.10#	Form of Restricted Stock Unit Award Agreement under the 2010 Stock Incentive Plan (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2014).
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10.12#	Form of Indemnity Agreement between the Company and its directors and officers (incorporated by reference to Exhibit 10.5 to the Company's Registration Statement on Form S-1 (File No. 33-68138)).
10.13#	1997 Employee Stock Purchase Plan of Incyte Corporation, as amended (incorporated by reference to Exhibit 10.2 to the Company's Current Report on Form 8-K filed May 27, 2016).

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10.14#	Form of Employment Agreement between the Company and Barry P. Flannelly (effective as of August 11, 2014), David W. Gryska (effective as of October 31, 2014), Steven H. Stein (effective as of March 2, 2015), and Vijay K. Iyengar (effective as of May 9, 2016) (incorporated by reference to Exhibit 10.14 to the Company's Annual Report on Form 10-K for the year ended December 31, 2012).
10.15#	Form of Amended and Restated Employment Agreement, effective as of April 18, 2012, between the Company and Reid M. Huber, Richard S. Levy, Eric H. Siegel, Paula J. Swain and Wenqing Yao (incorporated by reference to Exhibit 10.14 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2012).
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10.19†	Collaboration and License Agreement entered into as of November 24, 2009, by and between the Company and Novartis International Pharmaceutical Ltd. (incorporated by reference to Exhibit 10.21 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009).
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10.20.1†	License, Development and Commercialization Agreement, entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.22 to the Company's Annual Report on Form 10-K for the year ended December 31, 2009).
10.20.2†	Amendment, dated June 22, 2010, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2010).
10.20.3†	Third Amendment, entered into effective March 31, 2016, to License, Development and Commercialization Agreement entered into as of December 18, 2009, by and between the Company and Eli Lilly and Company (incorporated by reference to Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2016).
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10.24†	Share Purchase Agreement, dated as of May 9, 2016, by and among Incyte Europe S.à.r.l., ARIAD Pharmaceuticals (Cayman) L.P., ARIAD Pharmaceuticals, Inc., as guarantor, and the Company, as guarantor (incorporated by reference to Exhibit 10.2 to the Company’s Quarterly Report on Form 10-Q for the quarter ended June 30, 2016).
10.25†	Amended and Restated Buy-In License Agreement, dated as of June 1, 2016, between ARIAD Pharmaceuticals, Inc., ARIAD Pharmaceuticals (Europe) S.à.r.l. and the Company, as guarantor (incorporated by reference to Exhibit 10.3 to the Company’s Amendment No. 1 to Quarterly Report on Form 10-Q/A for the quarter ended June 30, 2016).
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10.32	Agreement of Sale between Incyte Corporation and Augustine Land II, L.P., dated August 21, 2015 (incorporated by reference to Exhibit 10.1 to the Company’s Current Report on Form 8-K filed August 25, 2015).
12.1*	Computation of Ratios of Earnings to Fixed Charges.
21.1*	Subsidiaries of the Company.
23.1*	Consent of Ernst & Young LLP, Independent Registered Public Accounting Firm.
24.1*	Power of Attorney (see page 129 of this Form 10-K).
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101.DEF*	XBRL Taxonomy Definition Linkbase Document

* Filed herewith.

** In accordance with Item 601(b)(32)(ii) of Regulation S-K and SEC Release Nos. 33-8238 and 34-47986, Final Rule: Management’s Reports on Internal Control Over Financial Reporting and Certification of Disclosure in Exchange Act Periodic Reports, the certifications furnished in Exhibits 32.1 and 32.2 hereto are deemed to accompany this Form 10-K and will not be deemed “filed” for purpose of Section 18 of the Exchange Act. Such certifications will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

† Confidential treatment has been requested with respect to certain portions of these agreements.

Indicates management contract or compensatory plan or arrangement.

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

FOURTH AMENDMENT

This Fourth Amendment ("Fourth Amendment") is entered into effective December 13, 2016 ("the Fourth Amendment Effective Date") by and between Incyte Corporation ("Incyte"), a Delaware Corporation having an office at 1801 Augustine Cut-off, Wilmington, DE 19803, and Eli Lilly and Company ("Lilly"), and Indiana corporation having an office at Lilly Corporate Center, Indianapolis, IN 46285.

RECITALS

- A. Incyte and Lilly are parties to (i) a License, Development and Commercialization Agreement, effective December 18, 2009, (ii) an Amendment, effective June 22, 2010, (iii) a Second Amendment, effective August 1, 2011, and (iv) a Third Amendment, effective March 31, 2016, pursuant to which Incyte has granted Lilly an exclusive License to develop and commercialize Licensed Compounds and Licensed Products in the Field (such Agreement, as so amended, the "Agreement").
- B. The Parties now desire to further amend the Agreement to modify the Milestone Event which triggers Lilly's obligation to pay Incyte a milestone payment.
- C. Unless otherwise defined herein, all capitalized terms appearing in this Fourth Amendment shall have the meaning set forth in the Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

- 1. Section 7.2(a)(i)(F) of the Agreement is hereby deleted and replaced to designate 7.2(a)(i)(F) as follows:

Milestone Event	First Indication	***	***
(F) Receipt of Marketing Authorization of a Licensed Product by the European Commission	US \$65,000,000	***	***

CONFIDENTIAL TREATMENT REQUESTED

2. Section 7.2(a)(ii)(E) of the Agreement is hereby deleted and replaced to designate 7.2(a)(ii)(E) as follows:

	[**]	[**]	[**]	[**]
(E)	[**]	[**]	[**]	[**]

3. All other terms and conditions of the Agreement shall remain in full force and effect.

4. This Fourth Amendment shall be effective as of the Fourth Amendment Effective Date.

IN WITNESS WHEREOF, the parties by their respective authorized representatives have executed this Fourth Amendment as of the Fourth Amendment Effective Date.

ELI LILLY AND COMPANY

INCYTE CORPORATION

By: /s/ David A. Ricke

By: /s/ Hervé Hoppenot

Name: David A. Ricke

Name: Hervé Hoppenot

Title: President, Lilly BioMedicine

Title: CEO, Incyte

NF

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

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

COLLABORATION AND LICENSE AGREEMENT

by and between

Incyte Corporation

and

Merus N.V.

dated as of December 20, 2016

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

COLLABORATION AND LICENSE AGREEMENT

THIS COLLABORATION AND LICENSE AGREEMENT (the “Agreement”) is entered into as of December 20, 2016 (the “Execution Date”), by and between Incyte Corporation, a Delaware corporation having an office at 1801 Augustine Cut-off, Wilmington, DE 19803, United States of America (“Incyte”), and Merus N.V., a company incorporated in the Netherlands, having an office at Yalelaan 62, 3584 CM Utrecht, The Netherlands (“Merus”).

WHEREAS, Merus is a clinical stage immuno-oncology company in the business of research and development of innovative bi-specific Antibodies;

WHEREAS, Incyte is in the business of research, development and commercialization of pharmaceutical and biologic products; and

WHEREAS, Incyte and Merus are interested in collaborating on activities relating to certain bi-specific Antibodies to Develop such Antibodies in the Field;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are 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 set forth in this ARTICLE I:

1.1 “Accounting Standards” means (a) with respect to Incyte, that Incyte shall maintain records and books of accounts in accordance with (i) US GAAP (United States Generally Accepted Accounting Principles) or (ii) if mandated by the SEC, IFRS (International Financial Reporting Standards) and (b) with respect to Merus, that Merus shall maintain records and books of accounts in accordance with IFRS. Notwithstanding the above, prior period restatements needed in conjunction with the IFRS adoption shall not impact royalty payments, milestone payments and Development Costs already paid prior to the IFRS adoption except for the fiscal year immediately prior to the fiscal year in which the change in accounting standards is implemented.

1.2 “Additional Co-Development Product” means a Novel Program Product arising from an Additional Co-Development Program.

1.3 “Additional Co-Development Program” means a Novel Program for which the Additional Co-Development Option has been timely exercised pursuant to Section 5.5(a).

1.4 “Affiliate” means, with respect to any Person, another Person which controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. Without limiting the generality of the foregoing, a Person shall be deemed to control another Person if any of the following conditions is met: (i) in the case of

corporate entities, direct or indirect ownership of more than [**] of the stock or shares having the right to vote for the election of directors, and (b) in the case of non-corporate entities, direct or indirect ownership of more than [**] of the equity interest with the power to direct the management and policies of such non-corporate entities. For the purposes of this Agreement, in no event shall Incyte or any of its Affiliates be deemed Affiliates of Merus or any of its Affiliates, nor shall the Merus or any of its Affiliates be deemed Affiliates of Incyte or any of its Affiliates.

1.5 “ Allowable Expenses ” means, subject to the other provisions of this Agreement, the following expenses to the extent specifically identifiable or reasonably allocable to, as applicable, (i) the [**] Co-Development Product, if any, or (ii) an Additional Co-Development Product, if any, with respect to Commercialization in the United States, or the manufacture for use in such Commercialization activities, by or on behalf of Incyte, or with respect to co-Detailing activities for the [**] Co-Detailing Product, Merus, and their respective Affiliates, or, where such Commercialization rights have been sublicensed by Incyte to a Third Party, such sublicensee:

(a) FTE and Out-of-Pocket costs specifically identifiable or reasonably allocable to the Commercialization of the [**] Co-Development Product or an Additional Co-Development Product in the United States (including co-Detailing costs of the Parties pursuant to Section 7.3(a); provided that each Party shall, in accordance with applicable Accounting Standards, prorate all such costs in the event that its sales representatives detail product in addition to a Co-Detailing Product during the same Detailing visit);

(b) Manufacturing Costs for the [**] Co-Development Product or an Additional Co-Development Product, as applicable, for sale in the United States (including [**] of the [**] Co-Development Product or such Additional Co-Development Product);

(c) Regulatory Expenses (including [**] to the extent allocable to sales of the [**] Co-Development Product or an Additional Co-Development Product);

(d) Development Costs incurred on or after First Commercial Sale ;

(e) costs for the coordination of medical information requests and field based medical scientific liaisons in the United States;

(f) costs associated with patient assistance programs;

(g) costs for filing, maintaining and enforcing Patent Rights pursuant to Sections 8.3(c) and 8.4, in each case to the extent not (i) otherwise reimbursed through recoveries obtained in connection with any litigation as contemplated under Section 8.4 or (ii) Merus’s responsibility pursuant to Section 8.5(d) or ARTICLE XI;

(h) costs of securing trademarks for the [**] Co-Development Product or an Additional Co-Development Product, as applicable, pursuant to Section 7.4(b);

(i) product liability insurance in the event the Parties obtain a joint policy that covers the [**] Co-Development Product or an Additional Co-Development Product;

(j) Third Party Payments (in accordance with Section 8.5(a) – (c));

(k) FTE and Out-of-Pocket costs associated with recall or withdrawal of the [**] Co-Development Product or an Additional Co-Development Product other than such costs that result from a Party's or its Affiliate's breach of this Agreement (which costs will be borne solely by such Party);

(l) FTE and Out-of-Pocket Costs incurred in relation to (i) Product Liability claims and (ii) Third Party infringement claims, except for any such infringement claim with respect to which either Party is required to indemnify the other Party pursuant to ARTICLE XI, in each case arising from the Development, manufacture and Commercialization of the [**] Co-Development Product or an Additional Co-Development Product; and

(m) any other costs and expense of Incyte, its Affiliates, and its sublicensees specifically identifiable or reasonably allocable to the Commercialization of the [**] Co-Development Product or an Additional Co-Development Product in the United States;

provided that Allowable Expenses shall exclude Development Costs incurred prior to First Commercial Sale and further provided that expenses incurred for [**] by or on behalf of either Party in relation to the [**] Co-Detailing Product shall only be included within "Allowable Expenses" [**]. For clarity, Allowable Expenses will not include [**] with respect to [**] Product (whether under the [**] Program or as a Novel Program Product under any Novel Program), other than the [**] Co-Detailing Product; provided that the foregoing would not limit [**] right to [**] to the extent provided under this Agreement.

1.6 "Annual Net Sales" means Net Sales of the applicable Licensed Products for a particular Program in any Calendar Year, or, in the first or last year of the applicable Royalty Term, the portion of such Calendar Year during which this Agreement is in effect.

1.7 "Antibody" means a molecule that comprises or contains: (a) one or more immunoglobulin variable domains; (b) fragments, variants, modifications or derivatives of such immunoglobulin variable domains irrespective of origin or source, including antigen binding portions including Fab, Fab', F(ab')₂, Fv, dAb and CDR fragments, single chain antibodies (scFv), chimeric antibodies, diabodies and polypeptides (including humanized versions thereof), in each case that contain at least a portion of an immunoglobulin that is sufficient to confer specific antigen binding; or (c) the nucleic acid consisting of a sequence of nucleotides encoding (or complementary to a nucleic acid encoding) any of the foregoing molecules in (a) or (b).

1.8 "Arising IP" means all Inventions and Know-How discovered, made or conceived, or information created by either Party or jointly by the Parties or any of their Affiliates, employees, independent contractors or consultants in the course of conducting activities under this Agreement, together with all Intellectual Property Rights therein; including Platform Arising IP, Discovery Arising IP, Target Pair Arising IP, Sole Arising IP and Joint Arising IP.

1.9 "Bankruptcy Event" means with respect to a Party (a) the entry of an order for relief under the Bankruptcy Code (or any other bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect) by such Party; (b) the commencement of

an involuntary proceeding under the Bankruptcy Code or any other bankruptcy, insolvency, reorganization or other similar act or law of any jurisdiction now or hereafter in effect against such Party, if not dismissed, bonded or stayed within [**] after such commencement; (c) the making by such Party of a general assignment for the benefit of creditors; or (d) the appointment of or taking possession by a receiver, liquidator, assignee, custodian, or trustee of all or substantially all of the business or property of such Party.

1.10 “Bi-Specific Construct” means an Antibody that recognizes two or more different Targets or two or more distinct epitopes on the same Target through binding by distinct V-Regions on each Fab region of such bi-specific Antibody. Where “Bi-Specific Construct” is used in connection with a Program, it applies to the Bi-Specific Constructs generated (or that could be generated based on the General Monoclonal Antibodies) for such Program, including with respect to Program 1 and Program 2, prior to the Effective Date.

1.11 “BLA” means (a) (i) a Biologics License Application or New Drug Application submitted to the FDA, or any successor application or procedure, as more fully defined in the United States Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, as amended from time to time, or under Section 351 of the Public Health Service Act (PHSA), which is codified at 42 U.S.C. §262, or (ii) any non-United States counterpart of such a New Drug Application or Biologics License Application, and (b) all supplements and amendments, including supplemental New Drug Applications and Biologics License Applications (and any non-United States counterparts) that may be filed with respect to the foregoing.

1.12 “Business Day” means any day except Saturday, Sunday and any day on which banking institutions in New York, New York or Utrecht, Netherlands, generally are closed as a result of federal, state or local holiday.

1.13 “Calendar Quarter” means a calendar quarter ending on the last day of March, June, September or December.

1.14 “Calendar Year” means (a) for the first year of the Term, the period beginning on the Effective Date and ending on December 31, 2017, (b) for each year of the Term thereafter, each successive period of time commencing on January 1 and ending twelve (12) consecutive calendar months later on December 31, and (c) for the last year of the Term, the period beginning on January 1 of the year in which this Agreement expires or terminates and ending on the effective date of expiration or termination of this Agreement.

1.15 “Candidate Nomination” means, with respect to a Program and its associated Target Pair, that [**] in such Program.

1.16 “[**] Antibody” means any Antibody that binds to [**].

1.17 “Change of Control” means, with respect to either Party, the occurrence of any of the following after the Effective Date:

(a) Any “person” or “group” (as such terms are defined below) (i) becomes the “beneficial owner” (as defined below), directly or indirectly, of shares or other interests (including

partnership interests) of a Party then outstanding and normally entitled (without regard to the occurrence of any contingency) to vote in the appointment or election of the directors, the managers, the members of the management board or the members of the supervisory board or similar positions (“Voting Stock”) of such Party representing [**] or more of the total voting power of all outstanding classes of Voting Stock of such Party or (ii) has the power, directly or indirectly, to elect [**] of the members of such Party’s directors, managers, management board, supervisory board, or similar governing body (“Board of Directors”); or

(b) A Party enters into a merger, consolidation or similar transaction with another Person (whether or not such Party is the surviving entity) and as a result of such merger, consolidation or similar transaction (i) the members of a Board of Directors of such Party immediately prior to such transaction, immediately following such transaction, (A) constitute less than [**] of the members of a Board of Directors of such surviving Person or (B) do not jointly hold [**] of the voting power within the Board of Directors or (ii) the Persons that beneficially owned, directly or indirectly, the shares of Voting Stock of such Party immediately prior to such transaction cease to beneficially own, directly or indirectly, shares of Voting Stock of such Party representing at least [**] of the total voting power of all outstanding classes of Voting Stock of the surviving Person in substantially the same proportions as their ownership of Voting Stock of such Party immediately prior to such transaction; or

(c) A Party sells or transfers to any Third Party, in one or more related transactions, properties or assets representing all or substantially all of such Party’s assets to which this Agreement relates; or

(d) The general meeting of shareholders of a Party adopt a resolution or the holders of shares or other interests of a Party approve a proposal, as applicable, for the dissolution of such Party or for the approval of a resolutions or a plan, as applicable, resulting in the liquidation of all or substantially all of such Party’s assets.

(e) For the purpose of this definition of Change of Control, (a) “person” and “group” have the meanings given such terms under Section 13(d) and 14(d) of the United States Securities Exchange Act of 1934 and the term “group” includes any group acting for the purpose of acquiring, holding or disposing of securities within the meaning of Rule 13d-5(b)(1) under the said Act; (b) a “beneficial owner” shall be determined in accordance with Rule 13d-3 under the aforesaid Act; and (c) the terms “beneficially owned” and “beneficially own” shall have meanings correlative to that of “beneficial owner.”

1.18 “Clinical Trial” means a Phase I Study, a Phase II Study, a Phase III Study, a Pivotal Study, a Phase IV Study or a combination of two (2) or more of any of the foregoing studies in any jurisdiction.

1.19 “Commercialization” or “Commercialize” means any activities directed to obtaining pricing and/or reimbursement approvals, marketing, promoting, distributing, importing, Detailing, offering to sell, and/or selling a product (including establishing the price for such product).

1.20 “Commercially Reasonable Efforts” of a Party means the reasonable, diligent, good faith efforts of the type to accomplish such objective as such Party would normally use to accomplish a similar objective under similar circumstances, it being understood and agreed that, with respect to efforts to be expended in relation to a Licensed Product, such efforts shall be substantially consistent with those efforts and resources commonly used by such Party for any other product owned by it or in relation to which it may have rights, which other product is at a similar stage in its Development or product life and is of similar market and economic potential as products expected to result from the Licensed Antibodies at a similar stage in their Development or product life provided that such efforts continue to be commercially reasonable in light of the scientific and economic outlook for the product, all as measured by the facts and circumstances at the time such efforts are due.

1.21 “Confidential Information” means (a) all confidential or proprietary information relating to Licensed Antibodies, and (b) all other confidential or proprietary documents, technology, Know-How or other information (whether or not patentable) actually disclosed by one Party to the other pursuant to this Agreement or the Prior Confidentiality Agreements.

1.22 “Control” or “Controlled” means, with respect to any (a) material, document, item of information, method, data or other Know-How or (b) other Intellectual Property Rights, the possession by a Party or its Affiliates, whether by ownership or license (other than by licenses granted under this Agreement), of the ability to grant to the other Party access, a license and/or a sublicense as provided herein without requiring the consent of a Third Party or violating the terms of any agreement or other arrangement with any Third Party, in each case as of the Execution Date, or if any of the same are acquired or created after the Execution Date, at the date it is acquired or created by the relevant Party or its Affiliate.

1.23 “Cover”, “Covering” or “Covered” means, with respect to a product, technology, process or method, that, but for a license granted to a Person under a Valid Claim included in the Patent Rights under which such license is granted, the Development, manufacture, Commercialization, importation, and/or other use of such product or the practice of such technology, process, or method by such Person would infringe such Valid Claim (or, in the case of a Valid Claim that has not yet issued, would infringe such Valid Claim if it were to issue).

1.24 “Data Package” means, on a Program-by-Program basis, a data package intended to support the achievement of the Candidate Nomination for a Bi-Specific Construct in such Program, including the following information, in a form reasonable under the circumstances and to the extent applicable to the given Research Plan: (a) a written report summarizing any [**] the applicable Program, and all [**] the applicable Research Plan, (b) a [**] relating to the [**] Antibodies for the applicable [**] and the [**], (c) available information and data relating to the [**] Bi-Specific Constructs [**] applicable Target Pair, and any results and data relating to [**], (d) a list of all Patents Controlled by Merus that at the time of submission of such data package would be licensed to Incyte for Development and Commercialization of such Bi-Specific Construct(s) set forth in (c) as Licensed Antibodies and Licensed Products under this Agreement and any Patents Controlled by Merus Covering the Antibodies set forth in (b), and (e) any other information and data that the JRC agrees, at the time of designation of such Target Pair (in

accordance with Sections 4.4 or 4.5) or prior to Candidate Nomination, should be included within such Data Package to support the determination of Candidate Nomination for such Program.

1.25 “Detail” means the act of presenting information on the [**] Co-Detailing Product in a manner consistent with the Detailing Plan. When used as a verb “Detail” or “Detailing” means to engage in a Detail.

1.26 “Development” or “Develop” means, with respect to a biologic molecule or Antibody, any activity directed to obtaining or maintaining Regulatory Approval, including all preclinical and clinical drug or biologic product development activities, including: the conduct of Clinical Trials, vector construction, cell line development, master cell bank generation, test method development and stability testing, toxicology, formulation and delivery system development, process development, pre-clinical and clinical Licensed Antibody and Licensed Product supply, manufacturing scale-up, development-stage manufacturing, quality assurance/quality control procedure development and performance with respect to clinical materials, statistical analysis and report writing and clinical studies, regulatory affairs with respect to the foregoing, and all activities conducted under a Development Plan. Development expressly excludes activities conducted under the [**] Discovery Plan, Novel Discovery Plans and the Research Plans. When used as a verb, “Develop” means to engage in Development. For clarity, “Development” shall include Phase IV Studies or any other Clinical Trial commenced after Regulatory Approval.

1.27 “Development Costs” means the costs and expenses incurred by or on behalf of a Party attributable to, or reasonably allocable to, the Development of Licensed Products in accordance with the applicable Development Plan and the Program 1 Joint Development Budget, the [**] Co-Development Budget, or an Additional Co-Development Budget (if any), as applicable. Development Costs shall not include [**]. “Development Costs” shall include (a) the costs of [**], (b) the [**] costs of the relevant Party or its Affiliates [**] performing Development activities, (c) all Out-of-Pocket Costs incurred by the Parties or their Affiliates, including payments made to Third Parties with respect to any of the foregoing (except to the extent that [**]), (d) [**], (e) the cost of [**] and (f) the cost of [**], including: (i) all costs of [**] used in Development, [**], (ii) expenses incurred to [**], and (iii) costs and expenses of [**], in each case of (i) through (iii), to the extent associated with Development activities under the applicable Development Plan and Development Budget. Development Costs expressly include Research Costs for Program 1 Antibodies but exclude Research Costs for Program 2 Antibodies, [**] Antibodies, and Novel Program Antibodies.

1.28 “Development Plan” means the Program 1 Joint Development Plan, the Program 1 Incyte Territory Development Plan, the Program 1 US Development Plan, the [**] Co-Development Plan, and an Additional Co-Development Plan (if any), as applicable.

1.29 “Discovery Arising IP” means all Inventions and Know-How discovered, made or conceived, or information created by either Party or jointly by the Parties or any of their Affiliates, employees, independent contractors or consultants in the course of conducting activities under any Research Plan, [**] Discovery Plan, or Novel Discovery Plan under this Agreement, together with all Intellectual Property Rights therein, including [**]; provided that Discovery Arising IP excludes [**].

1.30 “Drop Date” means, with respect to a Dropped Program and the corresponding Dropped Target Pairs, the date of Incyte’s written notice to Merus of its desire to drop the applicable Program pursuant to Section 4.8.

1.31 “Dropped Bi-Specific Construct” means a Bi-Specific Construct that is part of a Dropped Program and that was [**] for such Dropped Program.

1.32 “Dropped Bi-Specific Product” means a product or product candidate (other than a Licensed Antibody or Licensed Product) that contains a Dropped Bi-Specific Construct as an active ingredient, including all formulations and dosages.

1.33 “Dropped Program” means a Program that is dropped by Incyte in accordance with Section 4.8 prior to achievement of Program Selection for such Program.

1.34 “Dropped Target Pair” means the Target Pair that was the subject of research activities under a Dropped Program.

1.35 “EMA” means the European Medicines Agency, or a successor agency thereto.

1.36 “Executive Officers” means the Chief Executive Officer of Incyte (or a senior executive officer of Incyte designated by Incyte’s Chief Executive Officer) and the Chief Executive Officer of Merus (or a senior executive officer of Merus or its Affiliate as designated by Merus’s Chief Executive Officer).

1.37 “Existing Program Patents” means those Patent Rights filed by Merus with respect to (i) Program 1 and Program 2, (ii) any IMOD Pipeline Product, or (iii) a [**] Program that exist as of the Execution Date, as set forth on Exhibit 1.37.

1.38 “FDA” means the United States Food and Drug Administration, or a successor agency thereto.

1.39 “Field” means all fields of use.

1.40 “First Commercial Sale” means, with respect to a Licensed Product, the first arm’s length commercial sale for monetary value of such Licensed Product to a Third Party (who is not a sublicensee) by, as applicable, Merus or its Affiliates or sublicensees or Incyte or its Affiliates or sublicensees in a country following applicable Regulatory Approval (other than applicable governmental price and reimbursement approvals) of such Licensed Product in such country. Sales or transfers (a) to an Affiliate or sublicensee (unless the Affiliate or sublicensee is the last entity in the distribution chain of the Licensed Product), or (b) of reasonable quantities of Licensed Product for Clinical Trial purposes, for a bona fide charitable purpose, or for compassionate or similar use shall not be considered a First Commercial Sale. For purposes of clarification, except as otherwise provided in the previous sentence, any first arm’s length commercial sale to a distributor or wholesaler under any non-conditional sale arrangement would be a First Commercial Sale.

1.41 “Force Majeure Event” means an event, act, occurrence, condition or state of facts, in each case outside the reasonable control of a Party, including: acts of God; acts of any government; any rules, regulations or orders issued by any governmental authority or by any officer, department, agency or instrumentality thereof; fire; storm; flood; earthquake; accident; war; rebellion; insurrection; riot; terrorism and invasion; in each case that interfere with the normal business operations of such Party.

1.42 “FPFV” means the first patient’s first screening visit in a Clinical Trial at or prior to which such subject signs an informed consent to participate in such Clinical Trial.

1.43 “FTE” means a full-time equivalent person year (consisting of a total of [**] hours per year) of scientific, technical or commercialization work undertaken by Incyte or Merus employees, as applicable.

1.44 “FTE Rate” means the rate per FTE (which may be prorated on a daily basis as necessary) of [**] per annum, with respect to Development or Commercialization activities conducted pursuant to this Agreement, subject to annual adjustment by the rate of the Employment Cost Index for total compensation for the “management, professional and related” occupational group, as published by the United States Department of Labor, Bureau of Labor Statistics (or any similar index agreed upon by the Parties if such index ceases to be compiled and published).

1.45 “General Monoclonal Antibody” means, with respect to a Target Pair designated by Incyte for inclusion in a Research Plan, the [**] but which are [**].

1.46 “Generic Competition” means, with respect to a Licensed Product in any country, that one or more Generic Products [**] in such country, and such Generic Product(s) have a market share (in the aggregate) of [**] or greater in a Calendar Quarter . Market share shall be based on the aggregate market in such country of such Licensed Product and the Generic Product(s), based on units of such Licensed Product sold and units of such Generic Product(s) sold in the aggregate, as reported by IMS International, or if such data are not available, such other reliable data source as reasonably agreed by the Parties.

1.47 “Generic Product” means, on a Licensed Product-by-Licensed Product and country-by-country basis, any pharmaceutical or biological product (a) that contains (i) an identical Licensed Antibody or active ingredient(s) as such Licensed Product, or (ii) a “highly similar” active ingredient(s) as such Licensed Product, as the phrase “highly similar” is used in 42 U.S.C. § 262(i)(2), and subject to the factors set forth in FDA’s Guidance for Industry, “Quality Considerations in Demonstrating Biosimilarity of a Therapeutic Protein Product to a Reference Product,” (April 2015), at Section V, and any successor FDA guidance thereto, (b) for which Regulatory Approval is obtained by referencing Regulatory Materials of such Licensed Product, (c) is approved for use in such country pursuant to a Regulatory Approval process governing approval of interchangeable or biosimilar biologics as described in 42 U.S.C. § 262, or an equivalent process for Regulatory Approval in any country outside the United States, or any other equivalent provision that comes into force, or is the subject of a notice with respect to such Licensed Product under 42 U.S.C. § 262(l)(2) or any other equivalent provision that comes into force in such country, and (d) is sold in the same country (or is commercially available in the same

country via import from another country) as such Licensed Product by any Third Party that is not a sublicensee of a Party or its Affiliates and did not purchase such product in a chain of distribution that included any of a Party or any of its Affiliates or its Sublicensees.

1.48 “HCDR3” means the third heavy chain complementarity-determinant region determined by the amino acid sequence of the variable (V) domain that is flanked by the invariant cysteine 104 and the invariant tryptophan 118 according to the IMGT system of numbering (as set forth at <http://www.imgt.org/IMGTScientificChart/Nomenclature/IMGT-FRCDRdefinition.html>) corresponding to cysteine 92 and tryptophan 103 in the Kabat system and cysteine 92 and tryptophan 103 of the Chothia system.

1.49 “HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereto.

1.50 “IMOD Pipeline Product” means [**] product or product candidate that contains a Bi-Specific Construct specifically binding to an IMOD Target Pair, including all formulations and dosages of such Bi-Specific Construct.

1.51 “IMOD Target Pair” means a Target Pair comprised of any two (2) IMOD Targets, or any two (2) distinct epitopes on any IMOD Target.

1.52 “IMOD Targets” means collectively [**], and each of (a) through (g) individually, an “IMOD Target”.

1.53 “Incyte Group Member” means Incyte and any direct or indirect wholly owned subsidiary of Incyte.

1.54 “Incyte IP” means Incyte Know-How and Incyte Patent Rights.

1.55 “Incyte Know-How” means all Know-How that (a) is Controlled by Incyte or any of its Affiliates as of the Execution Date or , subject to Section 5.3(d)(iv) (with respect to Program 1), during the Term (subject to Section 15.4(c)) and (b) is [**] to Develop, manufacture, or Commercialize any Licensed Antibodies or Licensed Products; provided that Incyte Know-How includes Know-How in Incyte’s Sole Arising IP but excludes Know-How in Target Pair Arising IP and Joint Arising IP.

1.56 “Incyte Patent Rights” means all Patent Rights that (a) are Controlled by Incyte or any of its Affiliates as of the Execution Date or during the Term (subject to Section 15.4(c)) and (b) are [**] to Develop, manufacture, use or Commercialize any Licensed Antibodies or Licensed Products; provided that Incyte Patent Rights include Patent Rights in Incyte’s Sole Arising IP, but excludes Patent Rights in Target Pair Arising IP and Joint Arising IP.

1.57 “[**] Targets” means a list of [**] Targets [**] within [**].

1.58 “Incyte Territory” means the entire world other than the United States.

1.59 “IND” means an Investigational New Drug Application filed with the FDA under 21 C.F.R. Part 312 or similar non-United States application or submission in any country or group of countries for permission to conduct human clinical investigations.

1.60 “Indication” means any disease, condition or syndrome, or sign or symptom of, or associated with, a disease or condition.

1.61 “Initial Research Term” means the period commencing on the Effective Date and ending on the [**] of the Effective Date.

1.62 “Initiation” or “Initiate” means, with respect to a Clinical Trial, the first dosing of the first human subject in such Clinical Trial.

1.63 “Intellectual Property Rights” means (a) Patent Rights, (b) Know-How, (c) copyrights (whether registered or unregistered), (d) rights in software, (e) trademarks, service marks, trade names, trade dress, domain names and similar rights, including goodwill therein, and (f) any other forms of proprietary or industrial rights pertaining to inventions, original works, and other forms of intellectual property now known or recognized in any jurisdiction, including the right to bring a claim with respect to any of the foregoing for past, present or future infringement, and any applications or registrations thereof .

1.64 “Internal Merus Program” means a bona fide internal program of research and development activities that [**] conducted by Merus or any of its Affiliates and that is directed to the identification, research and development of any Bi-Specific Constructs directed to one or more named Target Pair(s) where (a) [**] such research and development activities, and (b) [**] research, Development or Commercialization under this Agreement. [**] Internal Merus Program, (i) such [**], with respect to each such named Target Pair, be [**] under this Agreement and (ii) such [**], with respect to each such Target Pair, be [**] under this Agreement. For purposes of this definition, [**] and [**].

1.65 “Inventions” means all inventions, discoveries, improvements and other technology that are discovered, made or conceived by or on behalf of either Party or its respective Affiliates or both Parties or the respective Affiliates, whether solely or jointly with any Third Party, during and in the course of activities performed under this Agreement.

1.66 “Joint Arising IP” means all Inventions and Know-How discovered, made or conceived or information created, jointly by both Parties or any of their Affiliates, employees, independent contractors or consultants in the course of conducting activities under this Agreement, together with all Intellectual Property Rights therein; provided that Joint Arising IP excludes Platform Arising IP, Discovery Arising IP, and Target Pair Arising IP.

1.67 “Know-How” means any information, ideas, data, inventions, works of authorship, database rights, trade secrets, technology, practices, techniques, procedures, knowledge, skill, experience or materials, including formulations, molecules, assays, reagents, compounds, biologic molecules, compositions, human or animal tissue, samples or specimens, and combinations or components thereof, whether or not proprietary or patentable, or public or confidential, and whether stored or transmitted in oral, documentary, electronic or other form, including all

Regulatory Documentation, but excluding any such information or materials publicly disclosed in Patent Rights.

1.68 “Law” means any law, statute, rule, regulation, ordinance or other pronouncement having the effect of law, of any federal, national, multinational, state, provincial, county, city or other political subdivision, including (a) good clinical practices and adverse event reporting requirements, guidance from the International Conference on Harmonization or other generally accepted conventions, and all other rules, regulations and requirements of the Department of Health and Human Services, including the FDA, Center for Medicare & Medicaid Services (CMS) and other applicable Regulatory Authorities, (b) the Foreign Corrupt Practices Act of 1977, as amended, or any comparable laws in any country, and (c) all export control laws.

1.69 “Licensed Antibody” means a Program 1 Antibody, Program 2 Antibody, a [**] Antibody, or a Novel Program Antibody.

1.70 “Licensed Patent Rights” means (a) with respect to the Patent Rights licensed to Merus hereunder, the Incyte Patent Rights, and (b) with respect to the Patent Rights licensed to Incyte hereunder, the Merus Patent Rights and Patent Rights in the Merus Platform IP.

1.71 “Licensed Product” means a Program 1 Product, Program 2 Product, [**] Product, or Novel Program Product, as applicable. As used in this Agreement, except where not appropriate in context, a Licensed Product also includes the Licensed Antibody contained in such Licensed Product.

1.72 “Licensed Target Pair” means the Program 1 Target Pair, Program 2 Target Pair, [**] Target Pairs and Novel Program Target Pairs.

1.73 “Major Market” means the United States and the Non-U.S. Major Markets.

1.74 “Manufacturing Cost” means the fully burdened cost, including any internal and Out-of-Pocket Costs and expenses incurred to manufacture a Bi-Specific Construct, Licensed Antibody or Licensed Product, in each case solely to the extent allocable to such manufacture, including:

- (a) costs of [**] ;
- (b) costs associated with [**] ;
- (c) costs of [**] costs;
- (d) operating costs of facilities and equipment [**] ;
- (e) costs to [**] in compliance with cGMP;
- (f) [**] costs;
- (g) charges for [**] costs;

- (h) **[**]** costs;
- (i) a **[**]** of **[**]** ;
- (j) any **[**]** paid or payable in relation to the manufacture of a Bi-Specific Construct, Licensed Antibody or Licensed Product or any portion or component thereof; and
- (k) amounts that are paid to a Third Party, in connection with manufacturing a Bi-Specific Construct, Licensed Antibody or Licensed Product.

1.75 “Merus IP” means Merus Know-How and Merus Patent Rights.

1.76 “Merus Know-How” means all Know-How that (a) is Controlled by Merus or any of its Affiliates as of the Execution Date or , subject to Section 5.3(d)(iv) (with respect to Program 1), during the Term (subject to Section 15.4(c)) and (b) is necessary or useful to Develop, manufacture, or Commercialize any Licensed Antibodies or Licensed Products; provided that Merus Know-How includes Know-How in Merus’s Sole Arising IP and Discovery Arising IP, but excludes Know-How in Target Pair Arising IP, Joint Arising IP, and Merus Platform IP.

1.77 “Merus Patent Rights” means all Patent Rights that (a) are Controlled by Merus or its Affiliates as of the Execution Date or during the Term (subject to Section 15.4(c)) and (b) are necessary or useful to Develop, manufacture, use or Commercialize any Licensed Antibodies or Licensed Products; provided that Merus Patent Rights include Patent Rights in Existing Program Patents, Divisionals, Merus’s Sole Arising IP and Discovery Arising IP, but excludes Patent Rights contained in the Target Pair Arising IP, Joint Arising IP, and Merus Platform IP.

1.78 “Merus Platform” means Merus’s proprietary (a) Biclomics® **[**]** technology, (b) technology for **[**]** into Bi-Specific Constructs, including the technology used to **[**]** to generate Bi-Specific Constructs, (c) **[**]** and **[**]** , and (d) **[**]** technology and other **[**]**, including any modifications or improvements to the foregoing as may be made from time to time.

1.79 “Merus Platform IP” means all Know-How and Patent Rights that are Controlled by Merus or any of its Affiliates on the Execution Date or at any time during the Term (subject to Section 15.4(c)) that relates to the Merus Platform, including the Platform Arising IP.

1.80 “MHLW” means the Japanese Ministry of Health, Labor and Welfare, or a successor agency thereto.

1.81 “Net Profits” and, with correlative meaning, “Net Losses”, means Net Sales of the **[**]** Co-Development Products or an Additional Co-Development Product, as applicable, in the United States less Allowable Expenses.

1.82 “Net Sales” means, with respect to any Licensed Product, the net sales on behalf of a Royalty Paying Party or its Affiliates, licensees or sublicensees sold to Third Parties as determined in accordance with the Royalty Paying Party’s (or its Affiliate’s, licensee’s, or sublicensee’s, as applicable) usual and customary accounting methods, which are in accordance

with Accounting Standards, as consistently applied by such Royalty Paying Party (or its Affiliate, licensee, or sublicensee, as applicable), including [**] and [**] Licensed Products.

(a) In the case of any sale or other disposal of the Licensed Product between or among a Royalty Paying Party and its Affiliates, licensees and sublicensees for resale, Net Sales shall be deemed to occur and shall be calculated as above only on the [**] sale thereafter to a Third Party .

(b) In the case of any sale that is not invoiced or is delivered before invoice, Net Sales shall be calculated at the time all the revenue recognition criteria under the applicable Accounting Standards are met.

(c) In the case of any sale or other disposal for value, such as barter or counter-trade, of Licensed Product, or part thereof, other than in an arm's length transaction exclusively for cash, Net Sales shall be calculated as above on the [**] of the [**] received or the [**] (if higher) of the Licensed Product in the country of sale or disposal, as determined in accordance with the Accounting Standards.

(d) In the event the Licensed Product is sold in a finished dosage form containing the Licensed Product in combination with one or more other active ingredients (a "Combination Product"), the Net Sales of the Licensed Product, for the purposes of determining royalty payments, shall be determined:

(i) if the Licensed Product and other active ingredients contained in the Combination Product are each sold separately in finished form, by multiplying the Net Sales (as defined above in this Section 1.82) of the Combination Product by the fraction, $A/(A+B)$ where [**] is the [**] in the prior Calendar Year when sold separately in finished form and [**] is the [**] in the prior Calendar Year of the other product(s) sold separately in finished form;

(ii) if the Licensed Product contained in the Combination Product is sold separately in finished form but the other active ingredients are not sold separately in finished form, by multiplying the Net Sales (as defined above in this Section 1.82) of the Combination Product by the fraction, A/C where [**] is the [**] of the Licensed Product in the prior Calendar Year when sold separately in finished form and [**] is the [**] in the prior Calendar Year of the Combination Product sold separately in finished form

(iii) if neither clauses (i) or (ii) above is applicable, by mutual agreement of the Parties based on the relative value contributed by each component, such agreement shall not be unreasonably withheld.

1.83 "Non-U.S. Major Market" means [**].

1.84 "Not Available" means, subject to Section 2.8(c), that as of the date of a notice from Incyte proposing a given Target Pair pursuant to Section 4.4(c) (with respect to a [**] Target Pair) or Section 4.5(b) (with respect to a Novel Program Target Pair): (a) [**] such Target Pair that would prevent Merus from granting the license and other rights to Incyte hereunder if such Target Pair were selected by Incyte pursuant to Section 4.4(c) (with respect to a [**] Target Pair) or

Section 4.5(b) (with respect to a Novel Program Target Pair); provided that [**] (i) the program for such Target Pair [**] and (ii) [**] as applicable, unless [**] at a time when the [**]; or (b) [**] (i) Merus [**] Sections 4.4 or 4.5, and Incyte declined to include such Target Pair under this Agreement at such time, and (ii) [**] with respect to the applicable Target Pair. For clarity, (A) no [**] Target Pair may be Not Available during the [**] Exclusivity Period, (B) during the IMOD Reserved Period, the Reserved IMOD Target Pairs cannot be Not Available and (C) during the Research Term, all [**] Antibodies Controlled by Merus or any of its Affiliates will be made available for Bi-Specific Constructs under this Agreement. The Parties hereby agree and acknowledge that only those Target Pairs set forth on Exhibit 1.84 are Not Available as of the Execution Date.

1.85 “Novel Program” means a program of research, Development and Commercialization activities conducted pursuant to this Agreement with respect to the Novel Program Products.

1.86 “Novel Program Antibody” means, on a Novel Program Target Pair-by-Novel Program Target Pair basis, (a) any Bi-Specific Construct specifically binding to a given Novel Program Target Pair, and (b) the Selected Monoclonal Antibodies used to generate the Target Pair Biclomics Matrix under the Research Plan (or Bi-Specific Constructs that could be generated by combining General Monoclonal Antibodies for each Target in the Novel Program Target Pair) for such Novel Program Target Pair. For clarity, a “Novel Program Antibody” includes [**] for such Novel Program Target Pair (including the lead Bi-Specific Construct and any back-up Bi-Specific Constructs), and any modification or derivative thereof.

1.87 “Novel Program Product” means a product or product candidate that contains a Novel Program Antibody as an active ingredient, including all formulations and dosages of such Novel Program Antibody.

1.88 “Novel Program Target Pair” means any Target Pair that is the subject of activities under this Agreement that is not (a) a Program 1 Target Pair, (b) a Program 2 Target Pair, or (c) a [**] Target Pair.

1.89 “Out-of-Pocket Costs” means, with respect to certain activities hereunder, direct expenses paid or payable by either Party or its Affiliates to Third Parties (other than employees of such Party or its Affiliates) that are specifically identifiable and incurred to conduct such activities for the applicable Licensed Products, have been recorded in accordance with the Accounting Standards, and for the avoidance of doubt [**].

1.90 “Party” means Merus or Incyte. “Parties” means Merus and Incyte.

1.91 “Patent Rights” means all patents and patent applications in any country in the world, including any continuations, continuations-in-part, divisionals, provisionals or any substitute applications, any patent issued with respect to any such patent applications, any reissue, reexamination, renewal or extension (including any Patent Term Extension in the United States or supplemental protection certificate) of any such patent, and any confirmation patent or registration

patent or patent of addition based on any such patent, and all non-United States counterparts of any of the foregoing.

1.92 “Patent Term Extension” means any patent term extension, adjustment or restoration or supplemental protection certificates anywhere in the world.

1.93 “Person” means any natural person, general or limited partnership, corporation, limited liability company, limited liability partnership, firm, association or organization or other legal entity.

1.94 “Phase I Study” means a study in humans which provides for the first introduction into humans of a product, conducted in healthy volunteers or patients to obtain information on product safety, tolerability, pharmacological activity or pharmacokinetics, as more fully defined in 21 C.F.R. § 312.21(a) (or the non-United States equivalent thereof).

1.95 “Phase II Study” means a study in humans of the safety, dose ranging and efficacy of a product, which is prospectively designed to generate sufficient data (if successful) to commence Pivotal Studies, as further defined in 21 C.F.R. § 312.21(b) (or the non-United States equivalent thereof).

1.96 “Phase III Study” means a controlled study in humans of the efficacy and safety of a product, which is prospectively designed to demonstrate statistically whether such product is effective and safe for use in a particular Indication in a manner sufficient to submit a BLA to obtain Regulatory Approval to market the product, as further defined in 21 C.F.R. § 312.21(c) (or the non-United States equivalent thereof).

1.97 “Phase IV Study” means a human clinical trial which is conducted on a product after Regulatory Approval of the product has been obtained from an appropriate Regulatory Authority, and includes (a) trials conducted voluntarily for enhancing marketing or scientific knowledge or (b) trials conducted after Regulatory Approval due to request or requirement of a Regulatory Authority or as a condition of a previously granted Regulatory Approval.

1.98 “Pivotal Study” means a human clinical trial of a product on a sufficient number of subjects that, prior to commencement of the trial, satisfies both of the following ((a) and (b)):

(a) such trial is designed to establish that such product has an acceptable safety and efficacy profile for its intended use, and to determine warnings, precautions, and adverse reactions that are associated with such product in the dosage range to be prescribed, which trial is intended to support Regulatory Approval of such product in the United States or European Union and will provide substantial evidence of safety and effectiveness for reliance by Regulatory Authorities in granting Regulatory Approval; and

(b) such trial is a registration trial sufficient for submitting an application for Regulatory Approval for such product in the United States or the European Union, as evidenced by (i) an agreement with or statement from the FDA or the EMA on a Special Protocol Assessment or equivalent, or (ii) other guidance or minutes issued by the FDA or EMA, for such registration trial.

1.99 “ Platform Arising IP ” means all Inventions and Know-How discovered, made or conceived, or information created by either Party or jointly by the Parties or any of their Affiliates, employees, independent contractors or consultants in the course of conducting activities under this Agreement, together with all Intellectual Property Rights therein, where such Inventions are [**].

1.100 “ Prior Confidentiality Agreements ” means the Mutual Confidential Disclosure Agreement by and between Incyte and Merus, dated May 17, 2016.

1.101 “ Product Arising Claim ” means a claim within Patent Rights that claims (a) a Licensed Antibody [**], (b) a Licensed Product [**], or (c) the [**] of a Licensed Antibody or Licensed Product.

1.102 “ Product Liability ” means any product liability claim asserted or filed by a Third Party (without regard to their merit or lack thereof), seeking damages or equitable relief of any kind, relating to personal injury, wrongful death, medical expenses, an alleged need for medical monitoring, consumer fraud or other alleged economic losses, allegedly caused by any Licensed Antibody or Licensed Product, and including claims by or on behalf of users (including spouses, family members and personal representatives of such users) of any Licensed Antibody or Licensed Product (as applicable) relating to the use, sale, distribution or purchase of any Licensed Antibody or Licensed Product (as applicable) sold by a Party, its Affiliates, sublicensees or distributors, including claims by Third Party payers, such as insurance carriers and unions.

1.103 “ Program ” means Program 1, Program 2, any [**] Program or any Novel Program.

1.104 “ Program 1 ” means the program of research, Development and Commercialization activities for Program 1 Products conducted pursuant to this Agreement.

1.105 “ Program 1 Antibody ” means (a) any Bi-Specific Construct specifically binding to the Program 1 Target Pair and (b) the Selected Monoclonal Antibodies used to generate the Target Pair Bionics Matrix under the Research Plan (or Bi-Specific Constructs that could be generated by combining General Monoclonal Antibodies for each Target in the Program 1 Target Pair) for such Program 1 Target Pair. For clarity, a “Program 1 Antibody” includes [**] for such Program 1 Target Pair (including the lead Bi-Specific Construct and any back-up Bi-Specific Constructs) and any modification or derivative thereof.

1.106 “ Program 1 Product ” means a product or product candidate that contains a Program 1 Antibody as the active ingredient, including all formulations and dosages of such Program 1 Antibody.

1.107 “ Program 1 Manufacturing Plan ” means the plan for the clinical and commercial manufacture of Program 1 Antibody and Program 1 Product.

1.108 “ Program 1 Target Pair ” means [**].

1.109 “ Program 2 ” means the program of research, Development and Commercialization activities with respect to Program 2 Products conducted under this Agreement.

1.110 “Program 2 Antibody” means (a) any Bi-Specific Construct specifically targeting the Program 2 Target Pair and (b) the Selected Monoclonal Antibodies used to generate the Target Pair Bionics Matrix under the Research Plan (or Bi-Specific Constructs that could be generated by combining General Monoclonal Antibodies for each Target in the Program 2 Target Pair) for such Program 2 Target Pair. For clarity, a “Program 2 Antibody” includes all Bi-Specific Constructs [**] for such Program 2 Target Pair (including the lead Bi-Specific Construct and any back-up Bi-Specific Constructs) and any modification or derivative thereof.

1.111 “Program 2 Product” means a product or product candidate that contains a Program 2 Antibody as the active ingredient, including all formulations and dosages of such Program 2 Antibody.

1.112 “Program 2 Target Pair” means [**].

1.113 “Program Selection” means, with respect to a Program, the [**] for the first Bi-Specific Construct directed to the Target Pair that is the subject of such Program. For purposes of this definition, [**] means that [**] for such Bi-Specific Construct [**].

1.114 “Proof of Concept” means the [**] at a [**], each as defined in the protocol of a Phase II Study or equivalent Clinical Trial.

1.115 “Publication” means any publication in a scientific journal, any abstract to be presented to any scientific audience, any presentation at any scientific conference, including slides and texts of oral or other public presentations, any other scientific presentation and any other oral, written or electronic disclosure directed to a scientific audience which pertains to the Licensed Antibody, the Licensed Product or the use of the Licensed Product.

1.116 “Regulatory Approval” means all approvals (including any applicable governmental price and reimbursement approvals), licenses, registrations, and authorizations of any federal, national, multinational, state, provincial or local Regulatory Authority, department, bureau and other governmental entity that are necessary for the marketing and sale of a product in a country or group of countries.

1.117 “Regulatory Authority” means, with respect to a country, the regulatory authority or regulatory authorities of such country (including state and local) with authority over the testing, manufacture, use, storage, disposal, importation, promotion, marketing, pricing or sale of a pharmaceutical or biologic product in such country.

1.118 “Regulatory Documentation” means, with respect to the Licensed Antibodies and Licensed Products, all INDs and other regulatory applications submitted to any Regulatory Authority, Regulatory Approvals, pre-clinical and clinical data and information, regulatory materials, drug dossiers, master files (including Drug Master Files, as defined in 21 C.F.R. 314.420 and any non-United States equivalents), and any other reports, records, regulatory correspondence and other materials relating to Development or Regulatory Approval of a Licensed Antibody or Licensed Product, or required to manufacture, distribute or sell the Licensed Products, including any information that relates to pharmacology, toxicology, chemistry, manufacturing and controls data, batch records, safety and efficacy, and any safety database.

1.119 “Regulatory Exclusivity” means, on a Licensed Product-by-Licensed Product and country-by-country basis, that (a) a Party or any of its Affiliates or sublicensees have been granted the exclusive legal right by a Regulatory Authority (or is otherwise entitled to the exclusive legal right by operation of Law) to exclude Third Parties from Commercializing such Licensed Product in such country, including without limitation by orphan drug exclusivity, pediatric designation, or new product designation, or (b) the data and information submitted by a Party or any of its Affiliates or sublicensees to the relevant Regulatory Authority in such country for purposes of obtaining Regulatory Approval is subject to regulatory exclusivity and may not be disclosed, referenced or relied upon in any way by any Person other than such Party, its Affiliates or sublicensees (including by relying upon the Regulatory Authority’s previous findings regarding the safety or effectiveness of such Licensed Product) to support the Regulatory Approval or marketing of any product by a Third Party in such country.

1.120 “Regulatory Expenses” means, with respect to a Licensed Antibody or Licensed Product, all FTE and Out-of-Pocket Costs incurred by or on behalf of a Party in connection with the preparation and filing of regulatory submissions for Licensed Product and obtaining of, maintaining, enhancing or expanding Regulatory Approvals.

1.121 “Research Costs” means the costs and expenses incurred by or on behalf of a Party that are attributable to, or reasonably allocable to, activities conducted with respect to a given Target Pair and associated Bi-Specific Constructs in accordance with the applicable Research Plan, [**] Discovery Plan or Novel Discovery Plan and associated budgets. Research Costs shall [**]. “Research Costs” shall include (a) the costs of [**] for a given Target Pair, including [**] associated therewith, (b) the [**] costs of a Party or its Affiliates [**] Research Plan, (c) all Out-of-Pocket Costs incurred by a Party or its Affiliates, including payments made to Third Parties with respect to any of the foregoing (except to the extent that such costs have been included in [**] costs), and (d) costs associated with [**] for such Target Pair, including the [**] in relation to [**] under Sections 4.11 and 4.12(b), in each case of (a) through (d) to the extent associated with research activities under the applicable Research Plan, [**] Discovery Plan or Novel Discovery Plan.

1.122 “Reserved IMOD Target Pairs” means [**].

1.123 “Right of Reference or Use” means a “Right of Reference or Use” as that term is defined in 21 C.F.R. §314.3(b), and any non-United States equivalents.

1.124 “Royalty Paying Party” means the Party required to pay royalties to the other Party with respect to a Licensed Product pursuant to Section 9.3.

1.125 “Royalty Receiving Party” means the Party that is entitled to receive royalties from the other Party with respect to a Licensed Product pursuant to Section 9.3.

1.126 “SEC” means the United States Securities and Exchange Commission.

1.127 “Selected Monoclonal Antibodies” means, with respect to a Target Pair designated by Incyte for inclusion in a Research Plan, the monoclonal Antibodies generated or used in the applicable Research Plan that are selected by Incyte, in its sole discretion, in writing based on data

generated by Merus and Incyte, and used to generate the Target Pair Bionics Matrix. For clarity, the Selected Monoclonal Antibodies will be [**] Target Pair Bionics Matrix and will include [**] Antibodies. Any General Monoclonal Antibody deemed a Selected Monoclonal Antibody by Incyte pursuant to Section 4.11 will also be a Selected Monoclonal Antibody. The Selected Monoclonal Antibodies will [**]. The number of Selected Monoclonal Antibodies shall not exceed [**] for a given Program (or exceed [**] for a given Program if Incyte [**] Selected Monoclonal Antibodies above [**], provided that the number of Selected Monoclonal Antibodies [**] a Target Pair; and further provided that if Incyte selects more than [**] Selected Monoclonal Antibodies for a given Program, within [**] after [**] for such Program, Incyte shall designate, in its sole discretion, the number of Selected Monoclonal Antibodies [**] such that there will thereafter be only [**] Selected Monoclonal Antibodies for such Program and not more than [**] Selected Monoclonal Antibodies [**] in the relevant Target Pair. Notwithstanding the foregoing, upon determination of the final Selected Monoclonal Antibodies for a given Target Pair, the number of Selected Monoclonal Antibodies [**] Target Pair, but in no event may the number of Selected Monoclonal Antibodies on [**] Target Pair exceed [**]. For clarity, all Bi-Specific Constructs created by the [**] Selected Monoclonal Antibody panel for such Program would remain included as Licensed Antibodies.

1.128 “Share Subscription Agreement” means the share subscription agreement entered into on even date hereof by and between Merus and Incyte (or one of its Affiliates) providing for Incyte’s (or one of its Affiliate’s) purchase of common shares of Merus.

1.129 “Sole Arising IP” means Inventions discovered, made or conceived, or information created, by one of either Party or any of its Affiliates, employees, independent contractors or consultants in the course of conducting activities under this Agreement, together with all Intellectual Property Rights therein; provided that Sole Arising IP excludes Platform Arising IP, Discovery Arising IP, and Target Pair Arising IP.

1.130 “Target” means (a) a specific biological molecule that is identified by a GenBank accession number or similar information, or by its amino acid or nucleic acid sequence, (b) any naturally occurring mutant or allelic variant of a molecule disclosed in the foregoing clause (a), including transcriptional and posttranscriptional isoforms (e.g., alternative splice variants), and post-translational modification variants (e.g., protein processing, maturation and glycosylation variants), and (c) truncated forms (including fragments thereof); in each case of (b) and (c) that have a biological function substantially identical to that of a molecule disclosed in the foregoing clause (a). For clarity, in the case of a Target Pair that consists of two (2) distinct epitopes on the same Target, the term “Target” shall refer to each such epitope.

1.131 “[**] Transaction” means any transaction in which Merus enters into a [**] with a Third Party pursuant to which Merus grants to such Third Party the right to develop or commercialize Antibodies that bind to a [**] Target (the “[**] Target”) where such [**] would prevent Incyte from including within a Program under this Agreement [**] Target in a Target Pair, provided that notwithstanding the foregoing, any transaction in which Merus enters into a [**] with a Third Party where Merus grants rights to develop or commercialize Antibodies that bind to [**] Target Pairs ([**] Target Pairs) where such Target Pairs [**] Target and [**] Target(s) that are [**] such Agreement, shall not be a [**] Transaction.

1.132 “Target Pair” means (a) two (2) different Targets or (b) two (2) distinct epitopes on the same Target. Reference to an Antibody or Bi-Specific Construct “specifically binding” to a Target Pair means that one V-Region on such Antibody or Bi-Specific Construct binds to one of the Targets in such Target Pair and a second V-Region on such Antibody or Bi-Specific Construct binds to the other Target in the Target Pair. For clarity, the use of the term “Target Pair” in this Agreement shall be construed in the context in which it is used to refer either to a Target Pair generally that is not within the scope of this Agreement, or to a Target Pair designated by the Parties under the terms of ARTICLE IV as included within the scope of this Agreement for an applicable Program (e.g., Program 1 Target Pair), in each case, as applicable.

1.133 “Target Pair Arising IP” means all Inventions and Know How discovered, made or conceived, or information created by either Party or jointly by the Parties or any of their Affiliates, employees, independent contractors or consultants in the course of conducting activities under this Agreement, together with all Intellectual Property Rights therein, directed to [**] Antibodies, Novel Program Antibodies, Program 1 Antibodies, and Program 2 Antibodies generated under the respective Research Plan, but excluding [**]; provided, that the Target Pair Arising IP excludes [**].

1.134 “Target Pair Biclomics Matrix” means, with respect to a given Target Pair designated by Incyte for inclusion within the collaboration, the matrix of Bi-Specific Constructs directed to such Target Pair that is generated using the Selected Monoclonal Antibodies for such Target Pair. For example, if there are [**] Selected Monoclonal Antibodies designated by Incyte for one Target in such Target Pair and [**] Selected Monoclonal Antibodies designated by Incyte for the other Target in such Target Pair, the Target Pair Biclomics Matrix includes [**] Bi-Specific Constructs corresponding to the combinations of such Selected Monoclonal Antibodies.

1.135 “Terminated Product” means any product containing a Bi-Specific Construct within a Terminated Program that was a Licensed Product as of the effective date of termination.

1.136 “Terminated Program” means (a) with respect to the termination of this Agreement with respect to a Program pursuant to Sections 10.2(a), 10.2(b), or 10.2(c), the Program subject to such termination, including all of the associated Licensed Antibodies and Licensed Products, and (b) with respect to termination of this Agreement in its entirety, all Programs and all of the associated Licensed Antibodies and Licensed Products; provided that, if a Program becomes a Terminated Program prior to Program Selection and prior to expiration of the Research Term, it shall be treated under this Agreement as a Dropped Program.

1.137 “Terminated Target Pair” means a Target Pair that was the subject of a Terminated Program.

1.138 “[**]” means (a) [**] having [**]; (b) any naturally occurring mutant or allelic variant of a molecule disclosed in the foregoing clause (a), including transcriptional and posttranscriptional isoforms (e.g., alternative splice variants), and post-translational modification variants (e.g., protein processing, maturation and glycosylation variants); and (c) truncated forms (including fragments thereof); in each case of (b) and (c), that have a biological function substantially identical to that of a molecule disclosed in the foregoing clause (a). For the purposes

of this Agreement, [**] shall also include any cell surface protein that specifically binds to any molecule described in (a), (b) or (c).

1.139 “[**] Antibodies” means, on a [**] Target Pair-by-[**] Target Pair basis, (a) all Bi-Specific Constructs specifically binding to such [**] Target Pair, and (b) the Selected Monoclonal Antibodies used to generate the Target Pair Biclones Matrix under the Research Plan (or Bi-Specific Constructs [**] Target Pair) for such [**] Target Pair. For clarity, a “[**] Antibody” includes all Bi-Specific Constructs generated under the Research Plan [**] for such [**] Target Pairs (including the [**] Bi-Specific Constructs), and any modification or derivative thereof.

1.140 “[**] Co-Development Product” means a [**] Product arising from the [**] Co-Development Program.

1.141 “[**] Co-Development Program” means a [**] Program for which the [**] Co-Development Option has been timely exercised pursuant to Section 5.4.

1.142 “[**] Exclusivity Period” means the period beginning on the Execution Date and ending [**] following the Effective Date.

1.143 “[**] Non-Co Product” means a [**] Product arising from a [**] Non-Co Program.

1.144 “[**] Non-Co Program” means all [**] Programs other than the [**] Co-Development Program.

1.145 “[**] Product” means a product or product candidate that contains a [**] Antibody as the active ingredient, including all formulations and dosages of such [**] Antibody.

1.146 “[**] Program” means the program of research, Development and Commercialization activities conducted with respect to any [**] Product. [**] Programs include the [**] Co-Development Program (if any) and the [**] Non-Co Programs.

1.147 “[**] Target Pair” means a Target Pair where at least one Target is [**].

1.148 “[**] Third Party” means any Person other than a Party or any of its Affiliates.

1.149 “[**] United States” means the United States of America and its territories and possessions.

1.150 “[**] V-Region” means the V-DOMAIN of the immunoglobulin (IG), encoded by the V-J-REGION (VL) and the rearranged V-D-J-REGION (VH).

1.151 “[**] Valid Claim” means (a) a claim of an issued patent that has not expired or been abandoned, or been revoked, held invalid, unpatentable, or unenforceable by a patent office, court or other governmental agency of competent jurisdiction in a final and non-appealable judgment (or judgment from which no appeal was taken within the allowable time period) or (b) a claim within a patent application that has not been revoked, cancelled, withdrawn, held invalid,

unpatentable, or finally abandoned and that has not been pending for more than [**] from the date of its earliest priority date.

1.152 Additional Definitions. Each of the following definitions is set forth in the Section of this Agreement indicated below:

<u>DEFINITION</u>	<u>SECTION</u>
Additional Co-Development Budget	5.1(c)
Additional Co-Development Option	5.5(a)
Additional Co-Development Plan	5.1(c)
Additional Co-Funding Termination Notice	5.5(f)
Additional Co-Funding Termination Date	5.5(f)
Additional JDC	3.2
Additional Option Period	5.5(b)(i)
Additional Pivotal Period Costs	5.5(f)
Agreement	Preamble
Alliance Manager	3.7
Arising Manufacturing Patent	8.2(b)(i)
Arising Product-Specific Patent	8.2(b)(ii)
Auditee	9.8(f)
Audit Rights Holder	9.8(f)
Audit Team	9.8(a)
Bankruptcy Code	2.6(a)
Board of Directors	1.17(a)
Breaching Party	10.2(b)
Buy-In Data	5.3(d)(i)
Buy-In Party	5.3(d)(i)
Co-Detailing Right	7.3(a)
Combination Product	1.82(d)
Controlling Party	8.3(f)
Detailing Overrun	9.6(b)
Detailing Budget	7.3(a)
Detailing Plan	7.3(a)
Disclosing Party	13.2
Divisionals	8.2(a)(iii)
Effective Date	15.16(c)
Exclusive Target	1.131
Execution Date	Preamble
Existing Patent Divisionals	8.2(a)(ii)
Existing Patents	12.3(l)
Extension Period	4.9(a)
Gatekeeper	4.2
Global Branding Strategy	7.4(a)
Global Safety Database	5.7(c)
Global Study	5.3(b)(iii)
Incyte	Preamble

<u>DEFINITION</u>	<u>SECTION</u>
Incyte Indemnified Parties	11.1(a)
Incyte Revised [**] Terms	2.10(b)
IMOD Reserved Period	2.9
Indemnity Cap	11.2(a)
Infringement Action	8.4(b)
Initial Enforcing Party	8.4(b)
Initial Research Plan	4.10(b)
JFC	3.2
JIPC	3.2
JMC	3.2
JRC	3.2
JSC	3.1(a)
Material	8.3(f)(iv)
Merus	Preamble
Merus In-License Agreements	12.3(m)
Merus Indemnified Parties	11.1(a)
Non-Breaching Party	10.2(b)
Non-Controlling Party	8.3(f)
Not Available List	4.2
Notice	15.6
Novel Discovery Plan	4.10(a)(ii)
Novel Gatekeeper Notice	4.5(b)
Novel Program Cap	4.3(b)
Participating Party	8.4(d)
Payments	9.9
Payment Shortfall	11.2(a)
Pharmacovigilance Agreement	5.7(c)
Product Information	13.1
Program 1 JCC	3.2
Program 1 JDC	3.2
Program 1 Joint Development Activity	5.3(b)(iii)
Program 1 Joint Development Budget	5.3(b)(iii)
Program 1 Joint Development Plan	5.3(b)(iii)
Program 1 Joint Manufacturing Process	6.3(a)
Program 1 Joint Manufacturing Technology	6.3(b)
Program 1 Incyte Territory Development Plan	5.3(a)(ii)
Program 1 Opt-Out	5.3(b)(iv)
Program 1 Opt-Out Date	5.3(b)(iv)
[**]	[**]
[**] Notice	[**]
Program 1 US Development Plan	5.3(a)(ii)
Receiving Party	13.2
Reimbursable Research Costs	4.10(c)
Research Plans	4.10(b)
Research Term	4.9(a)

<u>DEFINITION</u>	<u>SECTION</u>
Research Term Extension Fee	4.9(a)4.9
[**]	9.6(b)
Royalty Term	9.3(c)
Second Enforcing Party	8.4(c)(i)
Severed Clause	15.12
Sole Enforcing Party	8.4(b)
Subcommittees	3.2
Term	10.1
[**] Co-Detailing Product	7.3(b)(i)
[**] Co-Development Budget	5.1(b)
[**] Co-Development Option	5.4(a)
[**] Co-Development Period	5.4(a)
[**] Co-Development Plan	5.1(b)
[**] Co-Funding Termination Date	5.4(f)
[**] Co-Funding Termination Notice	5.4(f)
[**] Discovery Plan	4.10(a)(i)
[**] Gatekeeper Notice	4.4(c)
[**] JCC	3.2
[**] JDC	3.2
[**] Option Period	5.4(a)
[**] Costs	5.4(f)
[**] Program Cap	4.3(b)
Third-Party Infringement	8.4(a)
Third Party Payments	8.5(c)
[**] Terms	2.10(b)
Transition	10.5
Trigger Notice	7.3(a)
Unenforced Merus Platform Patent	9.3(e)
Voting Stock	1.17(a)

1.153 Construction. In construing this Agreement, unless expressly specified otherwise:

- (a) references to Sections and Exhibits are to sections of, and exhibits to, this Agreement;
- (b) except where the context otherwise requires, use of either gender includes the other gender, and use of the singular includes the plural and vice versa;
- (c) headings and titles are for convenience only and do not affect the interpretation of this Agreement;
- (d) any list or examples following the word “including” shall be interpreted without limitation to the generality of the preceding words;
- (e) the word “days” means calendar days unless otherwise specified;

(f) all references to “dollars” or “\$” or “USD” herein shall mean U.S. Dollars; and

(g) each Party represents that it has been represented by legal counsel in connection with this Agreement and acknowledges that it has participated in the drafting hereof. In interpreting and applying the terms and provisions of this Agreement, the Parties agree that no presumption will apply against the Party which drafted such terms and provisions.

ARTICLE II
COLLABORATION OVERVIEW; LICENSES

2.1 Overview of Collaboration. The Parties shall undertake a collaboration under this Agreement consisting, in general, of the following major component programs:

(a) Program 1. A worldwide collaboration with respect to Program 1 Products, pursuant to which the Parties may share Development Costs for agreed upon studies, Incyte shall have the exclusive right to Develop, manufacture, and Commercialize Program 1 Products in the Incyte Territory, and Merus shall have the exclusive right to Develop, manufacture, and Commercialize Program 1 Products in the United States, all as more fully set forth in this Agreement, including Sections 4.10(b), 5.3, 7.2(a), and ARTICLE VI;

(b) Program 2. A worldwide collaboration with respect to Program 2 Products, pursuant to which Incyte shall have the exclusive worldwide right to Develop, manufacture and Commercialize Program 2 Products, all as more fully set forth in this Agreement, including Sections 4.10(b), 5.1(a), and 7.2(c);

(c) **[**]** Program. A worldwide collaboration with respect to multiple potential **[**]** Products, pursuant to which Incyte shall have the exclusive worldwide right to Develop, manufacture and Commercialize **[**]** Products, except that Merus shall have the right with respect to one **[**]** Product to co-fund development and share in profits and losses in the United States, and Co-Detail in the United States, all as more fully set forth in this Agreement, including Sections 4.4 4.10(a), 4.10(b), 5.1(b), 5.4, 7.2(b), 7.3, and 9.6; and

(d) Novel Programs. A worldwide collaboration with respect to multiple Novel Program Products, pursuant to which Incyte shall have the exclusive worldwide right to Develop, manufacture and Commercialize such Novel Program Products, except that Merus shall have the right as set forth in Section 5.5 with respect to up to two (2) Novel Programs to co-fund development and share in profits and losses in the United States, all as more fully set forth in this Agreement, including Sections 4.5, 4.10(b), 5.1(a), and 7.2(c).

2.2 Goal of Research Plans. The overall goal of the Research Plans under this Agreement is for Merus to generate and deliver to Incyte suitable Bi-Specific Constructs for the Target Pair of each Program such that a total of eleven (11) Programs achieve Program Selection. Such eleven (11) Programs include Program 1, Program 2, **[**]** Programs and **[**]** Novel Programs; provided that for each of Program 1, Program 2, and all the **[**]** Programs that are dropped prior to Program Selection, the number of possible Novel Programs shall be increased by

[**] (or if all of the foregoing are dropped, [**]), increasing the total number of Novel Programs to [**] .

2.3 Rights Granted by Merus to Incyte .

(a) Program 1 . Subject to the terms of this Agreement, Merus hereby grants to Incyte (i) a co-exclusive (with Merus and its Affiliates), worldwide license, with the right to sublicense (subject to Section 2.5), under Merus IP, Merus Platform IP and Merus's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP, to conduct research and Development activities under the Program 1 Incyte Territory Development Plan and Program 1 Joint Development Plan and (ii) an exclusive (even as to Merus and its Affiliates) license, with the right to sublicense (subject to Section 2.5), under Merus IP, Merus Platform IP and Merus's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP, to Commercialize, make, have made, use, offer for sale, sell and import Program 1 Antibodies and Program 1 Products in the Incyte Territory and to make and have made Program 1 Antibodies and Program 1 Products worldwide for purposes of Commercialization in the Incyte Territory.

(b) Program 2 . Subject to the terms of this Agreement, Merus hereby grants to Incyte an exclusive (even as to Merus and its Affiliates), worldwide license, with the right to sublicense (subject to Section 2.5), under Merus IP, Merus Platform IP and Merus's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP, to research, Develop, Commercialize, make, have made, use, offer for sale, sell and import Program 2 Antibodies and Program 2 Products.

(c) [**] Program . Subject to the terms of this Agreement, Merus hereby grants to Incyte, an exclusive (even as to Merus and its Affiliates), worldwide license, with the right to sublicense (subject to Section 2.5), under Merus IP, Merus Platform IP and Merus's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP, to research, Develop, Commercialize, make, have made, use, offer for sale, sell and import [**] Antibodies and [**] Products. The grant set forth in this Section 2.3(c) is effective as of the Effective Date for purposes of the [**] Discovery Plan and will automatically become effective on a [**] Program basis upon the designation of a [**] Target Pair for the applicable [**] Program (or, as the case may be, a Novel Program, by Incyte pursuant to Section 4.4, as applicable).

(d) Novel Programs . Subject to the terms of this Agreement, Merus hereby grants to Incyte an exclusive (even as to Merus and its Affiliates), worldwide license, with the right to sublicense (subject to Section 2.5), under Merus IP, Merus Platform IP and Merus's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP, to research, Develop, Commercialize, make, have made, use, offer for sale, sell and import Novel Program Antibodies and Novel Program Products. The grant set forth in this Section 2.3(d) is effective as of the Effective Date for purposes of any Novel Discovery Plan and will automatically become effective on a Novel Program basis upon the designation of a Novel Program Target Pair (or, as the case may be, a [**] Target Pair, by Incyte pursuant to Section 4.4, as applicable) for the applicable Novel Program in accordance with Section 4.5.

2.4 Rights Granted by Incyte to Merus for Program 1. Subject to the terms of this Agreement, Incyte hereby grants to Merus under Incyte IP and Incyte's and its Affiliates' interests in Joint Arising IP and Target Pair Arising IP (a) a co-exclusive (with Incyte and its Affiliates), worldwide license, with the right to sublicense (subject to Section 2.5), to research and conduct Development activities under the Program 1 US Development Plan and Program 1 Joint Development Plan and (b) an exclusive (even as to Incyte and its Affiliates) license, with the right to sublicense (subject to Section 2.5), to Commercialize, use, offer for sale, sell and import Program 1 Antibodies and Program 1 Products in the United States.

2.5 Sublicenses.

(a) Incyte shall have the right to grant sublicenses through multiple tiers of sublicensees under the licenses granted in Section 2.3 to its Affiliates and to Third Parties that are conducting research, Development, or Commercialization activities with Incyte or its Affiliates with respect to the Licensed Antibodies and the Licensed Products; provided that Incyte shall remain responsible for its obligations under this Agreement and shall be responsible for the performance of the relevant sublicensee, and any such sublicenses shall be pursuant to a written agreement that is consistent with the terms and conditions of this Agreement.

(b) Subject to Section 2.10, Merus shall have the right to grant sublicenses, through multiple tiers of sublicensees, under the licenses granted in Section 2.4, to its Affiliates and to Third Parties that are conducting research, Development, or Commercialization activities with Merus or its Affiliates with respect to the Licensed Antibodies and the Licensed Products; provided that Merus shall remain responsible for its obligations under this Agreement and shall be responsible for the performance of the relevant sublicensee, and any such sublicenses shall be pursuant to a written agreement that is consistent with the terms and conditions of this Agreement.

(c) If either Party grants a sublicense to a Third Party as permitted by this Section 2.5, then such Party shall provide the other Party prompt written notice thereof and shall provide the other Party with an executed copy of any such sublicense (redacted as necessary to protect confidential or commercially sensitive information). Except as otherwise agreed by the Parties in writing, each Party shall be jointly and severally responsible with its sublicensees to the other Party for failure by its sublicensees to comply with this Agreement. If (i) the sublicensee fails to cure a material breach or to take reasonable steps to cure such breach under any such sublicense within [**] after notice of such breach and (ii) such material breach also constitutes a breach of this Agreement, the Party that granted such sublicense shall terminate the sublicense at the request of the other Party.

2.6 Section 365(n) of the Bankruptcy Code; License Registration.

(a) Section 365(n) of the Bankruptcy Code. All rights and licenses granted under or pursuant to any Section of this Agreement, including the licenses granted under this ARTICLE II and the rights granted under Sections 4.1(c) and 5.3(e), are and will otherwise be deemed to be for purposes of Section 365(n) of the United States Bankruptcy Code (Title 11, U.S. Code), as amended (the "Bankruptcy Code"), licenses of rights to "intellectual property" as defined in Section 101(35A) of the Bankruptcy Code. The Parties will retain and may fully exercise all of

their respective rights and elections under the Bankruptcy Code. Each Party agrees that the other Party, as licensee of such rights under this Agreement, will retain and may fully exercise all of its rights and elections under the Bankruptcy Code or any other provisions of applicable Law outside the United States that provide similar protection for “intellectual property.” The Parties further agree that, in the event of the commencement of a bankruptcy proceeding by or against a Party under the Bankruptcy Code or analogous provisions of applicable Law outside the United States, the other Party will be entitled to a complete duplicate of (or complete access to, as the other (non-bankrupt) Party deems appropriate) such intellectual property and all embodiments of such intellectual property, which, if not already in such Party’s possession, will be promptly delivered to it upon such Party’s written request thereof. Any agreements supplemental hereto will be deemed to be “agreements supplementary to” this Agreement for purposes of Section 365(n) of the Bankruptcy Code.

(b) License Agreement Registration. A Party may, in its sole discretion, register or record the existence of this Agreement, the exclusivity of the licenses under this Agreement and the Patent Rights licensed to such Party under this Agreement with applicable intellectual property registers, patent offices or other governmental authorities as necessary to support the rights licensed to such Party under this Agreement in an applicable territory. Upon a Party’s request, the other Party will execute and record such documents as are necessary in connection with such registration or recordation.

2.7 Retained Rights.

(a) No Implied Licenses or Rights. Except as expressly provided in this Agreement, all rights in and to the Merus IP, Merus Platform IP, and Merus’s and its Affiliates’ interests in Joint Arising IP and Target Pair Arising IP and any other Patent Rights or Know-How of Merus and its Affiliates, are hereby retained by Merus and its Affiliates. Except as expressly provided in Section 2.4, and subject to Section 2.8, all rights in and to the Incyte IP, Incyte’s and its Affiliates’ interests in Joint Arising IP and Target Pair Arising IP and any other Patent Rights or Know-How of Incyte and its Affiliates, are hereby retained by Incyte and its Affiliates.

(b) Other Retained Rights. Notwithstanding (i) the licenses granted to Incyte pursuant to Section 2.3, Merus retains the right to practice under the Merus IP, Merus Platform IP, Joint Arising IP, and Target Pair Arising IP to perform its obligations under this Agreement and (ii) the licenses granted to Merus pursuant to Section 2.4, Incyte retains the right to practice under the Incyte IP, Joint Arising IP, and Target Pair Arising IP to perform its obligations under this Agreement.

2.8 Exclusivity; Certain Covenants.

(a) Merus.

(i) For the duration of the Term, and except as otherwise permitted under Section 10.5, neither Merus nor any of its Affiliates shall, with respect to [**], (A) itself develop or commercialize, or collaborate or partner with any Third Party to develop or commercialize any product which contains an Antibody, (B) authorize any Third Party to develop,

manufacture or commercialize any product which contains an Antibody, or (C) provide or make available to any Third Party any Antibody or the sequence information therefor, wherein the [**] in each case of (A) through (C) has (1) [**] or greater homology and/or (2) [**] relative to the [**], provided that the foregoing limitations in this Section 2.8(a)(i) shall not apply to any [**]. Notwithstanding the foregoing, the restrictions in (A)–(C) shall not be construed to (x) limit Merus’s rights under Section 10.5 following termination of a Program, or (y) obligate Merus or its Affiliates to [**] a Third Party from [**] manufacturing, developing or commercializing a Bi-Specific Construct [**] that such Third Party [**] generated, where such Third Party’s [**] is a [**] created or developed by Merus for such Third Party in compliance with this Section 2.8(a)(i) and the terms of this Agreement.

(ii) During the [**] Exclusivity Period, neither Merus nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any Bi-Specific Construct specifically binding to [**].

(iii) For the duration of the applicable Term with respect to a Licensed Product arising from a [**] Program, neither Merus nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any Bi-Specific Construct specifically binding to the [**] Target Pair for such [**] Program, unless (A) such [**] Target Pair is a Dropped Target Pair, in which case Section 4.8 shall apply, or (B) the corresponding [**] Program is a Terminated Program.

(iv) For the duration of the applicable Term with respect to a Licensed Product arising from a Program (other than a [**] Program, but including a Novel Program for which the Target Pair is a [**] Target Pair, in accordance with Section 4.4), neither Merus nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any Bi-Specific Construct specifically binding to a Target Pair for such Program, unless (A) such Target Pair is a Dropped Target Pair, in which case Section 4.8 shall apply, or (B) the corresponding Program is a Terminated Program.

(v) For the duration of the Research Term, (A) Merus shall not exclusively license rights to a [**] to any Third Party and (B) any and all [**] Controlled by Merus or its Affiliates will be available for use in Bi-Specific Constructs under this Agreement, provided that the foregoing shall not be construed to limit Merus’s ability to grant exclusivity to a Third Party with respect to a Target Pair that includes a [**] (or Bi-Specific Constructs directed to such Target Pair), provided that no exclusivity is granted with respect to the [**] arm of such Target Pair, or any specific sequences thereof.

(b) Incyte.

(i) For the duration of the Term, and except as provided in this Agreement, neither Incyte nor any of its Affiliates shall, with respect to [**], (A) itself develop or commercialize, or collaborate or partner with any Third Party to develop or commercialize any product which contains an Antibody, (B) authorize any Third Party to develop, manufacture or commercialize any product which contains an Antibody, or (C) provide or make available to any Third Party any Antibody or the sequence information therefor, wherein the [**] in each case of

(A) through (C) has (1) [**] or greater homology and/or (2) [**] relative to the [**]; provided that the foregoing limitations in this Section 2.8(b)(i) shall not apply (I) to any [**] or (II) to any [**] before the Execution Date [**] as demonstrated by reasonable evidence. Notwithstanding the foregoing, the restrictions in (A)–(C) shall not be construed to (x) limit Incyte’s rights set forth elsewhere in this Agreement, or (y) obligate Incyte or its Affiliates to [**] a Third Party from [**] manufacturing, developing or commercializing a Bi-Specific Construct [**] that such Third Party [**] generated, where such Third Party’s [**] is a [**] created or developed by Incyte for such Third Party in compliance with this Section 2.8(b)(i) and the terms of this Agreement.

(ii) During the [**] Exclusivity Period, neither Incyte nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any Bi-Specific Construct specifically binding to [**].

(iii) For the duration of the applicable Term with respect to a Licensed Product arising from a [**] Program, neither Incyte nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any Bi-Specific Construct specifically binding to the [**] Target Pair for such [**] Program, unless (A) such [**] Target Pair is a Dropped Target Pair, in which case Section 4.8 shall apply, or (B) the corresponding [**] Target Program is a Terminated Program.

(iv) For the duration of the applicable Term with respect to a Licensed Product arising from a Program (other than a [**] Program, but including a Novel Program for which the Target Pair is a [**] Target Pair, in accordance with Section 4.4), neither Incyte nor any of its Affiliates shall (or shall authorize any Third Party to) Develop or Commercialize outside of this Agreement any [**] specifically binding to a Target Pair for such Program, unless (A) such Target Pair is a Dropped Target Pair, in which case Section 4.8 shall apply, or (B) the corresponding Program is a Terminated Program.

(c) Certain Covenants.

(i) Without limiting Merus’s obligations under Section 2.8(a), during the Research Term, neither Merus nor any of its Affiliates shall (A) enter into any [**] Transaction or (B) [**] any Third Party [**] Transaction (i.e., the [**] Transaction must be [**] a Third Party), where, as of the proposed execution date of such agreement or the proposed date of [**], the applicable [**] Target is also contained in any Target Pair that is either (1) the [**] under this Agreement or (2) a [**] Target Pair or [**] Target Pair.

(ii) During the Research Term, if Merus intends to enter into a [**] Transaction, then, prior to entering into such [**] Transaction, Merus shall notify the Gatekeeper in writing of the [**] Target that is proposed to be the subject of such [**] Transaction. Within [**] following the Gatekeeper’s receipt of such notice, the Gatekeeper shall verify whether such [**] Target is an [**] Target. If such proposed [**] Target is [**] Target, the Gatekeeper shall provide written notice to both Merus and Incyte including the identity of such Target that is [**] Target. Incyte shall have [**] following such notification from the Gatekeeper in which to notify Merus in writing that it wishes to designate a Target Pair including [**] Target to be the subject of a Novel Program under this Agreement; provided that the Novel Program Cap has not been

reached; provided further that [**] a Novel Program Target Pair if such Novel Program Cap has been reached. If Incyte provides such notice to Merus, then such designated Target Pair shall thereafter be a Novel Program Target Pair, the terms of Section 2.8(c)(i) will apply (including to any [**] Transaction that includes such Target as [**] Target), and Merus may not enter into such [**] Transaction. If Incyte does not provide such notice within such time period, Merus may enter into such [**] Transaction.

(iii) Without limiting Sections 2.8(c)(i) and 2.8(c)(ii) above, during the Research Term, Merus may not enter into any agreement with any Third Party that grants rights to such Third Party to [**] potential Target Pairs [**] such agreement, where such grant of rights would [**] Incyte of [**] such Third Party agreement for inclusion under this Agreement (in accordance with the terms of this Agreement), prior to the [**] by such Third Party. Once [**] it shall [**] if the program for such Target Pair would [**] if it were [**]. For clarity, Merus may enter into an agreement with a Party that grants rights to such Third Party to [**] potential Target Pairs [**] such agreement, so long as such Third Party's [**] is subject to Incyte's rights and Merus's obligations under this Agreement.

(iv) For clarity, the obligations in this Section 2.8(c) are in addition to the obligations set forth in Section 4.5(a) and are not intended to limit in any manner Section 4.5(a).

2.9 IMOD Target Pair Availability. Beginning on the Effective Date and for a period of [**] thereafter (the "IMOD Reserved Period"), the Reserved IMOD Target Pairs cannot be Not Available and Incyte may designate any or all such IMOD Target Pairs as Novel Program Target Pairs pursuant to Section 4.5(b) without going through the Gatekeeper process set forth therein. Merus shall (a) within [**] of the Effective Date, and (b) not more than [**], but not less than [**], prior to the expiration of the IMOD Reserved Period, provide Incyte with a written report with respect to any research conducted and data generated by Merus on any of the Reserved IMOD Target Pairs, in order for Incyte to determine whether it wishes to designate any such IMOD Target Pair as a Novel Program Target Pair prior to the expiration of the IMOD Reserved Period. In addition, during the IMOD Reserved Period, Merus shall also provide Incyte with updates on any material developments with respect to the IMOD Target Pairs. During and following the expiration of the IMOD Reserved Period, the terms of Section 4.5(a) shall apply to the Reserved IMOD Target Pairs; provided that the [**] period set forth in Section 4.5(a) shall begin during the IMOD Reserved Period if Merus meets the requirements of Section 4.5(a) for a Reserved IMOD Target Pair during the IMOD Reserved Period.

2.10 [**] Right of First Refusal.

(a) If, at any time during the Term applicable to Program 1, Merus intends (i) [**], or (ii) [**], then, prior to entering into any discussions or negotiations with [**] for [**] of the [**] or promptly following [**] of [**] in the United States, as applicable, Merus shall provide Incyte with prior written notice and [**] relating to such [**], as applicable, and, for a period of [**] after receipt of such notice and information, Incyte will have an exclusive right of first negotiation to enter into a definitive agreement with Merus for such [**]. Notwithstanding the

foregoing, the rights in this Section 2.10(a) shall not apply to (i) any [**] ; (ii) any [**] or (iii) rights granted for the [**] for or on behalf of Merus or its Affiliates' for its or their [**] .

(b) If the Parties fail to enter into a definitive agreement prior to the expiration of the [**] period set forth in Section 2.10(a), Merus may enter into negotiations with [**] for such [**] , on [**] , provided that, prior to entering into any definitive agreement with [**] , Merus shall be required to first offer to Incyte in writing (the “ [**] Notice ”) a [**] and that in [**] by [**] (or, if [**] is making such an offer, [**] such [**]) (such terms, the “ [**] Terms ”) for Incyte to determine whether it wishes to [**] to Merus for the [**] . Incyte shall have [**] following such [**] Notice to offer to Merus [**] (including [**] that [**] the [**] Terms (“ Incyte [**] Terms ”)). If Incyte provides Incyte [**] Terms that is [**] the [**] Terms, Merus may, [**] (i) [**] to [**] a definitive agreement for such [**] based on such [**] , or (ii) [**] (based on a [**] of the [**]) a [**] to [**] that are, [**] than the [**] . If [**] terms to Merus, taken in the aggregate, than the Incyte [**] Terms, then [**] , based on such [**] Terms, provided that Incyte shall have [**] in which to [**] of [**] Terms with a [**] Incyte [**] Terms. If [**] does not [**] to Merus, [**] the Incyte [**] Terms, then Merus and Incyte shall [**] for such [**] of Incyte [**] Terms.

(c) Merus shall [**] Incyte the [**] terms than the [**] Terms, until either (i) Merus elects to negotiate and enter into a definitive agreement with Incyte on [**] Incyte [**] Terms, or (ii) Incyte either notifies Merus in writing that [**] terms than the [**] Terms [**] , or [**] Incyte [**] Terms to Merus within the [**] period following a [**] Notice. Notwithstanding the foregoing, if Merus does not [**] with Incyte or with [**] in [**] within [**] of such election under the foregoing clause (ii), this Section 2.10 shall apply if Merus [**] with respect to [**] to [**] . Either Party may terminate the negotiations under this Section 2.10 at any time in its sole discretion; provided that the terms of this Section 2.10 [**] Merus if Merus [**] such agreement with respect to [**] , and thereafter intends to [**] set forth in Sections 2.10(a)(i) or 2.10(a)(ii) with respect to [**] in or to abandon [**] under Section 2.10(a).

ARTICLE III **GOVERNANCE**

3.1 Joint Steering Committee .

(a) Establishment. The Parties shall establish a joint steering committee (“ JSC ”) within [**] after the Effective Date that will have the responsibility for the overall coordination and oversight of the Parties’ activities with respect to each Program under this Agreement. As soon as practicable following the Effective Date (but in no event more than [**] following the Effective Date), each Party shall designate its initial [**] representatives on the JSC. The JSC may increase or decrease the number of representatives that each Party may appoint on the JSC, provided that each Party has the same number of representatives. Each Party’s representatives and any substitute for a representative shall be bound by the obligations of confidentiality set forth in ARTICLE XIII. The JSC may invite non-members (including scientific consultants and advisors of a Party who are under an obligation of confidentiality consistent with this Agreement) to participate in the discussions and meetings of the JSC, provided that such participants shall have no voting authority at the JSC. A representative from Incyte shall act as the chairperson of the JSC. The chairperson shall not have any greater authority than any other

representative on the JSC and shall conduct the following activities of the JSC: (i) calling meetings of the JSC; (ii) preparing and issuing minutes of each such meeting within [**] thereafter; (iii) ensuring that any decision-making delegated to the JSC is carried out in accordance with Section 3.5; and (iv) preparing and circulating an agenda for the upcoming meeting. Each Party shall be free to change its representatives on notice to the other or to send a substitute representative to any JSC meeting; provided that each Party shall ensure that, at all times during the existence of the JSC, its representatives on the JSC are appropriate in terms of expertise and seniority (including at least one member of senior management) for the then-current stage of Development and Commercialization of the Licensed Products and have the authority to bind such Party with respect to matters within the purview of the JSC.

(b) Responsibilities. The JSC shall provide strategic guidance to the Parties, facilitate communications between the Parties, and shall have responsibility for: (i) the general oversight of the collaboration, including approval of the [**] Discovery Plan, any Novel Discovery Plan, Research Plans, Development Plans, Program 1 Joint Development Budget, Program 1 Manufacturing Plan and the Detailing Plan (if any), and amendments thereto and review of the [**] Co-Development Budget and Additional Co-Development Budgets and amendments thereto; (ii) periodic review of the overall goals and strategy of the Programs; (iii) attempting to resolve any disputes arising from any Subcommittee, and to consider any other issues brought to its attention by the Parties; (iv) determining a joint course of action with respect to any Third-Party Infringement in accordance with Section 8.4; and (v) performing such other functions as appropriate to further the purposes of this Agreement, as mutually agreed upon by the Parties in writing.

3.2 Subcommittees. The JSC may by unanimous decision (with each Party's representatives together having a single vote) establish and disband such subcommittees ("Subcommittees") as deemed necessary by the JSC including based on the then current stage of Development and Commercialization. Each such Subcommittee shall consist of the same number of representatives designated by each Party, which number shall be mutually agreed by the Parties. Each Party shall be free to change its representatives or increase or decrease the number of its representatives on notice to the other or to send a substitute representative to any Subcommittee meeting; provided that each Party shall ensure that, at all times during the existence of any Subcommittee, its representatives on such Subcommittee are appropriate in terms of expertise and seniority for the then-current stage of Development and Commercialization of the Licensed Product in the Field and have the authority to bind such Party with respect to matters within the purview of the relevant Subcommittee. Each Party's representatives and any substitute for a representative shall be bound by the obligations of confidentiality set forth in ARTICLE XIII. Except as expressly provided in this Agreement, no Subcommittee shall have the authority to bind the Parties hereunder and each Subcommittee shall report to, and any decisions shall be made by, the JSC. The initial Subcommittees will be the Joint Research Committee ("JRC"), the Joint Development Committee for Program 1 ("Program 1 JDC"), the Joint Development Committee for the [**] Co-Development Product ("[**] JDC"), the Joint Development Committee for an Additional Co-Development Product ("Additional JDC"), the Joint Commercialization Committee for the Program 1 Product ("Program 1 JCC"), the Joint Commercialization Committee for the [**] Co-Detailing Product ("[**] JCC"), the Joint Manufacturing Committee ("JMC"), the Joint Intellectual Property Committee ("JIPC") and the Joint Finance Committee ("JFC"). The JSC may

by unanimous decision (with each Party's representatives together having a single vote) modify the structure of the JRC to create project-specific or multi-project specific JRCs as necessary.

(a) Joint Research Committee.

(i) The JRC will have the responsibility for the overall coordination and oversight of the pre-clinical and non-clinical research activities with respect to Program 1 and Program 2 under the Initial Research Plans and for each of the [**] Programs and the Novel Programs pursued pursuant to the relevant Research Plan prepared in accordance with Section 4.10(b). As soon as practicable following the Effective Date (but in no event more than [**] following the Effective Date), each Party shall designate its initial [**] representatives on the JRC. Incyte shall appoint a person from among its representatives on the JRC to serve as the chairperson of the JRC. The chairperson shall not have any greater authority than any other representative on the JRC and shall conduct the following activities of the JRC: (A) calling meetings of the JRC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the JRC is carried out in accordance with Section 3.5. The JRC may create project-specific teams as needed to facilitate management and coordination of research activities.

(ii) The JRC shall have responsibility for (A) overseeing the initial transfer of information and designated activities from Merus to Incyte relating to each Target Pair pursuant to Section 4.1(a); (B) reviewing and discussing proposed Target Pairs; (C) preparing a Research Plan for each Program and any amendments thereto and presenting them to the JSC for approval; (D) overseeing the subsequent flow and transfer of information between the Parties related to the Target Pairs pursuant to Section 4.1(b) and with respect to , including the Data Package pursuant to Section 4.12, pursuant to Section 4.1(b); and (E) overseeing, reviewing and coordinating the pre-clinical and non-clinical research activities for each of the Programs under the relevant Research Plans.

(b) Program 1 Joint Development Committee.

(i) The Program 1 JDC will be the principal body through which the Development of the Program 1 Product is planned, administered and evaluated, and shall have the responsibility for the overall coordination and oversight of the Development activities for the Program 1 Product. At least [**] prior to Initiation of IND-enabling studies, each Party shall designate its initial three (3) representatives on the Program 1 JDC. A representative of Incyte shall act as the chairperson of the Program 1 JDC. The chairpersons shall not have any greater authority than any other representative on the Program 1 JDC and shall conduct the following activities of the Program 1 JDC: (A) calling meetings of the Program 1 JDC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the Program 1 JDC is carried out in accordance with Section 3.5. The Program 1 JDC shall automatically terminate if Program 1 is terminated or dropped from this Agreement.

(ii) The Program 1 JDC shall have responsibility for (A) discussing potential initial and subsequent Indications for Development for Program 1 Products; (B) reviewing and commenting on the Program 1 Incyte Territory Development Plan (or any amendments or updates thereto) prepared by Incyte pursuant to Section 5.3(a)(ii), and the Program 1 US Development Plan (or any amendments or updates thereto) prepared by Merus pursuant to Section 5.3(a)(ii), and, in each case, present such plans to the JSC for approval; (C) evaluating and commenting upon any proposal from either Party to conduct Clinical Trials or other Development activities on a joint basis, as provided in Section 5.3(a)(ii), and if it determines such proposed activity could be a Global Study, presenting such Global Study to the JSC for its consideration and potential approval; (D) preparing the Program 1 Joint Development Plan and any amendments thereto to include any Global Study which the Parties agree to conduct as a Program 1 Joint Development Activity, including a Program 1 Joint Development Budget therefor, pursuant to Section 5.3(b), and presenting them to the JSC for approval; (E) overseeing the flow of and transfer of information between the Parties related to Program 1; and (F) overseeing, reviewing and coordinating the conduct of activities and work under the Program 1 Incyte Territory Development Plan, Program 1 US Development Plan and Program 1 Joint Development Plan, as each may be amended.

(c) [**] Joint Development Committee.

(i) The [**] JDC will be the principal body through which the Development of the [**] Co-Development Product is planned, administered and evaluated, and shall have the responsibility for the overall coordination and oversight of the Development activities for the [**] Co-Development Product. Within [**] after Merus's exercise of its [**] Co-Development Right, each Party shall designate its initial three (3) representatives on the [**] JDC. Incyte shall appoint a person from among its representatives on the [**] JDC to serve as the chairperson of the [**] JDC. The chairperson shall not have any greater authority than any other representative on the [**] JDC and shall conduct the following activities of the [**] JDC: (A) calling meetings of the [**] JDC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the [**] JDC is carried out in accordance with Section 3.5. The [**] JDC shall automatically terminate if there is no longer a [**] Co-Development Product under this Agreement.

(ii) The [**] JDC shall have responsibility for (A) reviewing and commenting on any amendment or update to the [**] Co-Development Plan and [**] Co-Development Budget and presenting the [**] Co-Development Plan and the [**] Co-Development Budget to the JSC for discussion and approval and (B) overseeing, reviewing and coordinating the conduct of activities and work under the [**] Co-Development Plan.

(d) Additional Joint Development Committee.

(i) The Additional JDC will be the principal body through which the Development of an Additional Co-Development Product is planned, administered and evaluated, and shall have the responsibility for the overall coordination and oversight of the Development activities for such Additional Co-Development Product. Within [**] after Merus's exercise of an

Additional Co-Development Option, each Party shall designate its initial [**] representatives on the Additional JDC. Incyte shall appoint a person from among its representatives on the Additional JDC to serve as the chairperson of the Additional JDC. The chairperson shall not have any greater authority than any other representative on the Additional JDC and shall conduct the following activities of the Additional JDC: (A) calling meetings of the Additional JDC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the Additional JDC is carried out in accordance with Section 3.5. The Additional JDC shall automatically terminate if there is no longer an Additional Co-Development Product under this Agreement.

(ii) The Additional JDC shall have responsibility for (A) reviewing and commenting on any amendment or update to each Additional Co-Development Plan and Additional Co-Development Budget and presenting each Additional Co-Development Plan and Additional Co-Development Budget to the JSC for discussion and approval and (B) overseeing, reviewing and coordinating the conduct of activities and work under the Additional Co-Development Plan.

(e) Program 1 Joint Commercialization Committee.

(i) The Program 1 JCC shall oversee Commercialization of Program 1 Products worldwide. At least [**] prior to anticipated NDA filing of a Program 1 Product in the United States, each Party shall designate its initial [**] representatives on the Program 1 JCC. A representative of Incyte shall act as the chairperson of the Program 1 JCC. The chairperson shall not have any greater authority than any other representative on the Program 1 JCC and shall conduct the following activities of the Program 1 JCC: (A) calling meetings of the Program 1 JCC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the Program 1 JCC is carried out in accordance with Section 3.5. The Program 1 JCC shall automatically terminate if Program 1 Product terminated or dropped from this Agreement.

(ii) The Program 1 JCC shall be responsible for: (A) overseeing, reviewing and coordinating the Commercialization of the Program 1 Products in the Field worldwide; (B) discussing, and if agreed pursuant to Section 7.4(a), developing and overseeing the Global Branding Strategy; (C) setting overall strategic objectives and plans related to Commercialization of the Program 1 Products in the Field in each of the United States and the Incyte Territory, consistent with the Parties' rights under this Agreement and Section 7.2(a); (D) reviewing Commercialization issues for the Program 1 Products in the Incyte Territory that will have an impact on Commercialization of the Program 1 Products in the United States; (E) reviewing Commercialization issues for the Program 1 Products in the United States that will have an impact on Commercialization of the Program 1 Products in the Incyte Territory; (F) providing a forum for the Parties to discuss the Commercialization of the Program 1 Products in the Field worldwide; and (G) such other responsibilities as may be assigned to the Program 1 JCC pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

(f) [**] Joint Commercialization Committee.

(i) The [**] JCC shall oversee Detailing of [**] Co-Detailing Product in the United States. Within [**] after Merus's exercise of the Co-Detailing Right, each Party shall designate its initial three (3) representatives on the [**] JCC. A representative of Incyte shall act as the chairperson of the [**] JCC. The chairperson shall not have any greater authority than any other representative on the [**] JCC and shall conduct the following activities of the [**] JCC: (A) calling meetings of the [**] JCC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the [**] JCC is carried out in accordance with Section 3.5. The [**] JCC shall automatically terminate if there is no longer a [**] Co-Detailing Product under this Agreement.

(ii) The [**] JCC shall be responsible for: (A) overseeing the implementation of, reviewing and coordinating the Detailing of the [**] Co-Detailing Product in the Field in the United States; (B) applying the Global Branding Strategy (or other branding strategy, if appropriate) to the [**] Co-Detailing Product in the United States; (C) setting overall strategic objectives and plans related to Detailing [**] Co-Detailing Product in the Field in the United States; (D) reviewing, commenting on and approving any amendment or update to the Detailing Plan and Detailing Budget, and presenting the Detailing Plan and the Detailing Budget to the JSC and to Incyte for approval; (E) reviewing Detailing issues for the [**] Co-Detailing Product; (F) providing a forum for the Parties to discuss the Detailing of the [**] Co-Detailing Product in the Field in the United States; and (G) such other responsibilities as may be assigned to the [**] JCC pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

(g) Joint Manufacturing Committee.

(i) The JMC shall oversee the manufacture of Licensed Products worldwide. As soon as practicable following the Effective Date (but in no event more than [**] following the Effective Date), each Party shall designate its initial [**] representatives on the JMC. A representative of Incyte shall act as the chairperson of the JMC. The chairperson shall not have any greater authority than any other representative on the JMC and shall conduct the following activities of the JMC: (A) calling meetings of the JMC; (B) preparing and issuing minutes of each such meeting within [**] thereafter; (C) preparing and circulating an agenda for the upcoming meeting; and (D) ensuring that any decision-making delegated to the JMC is carried out in accordance with Section 3.5.

(ii) The JMC shall be responsible for: (A) overseeing, reviewing and coordinating the manufacture of Program 1 Products worldwide; (B) discussing and preparing the Program 1 Manufacturing Plan and presenting it to the JSC for approval, (C) providing a forum for the Parties to discuss the clinical and commercial requirements for and manufacture of Program 1 Products; (D) overseeing the manufacturing process transfer from Merus to Incyte pursuant to Section 6.1; (E) overseeing, reviewing and coordinating the Parties' activities with respect to Licensed Antibody and Bi-Specific Construct [**] for Licensed Products; and (F) such other responsibilities as may be assigned to the JMC pursuant to this Agreement or as may be mutually agreed upon by the Parties from time to time.

(h) Joint Intellectual Property Committee.

(i) The JIPC shall provide a platform for the exchange of information between the Parties, and for decision-making with respect to actions allocated to the Parties under ARTICLE VIII, relating to the filing, prosecution and maintenance of all Patent Rights licensed by one Party to the other in Sections 2.3 and 2.4; provided, that the Parties shall discuss filing, prosecution and maintenance of the Merus Platform IP only with respect to the Licensed Antibodies and Licensed Products. As soon as practicable following the Effective Date (but in no event more than [**] following the Effective Date), each Party shall designate its [**] representatives on the JIPC. A representative of Incyte shall act as the chairperson of the JIPC. The chairperson shall not have any greater authority than any other representative on the JIPC and shall conduct the following activities of the JIPC: (A) calling meetings of the JIPC at least every quarter; (B) preparing and issuing minutes of each such meeting within [**] thereafter; and (C) preparing and circulating an agenda for the upcoming meeting.

(ii) The JIPC shall discuss the following with respect to Patent Rights described under Section 3.2(h)(i): (A) [**]; (B) [**]; and (C) [**], except with respect to [**]. With respect to [**], the JIPC shall discuss [**] the Licensed Antibodies or the Licensed Products. In discussing the foregoing matters, the JIPC shall [**] Parties and shall [**] Intellectual Property [**] under this agreement to both Parties including the [**] one Party to the other. The applicable Party or the Parties shall determine such foregoing matters as set forth in ARTICLE VIII based on decision-making of the JIPC with respect to the foregoing matters.

(i) Joint Finance Committee. The JFC shall provide a forum for the discussion and exchange of information between the Parties relating to Research Costs, the Program 1 Joint Development Budget, the [**] Co-Development Budget, the Additional Co-Development Budget, Allowable Expenses, Net Profits and Net Losses. As soon as practicable following the Effective Date (but in no event more than [**] following the Effective Date), each Party shall designate its [**] representatives on the JFC. A representative of Incyte shall act as the chairperson of the JFC. The chairperson shall not have any greater authority than any other representative on the JFC and shall conduct the following activities of the JFC: (A) calling meetings of the JFC at least every quarter; (B) preparing and issuing minutes of each such meeting within [**] thereafter; and (C) preparing and circulating an agenda for the upcoming meeting.

3.3 Committee Meetings. Commencing in the first Calendar Quarter of 2017, the JSC and each of the Subcommittees that have been established shall each hold at least one (1) meeting per Calendar Quarter at such times during such Calendar Quarter as the chairperson elects to do so. Except where a Party fails to appoint a member or members to the JSC or its Subcommittees or fails to participate in meetings of the JSC or its Subcommittees pursuant to Section 3.5(b)(i), meetings of the JSC and the Subcommittees, respectively, shall be effective only if at least one (1) representative of each Party is present or participating. The JSC and its Subcommittees may meet either (i) in person at either Party's facilities or at such locations as the Parties may otherwise agree or (ii) by audio or video teleconference; provided that no less than one (1) meeting during each Calendar Year shall be conducted in person, with such in-person meetings alternating between the locations of each Party, or as otherwise mutually agreed. Other representatives of each Party involved with the Licensed Product may attend meetings as non-voting participants, subject to the

confidentiality provisions set forth in ARTICLE XIII. Additional meetings of the JSC and its Subcommittees may also be held with the consent of each Party, or as required under this Agreement, and neither Party shall unreasonably withhold its consent to hold such additional meetings. Each Party shall be responsible for all of its own expenses incurred in connection with participating in all such meetings.

3.4 Authority. The JSC and any Subcommittee shall have only the powers assigned expressly to it in this ARTICLE III and elsewhere in this Agreement, and shall not have any power to amend, modify or waive compliance with or the terms of this Agreement. In furtherance thereof, each Party shall retain the rights, powers and discretion granted to it under this Agreement and no such rights, powers or discretion shall be delegated or vested in the JSC or any Subcommittee unless such delegation or vesting of rights is expressly provided for in this Agreement or the Parties expressly so agree in writing.

3.5 Decisions.

(a) Initial Dispute Resolution Procedures. Subject to the provisions of this Section 3.5, actions to be taken by the JSC and each of the Subcommittees shall be taken only following a unanimous vote, with all of each Party's representatives together having one (1) vote. If any Subcommittee fails to reach unanimous agreement on a matter (with each Party's representatives together having a single vote) before it for decision for a period in excess of [**], either Party may refer the matter to the JSC.

(b) Final Decision-Making. If the JSC, using good faith efforts in compliance with Section 3.5(c), fails to reach unanimous agreement on a matter within the scope of the JSC's authority (with each Party's representatives together having a single vote) before it for decision (whether originating there or referred to it by a Subcommittee) for a period in excess of [**], the following provisions shall apply:

(i) The JSC representatives appointed by [**] shall have the deciding vote on [**] other than (A) those matters for which [**] has the deciding vote pursuant to Section 3.5(b)(ii) and (B) those matters related to [**] requiring the consent of both Parties' representatives and as to which neither Party has final say as expressly provided in Section 3.5(b)(iii). [**] shall have the right to appeal any such final decision of the [**] representatives to the JSC by referring such dispute to the [**] Executive Officer or a designee of the [**] Executive Officer with decision-making authority for resolution, in which case the [**] Executive Officer or designee shall make himself or herself reasonably available to [**] representatives for a period of [**] to review and discuss such issue, including holding an in-person meeting with [**] representatives, if requested. In such case, the [**] Executive Officer or designee shall have the deciding vote on such issue. For clarity, Incyte shall have final decision-making authority over the budgets for all Development Plans and for the [**].

(ii) Except for those matters related to [**] requiring the consent of both Parties' representatives and as to which neither Party has final say as expressly provided in Section 3.5(b)(iii), the JSC representatives appointed by [**] shall have the deciding vote on any matter involving (A) the [**] of any [**] Antibody or [**] Product in or for the United States,

including (1) [**] in the United States, (2) the [**] or [**] thereto, and (3) any disputes regarding whether an activity under Sections 5.3(a)(iii) or 5.3(c) is [**] of [**] Products in the United States; provided that the [**] JSC representatives must make such determination reasonably; and (B) any matter within the scope of responsibility of the JIPC pertaining to Patent Rights contained within [**] or pertaining to [**]. [**] shall have the right to appeal any such decision of the JSC to the [**] Executive Officer or a designee of the [**] Executive Officer with decision-making authority for resolution, in which case the [**] Executive Officer or designee shall make himself or herself reasonably available to [**] representatives for a period of [**] to review and discuss such issue, including holding an in-person meeting with [**] representatives, if requested. In such case, the [**] Executive Officer or designee shall have the deciding vote on such issue.

(iii) Neither Party shall have the final say over a matter that relates to any [**] or any [**] and/or its related [**], as contemplated in Section 5.3(b), and, unless and until both Parties' representatives on the JSC approve such [**] and associated [**], neither Party shall [**], and either Party shall have the right to [**], in accordance with Section 5.3(c). In addition, neither Party shall have final say over (A) the [**] Products for the [**], and, if the Parties are unable to agree [**] on a [**] Products applicable to [**], each Party shall have the right to [**], or (B) the [**] for [**] and, if the Parties are unable to agree through the JSC on the [**] for [**], each Party shall have the right to pursue [**] for its territory.

(c) Good Faith. In conducting themselves on the JSC or any Subcommittees, and in exercising their rights under this ARTICLE III, all representatives of both Parties shall consider diligently, reasonably and in good faith all input received from the other Party, and shall use reasonable efforts to reach consensus on all matters before them. Notwithstanding such final decision making rights of a Party, neither Party shall exercise its right to finally resolve a dispute pursuant to Section 3.5(b): (i) in a manner that excuses such Party from any of its obligations specifically enumerated under this Agreement; (ii) in a manner that negates any consent rights or other rights specifically allocated to the other Party under this Agreement; (iii) to resolve any dispute regarding whether a Party may [**]; (iv) to [**]; (v) to resolve any dispute regarding whether a milestone event set forth in Section 9.2 has been achieved; (vi) in a manner that would require the other Party to perform any act that it reasonably believes to be inconsistent with any Law or any approval, order, policy or guidelines of a Regulatory Authority; or (vii) or in a manner that has a material adverse impact on the rights or ability of a Party to [**] Products in its territory.

3.6 Committee Membership.

(a) Appointment is a Right. The appointment of members of the JSC and any Subcommittees is a right of each Party and not an obligation and shall not be a "deliverable" as referenced in any existing authoritative accounting literature. Each Party shall be free to determine not to appoint members to the JSC or any Subcommittee.

(b) Consequence of Non-Appointment. If a Party does not appoint members of the JSC or any Subcommittee, it shall not be a breach of this Agreement, nor shall any consideration be required to be returned, and unless and until such members are appointed, the Parties shall discharge the roles of the JSC or any Subcommittee thereof directly.

3.7 Alliance Manager. Each Party shall appoint a person(s) who shall oversee contact between the Parties for all matters between meetings of the JSC and each Subcommittee and shall have such other responsibilities as the Parties may agree in writing after the Effective Date (each, an “Alliance Manager”). Each Party may replace its Alliance Manager at any time by notice in writing to the other Party.

ARTICLE IV
TARGET PAIR AND PROGRAM SELECTION; RESEARCH

4.1 Information Transfer.

(a) Initial Information Transfer. Merus shall make available to Incyte, in a mutually-agreed upon format and without further financial consideration, (i) the Merus Know-How related to the Initial Research Plans and Program 1 and Program 2 and any research plan Merus has in place related to [**], in each case within [**] after the Effective Date and (ii) the Merus Know-How and any research plan Merus has in place related to any other Program within [**] after Incyte’s designation of the Target Pair for such Program in accordance with this ARTICLE IV. In addition, within [**] after the Effective Date, Merus shall disclose summaries of currently existing Merus Know-How [**] regarding Target Pairs [**].

(b) Technical Assistance; Continuing Information Transfer. From the Effective Date through the [**] thereof, Merus shall make its relevant scientific and technical personnel and any academic collaborators, as applicable, reasonably available to Incyte to answer any questions or provide instruction as reasonably requested by Incyte concerning the information delivered pursuant to Section 4.1(a). On an ongoing and Program-by-Program basis during the Research Term, every [**] (or such other frequency as determined by the Parties), (i) prior to Candidate Nomination, each Party shall make available to the other Party, in a mutually agreed-upon format, material data generated under the [**] Discovery Plan, any Novel Discovery Plan and each Research Plan, and (ii) following Candidate Nomination, each Party shall make available to the other Party material data generated under the applicable Development Plan, and such other aspects of the Incyte Know-How or Merus Know-How, as applicable, that arise from such Party’s [**] and (A) that are [**] the other Party’s conduct of activities, in each case [**], or (B) that are [**] the other Party.

(c) Right of Reference or Use. Merus hereby grants to Incyte, solely for the purposes set forth in this Agreement, a [**] relating to Licensed Antibodies or Licensed Products arising from Programs and existing as of the Execution Date or [**], and agrees to sign, and cause its Affiliates to sign, any instruments reasonably requested by Merus in order to effect such grant.

4.2 Gatekeeper.

(a) Generally. Incyte shall promptly, but in no case later than [**] after the Effective Date, engage and retain an independent Third Party [**] and [**] (the “Gatekeeper”) for the purpose of confirming whether a proposed Target Pair is Not Available and confirming whether a proposed [**] Target is an Incyte Specified Target, such engagement to include provisions relating to confidentiality substantially similar to those contained in this Agreement.

Incyte will provide Merus a copy of the agreement for review reasonably prior to execution (which may be redacted to remove any sensitive financial or competitive information), and shall consider in good faith any Merus comments thereto. The cost of the Gatekeeper shall be borne by [**]. Until [**], the Gatekeeper will be responsible for maintaining the list of Incyte Specified Targets and an up-to-date list of Target Pairs that are Not Available (the “Not Available List”). Upon notice from Incyte of engagement of the Gatekeeper, Merus shall provide the Gatekeeper (with a copy to Incyte) with the initial Not Available List (which shall include the reason for each Target Pair being Not Available). All communications regarding the availability of a Target Pair between the Parties shall be exchanged through the Gatekeeper.

(b) Notice of Not Available. During the Research Term, Merus shall promptly, but in no case later than [**] after the occurrence of the events in the following subsections (i) or (ii), notify the Gatekeeper (i) if any Target Pair becomes Not Available and provide the reason for such Target Pair becoming Not Available and (ii) if any Target Pair ceases to be Not Available. Upon receipt of such notification, the Gatekeeper shall update the Not Available List accordingly. For clarity, Merus shall [**] at the time such [**]; provided that Merus shall be [**] to Incyte if Incyte seeks to designate a Target Pair for a Program in accordance with Section 4.4(c) or Section 4.5(b), as applicable.

4.3 Target Pairs; Program Caps.

(a) Generally. The Parties agree that, as of the Effective Date, the Target Pairs under each of Program 1 and Program 2 have been designated, and that Program 1 and Program 2 are the only Programs for which a Target Pair has been designated. For each of the [**] Programs and Novel Programs, subject to Sections 4.2, 4.4 and 4.5, Incyte has the sole right to designate a Target Pair as the subject of further research activities pursuant to a Research Plan. For clarity, except with respect to the rights granted to Incyte for Selected Monoclonal Antibodies binding to individual Targets composing a particular Target Pair and the right of Incyte to [**] for a [**] as a Licensed Antibody as described in Section 4.3(b), the designation by Incyte of a Target Pair for inclusion in a Program does not grant to Incyte any rights to Develop and Commercialize Antibodies binding to either (i) an [**] Target Pair, or (ii) any [**] in such Target Pair and [**] in any other Target Pair that has been [**] this Agreement, unless Incyte has elected or elects, subject to the Novel Program Cap or [**] Program Cap, as applicable, to include such [**] as the subject of a Novel Program under this Agreement. By way of example only, if Incyte designates each of (i) Target A x Target B and (ii) Target C x Target D as Target Pairs in two Programs under this Agreement, Incyte [**] this Agreement to Develop or Commercialize Antibodies [**] (unless Incyte had [**] Target), or to [**] Target Pair that is a [**] (e.g., [**]), unless Incyte has designated a Novel Program or [**] Program around such Target or Target Pair, subject to the Novel Program Cap or [**] Program Cap, as applicable. For clarity, nothing under this Section 4.3(a) shall prevent Incyte from Developing or Commercializing Antibodies directed at any single Target outside this Agreement, subject to Section 2.8(b)(i).

(b) Program Caps. At any given time during the Research Term, there may be a maximum of eleven (11) Programs being actively pursued under this Agreement. More specifically, subject to the adjustments set forth below, in addition to Program 1 and Program 2, there may be an active maximum of (i) [**] Novel Programs (including any Novel Programs that

have passed Program Selection, irrespective of whether such Programs have been terminated) (the “ Novel Program Cap ”), and (ii) [**] Programs (including any [**] Programs that have passed Program Selection, irrespective of whether such Programs have been terminated) unless no [**] Target Pairs are designated by Incyte during the [**] Exclusivity Period, in which case the maximum shall be [**] Programs (the “ [**] Program Cap ”); provided that if the [**] Program Cap has been reached, any additional [**] Target Pair that Incyte wishes to designate may be included as a Novel Program Target Pair for a Novel Program if, at such time, the Novel Program Cap has not been reached. Furthermore, (A) if [**] becomes a Dropped Program, then the Novel Program Cap shall be [**], (B) if [**] becomes a Dropped Program, then the Novel Program Cap shall be [**], and (C) if (a) Incyte never designated any [**] Programs or (b) all [**] Programs included within the [**] Program Cap become Dropped Programs, then the Novel Program Cap shall be [**] such that, if all of the foregoing (A), (B), and (C) occur, the Novel Program Cap shall be [**]. Notwithstanding the foregoing, the Parties may mutually agree at any time to increase the Novel Program Cap or the [**] Program Cap, either temporarily (e.g., to facilitate the conduct of research activities under particular Programs), or for the remainder of the Research Term. For clarity, if Incyte chooses to pursue a Selected Monoclonal Antibody as a Licensed Antibody and Licensed Product, Incyte would provide to Merus written notice thereof, and such Selected Monoclonal Antibody will be included as a Program within the Novel Program Cap or [**] Program Cap, as applicable, and subject to the terms of this Agreement.

4.4 [**] Target Pairs.

(a) Generally. Pursuant to the [**] Discovery Plan, the Parties will seek to identify one or more Target Pairs for nomination by Incyte as [**] Target Pairs. Potential [**] Target Pairs can arise de novo from the research or be defined by either of the Parties as set forth below.

(b) [**] Idea Sharing by Merus. During the Initial Research Term, Merus shall promptly propose to Incyte in writing all Target Pairs that Merus has identified for the potential creation of Bi-Specific Constructs, for which one of the Fab regions specifically binds to [**]. In each case where Merus proposes a [**] Target Pair to Incyte, Merus shall make available to Incyte, in a mutually-agreed upon format and without further financial consideration, and as applicable, the Merus Know-How related to such [**] Target Pairs and the proposed monoclonal Antibodies (and sequences therefor) and actual or proposed Bi-Specific Constructs specifically binding to such [**] Target Pairs, if any, which shall include a written report [**] the research and Development of Bi-Specific Constructs directed to such [**] Target Pair; provided that the absence or unavailability of any of such information shall not limit Merus’s obligations to promptly propose Target Pair ideas to Incyte (but the [**] period set forth below shall not commence until such information is provided). Incyte may evaluate such [**] Target Pairs and the associated Bi-Specific Constructs and provide written notice to Merus not later than [**] after disclosure of such proposal and information thereof as to whether Incyte desires to designate such Target Pair as a [**] Target Pair under this Agreement. For clarity, a [**] Target Pair may include an IMOD Target. Notwithstanding anything in this Section 4.4(b), after the [**] Exclusivity Period, Merus is not required to disclose or offer to Incyte for inclusion under this Agreement any [**] Target Pairs that are [**] by [**] and [**] activities under this Agreement.

(c) **[**] Idea Sharing by Incyte**. Subject to the [**] Cap, at any time during the Research Term, Incyte may, in its sole discretion, provide written notice to Merus that Incyte wishes to propose a Target Pair for designation under a Program under this Agreement. Within [**] thereafter, Merus shall provide an updated Not Available List to the Gatekeeper (which shall include the reason for each Target Pair being Not Available); provided that such update shall be based on the status as of the date of Incyte's notice. Incyte may then, in its sole discretion, provide written notice to the Gatekeeper proposing one or more [**] Target Pairs for designation under a [**] Program, provided that [**], any such [**] Target Pair would only be able to be included within the collaboration [**]. Within [**] following the Gatekeeper's receipt of such notice, the Gatekeeper shall verify whether such [**] Target Pair requested by Incyte is on the Not Available List and notify Incyte in writing (the "[**] Gatekeeper Notice") with respect thereto and, if it is Not Available, provide the reason given by Merus when placing such Target Pair on the Not Available List; provided that no [**] Target Pair proposed by Incyte shall be Not Available at any time during the [**] Exclusivity Period. If such proposed Target Pair requested by Incyte is on the Not Available List, then, at Incyte's request, Merus shall provide Incyte with written evidence [**] to Incyte that such Target Pair is Not Available. If such proposed [**] Target Pair requested by Incyte is not on the Not Available List, then the Gatekeeper shall also notify Merus of Incyte's proposed [**] Target Pair, and subject to the [**] Program Cap, such proposed [**] Target Pair shall be designated as a [**] Target Pair. For clarity, if the [**] Cap has been reached and the Novel Program Cap has not yet been reached, Incyte may nominate [**] Target Pairs for inclusion as Novel Programs pursuant to Section 4.5. If the [**] Gatekeeper Notice indicates that the proposed [**] Target Pair is Not Available, then Incyte shall have the right to pursue such [**] Target Pair and Bi-Specific Constructs directed to such [**] Target Pair outside of this Agreement.

(d) **Ongoing [**] Target Pair Idea Sharing by Merus**. Once the [**] Program Cap has been reached, Merus shall have no further obligation to offer potential [**] Target Pairs to Incyte pursuant to Section 4.4(b) (but shall remain required to disclose such Target Pairs pursuant to Section 4.5(a) if the Novel Program Target Cap has not been reached). Notwithstanding the foregoing, if during the Initial Research Term, a [**] Program [**], such that there are [**] Programs (that were not included under Novel Programs) at such time than the [**] Program Cap, [**] to Merus's [**] to Incyte for inclusion under a [**] Program under this Agreement (including with respect to any [**]). For clarity, (i) Section 4.4(b) shall not apply following [**] to any Target Pairs that are Not Available and (ii) Section 4.8 shall apply to any new Bi-Specific Constructs that [**] that [**] identifies after the applicable [**].

4.5 **Novel Program Target Pairs**.

(a) **Target Pair Idea Sharing by Merus**. During [**] until the Novel Program Cap is reached, Merus shall promptly propose to Incyte in writing [**] Bi-Specific Constructs (excluding any [**] Target Pair already disclosed to Incyte pursuant to Section 4.4 and, for clarity, including any Target Pair where one or both of the Targets is an IMOD Target), and shall make available to Incyte, in a mutually-agreed upon format and without further financial consideration, the Merus Know-How related to such Target Pairs and the proposed monoclonal Antibodies (and sequences therefor) and actual or proposed Bi-Specific Constructs specifically binding to such Target Pairs, if any, which shall include a written report [**] Bi-Specific Constructs directed to such Target Pair; provided that the absence or unavailability of any of such information shall not

limit Merus's obligations to promptly propose Target Pair ideas to Incyte (but the [**] set forth below shall not commence until such information is provided). Incyte may evaluate such Target Pairs and the associated Bi-Specific Constructs for inclusion as Novel Program Target Pairs under this Agreement. For a period of [**] after Incyte's receipt of such proposal and information, such Target Pair may not be considered Not Available or added to the Not Available List and Incyte may designate such Target Pair as a Novel Program Target Pair hereunder, but may be added to the Not Available list at Merus's discretion following the expiration of such period, provided that Merus had satisfied the criteria for an Internal Merus Program at the time such Target Pair was offered to Incyte. At any time after such [**] period, Incyte may propose such Target Pair pursuant to Section 4.5(b). Notwithstanding anything in this Section 4.5(a), Merus is not required to disclose or offer to Incyte for inclusion under this Agreement any Targets or Target Pairs that are [**] by [**] and [**] activities under this Agreement .

(b) Target Pair Idea Sharing by Incyte . Subject to the Novel Program Cap, at any time during the Research Term, Incyte may, in its sole discretion , provide written notice to Merus that Incyte wishes to propose a Target Pair for designation under a Program under this Agreement. Within [**] thereafter, Merus shall provide an updated Not Available List to the Gatekeeper (which shall include the reason for each Target Pair being Not Available); provided that such update shall be based on the status as of the date of Incyte's notice. Incyte may then, in its sole discretion , provide written notice to the Gatekeeper proposing Target Pairs (other than and in addition to the Program 1 Target Pair, Program 2 Target Pair and any [**] Target Pairs included in the [**] Program Cap) for inclusion as a Novel Program Target Pair under this Agreement, provided that after the expiration of the Initial Research Term, any such Target Pair would only be able to be included within the collaboration as a replacement for a Dropped Target Pair. For clarity, Target Pairs proposed by Incyte under this Section 4.5(b) may (i) be [**] Target Pairs or (ii) include one or more IMOD Targets. Within [**] following the Gatekeeper's receipt of such notice, the Gatekeeper shall verify whether such Target Pair requested by Incyte is on the Not Available List and notify Incyte in writing (the "Novel Gatekeeper Notice") with respect thereto and, if it is Not Available, provide the reason given by Merus when placing such Target Pair on the Not Available List; provided that no Novel Program Target Pair containing [**] as a Target shall be Not Available at any time during the [**] Exclusivity Period, and no Reserved IMOD Target Pair may be Not Available during the IMOD Reserved Period. If such proposed Novel Program Target Pair requested by Incyte is on the Not Available List, then, at Incyte's request, Merus shall [**] such Novel Program Target Pair is Not Available. If such proposed Novel Program Target Pair requested by Incyte is not on the Not Available List, then the Gatekeeper shall also notify Merus of Incyte's proposed Target Pair and, subject to the Novel Program Cap, such proposed Novel Program Target Pair shall be a Novel Program Target Pair. If the Novel Gatekeeper Notice indicates that the proposed Novel Program Target Pair is Not Available, then Incyte shall have the right to pursue such Novel Program Target Pair and Bi-Specific Constructs directed to such Novel Program Target Pair outside of this Agreement .

(c) Ongoing Novel Program Target Pair Idea Sharing by Merus . Once the Novel Program Cap has been reached, Merus shall have no further obligation to offer potential Targets and Target Pairs to Incyte for inclusion as Novel Program Target Pairs under this Agreement pursuant to Section 4.5(a). Notwithstanding the foregoing, if [**] , a Novel Program [**] , such that there are [**] applicable Novel Program Cap, [**] to Merus's [**] Targets and

Target Pairs to Incyte for inclusion as Novel Program Target Pairs under this Agreement (including with respect to [**]). For clarity, (i) Section 4.5(a) shall not apply following a Drop Date to any Target Pairs that are Not Available and (ii) Section 4.8 shall apply to any new Bi-Specific Constructs that specifically bind to the Dropped Target Pair that Merus identifies after the applicable Drop Date.

4.6 Back-Up Bi-Specific Construct Substitution. At any time during the Term, Incyte may elect, at its discretion, to cease Development of one or more of the Bi-Specific Construct(s) for a Program (including both Novel Programs and [**] Programs). At any time during the Term, Incyte may elect, at its discretion, to advance one or more back-up Bi-Specific Constructs directed at the same Target Pair. If such election is made by Incyte [**] for the applicable Program, Incyte shall provide written notice to Merus and (a) the Parties shall [**] directed to such back-up Bi-Specific Constructs, and (b) the time period in which [**] shall be no less than [**] from the date of such notice.

4.7 Change in Status. If, at any time during the Research Term, any Target Pair that was identified as Not Available in a [**] Gatekeeper Notice or Novel Gatekeeper Notice is no longer Not Available, Merus shall promptly, but in any case within [**] provide written notice to Incyte and make available, [**], the Merus Know-How related to such Target Pairs and the Bi-Specific Constructs specifically binding to the Target Pairs. Incyte may, in its sole discretion, select such Target Pair for inclusion in this Agreement, subject to this ARTICLE IV.

4.8 Dropped Programs and Dropped Target Pairs.

(a) Program 1 and Program 2. Incyte may elect, at its sole discretion, to drop from this Agreement either or both of Program 1 and Program 2 (and the corresponding Target Pair and all Bi-Specific Constructs that are the subject of such Program) by written notice to Merus delivered prior to Program Selection for Program 1 or Program 2, as applicable, and each such Program and associated Target Pair(s) will, effective as of the date of Incyte's notice to Merus, become a Dropped Program and Dropped Target Pair, as applicable. Effective upon the date of such notice, such Dropped Target Pair shall no longer be a Program 1 Target Pair or Program 2 Target Pair. Simultaneous with such notice, or [**], Incyte may, at its discretion, designate one additional Novel Program Target Pair in lieu of such Dropped Target Pair, for each of Program 1 and/or Program 2, as applicable, pursuant to Section 4.5. Upon effectiveness of each such notice designating such additional Novel Program Target Pair, the Program covering such additional Target Pair shall thereafter be treated as a Novel Program.

(b) [**] Programs. For [**] Programs, on a Program-by-Program basis, at any time prior to the expiration of the Research Term, and prior to Program Selection for such [**] Program, Incyte may elect, at its discretion and by written notice to Merus, to drop any one or more [**] Programs (and the [**] Target Pair and all Bi-Specific Constructs that are the subject of such Program) from this Agreement, and each such Program and associated [**] Target Pair(s) will, effective as of the date of Incyte's notice to Merus, become a Dropped Program and Dropped Target Pair, as applicable. Simultaneous with such notice, or [**], Incyte may, at its discretion, either (i) designate a replacement [**] Target Pair in lieu of such Dropped Target Pair to be the subject of research activities hereunder or (ii) if [**], such that there are no longer any [**]

Programs under this Agreement (not including any [**] Programs falling under the Novel Program Cap), designate [**] pursuant to Section 4.5 [**] to be the [**] hereunder. Upon effectiveness of each such notice designating such additional [**] Target Pair or Novel Program Target Pair, as applicable, the Program covering such additional Target Pair shall thereafter be treated as a [**] Program or Novel Program, as applicable.

(c) Novel Programs. For Novel Programs, on a Program-by-Program basis, at any time prior to the expiration of the Research Term, and prior to Program Selection for such Program, Incyte may elect, at its discretion and by written notice to Merus, to drop such Programs (and the Target Pair and all Bi-Specific Constructs that are the subject of such Program) from this Agreement, and each such Program and associated Target Pair(s) will, effective as of the date of Incyte's notice to Merus, become a Dropped Program and Dropped Target Pair, as applicable. Simultaneous with such notice, or at any time thereafter prior to expiration of the Research Term, Incyte may, at its discretion, designate a replacement Target Pair in lieu of such Dropped Target Pair to be the subject of research activities hereunder. Upon effectiveness of each such notice designating such additional Novel Program Target Pair, the Program covering such additional Target Pair shall thereafter be treated as a Novel Program.

(d) Ongoing Right to Drop and Replace. For clarity, Incyte's right to drop Programs and, at its discretion, elect to replace them pursuant to Sections 4.8(a), 4.8(b), and 4.8(c) applies also to Programs that replaced such Dropped Programs. For example, if Incyte drops Program 1 and replaces it with a Novel Program pursuant to Section 4.8(a), that Novel Program may subsequently be dropped and replaced with another Novel Program pursuant to Section 4.8(c) and so on until the earlier of either expiration of the Research Term or Program Selection for such Novel Program.

(e) Release of Exclusivity. Upon any Target Pair becoming a Dropped Target Pair pursuant to Sections 4.8(a), 4.8(b) or 4.8(c) above then, subject to the applicable terms of this Agreement, Merus may thereafter Develop or Commercialize any Bi-Specific Construct that specifically binds to the applicable Dropped Target Pair.

(f) [**] New Bi-Specific Constructs on Dropped Target Pairs. During the Research Term, if Merus or an Affiliate commences internal research and Development activities with respect to any Bi-Specific Construct that specifically binds any Dropped Target Pair, and such Bi-Specific Construct [**], Merus [**] with respect to such [**] for consideration as a potential Novel Program Target Pair in accordance with Section 4.5(a), or a potential [**] Target Pair in accordance with Section 4.4(b), as applicable. Subject to the [**] Program Cap and the Novel Program Cap, as applicable (provided that Incyte may elect to drop a Target Pair pursuant to Section 4.8(a), 4.8(b), or 4.8(c) if such caps have been reached), Incyte shall have the right, exercisable within [**] following [**], to re-designate such Dropped Target Pair hereunder. If Incyte determines that it wishes to re-designate such Dropped Target Pair, Incyte shall reimburse Merus, within [**] following receipt of an invoice, for [**] of Merus's [**] incurred in [**] with respect to the [**] such Bi-Specific Construct and such Dropped Target Pair following the Drop Date. Upon Merus's receipt of such payment, such Dropped Target Pair will be reinstated under this Agreement and shall count towards the [**] Program Cap or the Novel Program Cap, as applicable.

(g) License Grant. Promptly following Merus's request after a Program becoming a Dropped Program pursuant to this Section 4.8, Incyte for itself and on behalf of its Affiliates, shall and hereby does grant to Merus a non-exclusive (subject to Incyte's rights with respect to Selected Monoclonal Antibodies), worldwide, license (subject to the royalties set forth in Section 9.3(a)(ii)) in and to (i) any Incyte IP that is [**] or [**] Dropped Bi-Specific Products [**] for such Dropped Program for the Development, manufacture, or Commercialization of such Dropped Bi-Specific Products and (ii) all Arising Manufacturing Patents and Arising Product-Specific Patents, discovered, made or conceived under such Dropped Program for the Development, manufacture, or Commercialization of such Dropped Bi-Specific Products. Incyte shall also provide to Merus copies of all data generated by Incyte with respect to the Dropped Target Pair and Merus may use and disclose such data under reasonable confidentiality protections to the extent necessary for the Development, manufacture, or Commercialization of such Dropped Bi-Specific Products. Notwithstanding the foregoing, Incyte shall retain the license under Section 2.3 to the Selected Monoclonal Antibodies that were part of such Dropped Program for use in connection with any other Programs then existing or that may begin during the Research Term.

4.9 Research Term.

(a) Research Term Duration. Commencing on the Effective Date, pursuant to the terms of this Agreement, the Parties shall collaborate to conduct discovery and research activities, including the activities set forth in this ARTICLE IV, until the earlier of (a) the date upon which a total of [**] Program Selections have occurred in relation to Bi-Specific Constructs arising from Programs conducted under this Agreement, and (b) the [**] of the Effective Date, (such period ending on the earlier of (a) or (b), including any extensions under the remainder of this Section 4.9, collectively, the "Research Term"), provided that, following the expiration of the Initial Research Term, the total number of Programs being pursued under this Agreement may not be increased (e.g., if there are a total of seven (7) Programs ongoing at end of the Initial Research Term, no new Programs can be added but each of those seven (7) Programs may be dropped and a substitute selected one or more times pursuant to Section 4.8). Notwithstanding the foregoing, following the expiration of the Initial Research Term and during the remainder of the Research Term, Section 4.8 shall continue to apply, and Incyte may, [**], [**] for any [**]. If, as of the [**] of the Effective Date, fewer than [**] Program Selections have occurred (or such number of Program Selections corresponding to the total number of Programs that had either achieved Program Selection or were ongoing as of the expiration of the Initial Research Term, if less than [**]), Incyte shall have the right, at its discretion, to extend the Research Term for successive additional [**] periods (each, an "Extension Period"), by providing written notice to Merus no later than [**] prior to the [**] (and each subsequent [**]) of the Effective Date, and paying an extension fee (the "Research Term Extension Fee") for each such [**] extension, of [**] within [**] following an invoice from Merus for such amount. Incyte's ability to extend the Research Term in accordance with the foregoing sentence shall apply until the achievement of [**] Program Selections (or such number of Program Selections corresponding to the total number of Programs that had either achieved Program Selection or were ongoing as of the expiration of the Initial Research Term, if less than [**]).

(b) Expiration of the Research Term. If the Research Term expires at the end of an Extension Period because Incyte elects not to pay a Research Term Extension Fee under Section 4.9, and at such time [**] Program Selections have not been achieved, then if Merus is conducting activities under any Research Plan for a Program that has not yet achieved Program Selection, Merus shall, in accordance with the applicable Research Plan, (i) [**] all Programs that have not yet achieved Program Selection, and (ii) [**] for any Program for which a Target Pair has been designated pursuant to Sections 4.4 and/or 4.5 prior to the expiration of the Research Term but for which research activities have not yet commenced, in each case of (i) and (ii), until the earlier of (A) [**] under this Agreement, or (B) Incyte notifies Merus in writing that it [**]. Without limiting the foregoing, if at the expiration of the Research Term at the end of an Extension Period in accordance with this Section 4.9(b), regardless of whether [**] Program Selections have been achieved, Merus shall [**] with respect to any other active Programs, until [**].

4.10 Conduct of Discovery and Research Activities

(a) Discovery Activities.

(i) [**] Discovery Activities. Within [**] after the Effective Date, the JRC will prepare a plan and budget for review and approval by the JSC for the discovery of suitable [**] Target Pairs during the [**] Exclusivity Period (“ [**] Discovery Plan ”). The [**] Discovery Plan will assign responsibility for activities needed to identify Target Pairs for designation by Incyte as [**] Target Pairs. Merus shall use [**] to perform the obligations allocated to it under [**] Discovery Plan in accordance with the budget. Incyte may, in its sole discretion (A) perform activities set forth in the [**] Discovery Plan in parallel with Merus, (B) perform an activity in lieu of Merus, if Merus has not performed such activity pursuant to the timeline set forth in the [**] Discovery Plan, or (C) perform any other discovery activity. The duration of the [**] Discovery Plan shall be determined by the JRC.

(ii) Novel Discovery Activities. Should the Parties mutually agree that discovery activities directed toward a potential Novel Program should be conducted under this Agreement, the JRC will prepare a plan and budget for review and approval by the JSC for the discovery of suitable Novel Program Target Pairs (“ Novel Discovery Plan ”). The Novel Discovery Plan will assign responsibility for activities needed to identify Target Pairs for designation by Incyte as Novel Program Target Pairs. Merus shall use [**] to perform the obligations allocated to it under any Novel Discovery Plan in accordance with the budget. Incyte may, in its sole discretion (A) perform activities set forth in the Novel Discovery Plan in parallel with Merus, (B) perform an activity in lieu of Merus, if Merus has not performed such activity pursuant to the timeline set forth in the Novel Discovery Plan, or (C) perform any other discovery activity. The duration of each Novel Discovery Plan shall be determined by the JRC.

(b) Research Plans. Within [**] after the Effective Date, the JRC shall prepare a research plan and budget for research activities for Program 1 and Program 2 (the “ Initial Research Plans ”). The Initial Research Plans shall include the Selected Monoclonal Antibodies and General Monoclonal Antibodies for Program 1 and Program 2 previously generated by Merus. For a period of [**] after receipt of the Initial Research Plans, Incyte shall [**] such Selected Monoclonal Antibodies [**] and [**] Selected Monoclonal Antibodies which thereafter shall be

the Selected Monoclonal Antibodies for Program 1 or Program 2, as applicable. Within [**] after designation of each Target Pair hereunder (other than the Program 1 Target Pair and Program 2 Target Pair), the JRC shall prepare a research plan and budget for research activities related to such Target Pair and the associated Bi-Specific Constructs through to Candidate Nomination (together with the Initial Research Plans, the “Research Plans”) for review and approval by the JSC. For each such Program, Incyte shall have the right, in its discretion, to select the Selected Monoclonal Antibodies that will be used to generate the Target Pair Biclomics Matrix. The Research Plans shall (i) assign responsibilities to Merus including for generating Antibodies and Bi-Specific Constructs to be incorporated within each of the Licensed Products and conducting *in vitro* and *in vivo* pharmacology on such Bi-Specific Constructs and providing resulting materials and information to Incyte and (ii) include a budget, timeline, milestones and desired pre-clinical target characteristics for research and Development activities through to Candidate Nomination. The intent of each Research Plan is to set forth the activities necessary to achieve Candidate Nomination with respect to a given Program. The duration of each Research Plan shall be less than or equal to [**] unless otherwise determined by the JRC; provided that Merus shall not be obligated to create a Target Pair Biclomics Matrix for more than (A) [**] Target Pairs per year during Calendar Years [**] or (B) [**] Target Pairs per Calendar Year thereafter. Merus shall use [**] to perform the obligations allocated to it under each Research Plan in accordance with the budget and shall ensure that any obligations Merus has to Third Parties do not cause Merus to have insufficient capacity to perform its obligations under this Agreement. Incyte may, in its sole discretion, (x) perform Research activities set forth in the Research Plans in parallel with Merus, (y) perform a research activity in lieu of Merus, if Merus has not performed such activity pursuant to the timeline set forth in a Research Plan, or (z) perform any other research activity related to such Program.

(c) Discovery and Research Activity Costs. All Research Costs for Program 1 are Development Costs and shared equally by the Parties pursuant to Section 5.3(b)(iii). All Research Costs for Program 2, and each Novel Program, and for the [**] Discovery Plan, any Novel Discovery Plan and each [**] Program, up to [**] of the amount budgeted in the [**] Discovery Plan, any Novel Discovery Plan and applicable Research Plan (the “Reimbursable Research Costs”) shall be borne by Incyte. If Merus in good faith believes it will be necessary to incur costs in excess of the Reimbursable Research Costs in carrying out activities that are necessary in order to fulfil the requirements of the [**] Discovery Plan, any Novel Discovery Plan or a Research Plan, it shall secure Incyte’s prior written consent before conducting such activities. Provided such prior written consent has been secured, such costs will also be reimbursed by Incyte. Merus shall have no obligation to carry out any research activities that will incur Research Costs that exceed the Reimbursable Research Costs unless Incyte has provided its consent to reimburse such excess Research Costs or unless it is necessary for Merus to re-perform research activities that were improperly performed under a Research Plan and are necessary for Merus to provide a complete and accurate Data Package. At the time the [**] Discovery Plan, any Novel Discovery Plan or any Research Plan for which there are Reimbursable Research Costs is created by the JRC and approved by the JSC, the Parties shall agree on a [**] reporting and payment structure to implement the cost sharing set forth in this Section 4.10(c). If Incyte performs an activity in lieu of Merus pursuant to Section 4.10(a), the cost of performing such activity shall be removed from the budget allocated to Merus for such activity and Incyte shall not be required to reimburse Merus for such costs, provided it so notified Merus in advance that it was performing itself such activity.

(d) Reporting. Merus shall provide the JRC with a written report at least [**] summarizing in reasonable detail Merus's and its Affiliates' activities, progress and expenditures compared to allocated budget under the [**] Discovery Plan, any Novel Discovery Plans and Research Plans. Incyte shall provide the JRC with a written report at least [**] summarizing in reasonable detail Incyte's and its Affiliates' activities, if any, under the [**] Discovery Plan, any Novel Discovery Plans and Research Plans, or any other activities it elected to undertake, as contemplated under Section 4.10(a).

4.11 Additional Research Activities. The JRC may require that certain activities under the Research Plans be repeated, new research be conducted, that Bi-Specific Constructs be created, modified or re-engineered or other research-related activities related to the Licensed Antibodies be performed and the JRC will adjust the applicable Research Plan and the associated budget accordingly. In each case, [**] shall be responsible for all Research Costs incurred under any such amended Research Plan budget that is approved by the JSC. During the Term, in connection with Development activities under any Program, Incyte may, in its discretion, select by written notice to Merus, one or more General Monoclonal Antibodies for potential use in the generation of a Bi-Specific Construct under such Program. Promptly after such notice, Merus will notify Incyte whether Merus has granted rights to such General Monoclonal Antibody to any Third Party. If Merus has granted rights to such General Monoclonal Antibody to a Third Party, Incyte may (but shall not be required to) request that Merus create a monoclonal Antibody that is less than [**] homologous in HCDR3 to such General Monoclonal Antibody and subsequently deem such modified General Monoclonal Antibody a Selected Monoclonal Antibody under such Program. Incyte may request that Merus generate Bi-Specific Constructs using such modified General Monoclonal Antibody (in which case, the provisions of Section 2.8(b) shall not be applicable to such modified General Monoclonal Antibody). If Merus has not granted rights to the General Monoclonal Antibody to any Third Party, Incyte may deem such General Monoclonal Antibody as a Selected Monoclonal Antibody under such Program. If Incyte wishes to designate one or more General Monoclonal Antibodies as Selected Monoclonal Antibodies under this Section 4.11, and the total number of Selected Monoclonal Antibodies would subsequently exceed the applicable number authorized by Section 1.127, Incyte shall contemporaneously designate an equal number of Selected Monoclonal Antibodies of its choice to become General Monoclonal Antibodies such that there will thereafter be only the number of Selected Monoclonal Antibodies authorized by Section 1.127 for such Program. If Incyte deems one or more General Monoclonal Antibodies as Selected Monoclonal Antibodies under this Section 4.11, and the total number of Selected Monoclonal Antibodies on either individual arm of a Target Pair would subsequently exceed [**], Incyte shall contemporaneously designate an equal number of Selected Monoclonal Antibody of its choice to become a General Monoclonal Antibody such that there will thereafter be no more than [**] Selected Monoclonal Antibodies on either individual arm of such Target Pair in accordance with Section 1.127. Once such Selected Monoclonal Antibodies becomes a General Monoclonal Antibodies, all licenses granted to Incyte under such Antibody as a Selected Monoclonal Antibody shall terminate.

4.12 Candidate Nomination.

(a) Data Packages. Merus shall: (i) at the direction of the JRC, provide to Incyte the Data Package for Program 1 and Program 2 and their corresponding Bi-Specific Constructs,

and (ii) on a Program-by-Program basis, use Commercially Reasonable Efforts to provide to Incyte within [**] (or such other longer period as may be set forth in the applicable Research Plan) following designation of each Target Pair pursuant to Sections 4.4 or 4.5, the Data Package for such Target Pair, including the corresponding General Monoclonal Antibodies, Selected Monoclonal Antibodies and the Bi-Specific Construct(s) that specifically bind to such Target Pair that are the subject of such Program, and which have been the subject of research activities under the applicable Research Plan.

(b) Data Package Review. Following Incyte's receipt of a Data Package, Incyte shall have [**], or such other period as the Parties may mutually agree, in which to review the applicable Data Package to determine whether it wishes to proceed with Candidate Nomination, provided that if Incyte requests additional reasonable information and clarifications during such [**] period, then such [**] period will be automatically extended (as necessary) for up to an additional [**] period, during which period Incyte may continue to request additional reasonable information and clarifications and Merus shall provide such information and clarifications to Incyte. For clarity, Incyte may [**] set forth in the applicable Research Plan [**] as set forth in Section 4.11. Incyte will use [**] to initiate the vector construction activities required for Candidate Nomination once Incyte has received all additional reasonable information and clarification that it has requested from Merus under this Section 4.12(b) with respect to a complete and accurate Data Package.

ARTICLE V
DEVELOPMENT; REGULATORY MATTERS

5.1 Conduct of Development Activities.

(a) Program 2, Novel Programs and [**] Non-Co Products. Incyte will, subject to the terms of this Agreement, have the sole right, at its expense, to conduct the Development of: Program 2 Antibodies and Program 2 Products; [**] Antibodies and [**] Products (other than the [**] Co-Development Product, if any) and Novel Program Antibodies and Novel Program Products (other than Additional Co-Development Products, if any), in each case worldwide. At the time of Candidate Nomination for each Program, the Parties shall discuss and agree, through the JRC, on a plan for (i) information sharing in relation to Development activities conducted between Candidate Nomination and Program Selection for the applicable Program, and (ii) achieving Program Selection for such Program.

(b) [**] Co-Development Product. The Development of the [**] Co-Development Product, if any, shall be governed by a written Development plan that describes the proposed program of worldwide Development for the [**] Co-Development Product (the "[**] Co-Development Plan") and associated budget for such worldwide Development ("[**] Co-Development Budget"). Incyte shall have the sole right and responsibility for preparing and amending the [**] Co-Development Plan and preparing and approving the [**] Co-Development Budget. Except as otherwise provided in this Agreement, and subject to Section 5.4, all decisions with respect to the creation, modification and implementation of the [**] Co-Development Plan and all Development activities for the [**] Co-Development Product, shall be made by Incyte in its sole discretion.

(c) Additional Co-Development Plans. The Development of an Additional Co-Development Product shall be governed by a written Development plan that describes the proposed program of worldwide Development for such Additional Co-Development Product (the “Additional Co-Development Plan”) and associated budget for such worldwide Development (“Additional Co-Development Budget”). [**] shall have the [**] responsibility for preparing and amending the Additional Co-Development Plan and preparing and approving the Additional Co-Development Budget. Except as otherwise provided in this Agreement, and subject to Section 5.5, all decisions with respect to the creation, modification and implementation of the Additional Co-Development Plan and all Development activities for the Additional Co-Development Product shall be made by Incyte in its sole discretion .

(d) Potential Merus Activities. Notwithstanding Sections 5.1(a) and 5.1(b), Incyte may request that Merus conduct (i) additional research activities for one or more of the Programs following Candidate Nomination for such Programs, or (ii) certain Development activities that are included within Development plans for such Programs between Candidate Nomination and Program Selection for each such Program, by making a written proposal (which may be in PowerPoint or other format) setting out the research and Development activities that Incyte desires Merus to conduct, and the deliverables, estimated timeline and resource requirements for such activities. Subject to the capacity limitations set forth in Section 4.10(b), Merus shall [**] additional research and/or Development activities, and to the extent that Merus performs such activities, Incyte shall reimburse Merus for the associated documented costs as Research Costs hereunder.

5.2 Development Diligence for Programs. For each Program achieving Candidate Nomination under this Agreement, excluding Program 1, but including Program 2, each [**] Program, and each Novel Program, Incyte shall use [**] (a) to progress research and Development activities for each such Program and (b) to [**] for [**] Bi-Specific Construct arising therefrom within [**] following Candidate Nomination for such Program, as such period may be extended by the JSC. Following Program Selection, and on a Program-by-Program basis, Incyte shall use [**] (i) to Develop the Program 2 Product, [**] Products (including both the [**] Non-Co Product and the [**] Co-Development Product), and the Novel Program Products in the Major Markets, and (ii) to seek and obtain Regulatory Approval for [**] Licensed Product arising from each such Program in each Major Market.

5.3 Program 1 Products.

(a) Generally.

(i) From and after the Effective Date, (A) Incyte will, subject to the terms of this Agreement, be responsible, at its expense, for the Development of the Program 1 Product for Regulatory Approval in the Incyte Territory; and (B) Merus will be responsible, at its expense, for the Development of the Program 1 Product for Regulatory Approval in the United States . The Parties will strive to work together on particular projects; however, the Parties will have the right to conduct Development and Commercialization of the Program 1 Product independently as provided in this Section 5.3. The Parties shall provide access to certain information related to the Development and Commercialization of the Program 1 Product to the

Program 1 JDC, the Program 1 JCC, the JSC, and to each other as expressly described in this Agreement and subject to the terms of this Section 5.3.

(ii) The Development of the Program 1 Product shall be governed by a Development plan that describes the proposed overall program of Development for the Program 1 Product in the United States (the “Program 1 US Development Plan”) and in the Incyte Territory (the “Program 1 Incyte Territory Development Plan”) as well as a Program 1 Joint Development Plan covering Program 1 Joint Development Activities. Incyte shall have the sole right and responsibility for preparing the Program 1 Incyte Territory Development Plan. Except as otherwise provided in this Agreement (including as provided in Section 5.3(b)), with respect to the Program 1 Product in the Incyte Territory, all decisions with respect to the creation, modification and implementation of the Program 1 Incyte Territory Development Plan and Program 1 Joint Development Plan and all Development activities shall be made by Incyte in its sole discretion; provided that Incyte shall present to the Program 1 JDC a draft of the Program 1 Incyte Territory Development Plan and any material changes to the Program 1 Incyte Territory Development Plan, and shall give due consideration to any comments of Merus thereto. Merus shall have the sole right and responsibility for preparing the Program 1 US Development Plan. Except as otherwise provided in this Agreement (including as provided in Sections 5.3(b)), with respect to the Program 1 Product in the United States, all decisions with respect to the creation, modification and implementation of the Program 1 US Development Plan and Program 1 Joint Development Plan and all Development activities shall be made by Merus in its sole discretion; provided that Merus shall present to the Program 1 JDC a draft of the Program 1 US Development Plan and any material changes to the Program 1 US Development Plan, and shall give due consideration to any comments of Incyte thereto.

(iii) Notwithstanding the foregoing, prior to commencing any independent Clinical Trial or other Development activities as part of Program 1 (i.e., not including any proposed Global Studies, which are subject to Section 5.3(b)) that may have an effect on Development of Program 1 Product in the United States (in case of such activities by Incyte) or in the Incyte Territory (in the case of such activities by Merus), the Party that proposes to conduct such Clinical Trial or other Development activities shall first submit to the Program 1 JDC the proposed protocol for such proposed Clinical Trial or Development activities and a written summary, in a form mutually agreed by the Parties, of such Clinical Trial or Development activities for review by the Program 1 JDC; provided that neither Party may proceed with such Clinical Trial or Development activities if the non-proposing Party reasonably determines that such Clinical Trial or Development activities is reasonably likely to have a material adverse effect on the Development or Commercialization of the Program 1 Product in the non-proposing Party’s territory; and provided further that such Clinical Trial or Development activities shall be subject to the non-proposing Party’s rights to buy-in to the results generated thereunder in accordance with Section 5.3(d).

(b) Program 1 Joint Development Activities.

(i) Prior to a Party conducting any Clinical Trial or Development activity that may support the worldwide (i.e., both the United States and one or more countries in the Incyte Territory) Development of a Program 1 Product, it shall be required to submit to the

Program 1 JDC a proposal to collaborate with the other Party to conduct Clinical Trials or other Development activities in connection with the Development of a Program 1 Product; provided that such proposal is submitted in writing as far in advance as reasonably practicable and in any event not later than [**] before (A) the planned FPFV, in the case of Clinical Trials or (B) planned commencement of such other Development activities. Such proposal shall contain, at a minimum, information supporting the rationale for the proposed activity related to the Program 1 Product from a scientific, regulatory and commercial standpoint, as well as an estimated developmental critical path and an estimate of the cost of such Development. The Program 1 JDC may review and comment on such proposal and shall present it to the JSC for approval.

(ii) At any time during the period between when such proposal has been presented to the Program 1 JDC and the JSC has approved such Clinical Trial or other Development activity, and for [**] after such approval, the other Party may elect to participate in such Clinical Trial or other Development activity.

(iii) In the event (A) the Program 1 JDC determines that such Clinical Trial or Development activity may support the worldwide Development of Program 1 Products (a “Global Study”); (B) the Program 1 JDC approves such proposal, with the consent of both Parties, or, if the JDC does not approve such proposal and the matter is escalated to the JSC, the JSC approves such proposal, with the consent of both Parties and with neither Party having final say; and (C) the Parties agree to collaborate to conduct such Clinical Trial or other Development activity with respect to the Program 1 Product (any of the items in (A) through (C), a “Program 1 Joint Development Activity”), then the Parties shall, through the Program 1 JDC, create a development plan (the “Program 1 Joint Development Plan”) that includes a detailed description of the Program 1 Joint Development Activity to be undertaken by the Parties (or if a Program 1 Joint Development Plan already exists, amend such plan to include the new Program 1 Joint Development Activity) and develop a detailed annual budget for all Development Costs for such Joint Development Activity to be included in the Program 1 Joint Development Plan (the “Program 1 Joint Development Budget”). Each Party shall use [**] to perform the obligations allocated to such Party under the Program 1 Joint Development Plan. All Development Costs set forth in the Program 1 Joint Development Budget shall be shared equally by the Parties whether incurred by Merus or Incyte or their respective Affiliates (i.e., each Party shall be responsible for fifty percent (50%) of the Development Costs set forth in the Program 1 Joint Development Budget). At the time Program 1 Joint Development Plan and associated Program 1 Joint Development Budget (or any amendments thereto) is established by the Program 1 JDC and approved by the JSC, the Parties shall agree on a [**] reporting and payment structure to implement the cost sharing set forth in the preceding sentence. In the event either Party fails to timely make an undisputed payment under such agreed on payment structure, the payment amount shall be reflected as a credit against the monies due by the other Party under ARTICLE IX, or, if no such credit is available as no such monies are due by the other Party, shall be paid by such Party within [**] after invoice, and the terms of subsection (iv) below shall apply.

(iv) Should either Party (A) fail to timely pay any such invoice for Development Costs for activities set forth and in accordance with the Program 1 Joint Development Budget within [**] following written notice from the other Party, or (B) elect, by [**] advance written notice to the other Party, to cease funding Program 1 Development Costs

under the Program 1 Joint Development Budget (such action, a “Program 1 Opt-Out”), then such Party shall continue to have the right to Develop and Commercialize the Program 1 Product in the United States (in the case of Merus) or the Incyte Territory (in the case of Incyte) in accordance with the terms of this Agreement, but shall thereafter have no right to access or use any clinical and non-clinical data generated as a result of any Joint Development Activity occurring under the Program 1 Joint Development Plan, or any activities conducted by Incyte in relation to the Development and Commercialization of the Program 1 Product, in each case after the date of the occurrence of either of the events in (A) or (B) (such date, the “Program 1 Opt-Out Date”). If such Party subsequently desires to obtain access to any such data generated after the Program 1 Opt-Out Date, the terms of Section 5.3(d) shall apply.

(c) Right to Proceed with Development Activity. If the other Party declines or does not elect to participate in a proposed Program 1 Joint Development Activity at least [**] prior to (i) in the case of Clinical Trials, the estimated FPFV date (as notified by the submitting Party in its proposal for such Program 1 Joint Development Activity) or (ii) planned date of commencement of such other Program 1 Joint Development Activities, the submitting Party may proceed with such Clinical Trial or Development activity for its territory and would be solely responsible for the conduct and costs of such Clinical Trial or Development activity; provided that neither Party may proceed with such Clinical Trial or Development activity if a Party reasonably determines that the activity is reasonably likely to have a material adverse impact on the Development and/or Commercialization of the Program 1 Products in its territory. Any dispute regarding whether an activity is reasonably likely to have a material adverse impact on the Development and/or Commercialization of the Program 1 Product in a Party’s territory shall be resolved in accordance with Section 3.5(b).

(d) Program 1 Buy-In Right.

(i) If (A) a Party fails to elect to participate in a Clinical Trial or Development activity pursued by the other Party pursuant to Section 5.3(b), (B) either Party exercises a Program 1 Opt Out with respect to any Program 1 Joint Development Activity or (C) a Party desires to access data generated by a Clinical Trial or Development activity performed independently by the other Party, such Party (the “Buy-In Party”) may obtain access to and use of all clinical and non-clinical data generated pursuant to the relevant Clinical Trial or Development activity (the “Buy-In Data”), as if such Party had co-funded such Clinical Trial or Development activity from the outset, in accordance with the following procedure: At least on a semi-annual basis, the Party participating in a Clinical Trial or Development activity pursuant to Section 5.3(a) shall update the Buy-In Party on the status of such Clinical Trial or Development activity, including a summary of relevant Buy-In Data. At any time, the Buy-In Party may provide the other Party with notice of its election to participate in such Clinical Trial or Development activity, and promptly thereafter the other Party shall provide the Buy-In Party with an invoice for [**] of the Development Costs incurred by the other Party in the generation of such clinical data as of the date of the Buy-In Party’s written request, which invoice the Buy-In Party shall pay within [**] after receipt. Thereafter, to the extent the Development activity has not been completed, the Buy-In Party shall be responsible for [**] of the Development Costs incurred by the other Party through to completion of such Development activity. Such payment shall entitle the Buy-In Party to (1) use the Buy-In Data to the same extent as such Party would have been permitted to use such Buy-

In Data if it had co-funded such Clinical Trial or Development activity as a Program 1 Joint Development Activity from the outset under Section 5.3(b), and (2) the rights set forth in Section 5.3(e). The other Party shall, as applicable, provide copies of, and/or a Right of Reference or Use of, the requested Buy-In Data to the Buy-In Party promptly after receipt of the invoiced amount.

(ii) For the avoidance of doubt, the buy-in right pursuant to this Section 5.3(d) does not include the right to operational participation in the conduct of the Clinical Trial or Development activity unless, at the sole discretion of the Party that initiated the Clinical Trial or Development activity, such Party grants operational participation to the Buy-In Party.

(iii) In the event the Buy-In Party fails to meet any payment obligation pursuant to this Section 5.3(d), and such failure continues for [**] after the original due date of the payment, until such delinquency is cured, the Buy-In Data with respect to such exercise of the buy-in right shall not be shared with the Buy-In Party. In the event such delinquency is not cured within such [**] period, the Buy-In Party's notice of election to participate shall be considered void.

(iv) With respect to Buy-In Data falling within Section 5.3(d)(i)(C), such Buy-In Data will not be included, with respect to Program 1, within (A) the Merus Know-How for purposes of Section 2.3 (where Incyte is the Buy-In Party) or (B) the Incyte Know-How for purposes of Section 2.4 (where Merus is the Buy-In Party), until the Buy-In Party has fully satisfied its payment obligations with respect to such Buy-In Data under this Section 5.3(d). Following payment, such Buy-In Data will be included for Program 1 within the Merus Know-How, or the Incyte Know-How, as applicable, that is licensed to the other Party under this Agreement.

(v) If a Party does not buy in pursuant to this Section 5.3(d), then such Party shall have no right to obtain access to or to use the Buy-In Data in accordance with Section 5.3(e) below, except to the extent such Buy-In Data is relevant to or necessary to address issues relating to the safety of the Program 1 Product, including data relating to adverse effects associated with the Program 1 Product and safety related clinical, manufacturing and controls activities relating to the Program 1 Product, in each case solely (A) to the extent required to be reported to or made available to Regulatory Authorities in such Party's Territory, and (B) solely in such countries where such Party has the right to Develop and Commercialize the Program 1 Product.

(e) Rights to Data and Documentation. With respect to any Program 1 Joint Development Activities or where the Buy-In Party buys in:

(i) Subject to Section 5.3(d), each Party shall have the right to possess, retain and use all clinical and non-clinical data and related Regulatory Documentation Controlled by either Party and generated in the course of Program 1 Joint Development Activities in order to Develop, obtain Regulatory Approval for and Commercialize the Program 1 Product in such Party's territory in accordance with the terms of this Agreement;

(ii) Each Party hereby grants to the other Party a Right of Reference or Use to any and all such Regulatory Documentation, and agrees to sign, and cause its Affiliates to sign, from time to time, promptly upon request, any instruments reasonably requested by such other Party in order to effect such grant;

(iii) Each Party shall maintain complete and accurate records of all results, data, Development Costs and developments made pursuant to its efforts under the Program 1 Joint Development Plan. Such records shall appropriately reflect all work done and results achieved in the performance of Program 1 Joint Development Activities in sufficient detail and in good scientific manner appropriate for patent and regulatory purposes;

(iv) In any agreement between either Party and a clinical research organization related to a Program 1 Joint Development Activity, the contracting Party shall use reasonable efforts to name the other Party as a third party beneficiary for the purpose of receiving data derived from Clinical Trials related to such Program 1 Joint Development Activity from such clinical research organization; and

(v) Each Party shall be invited to and shall have the right to have a reasonable number of its representatives join in calls and meetings with vendors and contractors performing Program 1 Joint Development Activities on behalf of the other Party.

5.4 [**] Antibody Co-Development Option .

(a) [**] Co-Development Option . At any time following Candidate Nomination for a [**] Program, and with respect to only one [**] Program or [**] Program that is a Novel Program, Merus shall have the option (the “[**] Co-Development Option”) to co-Develop [**] Products arising from such [**] Program (i.e., that are directed to the [**] Target Pair that is the subject of such [**] Program or Novel Program, as applicable). The [**] Co-Development Option shall be exercisable by Merus by providing Incyte written notice any time after Program Selection for the applicable [**] Program, but no later than [**] prior to the anticipated date of the FPFV for the first Clinical Trial for the first [**] Antibody arising from such [**] Program, of which Incyte shall inform Merus in writing (the “[**] Option Period”). For clarity, unless Section 5.5 applies, (i) Merus is not required to exercise the [**] Co-Development Option for the first [**] Program anticipated to reach FPFV, or at all, but Merus may only exercise the [**] Co-Development Option once, for a single [**] Program (or Novel Program, as applicable) and (ii) if Merus does not exercise the [**] Co-Development Option for any [**] Program within the applicable [**] Option Period, then products arising from such [**] Program will thereafter be [**] Non-Co Products and will not be available for substitution under Section 5.4(e).

(b) [**] Co-Development Plan and Budget . Upon or before the earlier of (i) [**] following Merus’s exercise of the [**] Co-Development Option or (ii) if Merus has not yet exercised the [**] Co-Development Option, no later than [**] prior to expected FPFV for the first Clinical Trial (with an update provided one time upon Merus’s request during such [**] period), Incyte shall present to the [**] JDC for consideration the then-current draft of the [**] Co-Development Plan for each [**] Co-Development Product (or the then current development plan and budget for the applicable [**] Product if the [**] Co-Development Option has not been

exercised. Merus may provide comments on the [**] Co-Development Plan and [**] Co-Development Budget, and Incyte shall consider such comments in good faith; provided that the [**] Co-Development Plan and [**] Co-Development Budget (and any amendments thereto) shall be prepared and approved by Incyte in its sole discretion. For so long as there is a [**] Co-Development Program, Incyte will present any proposed amendments to the [**] Co-Development Plan to the [**] JDC for discussion at least annually, prior to [**] of each Calendar Year.

(c) [**] Co-Development Cost Share and Profit Share. If Merus exercises the [**] Co-Development Option, Merus shall be responsible for co-funding thirty-five percent (35%) of Incyte's global Development Costs for such [**] Program that are incurred after the exercise of the [**] Co-Development Option. Upon Merus's exercise of the [**] Co-Development Option, Section 9.6 shall apply to such [**] Co-Development Product, provided that, if Merus fails to timely pay any Development Costs due with respect to a [**] Co-Development Program as required in Section 5.4(d) within [**] of notice of such failure, the following shall apply at the end of such [**]: (i) such Program shall no longer be a [**] Co-Development Program or [**] Co-Development Product under this Agreement, (ii) Merus will be deemed to have delivered a [**] Co-Funding Termination Notice with respect to such Program under Section 5.4(f), (iii) Section 5.4(f), Section 9.2(a)(ii) and Section 9.3(b)(ii) (rather than Section 9.6) shall apply to Licensed Products arising from such Program, and (iv) Merus's obligation to co-fund Development Costs for such [**] Program shall cease.

(d) Payment; Reporting. Within [**] following the end of each Calendar Quarter after Merus has exercised the [**] Co-Development Option, Incyte shall prepare and deliver to Merus a [**] report detailing its Development Costs incurred during such period with respect to the [**] Co-Development Program together with an invoice for thirty-five percent (35%) of such Development Costs identified. Merus shall pay all undisputed amounts payable under any such invoice within [**] after its receipt of such invoice, provided that, with respect to any Development Costs incurred by Incyte in relation to the [**] Co-Development Product in excess of [**] of the then-approved [**] Co-Development Budget without prior notification to Merus and the approval of the [**] JDC (and if not approved by the [**] JDC, the JSC), Merus shall be required to pay any undisputed excess amounts within [**] after its receipt of the invoice including such excess costs. Merus shall have the right to audit the records of Incyte with respect to any purported Development Costs included in such reports, in accordance with Section 9.8.

(e) [**] Co-Development Product Substitution. If Incyte terminates this Agreement with respect to a [**] Co-Development Program and advances an alternative [**] Program pursuant to Section 4.8(b), then Merus shall have the right to exercise the [**] Co-Development Option with respect to such alternative [**] Program; provided that, to exercise the [**] Co-Development Option on such alternative [**] Program, Merus must (i) be current on reimbursement of its share of Development Costs for the [**] Co-Development Program, (ii) provide written notice of such exercise to Incyte any time after Program Selection for such alternative [**] Program, but no later than [**] prior to the anticipated date of the FPFV for the first Clinical Trial for the first [**] Antibody arising from such alternative [**] Program, of which Incyte shall inform Merus in writing, and (iii) reimburse Incyte for [**] of all Research Costs and Development Costs then-incurred by Incyte.

(f) **Termination of [**] Co-Funding.** At any time following the exercise of the [**] Co-Development Option, Merus may provide written notice to Incyte indicating that Merus wishes to permanently cease co-funding the [**] Co-Development Program (the “[**] **Co-Funding Termination Notice**”) (it being understood that such notice shall be deemed to have been delivered in accordance with Section 5.4(c)(ii)). Effective as of the date of the Co-Funding Termination Notice (the “[**] **Co-Funding Termination Date**”), the [**] Co-Development Program shall be a [**] Non-Co Program, there shall be no [**] Co-Development Program under this Agreement, and from and after the [**] Co-Funding Termination Date, Section 9.2(a)(ii) shall apply to the [**] Non-Co Program [**] the [**] Co-Funding Termination Date. After the [**] Co-Funding Termination Date, Incyte shall pay Merus an additional royalty at the applicable rate set forth in the table below on Annual Net Sales of the [**] Non-Co Product in the United States under such [**] Non-Co Program that was formerly the [**] Co-Development Program in addition to any royalties that are due on Annual Net Sales of such [**] Non-Co Product in the United States pursuant to Section 9.3(b)(ii) (e.g., if [**] of the [**] Costs, additional Development Costs for such Additional Co-Development Program and applicable Net Losses, if any, are paid by Merus, Merus will receive a royalty of [**] on Annual Net Sales of [**] Non-Co Product in the United States plus the amount specified in Section 9.3(b)(ii)), with the applicable additional royalty rate determined as set forth in the table below.

Timing of Opt-Out from [**] Co-Funding Obligation	Additional Royalty Rate
If the [**] Co-Funding Termination Notice is delivered prior to [**]	[**]
If the [**] Co-Funding Termination Notice is delivered after [**] but prior to [**].	[**]
If the [**] Co-Funding Termination Notice is delivered following [**], when Merus has paid [**] of its share of Development Costs prior to such [**] but less than [**] of its share of [**] for the [**] Co-Development Program [**] (the “[**]”).	[**]
If the [**] Co-Funding Termination Notice is delivered when Merus has paid [**] of its share of Development Costs prior to [**] and [**] or more, but less than [**], of its share of the [**].	[**]
If the [**] Co-Funding Termination Notice is delivered after Merus has paid [**] of its share of the [**] and [**] of the [**] Co-Funding Termination Notice.	4%

The determination of whether Merus has paid greater than its share of [**] of the [**] Costs shall be made by Incyte promptly after [**] based on the [**] Costs. If the [**] Co-Funding Termination Notice is delivered following [**] and Merus has paid less than its share of [**] of the actual [**] Costs but paid more than its share of [**] of the amount [**] Costs, then promptly following the completion and finalization of actual [**] Costs, Incyte shall provide written notice to Merus of such actual [**] Costs and Merus shall have the right to reimburse Incyte within [**] after receipt of such notice for additional Development costs for the [**] Co-Development Program so that it has paid its share of [**] of such actual [**] Costs. After Incyte’s timely receipt of such

reimbursement, Merus shall receive the [**] additional royalty set forth in the table above. If Merus does not timely make such reimbursement, Merus shall receive the [**] additional royalty set forth in the table.

5.5 Additional Co-Development Options.

(a) Additional Co-Development Options. In addition to the rights granted to Merus in connection with the [**] Co-Development Option, Merus shall have the option to co-fund Development of Licensed Products arising from up to [**] additional Programs (each, an “Additional Co-Development Option”) under this Agreement as follows:

(i) Provided that [**] Novel Programs [**], Merus shall have the right to exercise an Additional Co-Development Option for the [**] Novel Program (including any Novel Program selected after Program 1, Program 2 or all [**] Programs become Dropped Programs) under this Agreement [**] during the Research Term.

(ii) During the Research Term, if [**] becomes a Dropped Program, then, Merus shall have the right to exercise an Additional Co-Development Option for the Novel Program (which may cover a [**] Target Pair if included under the Novel Program Cap) that is the [**] Novel Program (including in such count the Program that replaces [**], any Novel Program that [**] and any Novel Program that replaces [**] Programs) under this Agreement [**] during the Research Term.

(b) Exercise of an Additional Co-Development Option.

(i) An Additional Co-Development Option shall be exercisable by Merus by providing Incyte written notice any time after Program Selection for the Novel Program falling within Section 5.5(a)(i) or 5.5(a)(ii), as applicable, but no later than [**] after the end of the Research Term in the case of Section 5.5(a)(i) or [**] prior to [**] in the case of Section 5.5(a)(ii), which date Incyte shall inform Merus of in writing, (the “Additional Option Period”). For clarity, (i) Merus is not required to exercise either Additional Co-Development Option, (ii) a Novel Program to which an Additional Co-Development Option applies may cover a [**] Target Pair to the extent permitted in Section 4.3(b), and (iii) if Merus does not exercise an Additional Co-Development Option within the applicable Additional Option Period, then Licensed Products arising from such Novel Program will be Novel Program Products or [**] Non-Co Products and not Additional Co-Development Products.

(c) Additional Co-Development Plans. Upon or before the earlier of (i) [**] following Merus’s exercise of an Additional Co-Development Option, or (ii) if Merus has not yet exercised an applicable Additional Co-Development Option, no later than [**] prior to [**] (with an update provided one time upon Merus’s request during such [**]) for the applicable Novel Program that is eligible for the exercise of the Additional Co-Development Option, Incyte shall present to the JSC for consideration the then current draft of the Additional Co-Development Plan for such Additional Co-Development Product, and Merus shall have the right to provide comments on such Additional Co-Development Plan and the associated Additional Co-Development Budget, and Incyte shall consider such comments in good faith; provided that the Additional Co-

Development Plan and Additional Co-Development Budget (and any amendments thereto) shall be prepared and approved by Incyte in its sole discretion. For so long as there is an applicable Additional Co-Development Program, Incyte shall present any proposed amendments to each Additional Co-Development Plan to the Additional JDC for discussion at least annually, prior to [**] of each Calendar Year.

(d) Additional Co-Development Cost Share and Profit-Share. Following the exercise of the Additional Co-Development Option, Incyte shall prepare and deliver to Merus a report covering the Research Costs and Development Costs incurred for the applicable Program prior to exercise of such Additional Co-Development Option and Merus shall reimburse Incyte for [**] of such costs within [**] of invoicing by Incyte. Thereafter, Merus shall be responsible for co-funding thirty-five percent (35%) of Incyte's global Development Costs for such Additional Co-Development Program that are incurred after the exercise of the Additional Co-Development Option. Upon Merus's exercise of an Additional Co-Development Option, Section 9.6 shall apply to such Additional Co-Development Product; provided that provided that if Merus fails to timely pay any Development Costs due with respect to an Additional Co-Development Program as required in this Section 5.5(d) within [**] of notice of such failure, the following shall apply at the end of such [**]: (i) such Program shall no longer be an Additional Co-Development Program under this Agreement, (ii) Merus will be deemed to have delivered an Additional Co-Funding Termination Notice with respect to such Program under Section 5.5(f), (iii) Section 5.5(f), Section 9.2(a)(ii) and Section 9.3(b)(ii) (rather than Section 9.6) shall apply to Licensed Products arising from such Program, and (iii) Merus's obligation to co-fund Development Costs for such Additional Program shall cease. Notwithstanding the foregoing, with respect to any Development Costs incurred by Incyte in relation to the Additional Co-Development Product in excess of one [**] of the then-approved Additional Co-Development Budget without prior notification to Merus and the approval of the Additional JDC (and if not approved by the Additional JDC, the JSC), Merus shall be required to pay any undisputed excess amounts within [**] after its receipt of the invoice including such excess Development Costs.

(e) Reporting. Within [**] following the end of each Calendar Quarter after Merus has exercised the Additional Co-Development Option, Incyte shall prepare and deliver to Merus a [**] report detailing its Development Costs incurred during such period with respect to such Additional Co-Development Program together with an invoice for thirty-five percent (35%) of such Development Costs identified. Merus shall pay all undisputed amounts payable under any such invoice within [**] after its receipt of such invoice. Merus shall have the right to audit the records of Incyte with respect to any purported Development Costs included in such reports, in accordance with Section 9.8.

(f) Termination of Additional Co-Development Program Co-Funding. At any time following the exercise of any Additional Co-Development Option, Merus may provide written notice to Incyte indicating that Merus wishes to permanently cease co-funding the applicable Additional Co-Development Program (the "Additional Co-Funding Termination Notice") (it being understood that such notice shall be deemed to have been delivered in accordance with Section 5.5(d)(ii)). Effective as of the date of the Co-Funding Termination Notice (the "Additional Co-Funding Termination Date"), such Program shall no longer be an Additional Co-Development Program, and from and after the Additional Co-Funding Termination Date,

Section 9.2(a)(ii) shall apply [**] the Additional Co-Funding Termination Date. After the Additional Co-Funding Termination Date, Incyte shall pay Merus an additional royalty at the applicable rate set forth in the table below on Annual Net Sales in the United States of the applicable Novel Program Product under the Program that was formerly the Additional Co-Development Program in addition to any royalties that are due on such Novel Program Product pursuant to Section 9.3(b)(ii) (e.g., if [**] of the Additional Pivotal Period Costs, additional Development Costs for such Additional Co-Development Program and applicable Net Losses, if any, are paid by Merus, Merus will receive a royalty of [**] on Annual Net Sales of the Additional Non-Co Product in the United States plus the amount specified in Section 9.3(b)(ii)), with the applicable additional royalty rate determined as set forth in the table below.

Timing of Opt-Out from Additional Co-Development Program Co-Funding Obligation	Additional Royalty Rate
If the applicable Additional Co-Funding Termination Notice is delivered prior to [**]	0%
If the applicable Additional Co-Funding Termination Notice is delivered after [**] but prior to [**].	[**]
If the applicable Additional Co-Funding Termination Notice is delivered following [**], when Merus has paid [**] of its share of Development Costs prior to [**] but less than [**] of its share of the [**] for such Additional Co-Development Program during [**] (the “[**] Costs”).	[**]
If the applicable Additional Co-Funding Termination Notice is delivered when Merus has paid [**] of its share of Development Costs prior to [**] and [**] or more,, but less than [**], of its share of the [**] Costs.	[**]
If the applicable Additional Co-Funding Termination Notice is delivered for the Additional Co-Development Program after Merus has paid [**] of its share of the [**] Costs and has timely paid its share of [**] through [**] Co-Funding Termination Notice.	4%

The determination of whether Merus has paid greater than its share of [**] of the [**] Costs shall be made by Incyte promptly after [**] based on the [**] Costs. If the Additional Co-Funding Termination Notice is delivered following [**] and Merus has paid less than its share of [**] of the actual [**] Costs but paid more than its share of [**] of the amount [**] Costs, then promptly following the completion and finalization of actual [**] Costs Incyte shall provide written notice to Merus of such actual [**] Costs and Merus shall have the right to reimburse Incyte within [**] after receipt of such notice for additional Development costs for the Additional Co-Development Program so that it has paid its share of [**] of such actual [**] Costs. After Incyte’s timely receipt of such reimbursement, Merus shall receive the [**] additional royalty set forth in the table above. If Merus does not timely make such reimbursement, Merus shall receive the [**] additional royalty set forth in the table.

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

5.6 Development Reports.

(a) Merus shall provide the Program 1 JDC with a written report (which may be in PowerPoint or other format) at least [**] summarizing in reasonable detail Merus's and its Affiliates' activities and progress related to the Development of the Program 1 Product in the United States, including information concerning the conduct of non-clinical activities and Clinical Trials, applications for and securing of Regulatory Approvals, First Commercial Sale of such Licensed Products on a country-by-country basis and any future planned Development activities.

(b) Incyte shall provide the Program 1 JDC, [**] JDC or Additional JDC, as applicable, with a written report (which may be in PowerPoint or other format) at least [**] summarizing in reasonable detail Incyte's and its Affiliates' and sublicensees' activities and progress related to the Development of (i) Program 1 Products in the Incyte Territory and (ii) the [**] Co-Development Product and an Additional Co-Development Product worldwide, including information concerning the conduct of non-clinical activities and Clinical Trials, applications for and securing of Regulatory Approvals, First Commercial Sale of such Licensed Products and any future planned Development activities.

5.7 Regulatory Matters Related to Licensed Products.

(a) Regulatory Submissions. Merus shall develop, produce, oversee, monitor and coordinate all regulatory actions, communications and filings with, and submissions to, the FDA with respect to the Program 1 Product in the United States; provided that Merus shall [**] to enable Incyte to [**]. Incyte shall oversee, monitor and coordinate all regulatory actions, communications and filings with, and submissions to: (i) except as provided above, all Regulatory Authorities with respect to the Program 1 Product, provided that Incyte shall [**] to enable Merus to [**], and (ii) all Regulatory Authorities with respect to the Program 2 Product, [**] Products, and Novel Program Products, provided that with respect to the [**] Co-Development Products and an Additional Co-Development Product, if any, Incyte shall provide Merus with copies of [**] to enable Merus to [**]. Each Party shall keep the Program 1 JDC, and Incyte shall keep the [**] JDC and Additional JDC, reasonably informed in connection with the preparation of all Regulatory Documentation, Regulatory Authority review of Regulatory Documentation, and Regulatory Approvals, annual reports, annual re-assessments, and variations and labeling, in each case with respect to the Program 1 Product, the [**] Co-Development Product, or an Additional Co-Development Product, if any, as applicable; provided that the providing Party shall have the right to redact any information to the extent not related to the Program 1 Products, the [**] Co-Development Products, or an Additional Co-Development Product, if any. Each Party shall respond within a reasonable time frame to all reasonable inquiries by the other Party with respect to any information provided pursuant to this Section 5.7(a). Unless already the Confidential Information of a Party, any information disclosed pursuant to this Section 5.7(a) shall be the Confidential Information of the Disclosing Party.

(b) Regulatory Meetings and Correspondence.

(i) Merus shall be responsible for interfacing, corresponding and meeting with the FDA with respect to Program 1 Product in the United States. Incyte shall be responsible for interfacing, corresponding and meeting with: (A) all Regulatory Authorities with

respect to the Program 1 Products in the Incyte Territory and (B) all Regulatory Authorities with respect to the Program 2 Product, [**] Products, and Novel Program Products.

(ii) The Party not responsible for interfacing, corresponding and meeting with the applicable Regulatory Authorities in a country with respect to the Program 1 Products shall have the right to have a senior, experienced employee reasonably acceptable to the responsible Party, participate as an observer in material or scheduled face-to-face meetings, video conferences and any teleconferences, involving participation of personnel beyond regulatory experts, with Regulatory Authorities in the Major Markets, and shall be provided with advance access to the responsible Party's material documentation prepared for such meetings. Prior to submission of material correspondence to the applicable Regulatory Authority, the responsible Party shall, sufficiently in advance for the other Party to review and comment, provide the other Party any material correspondence with Regulatory Authorities in the Major Markets related to such meetings. The responsible Party shall also provide the other Party with copies of any material correspondence with Regulatory Authorities in the Major Markets relating to Development of, or the process of obtaining Regulatory Approval for, the Program 1 Product, and respond within a reasonable time frame to all reasonable inquiries by the other Party with respect thereto.

(c) Global Safety Database; Pharmacovigilance Agreement. Incyte shall establish, hold and maintain the global safety database for Program 1 Product (the "Global Safety Database") into which it shall enter information on all adverse events concerning the Program 1 Product occurring anywhere in the world and reported to either of the Parties in accordance with a pharmacovigilance agreement for the Program 1 Product to be negotiated and entered into by the Parties at least [**] prior to FPFV for the first Clinical Trial (each, a "Pharmacovigilance Agreement"). Pursuant to the terms of the Pharmacovigilance Agreement, such database shall comply in all material respects with all Laws reasonably applicable to pharmacovigilance anywhere the Program 1 Product is being or has been Developed or Commercialized. The Pharmacovigilance Agreement shall, among other things, govern cooperation between the Parties that will enable each of them to comply with its respective obligations under applicable Laws with regard to adverse event data collection, analysis and reporting to Regulatory Authorities and to enable each Party to satisfy its duty of care, and to govern the Global Safety Database. Pursuant to the terms of the Pharmacovigilance Agreement, Merus shall have access and rights to use the Global Safety Database, and each Party shall provide information on all adverse events concerning Program 1 Product for the Global Safety Database.

5.8 Recall or Withdrawal of Program 2 Product, [**] Products and Novel Program Products. Incyte shall be responsible for all recalls, withdrawals and market notifications of the Program 2 Product, [**] Products and Novel Program Products worldwide.

5.9 Recall or Withdrawal of the Program 1 Product. If any Regulatory Authority threatens or initiates any action to remove the Program 1 Product from the market anywhere in the world, the Party receiving notice thereof shall notify the other Party of such communication immediately, but in no event later than [**], after receipt thereof. Notwithstanding the foregoing, in all cases Incyte (acting as the holder of the Regulatory Approval in the Incyte Territory) shall determine whether to initiate any recall, withdrawal or market notification of the Program 1 Product in the Incyte Territory, and Merus, as holder of the Regulatory Approval in the United

States shall determine whether to initiate any such recall, withdrawal or market notification of the Program 1 Product in the United States, including the scope of such recall or withdrawal (e.g., a full or partial recall, or a temporary or permanent recall) or market notification; provided, however that before Incyte or Merus (as the case may be) initiates a recall, withdrawal or market notification, the Parties shall promptly meet and discuss in good faith the reasons therefor, provided that such discussions shall not delay any action that Incyte or Merus (as the case may be) reasonably believes has to be taken in relation to any recall, withdrawal or market notification. In the event of any such recall, withdrawal or market notification, Incyte or Merus (as the case may be), as the holder of the Regulatory Approval in its respective territory, shall determine the necessary actions to be taken in its territory, and, shall implement such action, with the other Party providing reasonable input (which the first Party shall in good faith consider and incorporate into any recall, withdrawal or market notification strategy) and reasonable assistance, to conduct such recall, withdrawal or market notification. Each Party shall be responsible for all recall, withdrawal or market notification related costs it incurs in connection with its respective territory.

ARTICLE VI
PRECLINICAL, CLINICAL AND COMMERCIAL SUPPLY

6.1 Manufacturing Technology Transfer. Within [**] after the Effective Date with respect to Program 1 and Program 2, and as reasonably requested by Incyte at any time following the designation of a Program hereunder, Merus, through the JMC, shall transfer to Incyte (and/or its designated Affiliates or contractors) Merus's manufacturing technology for the applicable Licensed Antibodies and shall provide to Incyte copies or tangible embodiments of all data, information, materials and Know-How included within such manufacturing technology for such Licensed Antibodies. In addition, upon the request of Incyte from time-to-time during the Term, Merus shall provide to Incyte (and/or its designated Affiliates or contractors) such reasonable technical assistance, at Incyte's cost for any material activities, as Incyte may request in connection with the manufacture of the applicable Licensed Antibodies. With respect to Program 1, the costs related to any manufacturing technology transfer under this Section 6.1 are Development Costs.

6.2 Pre-Clinical Supply. Unless otherwise mutually agreed by the Parties, Merus shall be responsible, until completion of the manufacturing technology transfer to Incyte, for preclinical manufacture and supply of Program 1 Antibody and Program 2 Antibody (and any other Licensed Antibody for which Merus has commenced manufacturing activities for Bi-Specific Constructs with respect to such Licensed Antibody), with reasonable amounts and lead time provided by the JRC. The costs of such preclinical manufacture and supply of Program 1 Antibody are Development Costs. The costs of such preclinical manufacture and supply of Program 2 Antibody and any other Licensed Antibody are Research Costs.

6.3 Program 1 Clinical and Commercial Product Supply.

(a) Process Development. The Parties shall coordinate through the JMC for the joint development and establishment of the manufacturing process that the Parties intend to use globally with respect to Program 1 Product (the "Program 1 Joint Manufacturing Process"), which shall include processes for both early-stage clinical supply (i.e., Phase I Study and Phase 2 Studies) and for late-stage clinical (i.e., Phase III Studies) and commercial supply of Program 1 Product.

Incyte shall be the lead Party for the development and establishment of such Program 1 Joint Manufacturing Process, including the preparation of a plan therefor, which may include the engagement of one or more Third Party contract manufacturing organizations to perform activities, including process development, scale up and manufacturing, in relation to Program 1 Product. The Parties shall jointly make all decisions regarding the Program 1 Joint Manufacturing Process, notwithstanding anything to the contrary in this Agreement. The development and establishment of the Program 1 Joint Manufacturing Process is a Development Cost. If the Parties fail to agree on a Program 1 Joint Manufacturing Process and the Parties are unable to resolve such dispute within a reasonable period of time, then each Party may independently develop a manufacturing process for Program 1 Product for its respective territory (i.e., Merus in the United States and Incyte in the Incyte Territory). If the Parties elect to develop separate manufacturing processes for Program 1 Product, each Party shall thereafter be solely responsible for manufacture of Program 1 Product in its respective territory.

(b) Technology Transfer of Program 1 Joint Manufacturing Process. If the Parties develop a Program 1 Joint Manufacturing Process, and to the extent that a Party has manufacturing technology for such Program 1 Joint Manufacturing Process, such Party shall, upon the other Party's written request (i) transfer to the requesting Party (or its Affiliates, sublicensees or designated Third Party contract manufacturer) the manufacturing technology and copies or tangible embodiments of all data, information, materials and Know-How covering the Program 1 Joint Manufacturing Process ("Program 1 Joint Manufacturing Technology"), and (ii) provide to the requesting Party reasonable technical assistance in relation to the establishment of such Program 1 Joint Manufacturing Process in such Party's territory. Each Party shall grant, and hereby grants to the other Party co-exclusive (with rights to grant sublicenses to contract manufacturers), royalty-free, non-terminable license for so long a Party is Developing, using, or Commercializing Program 1 Product in its territory, with the right to grant sublicenses through multiple tiers (in accordance with the terms and conditions of this Agreement), in and to (A) in the case of Incyte's license to Merus, the Incyte IP necessary or useful to practice the Program 1 Manufacturing Technology, and (B) in the case of Merus's license to Incyte, the Merus IP necessary or useful to practice the Program 1 Joint Manufacturing Technology, in each case of (A) and (B), to the extent necessary for each Party and its Affiliates and designated contract manufacturers to manufacture and have manufactured anywhere in the world Program 1 Antibody and Program 1 Product for development, use and commercialization in such Party's territory. The costs associated with performing the technology transfer activities and providing the technical assistance described in (i) above shall be Development Costs. Merus may request two Program 1 Joint Manufacturing Process technology transfer for early-stage clinical supply and two for late-stage clinical/commercial supply of Program 1 Product.

(c) Clinical Supply.

(i) Generally. The Parties shall cooperate to mutually establish one or more sources of supply for the clinical supply of the Program 1 Antibody and Program 1 Product. Upon request of either Party, Incyte may negotiate and enter into a clinical supply agreement, for supply of Program 1 Antibody and Program 1 Product for use in Clinical Trials, including formulation and CMC work which shall be included within Program 1 Joint Development Activities. Incyte shall permit Merus to review and comment on any such supply agreement prior

to execution, and shall consider Merus's comments in good faith. If the Parties have agreed on a Program 1 Joint Manufacturing Process, the Parties shall discuss through the JMC, taking into account restrictions imposed by Third Parties, which of the following would be the most suitable mechanism for Merus to secure supply: (A) Merus becomes a party to such Third Party supply agreement for the purposes of obtaining its clinical supply of Program 1 Antibody and Program 1 Product, (B) Merus negotiates with and enter into a supply agreement directly with such Third Party with whom Incyte has entered into a supply agreement Incyte for the purposes of obtaining Merus's clinical supply of Program 1 Antibody and Program 1 Product at the same cost at which Incyte is obtaining its clinical supply of Program 1 Antibody and Program 1 Product, or (C) the Parties negotiate a supply agreement pursuant to which Incyte will supply Merus with such Program 1 Antibody and Program 1 Product at Incyte's Manufacturing Cost if Incyte is manufacturing Program 1 Antibody and Program 1 Product.

(ii) Joint Activities. The Parties shall cooperate to mutually agree on supply of Program 1 Antibody and Program 1 Product for Program 1 Joint Development Activities reasonably prior to such Joint Development Activity and based on a reasonable, mutually agreed allocation. Incyte shall be the lead Party for clinical supply for any Program 1 Joint Development Activities, provided that Incyte shall consult with Merus and shall consider Merus's comments in relation to such clinical supply activities in good faith and accommodate any reasonable request by Merus to provide Program 1 Antibody and Program 1 Product for Program 1 Joint Development Activities. All such manufacture will be conducted as a Program 1 Joint Development Activity in accordance with the Program 1 Manufacturing Plan and costs thereof treated as Development Costs.

(iii) Independent Activities. Each Party shall be responsible (itself or through an Affiliate or Third Party contract manufacturer), at its discretion and expense, for manufacture and clinical supply of Program 1 Antibody and Program 1 Product for use in independent clinical Development activities for such Party's territory. If either Party wishes to use the same manufacturer for clinical supply as that used by the other Party, such Party may make such a request in writing, and the other Party shall use reasonable efforts to assist such first Party in accessing such manufacturer for clinical supply of Program 1 Antibody and Program 1 Product.

(iv) Supply Shortage. If there is insufficient clinical supply of Program 1 Antibody or Program 1 Product to satisfy planned or ongoing Clinical Trials in both the United States and the Incyte Territory at any given time, the Party responsible for supplying such clinical supply shall make half of such supply available for the United States and half available for the Incyte Territory (or such other allocation as may be mutually agreed by the Parties).

(d) Commercial Supply. Each Party shall be responsible for, and have the right to manufacture and supply (itself or through a Third Party contract manufacturer) at its cost, all Program 1 Antibody and Program 1 Product for commercialization purposes in such Party's territory. If the Parties agreed on a Program 1 Joint Manufacturing Process, Incyte shall lead process development for commercial supply in accordance with Section 6.3(a) and the Parties shall coordinate through the JMC to determine second source and supply continuity matters applicable to each Party's territory with each Party having the right to determine the supply chain for its respective territory. All costs of either Party for such process development will be treated as

Development Costs. The Parties may also mutually agree that one Party shall be responsible for commercial supply of Program 1 Product and Program 1 Antibody worldwide, and in such case the Parties shall cooperate in good faith to agree upon the terms of such supply, which may include either Party or both Parties entering into a commercial supply agreement with a Third Party contract manufacturer for such supply. Whichever Party the Parties determine that will manufacture Program 1 Antibody and Program 1 Product for commercialization, the other Party may request that the manufacturing Party supply such Program 1 Antibody and Program 1 Product to such other Party. Upon such Party's request for supply of Program 1 Antibody and Program 1 Product, the Parties shall negotiate in good faith a commercial supply agreement that provides for the manufacturing Party to supply such other Party with Program 1 Antibody and Program 1 Product for Commercialization purposes at the [**], as well as other customary terms and provisions. If the Parties agree to contract with a Third Party contract manufacturer for commercial supply of Program 1 Antibody and Program 1 Product, [**] shall lead such negotiations, shall permit [**] to review and comment on any draft supply agreements, and shall consider [**] comments in good faith. [**] may request, and [**] shall consider, at its discretion, that [**] becomes a party to such Third Party supply agreement for the purposes of obtaining its commercial supply of Program 1 Antibody and Program 1 Product.

(e) Technology Transfer of [**] Program 1 Manufacturing Process. If either Party is [**] manufacturing or having manufactured Program 1 Product, such Party shall, upon the other Party's written request made from time to time, (i) [**] and (ii) provide to the requesting Party [**]. The requesting Party shall reimburse the transferring Party for [**] of the transferring Party's costs with respect to [**] Program 1 manufacturing process.

6.4 Program 2, [**] Programs and Novel Program Clinical and Commercial Product Supply. Incyte shall be responsible (itself or through an Affiliate or Third Party) for all clinical and commercial supply of Licensed Antibodies and Licensed Products for Program 2, all [**] Programs, and Novel Programs, including all activities related to such manufacture. The Manufacturing Costs for research activities in an applicable Research Plan for the [**] Co-Development Product and any Additional Co-Development Product shall be deemed Development Costs.

ARTICLE VII COMMERCIALIZATION AND CO-DETAILING OPTION

7.1 Commercialization Diligence.

(a) Program 1 Product. Merus shall use Commercially Reasonable Efforts to Commercialize the Program 1 Product for at least one Indication in the United States after receipt of Regulatory Approval therefor. Incyte shall use Commercially Reasonable Efforts to Commercialize the Program 1 Product for at least one Indication in the Non-U.S. Major Markets after receipt of Regulatory Approval therefor.

(b) Program 2, [**] Products and Novel Program Products. Incyte shall use Commercially Reasonable Efforts to Commercialize the Program 2 Product, at least one [**]

Product per [**] Program, and at least one Novel Program Product per Novel Program, in each case for at least one Indication in the Major Markets after receipt of Regulatory Approval therefor.

7.2 Marketing Responsibilities For Licensed Products.

(a) Program 1 Product.

(i) Incyte Territory. Incyte (itself or through its Affiliates or sublicensees) shall have the sole right to Commercialize Program 1 Products in the Incyte Territory, including to invoice and book sales, establish and modify all terms and conditions of sale (including contracting, pricing and discounts) and warehousing, and distribute the Program 1 Products in the Incyte Territory and to perform or cause to be performed all related services. Incyte shall handle all reimbursement, price reporting, returns, order processing, invoicing, collection, distribution, and inventory management with respect to the Program 1 Products in the Incyte Territory.

(ii) Merus Territory. Merus (itself or through its Affiliates or sublicensees) shall have the sole right to Commercialize Program 1 Products in the United States, including to invoice and book sales, establish and modify all terms and conditions of sale (including contracting, pricing and discounts) and warehousing, and distribute the Program 1 Products in the United States and to perform or cause to be performed all related services. Merus shall handle all reimbursement, price reporting, returns, order processing, invoicing, collection, distribution, and inventory management with respect to the Program 1 Products in the United States.

(iii) Coordination. The Parties shall coordinate their respective Commercialization activities for Program 1 Products through the Program 1 JCC.

(b) [**] Products. Subject to Merus's Co-Detailing Right with respect to the [**] Co-Development Product, if any, Incyte (itself or through its Affiliates or sublicensees) shall have the sole right to Commercialize [**] Products worldwide, including to invoice and book sales, establish and modify all terms and conditions of sale (including contracting, pricing and discounts) and warehousing, and distribute the [**] Products and to perform or cause to be performed all related services. Incyte shall handle all reimbursement, price reporting, returns, recalls, or withdrawals, order processing, invoicing, collection, distribution, and inventory management with respect to the [**] Products globally. Merus may co-Detail the [**] Co-Development Product if any, solely to the extent permitted pursuant to Section 7.3.

(c) Program 2 Product and Novel Program Products. Incyte (itself or through its Affiliates or sublicensees) shall have the sole right to Commercialize the Program 2 Product and Novel Program Products worldwide. In furtherance thereof, Incyte shall have the sole right to invoice and book sales, establish and modify all terms and conditions of sale (including contracting, pricing and discounts) and warehousing, and distribute the Program 2 Products and Novel Program Products and to perform or cause to be performed all related services. Incyte shall handle all reimbursement, price reporting, returns, recalls, or withdrawals, order processing,

invoicing, collection, distribution, and inventory management with respect to the Program 2 Product, and Novel Program Products.

7.3 Merus Co-Detailing Option for the [**] Co-Development Product.

(a) Co-Detailing Right. Subject to Merus's having met its co-funding obligations for the [**] Co-Development Product under this Agreement, Merus shall have a one-time non-exclusive right to Detail the [**] Co-Development Product, in the United States on the terms and conditions set forth in this Section 7.3 (“Co-Detailing Right”). Prior to Merus exercising its Co-Detailing Right, Incyte shall notify Merus in writing as soon as practicable prior to the anticipated launch of the first [**] Co-Development Product in the United States, of which date Incyte shall notify Merus in writing (the “Trigger Notice”) and shall provide Merus, along with such Trigger Notice, Incyte's then-current Detailing plan and budget (“Detailing Plan” and “Detailing Budget,” respectively) with respect to the [**] Co-Development Product in the United States. Merus may exercise its Co-Detailing Right by providing Incyte written notice at any time within the [**] period following its receipt of the complete Trigger Notice. For clarity, Incyte shall have no obligation to provide any further notification to Merus under this Section 7.3(a) after Merus has exercised its Co-Detailing Right with respect to the [**] Co-Development Program.

(b) Effects of Exercise of Co-Detailing Right. If Merus exercises its Co-Detailing Right:

(i) The [**] Co-Development Product shall also be referred to as the “[**] Co-Detailing Product”;

(ii) Incyte shall, no later than [**] prior to the initial anticipated launch of the [**] Co-Detailing Product in the United States, set out the anticipated number of FTE sales representatives it determines are required for Detailing the [**] Co-Detailing Product in the United States. Merus may elect within [**] of receipt of the foregoing information to be responsible for up to [**] but not less than [**] of the Details based on a primary detail equivalent to be set forth in the [**] Co-Detailing Plan for the [**] Co-Detailing Product in the United States. Once Merus has elected a percentage of Details in the range above, such percentage shall remain unchanged unless mutually agreed by the Parties. The Parties shall review and discuss any proposed changes to the aggregate Detailing effort through the [**] JCC with any updates to be provided in the [**] Co-Detailing Plan sufficiently in advance of any material change in Detailing level;

(iii) It is understood that any Co-Detailing Plan shall include [**], and a [**] between the Parties; provided that if such product is Detailed by a Party's sales representatives in the [**], the [**] by or on behalf of a Party to such sales representative for such [**] shall be [**] of the [**] to such sales representative under such sales representative's [**] offered by or on behalf of such Party;

(iv) Merus shall be responsible for its costs in conducting co-Detailing activities as well as [**] in accordance with Section 7.3(b)(v); provided that such costs shall be included in Allowable Expenses subject to the terms thereof;

(v) Merus's sales representatives will be included in all training programs with respect to the [**] Co-Detailing Product that Incyte provides to its own sales representatives who are Detailing the [**] Co-Detailing Product. Such training shall be provided by Incyte to Merus [**], provided that Merus shall be responsible for [**] to that [**], including any [**] that may be incurred by [**] the [**]; provided that [**] subject to the terms thereof. Merus representatives conducting Detailing activities must do so in accordance with such training and Incyte's standard operating procedures as provided in writing to Merus;

(vi) Incyte shall provide Merus's sales representatives with the same promotional materials (including any updates thereto), including literature and samples, as Incyte provides to its own similarly-situated representatives, and shall make available to Merus's sales representatives the same information and at that same time as supplied to Incyte's own sales representatives with respect to ex-factory sales, dispensing and distribution data, reimbursement data and the like;

(vii) All training and promotional materials for the [**] Co-Detailing Product (including messaging) shall be subject to approval by Incyte and presented to the [**] Joint Commercialization Committee. Merus shall promote the [**] Co-Detailing Product in accordance with the standards reasonably established by Incyte for the [**] Co-Detailing Product as applicable to the Incyte representatives and provided in writing to Merus, or Merus's own standards if more stringent and with prior notice to Incyte; and

(viii) The costs of the foregoing Detailing activities are Allowable Expenses (subject to the terms thereof) and allocation for such expenses between the Parties shall be set forth in the Detailing Budget) based on the level of Detailing undertaken by each Party and shall be dependent upon the percentage of Detailing effort Merus elects to undertake.

7.4 Global Branding; Trademarks.

(a) Global Branding Strategy. The Program 1 JCC shall have the right but not the obligation, from time to time during the Term, to implement (and thereafter modify and update) a global branding strategy, including global positioning (the "Global Branding Strategy"), for the Program 1 Product throughout the world. Each Party shall strive to adhere to the Global Branding Strategy in its Commercialization of the Program 1 Product in its territory. Incyte shall have sole discretion over Global Branding Strategy for the Program 2 Product, [**] Products, and Novel Program Products.

(b) Trademarks. The Parties may mutually agree on a global trademark for Program 1 Product and appropriate ownership thereof, but, absent such agreement, Program 1 trademarks will be handled as follows. Merus and its Affiliates shall select and own the trademarks under which the Program 1 Product will be marketed in the United States; provided that not such trademark may contain the word "Incyte". Incyte and its Affiliates shall select and own the trademarks under which the Program 1 Product will be marketed in the Incyte Territory and under which all other Licensed Products will be marketed worldwide; provided that no such trademark shall contain the word "Merus". The owner of a respective trademark shall be solely responsible

for the prosecution of such trademark and determining what, if any, action to take in response to any alleged infringement of such trademark by Third Parties.

ARTICLE VIII
INTELLECTUAL PROPERTY OWNERSHIP, PROTECTION AND RELATED MATTERS

8.1 Inventorship; Ownership.

(a) Inventorship. Inventorship of Inventions shall be determined in accordance with the patent Laws of the United States; provided that in the event that determining inventorship in accordance with such Laws would render any Patent Right that claims or covers such Invention invalid, inventorship shall be determined in accordance with the Laws of the jurisdiction where such Patent Right is filed.

(b) Inventor Assignment Obligation. Each Party shall cause all employees, independent contractors, consultants and others who perform activities for such Party under this Agreement to be under an obligation to assign (or, if such Party is unable to cause such person or entity to agree to such assignment obligation despite such Party using Commercially Reasonable Efforts to negotiate such assignment obligation, provide a license under) their rights in any Inventions and Intellectual Property Rights to such Party, except where applicable Law requires otherwise and except in the case of governmental, not-for-profit and public institutions which have standard policies against such an assignment (in which case a suitable license, or right to obtain such a license, shall be obtained).

(c) Ownership and Disclosure Obligations.

(i) Incyte Ownership. As between the Parties, Incyte shall own all right, title and interest in and to any and all Sole Arising IP discovered, made or created solely by Incyte or any of its Affiliates or its or their employees, independent contractors or consultants.

(ii) Merus Ownership. As between the Parties, Merus shall own all right, title and interest in and to any and all (A) Sole Arising IP discovered, made or created by solely Merus or any of its Affiliates or its or their employees, independent contractors or consultants, (B) [**], and (C) Platform Arising IP. Incyte shall promptly disclose to Merus in writing the conception, discovery, development, making, or reduction to practice of any [**] and Platform Arising IP discovered, made or created by Incyte or any of its Affiliates or its or their employees, independent contractors or consultants, or jointly with Merus or any of its Affiliates or its or their employees, independent contractors or consultants. Incyte, for itself and on behalf of its Affiliates, shall and hereby does assign to Merus all its right, title and interest in and to any [**] and Platform Arising IP. Incyte shall execute and record assignments and other necessary documents consistent with such ownership.

(iii) Joint Arising IP and [**]. As between the Parties, each Party shall own an equal, undivided interest in any Joint Arising IP [**]. Each Party shall promptly disclose to the other Party in writing, and shall cause its Affiliates, licensees and sublicensees to so disclose, the conception, discovery, development, making, or reduction to practice of any Joint Arising IP

[**] . Each Party shall have the right to use such Joint Arising IP, or license such Joint Arising IP to its Affiliates or any Third Party, or sell or otherwise transfer its interest in such Joint Arising IP to its Affiliates or a Third Party, in each case without the consent of the other Party and without a duty to account to the other Party, so long as such use, sale, license, or transfer is subject to and consistent with the terms of this Agreement, including exclusivity obligations. Each Party shall have the right to use such [**] , or license such [**] to its Affiliates or any Third Party, or sell or otherwise transfer its interest in such [**] to its Affiliates or a Third Party, in each case for Licensed Antibodies and Licensed Products under this Agreement, without the consent of the other Party and without a duty to account to the other Party, so long as such use, sale, license, or transfer is subject to and consistent with the terms of this Agreement, including exclusivity obligations.

8.2 Patent Filing; Assignment.

(a) Primary Patent Estate.

(i) Merus Platform. Merus shall be solely responsible for filing all patent applications with the appropriate patent authorities worldwide for any Patent Rights that claim the Merus Platform.

(ii) Existing Program 1 and Program 2 Patents. Promptly after the Effective Date, the Parties, through the JIPC, shall [**] for [**] (the “[**]”). For clarity, any [**] may not [**] of the [**] of the Selected Monoclonal Antibodies for such applicable Program.

(iii) [**] Patents and [**] Patents. [**] shall file all patent applications with the appropriate patent authorities worldwide for any [**] and the [**] . [**] shall consult with [**] through the JIPC on such Patent Rights, and shall consider in good faith [**] reasonable comments with respect to such Patent Rights. Promptly after the filing of any Patent Rights for [**] and the [**], the Parties, through the JIPC, shall discuss filing further Patent Rights (including divisionals, continuations, continuations in part, re-issues, and re-examinations) for [**] of the [**] and the [**] for such applicable Program (together with the [**], the “[**]”). For clarity, any [**] may not [**] of the [**] of the Selected Monoclonal Antibodies.

(b) Secondary Patent Estate.

(i) Manufacturing Patents. [**] shall file all patent applications with the appropriate patent authorities worldwide for any Arising IP (other than [**]) that claim the [**] Licensed Antibody or Licensed Product (“ Arising Manufacturing Patent”) [**] . [**] shall consult with [**] through the JIPC on such Arising Manufacturing Patents, and shall consider in good faith [**] reasonable comments with respect to such Arising Manufacturing Patents.

(ii) Arising [**] Patents. [**] shall file all patent applications with the appropriate patent authorities worldwide for any Arising IP (other than [**]) that [**] a Licensed Antibody or Licensed Product (“ Arising [**] Patent”) [**] . [**] shall consult with [**] through the JIPC on such Arising [**] Patents, and shall consider in good faith Merus’s reasonable comments with respect to such Arising [**] Patents.

8.3 Prosecution and Maintenance of Patent Rights.

(a) Merus Platform IP. Merus shall have the sole right to prosecute and maintain all Merus Platform IP.

(b) Merus-Prosecuted Patents. Merus shall have the initial right to prosecute and maintain Patent Rights for (i) the [**] IP, (ii) the [**] IP, (iii) the [**] and (iv) the Program 1 Antibody and Program 1 Product, in each case using external patent counsel selected and mutually agreed upon by the Parties. If Merus declines to prosecute or maintain any such Patent Rights in any country or jurisdiction, or desires to allow any such Patent Rights to lapse in any country or jurisdiction, or desires to abandon any such Patent Rights in any country or jurisdiction before all appeals within the respective jurisdiction have been exhausted, then Merus shall provide Incyte with [**] written notice of such decision so as to permit Incyte to decide whether to prosecute or maintain such Patent Rights in the respective country or jurisdiction and to take any necessary action. Following such notice from Merus, Incyte may, by providing prompt written notice thereof to Merus, assume control of the prosecution and/or maintenance of such Patent Rights in the respective country or jurisdiction. The costs of prosecuting and maintaining such Patent Rights for Program 1, [**] Co-Development Program, and Additional Co-Development Program shall be [**]. [**] shall [**] for the costs of prosecuting and maintaining such Patent Rights for [**] and [**] for Program 2, [**] Non-Co Programs and Novel Programs (other than Additional Co-Development Programs). [**] shall be responsible for the costs of prosecuting and maintaining such Patent Rights for [**] for Program 2, [**] Non-Co Programs and Novel Programs (other than Additional Co-Development Programs).

(c) Incyte-Prosecuted Patents. Incyte shall have the initial right to prosecute and maintain the [**] and the [**], in each case using external patent counsel [**] by the Parties [**] (except within the definition of an [**] for [**] Products) worldwide. If Incyte declines to prosecute or maintain any such Patent Rights in any country or jurisdiction, or desires to allow any such Patent Rights to lapse in any country or jurisdiction, or desires to abandon any such Patent Rights in any country or jurisdiction before all appeals within the respective jurisdiction have been exhausted, then Incyte shall provide Merus with [**] written notice of such decision so as to permit Merus to decide whether to prosecute or maintain such Patent Rights in the respective country or jurisdiction and to take any necessary action. Following such notice from Incyte, Merus may, by providing prompt written notice thereof to Incyte, assume control of the prosecution and/or maintenance of such Patent Rights in the respective country or jurisdiction.

(d) Other Merus Patent Rights. At Merus's expense, Merus shall have the sole right and discretion to file, prosecute and maintain all Merus Patent Rights not covered by Sections 8.3(b) and 8.3(c).

(e) Other Incyte Patent Rights. At Incyte's expense, Incyte shall have the sole right and discretion to file, prosecute and maintain all Incyte Patent Rights not covered by Sections 8.3(b) and 8.3(c).

(f) Cooperation. For the purposes of this Section 8.3(f), a Party responsible for the filing, prosecution and maintenance of a Patent Right under this Agreement will be referred to

as the “Controlling Party” and the other Party will be referred to as the “Non-Controlling Party”. Solely with respect to the rights and obligations described in Sections 8.3(b) and 8.3(c), the following will apply:

(i) The Non-Controlling Party shall, at the Controlling Party’s expense and reasonable request, assist and cooperate in the filing, prosecution and maintenance of or any related necessary action for the applicable Patent Rights, including by making its employees, agents, and consultants reasonably available to the Non-Controlling Party. Such cooperation will be coordinated through the JIPC.

(ii) The Controlling Party shall keep the Non-Controlling Party reasonably informed as to Material developments with respect to the prosecution and maintenance of the Patent Rights. The Controlling Party shall provide the Non-Controlling Party sufficiently in advance, when possible, for the Non-Controlling Party to comment, with copies of all patent applications and other Material submissions and communications (including oral communications) with any patent authorities pertaining to the applicable Patent Rights.

(iii) The Controlling Party shall consider in good faith and reasonably implement the Non-Controlling Party’s comments and recommended actions, but the Controlling Party shall have the final say in determining whether or not to incorporate such comments.

(iv) “Material” for the purposes of this Section 8.3(f) means that the [**] could [**] the patents that claim or cover the Licensed Antibodies, Licensed Products, or Merus Platform.

(g) Patent Term Extensions. The Controlling Party may seek and obtain Patent Term Extensions, including supplementary protection certificates and any other extensions that are now or become available in the future, wherever applicable, in the countries or other jurisdictions that it controls. The Controlling Party shall keep the Non-Controlling Party reasonably informed of its efforts to obtain such extension or supplementary protection certificate. The Non-Controlling Party shall provide prompt and reasonable assistance, as requested by the Controlling Party. For purposes of this Section 8.3(g), Merus is the Controlling Party for Patent Rights for Program 1 in the United States and Incyte is the Controlling Party for Patent Rights for Program 2, [**] Program, and Novel Program worldwide and for Patent Rights for Program 1 in the Incyte Territory.

8.4 Third-Party Infringement.

(a) Notice. Each Party shall promptly provide the other Party with written notice reasonably detailing (i) any alleged, or threatened infringement by a Third Party of Intellectual Property Rights in Joint Arising IP, Target Pair Arising IP, Incyte IP, Merus IP, or Merus Platform IP, which infringing activities involves the using, making, importing, exporting, offering for sale or selling of Licensed Antibodies or Licensed Products, including any “patent certification” filed in the United States under 21 U.S.C. §355(b)(2) or 21 U.S.C. §355(j)(2) or biosimilar litigation initiated under 42 U.S.C. §262, or similar provisions in other jurisdictions, or (ii) any declaratory judgment for non-infringement of any such Intellectual Property Rights

described in clause (i) (each of (i) and (ii), a “Third-Party Infringement”). As soon as practicable after receipt of such notice, but no later than [**] thereafter, the Parties shall consult via the JIPC to determine the response to any Third-Party Infringement.

(b) Enforcing Parties and Recoveries. One of the Parties, as set forth below, will have either the initial right (the “Initial Enforcing Party”) or the sole right (the “Sole Enforcing Party”) to proceed with legal enforcement against any Third-Party Infringement, including assertion, in connection with any Third-Party Infringement Claim (an “Infringement Action”) subject to the remainder of this Section 8.4(b):

(i) Program 1. For Third-Party Infringement pertaining to Patent Rights that claim or cover Program 1 Antibodies and Program 1 Products, Merus is the Sole Enforcing Party with respect to Infringement Actions in the United States, and Incyte is the Sole Enforcing Party with respect to Infringement Actions in the Incyte Territory. Any recoveries resulting from such an Infringement Action shall be applied as follows:

A. First, to reimburse each Party for all Out-of-Pocket Costs in connection with such Infringement Action (on a pro rata basis, based on each Party’s respective litigation costs, to the extent the recovery was less than all such litigation costs); and

B. Second, any remainder shall be paid (a) [**] to Merus and [**] to Incyte for actions in the United States and (b) [**] to Merus and [**] to Incyte for actions in the Incyte Territory.

(ii) Program 2, [**] Program and Novel Program. For Third-Party Infringement of any Patent Rights (other than [**] and [**] IP) that claim or cover Program 2 Antibodies, [**] Antibodies, Novel Program Antibodies, Program 2 Products, [**] Products, or Novel Program Products, [**] is the Sole Enforcing Party worldwide. For Third-Party Infringement of any Patent Rights within the [**] IP that claim or cover Program 2 Antibodies, [**] Antibodies, Novel Program Antibodies, Program 2 Products, [**] Products, or Novel Program Products, [**] is the Sole Enforcing Party worldwide; provided that where there is [**] within the [**] Licensed Antibody or Licensed Product (for clarity the [**] from the [**] for the [**] Licensed Antibody or Licensed Product), [**] is the Initial Enforcing Party worldwide and [**] is the Second Enforcing Party worldwide for any [**] within the [**] IP that claim or cover Program 2 Antibodies, [**] Antibodies, Novel Program Antibodies, Program 2 Products, [**] Products, or Novel Program Products. Any recoveries resulting from such an Infringement Action relating shall be applied as follows:

A. First, to reimburse each Party for all Out-of-Pocket Costs in connection with such Infringement Action (on a pro rata basis, based on each Party’s respective litigation costs, to the extent the recovery was less than all such litigation costs); and

B. Second, any remainder shall be paid [**] to Merus and [**] to Incyte.

(iii) Other Merus IP. For Third-Party Infringement of all other Merus IP that is not covered by Sections 8.4(b)(i) or 8.4(b)(ii), Merus is the Sole Enforcing Party worldwide

and shall retain all recoveries resulting from such Infringement Action; provided on a country-by-country basis where there is [**] Licensed Antibody or Licensed Product (for clarity the [**] Licensed Antibody or Licensed Product) then [**] is the Initial Enforcing Party and [**] is the Second Enforcing Party with respect to Infringement Actions. Any recoveries resulting from such an Infringement Action shall be applied as defined in Section 8.4(b)(v)(A) and Section 8.4(v)(B).

(iv) Other Incyte IP. For Third-Party Infringement of all other Incyte IP that is not covered by Sections 8.4(b)(i) or 8.4(b)(ii), Incyte is the Sole Enforcing Party worldwide and shall retain all recoveries resulting from such Infringement Action.

(v) Other Joint Arising IP. For Third-Party Infringement of all other Joint Arising IP and [**] that is not covered by Sections 8.4(b)(i) or 8.4(b)(ii), [**] is the Initial Enforcing Party and [**] is the Second Enforcing Party worldwide. Any recoveries resulting from such an Infringement Action relating shall be applied as follows:

A. First, to reimburse each Party for all Out-of-Pocket Costs in connection with such Infringement Action (on a pro rata basis, based on each Party's respective litigation costs, to the extent the recovery was less than all such litigation costs); and

B. Second, any remainder shall be paid [**] to Merus and [**] to Incyte.

(c) Initial and Second Enforcement Rights.

(i) Except with respect to [**] to which this Section 8.4(c) shall not apply, if the JSC fails to agree on a joint course of Infringement Action with respect to a Third-Party Infringement within [**] after a Party's receipt of the notice set forth in Section 8.4(a), then notwithstanding Section 3.5, the Initial Enforcing Party may determine and control an Infringement Action designed to curtail or defend against such Third Party Infringement, at its own expense as it reasonably determines appropriate. In the event such course of action includes litigation, the other Party (the "Second Enforcing Party") may choose, at its own expense, to be represented in such action by counsel of its own choice; provided that if the Second Enforcing Party is required as a necessary party to such Infringement Action other than as a joint owner, the Initial Enforcing Party shall pay the Second Enforcing Party's reasonable expenses associated therewith. The Initial Enforcing Party shall keep the Second Enforcing Party reasonably informed as to any Infringement Action. The Initial Enforcing Party shall provide the Second Enforcing Party sufficiently in advance, where reasonable, for the Second Enforcing Party to comment, with copies of all submissions in the Third Party Infringement. The Second Enforcing Party will have the right to provide input regarding the Third Party Infringement, and the Initial Enforcing Party will consider all such input in good faith. At the request and expense of the Initial Enforcing Party, the Second Enforcing Party shall provide reasonable assistance to the Initial Enforcing Party in connection therewith, including by executing reasonably appropriate documents, cooperating in discovery and joining as a party to the action. In connection with any such Infringement Action, the Initial Enforcing Party shall not enter into any settlement admitting the invalidity of, or otherwise impairing the licenses and rights of the Second Enforcing Party hereunder without the prior written consent of the Second Enforcing Party, such consent not to be unreasonably withheld.

(ii) If within [**] after the Initial Enforcing Party's receipt of a notice of a Third-Party Infringement, the Initial Enforcing Party does not initiate any Infringement Action as described in Section 8.4(c)(i), the Second Enforcing Party may, subject to the following sentence, in its sole discretion, bring and control any legal action in connection therewith at its sole expense. If the Second Enforcing Party intends to bring or defend any such legal action, it shall first notify the Initial Enforcing Party in writing of such intent and the reasons therefor and provide the Initial Enforcing Party with an opportunity to indicate to the Second Enforcing Party its reasons for not bringing or defending such legal action, and if the Initial Enforcing Party provides either a reasonable (A) legal basis for the Second Enforcing Party not bringing or defending such legal action, or (B) explanation of how the Initial Enforcing Party is taking commercial steps to curtail or defend the Third-Party Infringement, the Second Enforcing Party shall not bring or defend such legal action. The Second Enforcing Party shall keep the Initial Enforcing Party reasonably informed as to any legal courses of action it pursues pursuant to this Section 8.4(c)(ii). The Second Enforcing Party shall provide the Initial Enforcing Party sufficiently in advance, where reasonable, for the Initial Enforcing Party to comment, with copies of all submissions in the Third Party Infringement. The Initial Enforcing Party will have the right to provide input regarding the Third Party Infringement, and the Second Enforcing Party will consider all such input in good faith. At the request and expense of the Second Enforcing Party, the Initial Enforcing Party shall provide reasonable assistance to the Second Enforcing Party in connection therewith, including by executing reasonably appropriate documents, and cooperating in discovery; provided that nothing herein shall require the Initial Enforcing Party to join as a party or otherwise participate in such legal action, if in the Initial Enforcing Party's reasonable opinion such participation will damage any of the Initial Enforcing Party's commercial relationships. The Initial Enforcing Party may choose, at its own expense, to be represented in any such action by counsel of its own choice; provided that if the Initial Enforcing Party is required as a necessary party to such action other than as a joint owner, the Second Enforcing Party shall pay the Initial Enforcing Party's reasonable expenses associated therewith. In connection with any such proceeding, the Second Enforcing Party shall not enter into any settlement admitting the invalidity of or otherwise impairing the Initial Enforcing Party's rights under the Initial Enforcing Party's Intellectual Property without the prior written consent of the Initial Enforcing Party, such consent not to be unreasonably withheld.

(d) Sole Enforcement Rights. If the JSC fails to agree on a joint course of action with respect to a Third-Party Infringement within [**] after receipt of the notice set forth in Section 8.4(a), the Sole Enforcing Party will have the sole right to determine and control an Infringement Action designed to curtail or defend such Third-Party Infringement at its own expense as it reasonably determines appropriate. In the event such course of action includes litigation, the other Party (the "Participating Party") may choose, at its own expense, to be represented in such Infringement Action by counsel of its own choice; provided that if the Participating Party is required as a necessary party to such action other than as a joint owner, the Sole Enforcing Party shall pay the Participating Party's reasonable expenses associated therewith. The Sole Enforcing Party shall keep the Participating Party reasonably informed as to any Infringement Action it pursues pursuant to this Section 8.4(d). The Sole Enforcing Party shall provide the Participating Party sufficiently in advance, where reasonable, for the Participating Party to comment, with copies of all submissions in the Third Party Infringement. The Participating Party will have the right to provide input regarding the Third Party Infringement, and

the Sole Enforcing Party will consider all such input in good faith. At the request and expense of the Sole Enforcing Party, the Participating Party shall provide reasonable assistance to the Sole Enforcing Party in connection therewith, including by executing reasonably appropriate documents, cooperating in discovery and joining as a party to the action. In connection with any such proceeding, the Sole Enforcing Party shall not enter into any settlement admitting the invalidity of, or otherwise impairing the licenses and rights of the Participating Party hereunder, without the prior written consent of the Participating Party, such consent not to be unreasonably withheld.

(e) Third-Party Opposition; Invalidation Proceedings. Each Party shall promptly provide the other Party with written notice reasonably detailing any opposition, inter partes reexamination, inter partes review, post grant proceeding, interference, or other similar action alleging the invalidity, unpatentability, unenforceability brought against any Intellectual Property Rights under this Agreement. Upon receipt of such notice, the Parties shall coordinate through the JIPC to establish a mutually agreed plan for a counterclaim against such opposition or proceeding. If the Parties are unable to agree on a plan for a counterclaim, the Controlling Party may determine and control any such counterclaim. For purposes of this Section 8.4(e), Merus is the Controlling Party for Patent Rights for Program 1 in the United States and Incyte is the Controlling Party for Patent Rights for Program 2, [**] Program, and Novel Program worldwide and for Patent Rights for Program 1 in the Incyte Territory.

8.5 Third Party Licenses.

(a) If Incyte in good faith believes that [**] to obtain a license under any Patent Rights of a Third Party [**] that would be infringed by the [**] by Incyte of a [**] Antibody, Novel Program Antibody, Program 2 Antibody, [**] Product, Novel Product, Program 2 Product in any country, or the Program 1 Antibody or Program 1 Product in any country in the Incyte Territory, then Incyte shall promptly notify Merus in writing. The Parties shall thereafter [**] regarding whether [**] such Licensed Antibody or Licensed Product in such country. Subject to Section 8.5(d) with respect to Third Party licenses that are necessary for the [**], after [**], [**] shall have the [**] right to obtain a license and negotiate and execute a license agreement in connection with respect to any Patent Rights applicable to such Licensed Antibodies and Licensed Product.

(b) If either Party in good faith believes that [**] to obtain a license under any Patent Rights of one Third Party that would be infringed by the [**] by such Party of the Program 1 Product or Program 1 Antibody in its territory and the other Party's territory or that are part of a commonly owned family with Patent Rights in the United States and the Incyte Territory, then, prior to commencing negotiations or entering into an agreement with respect to any such Third Party Patent Rights, such Party shall promptly notify the other Party. The Parties shall thereafter conduct good faith discussions regarding whether such Third Party Patent Rights are necessary or would be commercially prudent to make, have made, use, sell, offer for sale or import Licensed Antibody or Licensed Product in the Incyte Territory and the United States. If the Parties agree that such Third Party Patent Rights are [**] Licensed Antibody and Licensed Product in both the United States and the Incyte Territory, then (i) Merus shall have the [**] right to obtain a license and negotiate and execute a license agreement with respect to any Patent Rights applicable to such

applicable to such Licensed Antibodies and Licensed Products in the United States and (ii) Incyte shall have the [**] right to obtain a license and negotiate and execute a license agreement, in connection with the manufacture of such Licensed Antibodies and Licensed Products or with respect to any Patent Rights applicable to such Licensed Antibodies and Licensed Products in the Incyte Territory; provided that, if such licenses are unable to be separated by territory, then the Parties shall meet to discuss and determine which Party will be primarily responsible for the negotiation and execution of the license agreement and any such license from a Third Party must include a license or sublicense to the Party that is not primarily responsible for obtaining such license and its Affiliates and sublicensees with respect to the Licensed Antibody and Licensed Product. Notwithstanding the foregoing, neither Party shall [**] without the other Party's written consent.

(c) Subject to Section 8.5(d), if pursuant to Section 8.5(a) Incyte determines, or pursuant to Section 8.5(b) the Parties agree, that a license under such Third Party Patent Rights is [**] avoid infringement based on [**] Licensed Antibodies or Licensed Products, then responsibility for any [**] to the extent attributable to the applicable Licensed Antibody or Licensed Product ("Third Party [**]") shall be handled as follows, in each case solely to the extent that any such payments are specifically allocable to the applicable Licensed Product: (i) for [**] Co-Development Products and for Additional Co-Development Products, in each case in the United States, Incyte may include [**] of such Third Party [**] as an Allowable Expense, (ii) for the Program 1 Product in the Incyte Territory, [**] Co-Development Products in the Incyte Territory, [**] Non-Co Products worldwide, the Program 2 Product worldwide, Novel Program Products (other than an Additional Co-Development Product) worldwide, and an Additional Co-Development Product in the Incyte Territory, Incyte may deduct [**] of such Third Party Payments from amounts due by Incyte to Merus under Section 9.3, and (iii) for the Program 1 Product in the United States, Merus may deduct [**] of such Third Party Payments from amounts due by Merus to Incyte under Section 9.3; provided that, notwithstanding the foregoing, Section 9.3(e) shall apply to limit the maximum reductions that can be taken by a Party under this Section 8.5(c).

(d) Notwithstanding subsections (a) through (c), and subject to the remainder of this subsection (d), [**] shall be solely responsible, at its discretion, for determining whether to enter into a license (and the terms of any such license) with respect to Third Party Intellectual Property Rights relating to [**], including under [**] in connection with Licensed Antibodies and Licensed Products. [**] shall be responsible for [**] of all Third Party Payments associated with any such Third Party license. Notwithstanding the foregoing, if [**] elects not to take a license with respect to any Patent Rights, other than those [**] that relate to [**] in any one or more countries, where a license under such Patent Rights is necessary to avoid infringement based on the making, having made, using, selling, offering for sale or importing of Licensed Antibodies or Licensed Products [**] in such one or more countries, then [**] shall notify [**] of its intention to take such a license, and [**] shall thereafter have the right to negotiate and enter into, at its discretion on commercially reasonable terms, a license with the applicable Third Party under such Patent Rights, provided that [**] will consider in good faith and take into account any reasonable comments from [**] in relation thereto. [**] shall indemnify [**] with respect to the costs of obtaining such a license in accordance with the terms of [**]. [**] may either deduct any such indemnifiable amounts paid by [**] from the amounts due under ARTICLE IX or invoice [**] for its share of such amounts. [**] shall pay all such invoices within [**] of receipt.

**ARTICLE IX
FINANCIAL PROVISIONS**

9.1 License Fee. Within [**] after the Effective Date, Merus shall submit an invoice to Incyte for a one-time, non-creditable, non-refundable license fee of One Hundred Twenty Million U.S. Dollars (USD 120,000,000), which Incyte shall pay within [**] after invoice receipt.

9.2 Milestone Payments. Incyte shall pay Merus the following amounts after the first achievement by Incyte, its Affiliates or its sublicensees of the corresponding milestone events set forth below:

(a) Development Milestones.

(i) For Program 2, each Novel Program, and each [**] Program that achieves Candidate Nomination, Incyte shall pay to Merus a non-creditable, non-refundable milestone payment of [**] following confirmation by the JRC that a Bi-Specific Construct for the applicable Program has achieved Candidate Nomination.

(ii) The following development milestones shall apply with respect to Program 2, each Novel Program (other than any Additional Co-Development Programs), and each [**] Non-Co Program:

Development Milestone Events	Payments	
	First Indication	Second Indication
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]
[**]	[**]	[**]

Each of the foregoing development milestones shall be payable once only for each such Program, for the first Product arising from such Program to achieve the applicable milestone event, and shall be non-creditable and non-refundable. No development milestone payments shall be due under this Section 9.2(a)(i) with respect to Program 1, the [**] Co-Development Program, or any Additional Co-Development Program and any milestone that would have been payable prior to an Additional Co-Funding Termination Date or [**] Co-Funding Termination Date are not required to be paid.

(iii) The maximum aggregate milestone amount payable per each Program (for all Indications) under this Section 9.2(a) shall be one hundred million Dollars (\$100,000,000) .

(b) Sales Milestones .

(i) Licensed Product Sales Milestones . Incyte shall make non-refundable, non-creditable, one-time payments to Merus as set forth below upon the first achievement of Annual Net Sales of (A) the Program 2 Product, (B) the Novel Program Products in each distinct Novel Program (other than any Additional Co-Development Programs), and (C) each [**] Non-Co Product that meets or exceeds the thresholds set forth below, with thresholds determined on a Program-by-Program basis (i.e., aggregating all Net Sales of Licensed Products from a given Program):

Annual Net Sales Threshold per Program	Milestone Payment
[**]	[**]
[**]	[**]
[**]	[**]
[**]	[**]
[**]	[**]
Total for each such Program	USD 250,000,000

(ii) No sales milestone payments shall be due with respect to the Program 1 Product, the [**] Co-Development Product or an Additional Co-Development Product.

(c) Certain Limitations . None of the payments listed in this Section 9.2 shall be payable more than once per Program, and each shall be payable at the first achievement of a milestone event for a Licensed Product and shall not be payable again if subsequently another Licensed Product for a given Program achieves the same milestone event. For clarification, (i) if a milestone is paid for a Licensed Product in a Program, that milestone will not be paid again for a back-up or replacement Antibody for that Program, and (ii) if more than one threshold for payment of a sales milestone is met for the first in any single Calendar Year, both the applicable milestone payments will be due in such Calendar Year.

(d) Payment . Incyte shall provide Merus with written notice of the achievement of each milestone event: (A) within [**] after achievement of the milestone event set forth in Section 9.2(a) and within [**] after the end of any Calendar Quarter in which a milestone set forth in Section 9.2(b) is achieved. Incyte shall pay to Merus, by wire transfer to an account designated by Merus, the applicable non-refundable, non-creditable milestone payment listed above: (1) with respect to milestone events set forth in Section 9.2(a), within [**] after Incyte's receipt of invoice

and (2) with respect to all milestone events set forth in Section 9.2(b), within [**] after the end of the applicable Calendar Quarter; provided that Incyte has received the relevant invoice from Merus for such sales milestones within [**] after Merus's receipt of notice from Incyte of the achievement of such sales milestones. In the event Incyte does not receive Merus's invoice within such [**] period as described above, Incyte's obligation to pay such amount within [**] after the end of the applicable Calendar Quarter shall be extended by the number of days that lapse between the date Incyte should have received Merus's invoice and the date Incyte actually receives such invoice.

9.3 Royalties . .

(a) Merus Royalties to Incyte .

(i) Merus shall pay to Incyte, on a Program 1 Product-by-Program 1 Product basis, royalties on Annual Net Sales of Program 1 Product in the United States, at the following rates:

Annual Net Sales of Program 1 Product	Royalty Rate
On the portion of Annual Net Sales less than or equal to [**]	6%
On the portion of Annual Net Sales greater than [**] and less than or equal to [**]	[**]
On the portion of Annual Net Sales greater than [**]	10%

(ii) Merus shall pay to Incyte, on a Dropped Bi-Specific Product-by-Dropped Bi-Specific Product basis, royalties on aggregate Annual Net Sales of Dropped Bi-Specific Products worldwide at the following rates:

Stage of Development	Royalty Rate
If the applicable Drop Date is prior to [**]	[**]
If the applicable Drop Date is on or after [**] but prior to [**]	[**]

For clarity, after Program Selection, a Program cannot be dropped pursuant to Section 4.8 and the royalties in Section 10.6 will apply if a given Program is terminated.

(b) Incyte Royalties to Merus .

(i) Incyte shall pay to Merus, on a Licensed Product-by-Licensed Product basis, royalties on aggregate Annual Net Sales of the Program 1 Product in the Incyte Territory, the [**] Co-Development Product in the Incyte Territory, and any Additional Co-Development Product in the Incyte Territory at the following rates:

Annual Net Sales per Licensed Product	Royalty Rate
On the portion of Annual Net Sales less than or equal to [**]	6%
On the portion of Annual Net Sales greater than [**] and less than or equal to [**]	[**]
On the portion of Annual Net Sales greater than [**]	10%

(ii) Incyte shall pay to Merus, on a Licensed Product-by-Licensed Product basis, royalties on aggregate worldwide Annual Net Sales of the Program 2 Product, each [**] Non-Co Product and each Novel Program Products (other than an Additional Co-Development Product), at the following rates:

Annual Net Sales per Licensed Product	Royalty Rate
On the portion of Annual Net Sales less than or equal to [**]	6%
On the portion of Annual Net Sales greater than [**] and less than or equal to [**]	[**]
On the portion of Annual Net Sales greater than [**]	10%

(c) Royalty Term. Royalties payable under this Section 9.3 shall be paid by the applicable Party on a [**] and [**] basis from the date of First Commercial Sale of each Licensed Product with respect to which royalty payments are due for a period which is the longest of: (i) the last to expire of any Valid Claim of Licensed Patent Rights, Patent Rights in [**], or Joint Patent Rights Covering such Licensed Product in such country, (ii) the expiration of Regulatory Exclusivity for such Licensed Product in such country, and (iii) [**] after the First Commercial Sale of such Licensed Product in such country (each such term with respect to a Licensed Product and a country, a “Royalty Term”), provided that if, during the Royalty Term, no Valid Claim of any Patent Right included under the foregoing clause (i) exists in the country of manufacture or sale that Covers the applicable Licensed Product, and subsection (ii) does not apply to such Licensed Product in such country, then the royalty rates payable by one Party to the other Party under Sections 9.3(a) or 9.3(b) shall be [**] for as long as no such Valid Claim exists.

(d) Generic Competition. Notwithstanding the foregoing, in the event that Generic Competition exists with respect to a given Licensed Product in a country, then the royalty rates in such country for such Licensed Product will be:

(i) reduced to [**] of the applicable rate in Section 9.3(a) or 9.3(b), beginning from [**] the conditions for Generic Competition are satisfied; and

(ii) reduced to [**] of the applicable rate in Section 9.3(a) or 9.3(b), beginning from [**] such Generic Product(s) achieve a market share (in the aggregate) in such country of [**] or greater in a Calendar Quarter.

(e) Non-Enforcement of [**]. Notwithstanding Section 9.3(c), on a Licensed Product-by-Licensed Product and country-by-country basis, if during the Royalty Term (i) there is no Valid Claim of any Patent Right included in the (A) [**] or (B) [**], in each case that Covers such Licensed Product in such country, (ii) there is a Valid Claim of a Patent Right included within

the [**] that Covers such Licensed Product, and such Valid Claim is, at such time, infringed by the use, manufacture or sale of one or more Third Party product(s) in such country, and (iii) [**] elects not to enforce such Patent Right included in the [**] (the “Unenforced [**] Patent”) against such one or more Third Parties, then during any period in which [**] is not enforcing such Unenforced [**] Patent in good faith, claims of such Unenforced [**] Patent shall not count as Valid Claims under Section 9.3(c)(i) for the purposes of determining the Royalty Term for the applicable Licensed Product in such country.

(f) Royalty Floor. The cumulative offsets and reductions permitted pursuant to Sections 8.5(c), 9.3(c) and 9.3(d) shall not operate in the aggregate to reduce the royalty rates payable by one Party to the other Party under Sections 9.3(a) and (b) by greater than [**], [**], in which case the royalty floor shall be set at [**]; provided that [**] would be [**] with respect to [**].

(g) Expiration of the Royalty Term. Upon the expiration of the Royalty Term with respect to a Licensed Product in a country, (i) the licenses granted by Merus to Incyte pursuant to Section 2.3 shall be deemed to be fully paid-up, irrevocable and perpetual with respect to such Licensed Product in such country; and (ii) the licenses granted by Incyte to Merus pursuant to Section 2.4 shall be deemed to be fully paid-up, irrevocable and perpetual with respect to the Program 1 Products in such country.

9.4 Estimated Royalty Reports. On a Licensed Product-by-Licensed Product basis, within [**] after the end of each calendar month, beginning with the calendar month in which the First Commercial Sale of the applicable Licensed Product occurs in the selling Party’s territory, the applicable selling Party will deliver to the other Party a non-binding, good-faith estimate of the following information on a Licensed Product-by-Licensed Product and country-by-country basis for the just-ended calendar month: (a) the gross sales and Net Sales of all Licensed Products in such Party’s territory, (b) the number of units of Licensed Product sold by the selling Party and its Affiliates and sublicensees (if available) and provided as samples without charge to any Third Party in such Party’s territory, (c) the basis for any adjustments to the royalty payable for the sale of all Licensed Products in the selling Party’s territory, (d) the royalty due hereunder for the sales of all Licensed Products in the applicable territory and (e) the applicable exchange rate as determined in accordance with this Agreement. Within [**] after the end of each such calendar month, the selling Party will make any necessary adjustments to such estimate and provide the other Party with an updated and final report setting forth all of the information referenced in clauses (a) through (e) above in this Section 9.4, which report will serve as the basis for the calculation of the royalty payments due under Section 9.3 for Net Sales during the applicable calendar month. Royalties payable under this ARTICLE IX shall be payable in accordance with Section 9.5.

9.5 [**] Royalty Reports; Payments. Within [**] after the end of [**], the Royalty Paying Party shall provide the Royalty Receiving Party with a report stating the sales in units and in value of the Licensed Product made by the Royalty Paying Party, its Affiliates, licensees and sublicensees, as applicable, in the Royalty Paying Party’s territory, on a country-by-country basis, together with the calculation of the royalties due to the Royalty Receiving Party, including the method used to calculate the royalties and the exchange rates used. Royalty payments shall be made by the Royalty Paying Party to the bank account indicated by the Royalty Receiving Party

within [**] after the end of [**]; provided that the Royalty Receiving Party has issued the relevant invoice for royalty payment within [**] after the Royalty Receiving Party's receipt of the royalty report from the Royalty Paying Party. In the event the Royalty Receiving Party fails to issue an invoice within such [**] period as described above, the Royalty Paying Party's obligation to pay such amounts within [**] after the end of [**] shall be extended by the number of days that lapse between the date the Royalty Receiving Party should have invoiced the Royalty Paying Party and the date the Royalty Receiving Party actually invoices the Royalty Paying Party.

9.6 Profit and Loss Sharing for [**] Co-Development Product and Additional Co-Development Products in the United States. Provided that Merus has exercised the [**] Co-Development Option or an Additional Co-Development Option and has paid its share of Development Costs, subject to Section 5.4, 5.5 and 5.6, as applicable, the terms and conditions of this Section 9.6 shall govern each Party's rights and obligations with respect to Net Profits and Net Losses relating to the [**] Co-Development Product and Additional Co-Development Product, as applicable.

(a) In General. Subject to Sections 5.4, 5.5, 5.6, 9.6(b), and 9.6(c), (a) Merus shall receive fifty percent (50%) of all Net Profits, and bear fifty percent (50%) of all Net Losses, as applicable, with respect to the [**] Co-Development Product and Additional Co-Development Product in the United States, and (b) Incyte shall retain fifty percent (50%) of all Net Profits, and bear fifty percent (50%) of all Net Losses, as applicable, with respect to the [**] Co-Development Product and Additional Co-Development Product in the United States. Merus shall be entitled to its share of the Net Profits and bear its share of Net Losses with respect to the [**] Co-Development Product regardless of whether it exercises its Co-Detailing Right with respect to the [**] Products.

(b) Detailing Overruns. If, following Merus's exercise of its Co-Detailing Right, the Allowable Expenses exceed the amounts budgeted for Detailing activities in the applicable Detailing Plan (and taking into account any amendments to such Detailing Plan that may be approved during a Calendar Year) by more than [**] (calculated for all costs incurred over such Calendar Year for all budgeted activities in the Detailing Plan), such excess Allowable Expenses (each, a "Detailing Overrun") shall be borne by [**] (for purposes of this Section 9.6(b), the "[**]") and shall be [**] hereunder for the [**]; provided that in the event and to the extent that such Detailing Overrun was [**] of, and [**] by, the [**], or did not result from [**] to [**], then such Detailing Overrun shall be [**] and [**] pursuant to Section 9.6(a).

(c) Reconciliation; Calculation and Payment of Net Profit or Net Loss Share.

(i) Reports and Reconciliation Payments in General. Within [**] after the end of each Calendar Quarter (or for the last Calendar Quarter in a Calendar Year, [**] after the end of such Calendar Quarter), Incyte shall report to Merus its Net Sales, and, if Merus has exercised its Co-Detailing Right, Merus shall report to Incyte the co-Detailing expenses it proposes to include as Allowable Expenses that are incurred by Merus for such [**] Co-Detailing Product during such Calendar Quarter in the United States in a manner sufficient to enable Incyte to comply with its reporting requirements. Each such report from Incyte shall specify in reasonable detail all deductions allowed in the calculation of such Net Sales and all costs and expenses incurred by Incyte and included as Allowable Expenses, and such report from Merus shall specify in detail all

co-Detailing expenses to be included in Allowable Expenses. If requested by either Party, the other Party shall supply any invoices or other supporting documentation for any payments to a Third Party shall be promptly provided that individually exceed [**] or with respect to which documentation is otherwise reasonably requested .

(ii) Calculation of Profit Share/Loss. Within [**] after the end of each Calendar Quarter (or for the last Calendar Quarter in a Calendar Year, [**] after the end of such Calendar Quarter), Incyte shall confer with Merus, and the Parties shall agree in good faith on a consolidated financial statement setting forth a reconciliation of all Net Sales and Allowable Expenses and stating whether there is a Net Profit or Net Loss. Reconciliation payments for Net Profit or Net Loss shall be made as set forth in subsections A, B and C below, as applicable:

A. If there is a Net Profit for such Calendar Quarter, then Incyte shall pay to Merus an amount equal to fifty percent (50%) of the Net Profit for such Calendar Quarter, taking into consideration all Allowable Expenses incurred by Merus during such Calendar Quarter and as reported to Incyte; or

B. If there is a Net Loss for such Calendar Quarter, then the Party that has borne less than its share of such Net Loss in such Calendar Quarter shall make a reconciling payment to the other Party to assure that each Party bears fifty percent (50%) of such Net Losses during such Calendar Quarter.

C. No separate payment shall be made for the last Calendar Quarter in any Calendar Year. Instead, at the end of each such Calendar Year, a final reconciliation shall be conducted by comparing the share of Net Profit or Net Loss to which a Party is otherwise entitled for such Calendar Year pursuant to this Section 9.6 against the sum of all amounts (if any) previously paid or retained by such Party for prior Calendar Quarters during such Calendar Year, and the Parties shall make reconciling payments to one another no later than [**] after the end of such Calendar Quarter, if and as necessary to ensure that each Party receives for such Calendar Year its share of Net Profits and bears its share of Net Losses in accordance with this Section 9.6.

(iii) Accounting for FTEs. Each Party shall record and account for its FTE effort to the extent that such FTE efforts are included in Development Costs or Allowable Expenses that are, or may in the future be, shared under this Agreement, and shall report such FTE effort to the applicable Subcommittee, if requested (such request not to be more than on a [**]). Each Party shall calculate and maintain records of FTE effort incurred by it in the same manner as used for other products developed by such Party, unless instructed by the applicable Subcommittee to employ other procedures, in which case such other procedures shall be applied equally to both Parties.

9.7 Financial Records. The Parties shall keep complete and accurate books and records in accordance with the defined Accounting Standards. The parties will keep such books and records for at [**] following the end of the Calendar Year to which they pertain. Such books of accounts shall be kept at the principal place of business of the financial personnel with responsibility for preparing and maintaining such records. With respect to royalties, such records shall be in sufficient detail to support calculations of royalties due to either Party. Merus and Incyte

shall also keep complete and accurate records and books of accounts containing all data reasonably required for the calculation and verification of Allowable Expenses, Development Costs, including internal FTEs utilized by either Party in jointly funded Clinical Trials or other Development activities.

9.8 Audits . .

(a) Each Party may, upon request and at its expense (except as provided for herein), cause one of the “Big Four” accounting firms (Deloitte, Ernst & Young, KPMG or PricewaterhouseCoopers) selected by it (except one to whom the Auditee has a reasonable objection), (the “Audit Team”) to audit during ordinary business hours the books and records of the other Party and the correctness of any payment made or required to be made to or by such Party, and any report underlying such payment (or lack thereof), pursuant to the terms of this Agreement. Prior to commencing its work pursuant to this agreement, the Audit Team shall enter into an appropriate confidentiality agreement with the Auditee.

(b) In respect of each audit of the Auditee’s books and records: (i) the Auditee may be audited only once per year, (ii) no records for any given year for an Auditee may be audited more than once; provided that the Auditee’s records shall still be made available if such records impact another financial year which is being audited, (iii) the Audit Rights Holder shall only be entitled to audit books and records of an Auditee from the [**] Calendar Years prior to the Calendar Year in which the audit request is made.

(c) In order to initiate an audit for a particular Calendar Year, the Audit Right Holder must provide written notice to the Auditee. The Audit Rights Holder exercising its audit rights shall provide the Auditee with notice of one or more proposed dates of the audit not less than [**] prior to the first proposed date. The Auditee will reasonably accommodate the scheduling of such audit. The Auditee shall provide such Audit Team(s) with full and complete access to the applicable books and records and otherwise reasonably cooperate with such audit.

(d) The audit report and basis for any determination by an Audit Team shall be made available first for review and comment by the Auditee, and the Auditee shall have the right, at its expense, to request a further determination by such Audit Team as to matters which the Auditee disputes (to be completed no more than [**] after the first determination is provided to such Auditee and to be limited to the disputed matters). If the Parties disagree as to such further determination, the Audit Right Holder and the Auditee shall mutually select one of the “Big Four” accounting firms (Deloitte, Ernst & Young, KPMG or PricewaterhouseCoopers) that shall make a final determination as to the remaining matters in dispute that shall be binding upon the Parties. Such accountants shall not disclose to the Audit Rights Holder any information relating to the business of the Auditee except that which should properly have been contained in any report required hereunder or otherwise required to be disclosed to such Party to the extent necessary to verify the payments required to be made pursuant to the terms of this Agreement.

(e) If the audit shows any under-reporting or underpayment, or overcharging by any Party, that under-reporting, underpayment or overcharging shall be reported to the Audit Rights Holder and the underpaying or overcharging Party shall remit such underpayment or

reimburse such overcompensation to the underpaid or overcharged Party within [**] after receiving the audit report. Further, if the audit for an annual period shows an under-reporting or underpayment or an overcharge by any Party for that period in excess of [**] of the amounts properly determined, the underpaying or overcharging Party, as the case may be, shall reimburse the applicable underpaid or overcharged Audit Rights Holder conducting the audit, for its respective audit fees and reasonable Out-of-Pocket Costs in connection with said audit, which reimbursement shall be made within [**] after receiving appropriate invoices and other support for such audit-related costs.

(f) For the purposes of the audit rights described herein, an individual Party subject to an audit in any given year will be referred to as the “Auditee” and the other Party who has certain and respective rights to audit the books and records of the Auditee will be referred to as the “Audit Rights Holder”.

9.9 Tax Matters. The royalties, milestones and other amounts payable by pursuant to this Agreement (“Payments”) shall not be reduced on account of any taxes unless required by Law. Each Party alone shall be responsible for paying any and all taxes (other than withholding taxes required by Law to be deducted and paid on by the other Party on such Party’s behalf) levied on account of, or measured in whole or in part by reference to, any Payments it receives. The Parties will cooperate in good faith to obtain the benefit of any relevant tax treaties to minimize as far as reasonably possible any taxes which may be levied on any Payments. Each Party shall deduct or withhold from the Payments any taxes that it is required by Law to deduct or withhold. Notwithstanding the foregoing, if either Party 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 the other Party or the appropriate governmental authority (with the assistance of the other Party 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 or to relieve the other Party of its obligation to withhold tax, and the other Party shall apply the reduced rate of withholding tax, or dispense with withholding tax, as the case may be, provided that the other Party has received evidence of such delivery of all applicable forms (and, if necessary, its receipt of appropriate governmental authorization) at least [**] prior to the time that the Payment is due. If, in accordance with the foregoing, a Party withholds any amount, it shall make timely payment to the proper taxing authority of the withheld amount, and send to the other Party proof of such payment within [**] following that latter payment.

9.10 Currency Exchange. The currency exchange method set out in this Section 9.10 shall be applied for calculations of amounts for (a) Net Sales and royalties, and (b) Development Costs and Allowable Expenses. With respect to amounts invoiced in United States Dollars, all such amounts shall be expressed in United States Dollars. With respect to amounts invoiced in a currency other than United States Dollars, all such amounts shall be expressed both in the currency in which the amount was invoiced and in the United States Dollar equivalent. The United States Dollar equivalent shall be calculated using the average of the last (bid) United States dollar/foreign currency rates for the last Business Day of each month in the Calendar Quarter for which Net Sales, royalties, Development Costs and Allowable Expenses, each as applicable, are being reported, as reported by The Wall Street Journal, for the conversion of foreign currency sales into United States Dollars.

9.11 Invoices. Where any payment due under this Agreement requires a Party to invoice the other Party following notification of an event triggering such payment from the paying Party, including with respect to any milestone payments payable under this ARTICLE IX, the non-paying Party may invoice the paying Party for such payment prior to receiving such notification, if the non-paying Party becomes aware of the occurrence of the event triggering such payment obligation by means other than such notification, including by press release or other public disclosure of such event issued by the paying Party.

9.12 Late Payments. The paying Party shall pay interest to the receiving Party on the aggregate amount of any payments that are not paid on or before the date such payments are due under this Agreement at a rate per annum equal to the lesser of the [**] LIBOR rate for United States dollars, as reported by The Wall Street Journal, plus [**] or the highest rate permitted by applicable Law, calculated on the number of days such payments are paid after the date such payments are due; provided, that with respect to any disputed payments, no interest payment shall be due until such dispute is resolved and the interest which shall be payable thereon shall be based on the finally-resolved amount of such payment, calculated from the original date on which the disputed payment was due through the date on which payment is actually made.

ARTICLE X TERM AND TERMINATION

10.1 Agreement Term. The term of this Agreement shall commence on the Effective Date and shall continue on a Program-by-Program basis unless earlier dropped pursuant to Section 4.8 or terminated pursuant to Section 10.2, until (a) with respect to Program 1, Program 2, [**] Non-Co Programs, and Novel Programs (other than any Additional Co-Development Programs), following the First Commercial Sale of any such Licensed Product, the expiration of the last-to-expire of all Royalty Terms with respect to all Licensed Products within such Program, and (b) with respect to the [**] Co-Development Program and Additional Co-Development Program, following the First Commercial Sale of any such [**] Co-Development Product or Additional Co-Development Product, as applicable, the later of (i) expiration of the last-to-expire of all Royalty Terms outside the United States for such [**] Co-Development Product or Additional Co-Development Product, as applicable, and (ii) the cessation of Commercialization of such [**] Co-Development Product or Additional Co-Development Product, as applicable, in the United States (the "Term").

10.2 Termination.

(a) Termination by Incyte for Convenience. Incyte shall have the right to terminate this Agreement for convenience (i) in its entirety upon [**] prior written notice to Merus, or (ii) on a Program-by-Program basis, at any time following Program Selection for the applicable Program (A) with respect to Program 1 or any [**] Co-Development Program upon [**] prior written notice to Merus, and (B) with respect to Program 2, any [**] Non-Co Program, or any Novel Program, upon [**] prior written notice to Merus. For clarity, an election by Incyte to cease

activities under a given Program prior to Program Selection makes such Program a Dropped Program pursuant to Section 4.8 and such Program is not subject to this Section 10.2(a).

(b) Termination for Material Breach. If either Party (the “Non-Breaching Party”) believes that the other Party (the “Breaching Party”) is in material breach of this Agreement, then the Non-Breaching Party may deliver notice of such breach to the Breaching Party, which such notice shall describe such breach in sufficient detail to allow the Breaching Party to cure such breach. If the Breaching Party fails to cure such breach, or take such steps that would be considered reasonable to effectively cure such breach within the [**] period ([**] period for non-payment) after delivery of such notice, the Non-Breaching Party may terminate this Agreement upon written notice to the Breaching Party, which termination shall apply (i) solely with respect to a particular Program (and all Licensed Products for such Program) if the harm from such breach is related solely to such Program, or (ii) at the discretion of the Non-Breaching Party if such breach is not related solely to a single Program, either (A) with respect to the Programs that are the subject of such breach or (B) with respect to all [**] Programs if the breach is related to multiple [**] Programs or with respect to all Novel Programs if the breach is related to multiple Novel Programs. Except with respect to non-payment, if during such [**] period the Breaching Party is undertaking steps that would be considered reasonable to effectively cure such breach, the cure period shall be extended by an additional [**] .

(c) Termination for Patent Challenge. Except to the extent the following is unenforceable under the laws of a particular jurisdiction, if a Party or any of its Affiliates, directly or indirectly, (i) initiates or requests an interference or opposition proceeding with respect to any Merus Patent Rights (if such Party is Incyte) or Incyte Patent Rights (if such Party is Merus), (ii) makes, files, or maintains any claim, demand, lawsuit, or cause of action to challenge the validity or enforceability of any Merus Patent Right (if such Party is Incyte) or Incyte Patent Rights (if such Party is Merus) in a tribunal or forum, or (iii) opposes any extension of, or the grant of a supplementary protection certificate with respect to, any Merus Patent Right (if such Party is Incyte) or Incyte Patent Rights (if such Party is Merus), then the other Party may terminate this Agreement solely with respect to any Programs to which such patent challenge relates upon [**] prior written notice to such Party. Any such termination will only become effective such Party or its Affiliate, as applicable, has not withdrawn such action before the end of the above notice period.

(d) Termination Disputes. If the Breaching Party disputes in good faith the existence or materiality of a breach specified in a notice provided by the other Party under Section 10.2(b), or if a Non-Breaching Party gives notice of termination under Section 10.2(b) and the Breaching Party disputes whether such notice was proper, then the issue of whether such breach has occurred and/or whether this Agreement was properly terminated shall be resolved in accordance with ARTICLE XIV, and the Agreement shall remain in full force and effect until such dispute is resolved. If as a result of such dispute resolution process it is determined that (i) the Breaching Party has in fact materially breached the Agreement, then such Party must cure such breach within [**] following such determination; or (ii) the notice of termination was proper, then such termination shall be effective on the date on which such dispute is resolved. If as a result of the dispute resolution process it is determined that the Breaching Party has not materially breached the Agreement, or the notice of termination for uncured material breach was improper, then no termination shall have occurred and this Agreement shall remain in full force and effect.

10.3 Effects of Termination. Upon any termination of this Agreement, the following will apply:

- (a) All rights and licenses granted by either Party hereunder shall immediately terminate with respect to the Terminated Programs;
- (b) Incyte shall Transition the Terminated Programs to Merus pursuant to Section 10.5;
- (c) Merus shall pay Incyte a grantback royalty pursuant to Section 10.6 with respect to any future Net Sales of Terminated Products;
- (d) The provisions of Section 2.8 will cease to apply with respect to Terminated Programs;
- (e) The provisions of ARTICLE VIII (other than Sections 8.1) will cease to apply to Terminated Programs; and
- (f) Following any termination of a Program occurring prior to Program Selection for such Program, Section 4.8 shall apply.

10.4 Alternative to Termination by Incyte. If Incyte has a right to terminate this Agreement for Merus's uncured material breach pursuant to Section 10.2(b), subject to Section 10.2(d), Incyte may elect in its notice of termination to, in lieu of terminating this Agreement with respect to the affected Programs and [**], have all rights and licenses granted hereunder with respect to such Programs continue and receive [**] or as otherwise agreed by the Parties in writing in their sole discretion. The payment of amounts under this Section 10.4 shall be [**] in connection with [**] or, if such determination is agreed by the Parties, then in accordance with such agreement.

10.5 Transition. In the event of termination of this Agreement, whether in its entirety or with respect to a Terminated Program, at Merus's request, Incyte shall transition to Merus Incyte's relevant rights and obligations with respect to the Terminated Program as reasonably necessary for Merus to Develop and Commercialize the Terminated Programs after termination as set forth in this Section 10.5(a) through 10.5(j) (the "Transition").

(a) Incyte shall, as soon as reasonably practicable, transfer and assign to Merus all of its right, title, and interest in all Regulatory Documentation then Controlled by Incyte and held in its name applicable to the Terminated Programs, the data comprising the Global Safety Database, and other documented technical information, Know-How, and materials Controlled by Incyte that were generated under this Agreement by Incyte with respect to the Terminated Program and are necessary for the Development, manufacture, and Commercialization of the Terminated Products (as they exist as of the effective date of termination) worldwide or, if the Terminated Product is a Program 1 Product, in the Incyte Territory, and Merus shall provide Incyte with access to and a right of reference to all of the foregoing for all uses in relation to Programs or activities under this Agreement;

(b) Incyte shall notify the applicable Regulatory Authorities and take any other action reasonably necessary to effect the transfer set forth in subsection (a) above;

(c) Unless expressly prohibited by any Regulatory Authority, Incyte shall transfer, as of the effective date of termination, to Merus control of all Clinical Trials being conducted by Incyte for the Terminated Programs that Merus shall designate in writing for continuation and shall [**] (unless Incyte terminates for Merus's uncurd breach, in which case [**]), to enable such transfer to be completed without interruption of any such Clinical Trial; provided that, at Merus's request, Incyte shall [**] with reimbursement on a reasonably agreed schedule following the effective date of termination. In addition, with respect to each Clinical Trial for which such transfer is expressly prohibited by the applicable Regulatory Authority or for which Merus does not wish to continue, if any, Incyte shall in its discretion either (i) wind down such Clinical Trial if permitted by the applicable Regulatory Authorities and Law or (ii) continue to conduct such Clinical Trial to the point at which it may be so transferred, wound down, or to completion, in each case at Merus's cost;

(d) Incyte shall provide to Merus a summary report of the status of the Development and Commercialization of the Terminated Products in each country (i) worldwide with respect to Program 2, any [**] Program, and any Novel Program, and (ii) in the Incyte Territory with respect to Program 1 through the effective date of such termination;

(e) Incyte shall promptly transfer and assign to Merus all of Incyte's and its Affiliates' right, title, and interest in and to any Terminated Product-specific trademarks (but not any Incyte-owned house marks or any trademarks that cover products or services other than Terminated Products) owned by Incyte and used for the Terminated Products (i) worldwide with respect to Program 2, any [**] Program, and any Novel Program, and (ii) in the Incyte Territory with respect to Program 1; provided that such trademarks were used in connection with the Commercialization of Terminated Products as of or prior to the effective date of termination.

(f) Merus may, within [**] following the effective date of such termination, elect to obtain Incyte's inventory of Terminated Product manufactured by a Third Party; provided that if Merus elects to obtain Incyte's inventory of Terminated Product, Merus may not use any trademarks, names, and logos of Incyte contained therein (except to the extent transferred pursuant to Section 10.5(e)) in connection with the sale of such inventory. Merus shall pay Incyte [**] (or [**] if Incyte terminates due to Merus's breach) of Incyte's Manufacturing Costs for such inventory of Terminated Product. Merus shall indemnify Incyte in accordance with Section 11.2(a) from and against any losses, costs, damages, fees or expenses arising from sales by Merus or its Affiliates of any such Terminated Product;

(g) Incyte shall provide reasonable assistance to Merus and cooperation in connection with the transition of Incyte's applicable prosecution, maintenance, and enforcement responsibilities to Merus, including execution of such documents as may be necessary to effect such transition;

(h) If Incyte is responsible for manufacturing a Terminated Product prior to termination of this Agreement for a Terminated Program, Incyte shall:

(i) either (A) assign to Merus Incyte's right, title, and interest in and to any agreements with Third Parties for the manufacture of Terminated Product if such agreements are [**] transferable [**] to Incyte or (B) if such agreements are [**] or transferable [**] to Incyte, in exchange for a payment equal to [**] (or [**] if termination is due to Merus's breach) of Incyte's Manufacturing Cost, use Commercially Reasonable Efforts to supply Merus's and its Affiliates' requirements of Terminated Product in the dosage strength, formulation and presentation as were being Developed or Commercialized as of the effective date of termination until the earlier of

[**] after the effective date of the termination and establishment by Merus of an alternative supply for such Terminated Product; provided that Merus shall use Commercially Reasonable Efforts to establish an alternative supply as promptly as reasonably practicable. For clarity, if Merus does not agree to an assignment under (A) above, Incyte shall have no obligation to supply Terminated Product to Merus;

(ii) cooperate with Merus in reasonable respects to transfer manufacturing documents and materials that are used (at the time of the termination) by Incyte in the manufacture of Terminated Products;

(iii) reasonably cooperate with Merus to transfer to Merus, or Merus's designated contract manufacturer, the manufacturing technologies (including all relevant Know-How) that are necessary (at the time of the termination) and Controlled by Incyte in the manufacture of Terminated Products, provided that Merus shall reimburse Incyte for Incyte's reasonable Out-of-Pocket Costs to provide such requested assistance;

(i) Incyte, for itself and on behalf of its Affiliates, shall and hereby does grant to Merus (A) a [**] license under any [**], and (B) an [**] license under Incyte's interest in and to any [**] and [**], in each case of (A) and (B), that is [**] Terminated Products [**], only to [**] the Terminated Products. For clarity, Incyte retains all other rights in and to the [**] subject to the terms this Agreement for use with other Licensed Products that are not Terminated Products. The foregoing licenses will include the right for Merus to grant sublicenses through multiple tiers (subject to Section 2.5).

(j) Notwithstanding the foregoing, Incyte retains the license under Section 2.3 to the [**] Terminated Programs for internal research purposes and for use in connection with existing Programs and any other Programs that may begin during the Research Term, in each case until the end of the Term applicable to such Program, provided that with respect to (and to the extent that) any [**] are incorporated into any Terminated Product, or any [**] included within the Terminated Program, the exclusive license retained by Incyte shall exclude with respect to any grant of rights to use such [**] in relation to the development, manufacture or commercialization of Antibodies directed to the Terminated Target Pair.

10.6 Grantback Royalty. Following the effective date of termination of this Agreement in its entirety or with respect to any Program, Merus shall pay Incyte, on a Terminated Program-by-Terminated Program basis for which it elects to obtain the rights under Section 10.5, a royalty on Annual Net Sales by Merus or its Affiliates or sublicensees worldwide of Terminated Products at the following rates:

Stage of Development	Royalty Rate
If the effective date of termination occurs prior to [**]	[**]
If the effective date of termination occurs on or after [**] but prior to [**] for [**]	[**]
If the effective date of termination occurs on or after [**] for [**]	4%

The foregoing obligation for Merus to pay royalties to Incyte shall continue until the expiration of the Royalty Term that would have applied to such Terminated Product in such country or other jurisdiction had the Terminated Program not been terminated. For clarity, an election by Incyte to cease activities under a given Program prior to [**] is subject to Section 4.8 as a Dropped Program and either no royalty or a [**] royalty will be payable thereon in accordance with Section 9.3(a)(ii). For purposes of this Section 10.6, the definition of “Annual Net Sales”, “Royalty Receiving Party” and “Royalty Paying Party”, and Sections 8.5(c), 9.3 and 9.7 through 9.12 shall apply *mutatis mutandis* to the calculation, payment, recording, and auditing of Merus’s obligations to pay royalties under this Section 10.6.

10.7 Survival. Article I (to the extent used in any surviving provisions), Section 2.6(a) and 6.3(b) (solely with respect to the license grant therein), Sections 8.1, 9.3(a)(ii) (for the applicable Royalty Term, and, for purposes of calculating the royalties set forth therein, the applicable portions of Sections 8.5(c), 9.3, 9.7, 9.9, 9.10 and 9.11), 9.3(g), 9.7 (with respect to obligation to maintain records), 9.8 (for the time period specified therein), 9.9 through 9.12 (solely with respect to payment obligations accrued as of the effective date of termination or expiration), 10.3, 10.5, 10.6, 10.7, Article XI, Section 12.6, Article 13 (for the time period specified therein) and Sections 15.1, 15.2, 15.5, 15.6, 15.9, 15.10, 15.11, 15.12, 15.14 and 15.15 shall survive termination or expiration (in accordance with Section 10.1 (Agreement Term) of this Agreement).

**ARTICLE XI
INDEMNIFICATION**

11.1 By Incyte.

(a) Incyte agrees, at Incyte’s cost and expense, to defend, indemnify and hold harmless Merus and its Affiliates and sublicensees and their respective directors, officers, employees, subcontractors (including contract research organizations and contract manufacturers), and agents (the “Merus Indemnified Parties”) from and against any losses, costs, damages, fees or expenses arising out of any Third Party claim against such Merus Indemnified Parties relating to (i) any breach by Incyte of any of its representations, warranties, or obligations pursuant to this Agreement; (ii) the gross negligence or willful misconduct of Incyte; (iii) the breach of Incyte’s obligations under the [**] Discovery Plan, any Novel Discovery Plans, or Research Plans; and (iv) Incyte’s, its Affiliates’ or sublicensees’ Development, manufacture or Commercialization of (A) Program 1 Antibody and Program 1 Product for the Incyte Territory or (B) Program 2 Antibody, Program 2 Product, [**] Antibodies, [**] Products, Novel Program Antibodies and Novel Program Products worldwide; provided that Incyte shall not defend, indemnify nor hold harmless Merus Indemnified Parties from and against any losses, costs, damages, fees or expenses arising out of

any Third Party claims for which Merus is obligated to defend, indemnify or hold harmless the Incyte Indemnified Parties pursuant to Section 11.2.

(b) In the event of any such claim against the Merus Indemnified Parties by any Third Party, Merus shall promptly, and in any event within [**], notify Incyte in writing of the claim. Incyte shall have the right, exercisable by notice to Merus within [**] after receipt of notice from Merus of the claim, to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the claim (including the right to settle the claim solely for monetary consideration) with counsel selected by Incyte and reasonably acceptable to Merus; provided that the failure to provide timely notice of a claim by a Third Party shall not limit a Merus Indemnified Party's right for indemnification hereunder except to the extent such failure results in actual prejudice to Incyte. The Merus Indemnified Parties shall cooperate with Incyte and may, at their option and expense, be separately represented in any such action or proceeding. Merus will have the right to provide input on all decisions regarding the defense, litigation, settlement, appeal or other disposition of any such claim, and Incyte shall consider all such input in good faith. Merus shall not be liable for any litigation costs or expenses incurred by the Merus Indemnified Parties without Incyte's prior written authorization. In addition, Incyte shall not be responsible for the indemnification or defense of any Incyte Indemnified Party to the extent arising from any negligent or intentional acts by any Merus Indemnified Party or the breach by Merus of any obligation or warranty under this Agreement, or any claims compromised or settled without its prior written consent.

(c) Notwithstanding anything to the contrary above, (i) in the event of any such claim against the Merus Indemnified Parties by a governmental or criminal action seeking an injunction against Merus, or (ii) if at the time that a claim for which indemnification may be sought under this Section 11.2, or at any time thereafter prior to the final resolution of such claim, a Bankruptcy Event of Incyte has occurred, Merus shall have the right to control the defense, litigation, settlement, appeal or other disposition of the claim [**].

11.2 By Merus.

(a) Merus agrees, at Merus's cost and expense, to defend, indemnify and hold harmless Incyte and its Affiliates and sublicensees and their respective directors, officers, employees, subcontractors (including contract research organizations and contract manufacturers), and agents (the "Incyte Indemnified Parties") from and against any losses, costs, damages, fees or expenses arising out of any Third Party claim against such Incyte Indemnified Party(ies) relating to (i) any breach by Merus of any of its representations, warranties, or obligations pursuant to this Agreement; (ii) the gross negligence or willful misconduct of Merus; (iii) the breach of Merus's obligations under the [**] Discovery Plan, any Novel Discovery Plans, or Research Plans; (iv) Merus's, its Affiliates' or sublicensees' (A) manufacture or Development of Program 1 Antibody or Program 1 Product worldwide for Commercialization in, or Commercialization of Program 1 Antibody or Program 1 Product in, the United States, (B) breach of Merus's obligations with respect to co-Detailing of [**] Co-Detailing Product in the United States, (C) manufacture, Development, Commercialization, use, sale or other disposition of Dropped Products and/or Terminated Products worldwide, and/or (D) manufacture or Development of Program 1 Antibody or Program 1 Product, or Program 2 Antibody or Program 2 Product, in each case prior to the

Effective Date; (v) any alleged infringement (directly or indirectly, by Merus or Incyte) of any claim (A) in those Patent Rights (of one or more Third Parties) as set forth in Exhibit 11.2(a)(v)(A), and (B) in those Patent Rights (of one or more Third Parties) as set forth in Exhibit 11.2(a) (v)(B) that [**] ; (vi) any alleged infringement (directly or indirectly, by Merus or Incyte) of any claim in any Patent Rights of one or more Third Parties (other than those set forth in Exhibit 11.2(a)(v)(A) and Exhibit 11.2(a)(v)(B)) that [**] or Merus's or its Affiliate's [**] ; provided that, in each of cases (i) through (vi), Merus shall not defend, indemnify nor hold harmless Incyte Indemnified Parties from and against any losses, costs, damages, fees or expenses arising out of any Third Party claims for which Incyte is obligated to defend, indemnify or hold harmless the Merus Indemnified Parties pursuant to Section 11.1. Notwithstanding anything else to the contrary, in no event shall Merus's obligation to indemnify Incyte pursuant to clause (vi) of this Section 11.2(a) [**] as of the date that judgment determining such liability is rendered (the "Indemnity Cap"). If the amount that Merus would have been required to indemnify Incyte pursuant to clause (vi) of this Section 11.2(a) but for the Indemnity Cap exceeds the Indemnity Cap and Incyte is required to pay such amount to a Third Party (the "Payment Shortfall") with respect to the Licensed Products that are the subject of such infringement action which is subject to such indemnification claim, then Incyte may [**] under this Agreement for the [**] , as they become due, until the Payment Shortfall is fully recouped.

(b) In the event of any such claim against the Incyte Indemnified Parties by any Third Party, Incyte shall promptly, and in any event within [**] , notify Merus in writing of the claim. Merus shall have the right, exercisable by notice to Incyte within [**] after receipt of notice from Incyte of the claim, to assume direction and control of the defense, litigation, settlement, appeal or other disposition of the claim (including the right to settle the claim solely for monetary consideration) with counsel selected by Merus and reasonably acceptable to Incyte; provided that the failure to provide timely notice of a claim by a Third Party shall not limit an Incyte Indemnified Party's right for indemnification hereunder except to the extent such failure results in actual prejudice to Merus. The Incyte Indemnified Parties shall cooperate with Merus and may, at their option and expense, be separately represented in any such action or proceeding. Incyte will have the right to provide input on all decisions regarding the defense, litigation, settlement, appeal or other disposition of any such claim, and Merus shall consider all such input in good faith. Merus shall not be liable for any litigation costs or expenses incurred by the Incyte Indemnified Parties without Merus's prior written authorization. In addition, Merus shall not be responsible for the indemnification or defense of any Incyte Indemnified Party to the extent arising from any negligent or intentional acts by any Incyte Indemnified Party, or the breach by Incyte of any representation, obligation, or warranty under this Agreement, or any claims compromised or settled without its prior written consent.

(c) Notwithstanding anything to the contrary above: (i) in the event of any such claim against the Incyte Indemnified Parties by a governmental or criminal action seeking an injunction against Incyte, or (ii) if at the time that a claim for which indemnification may be sought under this Section 11.2, or at any time thereafter prior to the final resolution of such claim, a Bankruptcy Event of Merus has occurred, Incyte shall have the right to control the defense, litigation, settlement, appeal or other disposition of the claim at Merus's expense .

11.3 General Limitation of Liability. EXCEPT WITH RESPECT TO A PARTY'S LIABILITY PURSUANT TO ARTICLE XI, NEITHER PARTY SHALL BE LIABLE FOR SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR OTHER INDIRECT OR REMOTE DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, IN EACH CASE ARISING IN ANY WAY OUT OF THIS AGREEMENT OR THE EXERCISE OF ITS RIGHTS HEREUNDER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS; PROVIDED, THAT NOTWITHSTANDING THE FOREGOING, IF INCYTE IS LIABLE TO MERUS FOR NON-PAYMENT OF MERUS'S SHARE OF NET PROFITS PURSUANT TO SECTION 9.6, SUCH UNPAID NET PROFITS SHALL BE TREATED AS DIRECT DAMAGES, AND NOT AS LOST PROFITS FOR THE PURPOSES OF APPLICATION OF THIS SECTION 11.3.

11.4 Insurance. Each Party shall use Commercially Reasonable Efforts to maintain Third Party insurance and/or self-insurance, as applicable, including product liability insurance, with respect to its activities hereunder in amounts customary to such insurance and sufficient to meet its obligations under this Agreement, and shall claim upon such insurance policy according to such policy's relevant terms and conditions before relying upon indemnification from the other Party. Prior to the Effective Date, Merus will evaluate and consider in good faith patent infringement insurance to cover Merus's indemnification obligations under Section 11.2(a), and will discuss such evaluation with Incyte.

ARTICLE XII
REPRESENTATIONS AND WARRANTIES AND COVENANTS

12.1 Representation of Authority; Consents. Incyte and Merus each represents and warrants to the other Party as of the Execution Date that:

- (a) it has full right, power and authority to enter into this Agreement;
- (b) this Agreement has been duly executed by such Party and constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, fraudulent conveyance, insolvency, reorganization, moratorium and other Laws relating to or affecting creditors' rights generally and by general equitable principles and public policy constraints (including those pertaining to limitations and/or exclusions of liability, competition Laws, penalties and jurisdictional issues including conflicts of Laws); and
- (c) all necessary consents, approvals and authorizations of all government authorities and other persons required to be obtained by such Party in connection with the execution, delivery and performance of this Agreement have been and shall be obtained.

12.2 No Conflict. Each Party represents and warrants to the other Party that the execution and delivery of this Agreement and the performance of such Party's obligations hereunder (a) do not conflict with or violate such Party's corporate charter and bylaws or any requirement of applicable Laws and (b) do not and shall not conflict with, violate or breach or

constitute a default or require any consent under, any oral or written contractual obligation of such Party. Each Party agrees that it shall not during the Term grant any right, license, consent or privilege to any Third Party or otherwise undertake any action, either directly or indirectly, that would conflict with the rights granted to the other Party or interfere with any obligations of such Party set forth in this Agreement.

12.3 Additional Merus Representations and Warranties. Merus represents and warrants, as of the Execution Date, except as disclosed in Exhibit 12.3:

(a) Neither it nor any of its Affiliates or any of its or their licensees or sublicensees has received written notice of any claim or litigation which alleges any Intellectual Property Rights of a Third Party are infringed by (i) the use of the Merus Platform, (ii) any Bi-Specific Constructs and the corresponding Selected Monoclonal Antibodies existing as of the Execution Date that bind to the Program 1 Target Pair, the Program 2 Target Pair or [**] or (iii) IMOD Pipeline Products;

(b) To the knowledge of Merus and its Affiliates, none of Merus or any of its Affiliates has in the past infringed or is currently infringing any Third Party Intellectual Property Rights through activities [**] (i) the [**], (ii) any [**] or the [**] that bind to the [**] Target Pair or [**] or (iii) [**];

(c) To the knowledge of Merus and its Affiliates, there are no Third Party Patent Rights existing as of the Execution Date that would be infringed by (i) [**] and (ii) the [**] as contemplated under this Agreement, in each case as directed to the [**] Target Pair or, as of the Execution Date, [**] or any of the [**] Target Pairs.

(d) Only those Target Pairs set forth on Exhibit 1.84 are Not Available as of the Execution Date;

(e) There are no claims, judgments or settlements against or owed by Merus or any of its Affiliates with respect to (i) any Bi-Specific Constructs binding or the corresponding Selected Monoclonal Antibodies to the Program 1 Target Pair, the Program 2 Target Pair or [**], (ii) the IMOD Pipeline Products, (iii) the Merus IP or (iv) the Merus Platform IP nor, to the knowledge of Merus or any of its Affiliates, any pending reissue, reexamination, interference, opposition or similar proceedings with respect to Patent Rights claiming any of the foregoing (i) – (iv), and Merus has not received written notice of any threatened claims or litigation or any reissue, reexamination, interference, opposition or similar proceedings seeking to invalidate or otherwise challenge any Merus IP or Merus Platform IP;

(f) To the knowledge of Merus and its Affiliates, no Third Party is infringing or misappropriating any Merus IP or Merus Platform IP;

(g) (i) Merus is the legal and beneficial owner of or has the right to grant to Incyte the rights granted herein to all Merus IP and Merus Platform IP, and (ii) no Third Party has any right, interest or claim in or to such rights that would limit the rights granted to Incyte under this Agreement;

(h) All fees due to date that are required to maintain the Merus IP and Merus Platform IP have been paid in full and to Merus's knowledge, the Merus IP and Merus Platform IP is valid and enforceable;

(i) Merus has not granted to any Third Party rights that are inconsistent with Incyte's rights hereunder and there are no agreements or arrangements to which Merus or any of its Affiliates is a party relating to Licensed Antibodies or Merus IP or Merus Platform IP that would limit the rights granted to Incyte under this Agreement;

(j) Merus has disclosed to Incyte all material information known to it and its Affiliates with respect to the [**]. Merus has disclosed to Incyte all material information known to it and its Affiliates with respect to the [**] of (i) any [**] generated by Merus or its Affiliates prior to the Execution Date that bind to the Program 1 Target Pair, Program 2 Target Pair or [**] and (ii) any [**] generated by Merus or its Affiliates prior to the Execution Date;

(k) Merus has no existing IMOD Pipeline Products other than the IMOD Pipeline Products set forth on Exhibit 12.3(k);

(l) All Merus Patent Rights existing as of the Execution Date are listed on Exhibit 12.3(l) (the "Existing Patents");

(m) Merus is (i) the sole and exclusive owner of the entire right, title and interest in the Existing Patents listed on Exhibit 12.3(l), Part 1 and the Merus Know-How and (ii) the sole and exclusive licensee of the Existing Patents listed on Exhibit 12.3(l), Part 2 through one or more in-license agreements ("Merus In-License Agreements"), in each case ((i) and (ii)) free of any encumbrance, lien, or claim of ownership by any Third Party. Merus is entitled to grant the licenses specified herein;

(n) Neither Merus nor any of its Affiliates has previously entered into any agreement, whether written or oral, with respect to the assignment, transfer, license, conveyance or encumbrance of, or otherwise assigned, transferred, licensed, conveyed or encumbered its right, title, or interest in or to the Existing Patents, Merus Know-How, the Licensed Products, or the Licensed Antibodies (including by granting any covenant not to sue with respect thereto) or any Patent Right or other intellectual property or proprietary right or Information that would be an Existing Patent or Merus Know-How but for such assignment, transfer, license, conveyance, or encumbrance;

(o) True, complete, and correct copies of the file wrapper and other documents and materials relating to the prosecution, defense, maintenance, validity, and enforceability of the Existing Patents have been provided or made available to Incyte prior to the Execution Date;

(p) To the knowledge of Merus, each of the Existing Patents properly identifies each and every inventor of the claims thereof as determined in accordance with the laws of the jurisdiction in which such Existing Patent is issued or such application is pending;

(q) No rights or licenses are required under the Merus IP for the conduct of the Development or Commercialization of Licensed Antibodies and Licensed Products directed to the

Program 1 Target Pair or the Program 2 Target Pair as contemplated under this Agreement as of the Execution Date other than those granted to Incyte under this Agreement.

(r) (i) All inventors of Inventions claimed in the Existing Patents have assigned their entire right, title, and interest in and to such Inventions to Merus, (ii) to the knowledge of Merus, all authors of the Merus Know-How have assigned their entire right, title, and interest in and to such Merus Know-How to Merus; and (iii) to the knowledge of Merus, all assignments to Merus of inventorship rights relating to the Merus Patent Rights are legally binding and enforceable;

(s) The inventions claimed or covered by the Existing Patents (i) were not conceived, discovered, developed, or otherwise made in connection with any research activities funded, in whole or in part, by the federal government of the United States or any agency thereof, (ii) are not a “subject invention” as that term is described in 35 U.S.C. Section 201(f), and (ii) are not otherwise subject to the provisions of the Bayh-Dole Act; and

(t) [**]

12.4 Merus Covenants.

(a) During the Term, Merus shall not grant to any Third Party rights that would be inconsistent with Incyte’s rights hereunder, including a grant of rights that would remove the Merus IP from Merus’s Control or limit the rights granted to Incyte under this Agreement;

(b) Between the Execution Date until the Effective Date, Merus shall not and shall cause its Affiliates not to (i) incur, create, assume, or permit the incurrence, creation, or assumption of any encumbrance, lien, or claim of ownership by any Third Party with respect to any Merus Platform IP or Merus IP; (ii) dispose of any of Merus Platform IP or Merus IP; or (iii) waive, release, grant, license, or transfer any right, title or interest in or to any Merus Platform IP or Merus IP in any manner that would limit the scope of the intellectual property rights included in, or the exclusivity of the license rights granted to Incyte under this Agreement;

(c) Between the Execution Date and the Effective Date and during the Term, neither Merus nor any of its Affiliates shall not (i) commit any acts or permit the occurrence of any omissions that would cause the breach or termination of any Merus In-License Agreement, or (ii) amending or otherwise modifying or permitting to be amended or modified, Merus In-License Agreement, in each case in any manner that would limit the scope of rights granted to Incyte. Merus shall promptly provide Incyte with notice of any alleged, threatened, or actual breach of any Merus In-License Agreement. As of the Execution Date, Merus has not received any notice of breach of any Merus In-License Agreement. To the knowledge of Merus, each Merus In-License Agreement is in full force and effect; and

(d) Between the Execution Date and the Effective Date and during the Term, Merus shall continue to prosecute and maintain all Intellectual Property Rights included within the Merus Platform IP in the ordinary course;

(e) Within [**] after the Effective Date, Merus shall inform Incyte in writing if Merus or any of its Affiliates becomes aware that the representations and warranties made by Merus pursuant this ARTICLE XII as of the Execution Date are not true and correct in any material respects on and as of the Effective Date if they were made on and as of the Execution Date.

(f) Merus shall not [**] under this Agreement.

12.5 Mutual Representations, Warranties, and Covenants.

(a) Neither Party, nor any of their Affiliates, nor any of their respective officers, employees, or agents has made an untrue statement of material fact or fraudulent statement to the FDA or any other Regulatory Authority with respect to the Development of the Licensed Antibodies or the Licensed Products, failed to disclose a material fact required to be disclosed to the FDA or any other Regulatory Authority with respect to the Development of the Licensed Antibodies or the Licensed Products, or committed an act, made a statement, or failed to make a statement with respect to the Development of the Licensed Antibodies or the Licensed Products or the Development of any Antibodies that could reasonably be expected to provide a basis for the FDA to invoke its policy respecting “Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities”, set forth in 56 Fed. Reg. 46191 (September 10, 1991) and any amendments thereto or any analogous laws or policies.

(b) Neither Party nor any of their or their Affiliates’ employees or agents performing hereunder have ever been, are currently, or are the subject of a proceeding that could lead to it or such employees or agents becoming, as applicable, a Debarred Entity or Debarred Individual, an Excluded Entity or Excluded Individual or a Convicted Entity or Convicted Individual. If, during the Term, either Party, or any of its or its Affiliates’ employees or agents performing hereunder, become or are the subject of a proceeding that could lead to a Person becoming, as applicable, a Debarred Entity or Debarred Individual, an Excluded Entity or Excluded Individual or a Convicted Entity or Convicted Individual, such Party shall immediately notify the other Party, and such other Party shall have the option, at its sole discretion, to either: (i) prohibit such Person from performing work under this Agreement (ii) terminate all work being performed or to be performed by the first Party pursuant to this Agreement. For purposes of this provision, the following definitions shall apply:

(i) A “Debarred Individual” is an individual who has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from providing services in any capacity to a Person that has an approved or pending drug or biological product application.

(ii) A “Debarred Entity” is a corporation, partnership or association that has been debarred by the FDA pursuant to 21 U.S.C. §335a (a) or (b) from submitting or assisting in the submission of any abbreviated drug application, or a subsidiary or affiliate of a Debarred Entity.

(iii) An “Excluded Individual” or “Excluded Entity” is (A) an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal health care programs such as Medicare or Medicaid by the Office of the

Inspector General (OIG/HHS) of the U.S. Department of Health and Human Services, or (B) is an individual or entity, as applicable, who has been excluded, debarred, suspended or is otherwise ineligible to participate in federal procurement and non-procurement programs, including those produced by the U.S. General Services Administration (GSA).

(iv) A “Convicted Individual” or “Convicted Entity” is an individual or entity, as applicable, who has been convicted of a criminal offense that falls within the ambit of 21 U.S.C. §335a (a) or 42 U.S.C. §1320a - 7(a), but has not yet been excluded, debarred, suspended or otherwise declared ineligible.

12.6 Disclaimer of Warranty. Nothing in this Agreement shall be construed as a representation made or warranty given by either Party that either Party will be successful in obtaining any Patent Rights, that any patents will issue based on pending applications or that any such pending applications or patents issued thereon will be valid. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EACH PARTY EXPRESSLY DISCLAIMS, WAIVES, RELEASES AND RENOUNCES ANY WARRANTY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

ARTICLE XIII **CONFIDENTIALITY**

13.1 Product Information. Merus recognizes that by reason of, among other things, Incyte’s status as an exclusive licensee under this Agreement, Incyte has an interest in Merus’s maintaining the confidentiality of certain information of Merus. Accordingly, during the Term applicable to a Program and except with respect to Program 1, Merus shall, and shall cause its Affiliates and its and their respective officers, directors, employees, and agents to, keep completely confidential, and not publish or otherwise disclose, and not use directly or indirectly for any purpose other than to fulfill Merus’s obligations, or exercise Merus’s rights, hereunder Confidential Information Controlled by Merus or any of its Affiliates specifically relating to any Licensed Antibody or Licensed Product (the “Product Information”); except to the extent (a) the Product Information is in the public domain through no fault of Merus, its Affiliates or any of its or their respective officers, directors, employees, or agents; (b) such disclosure or use is expressly permitted under Section 13.3 or (c) such disclosure or use is otherwise expressly permitted by the terms of this Agreement. For purposes of Section 13.2 Incyte shall be deemed to be the disclosing Party with respect to Product Information under Section 13.2 and Merus shall be deemed to be the receiving Party with respect thereto. For further clarification, (i) without limiting this Section 13.1, to the extent Product Information is disclosed by Merus to Incyte pursuant to this Agreement, such information shall, subject to the other terms and conditions of this Article XIII, also constitute Confidential Information of Merus with respect to the use and disclosure of such Information by Merus, but (ii) the disclosure by Merus to Incyte of Product Information shall not cause such information to cease to be subject to the provisions of this Section 13.1 with respect to the use and disclosure of such Confidential Information by Merus. In the event (A) this Agreement is terminated in its entirety or with respect to a Terminated Program, or (B) a Program becomes a Dropped Program under Section 4.8, this Section 13.1 shall have no continuing force or effect with respect to the use or disclosure of such information solely in connection with Terminated

Program(s) or Dropped Program (other than any such information relating to the Selected Monoclonal Antibodies), but the Product Information, to the extent disclosed by Incyte to Merus hereunder, shall continue to be Confidential Information of Incyte for purposes of the surviving provisions of this Agreement.

13.2 **Confidential Information**. Except to the extent expressly authorized by this Agreement or otherwise agreed in writing by the Parties, the Parties agree that, all Confidential Information of a Party (“**Disclosing Party**”) shall not be used by the other Party (the “**Receiving Party**”) except in performing its obligations or exercising rights explicitly granted under this Agreement. Each Receiving Party shall maintain in confidence the Confidential Information of the Disclosing Party and shall not otherwise disclose such Confidential Information to any Third Party without the prior written consent of the Disclosing Party. Each Party shall use at least the same standard of care as it uses to protect proprietary or confidential information of its own (but no less than reasonable care) to ensure that its employees, agents, consultants, contractors, and other representatives do not disclose or make any unauthorized use of the Confidential Information of the other Party. Each Party will promptly notify the other upon discovery of any unauthorized use or disclosure of the Confidential Information of the other Party. The foregoing obligations shall not apply to the extent that the Receiving Party is able to demonstrate that the Confidential Information:

- (a) was known by the Receiving Party or its Affiliates prior to its date of disclosure to the Receiving Party; or
- (b) is lawfully disclosed to the Receiving Party or its Affiliates by sources other than the Disclosing Party rightfully in possession of the Confidential Information and such sources are not under any obligations of confidentiality to the Disclosing Party; or
- (c) becomes published or generally known to the public through no fault or omission on the part of the Receiving Party, its Affiliates or its sublicensees; or
- (d) is independently developed by or for the Receiving Party or its Affiliates without reference to or reliance upon such Confidential Information, as established by written records.

Specific information shall not be deemed to be within any of the foregoing exclusions merely because it is embraced by more general information falling within those exclusions. Any confidential information disclosed under the Prior Confidentiality Agreement shall be treated as Confidential Information subject to the terms of this Agreement.

13.3 **Permitted Disclosure**. Notwithstanding the obligations set forth in Section 13.1, the Receiving Party may provide the Disclosing Party’s Confidential Information:

- (a) to the Receiving Party’s respective employees, consultants and advisors, and to the employees, consultants and advisors of such Party’s Affiliates, who have a need to know such information and materials for performing obligations or exercising rights expressly granted under this Agreement, provided that such Persons have an obligation to treat such information and materials as confidential consistent with this ARTICLE XIII;

(b) to the Receiving Party's potential or actual investors, financiers, or acquirers as may be necessary in connection with their evaluation of such potential or actual investment, financing, or acquisition; provided that such Persons shall be subject to obligations of confidentiality and non-use with respect to such Confidential Information substantially similar to the obligations of confidentiality and non-use of the Receiving Party pursuant to this ARTICLE XIII.

(c) to patent offices in order to seek or obtain Patent Rights or to Regulatory Authorities in order to seek or obtain approval to conduct Clinical Trials or to gain Regulatory Approval with respect to the Licensed Product as contemplated by this Agreement; provided that such disclosure may be made only following reasonable notice to the Disclosing Party and to the extent reasonably necessary to seek or obtain such Patent Rights or approvals; or

(d) if such disclosure is required by Law or court or administrative orders, or to defend or prosecute litigation or arbitration; provided that prior to such disclosure, to the extent permitted by Law, the Receiving Party promptly notifies the Disclosing Party of such requirement and, after reasonable consultation with the Disclosing Party and using efforts to secure confidential treatment of such Confidential Information at least as diligent as such Party would use to protect its own confidential information (but in no event less than reasonable efforts), furnishes only that portion of the Disclosing Party's Confidential Information that the Receiving Party is legally required to furnish. Any information disclosed pursuant to this Section 13.3(d) remains the Confidential Information of the Disclosing Party.

13.4 Publicity; Attribution; Terms of this Agreement; Non-Use of Names.

(a) Public Announcements. Except as required by judicial order or applicable Law or as set forth below, neither Party shall make any public announcement concerning this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. The Party preparing any such public announcement shall provide the other Party with a draft thereof at least [**] prior to the date on which such Party would like to make the public announcement. Notwithstanding the foregoing, the Parties shall issue a joint press release in the form attached as Exhibit 13.4(a), within [**] after the Execution Date to announce the execution of this Agreement and describe the material financial and operational terms of this Agreement.

(b) Use of Names. Neither Party shall use the name, trademark, trade name or logo of the other Party or its employees in any publicity, publication, presentation or news release relating to this Agreement or its subject matter, without the prior express written permission of the other Party.

(c) Legal Disclosures. Notwithstanding the terms of this ARTICLE XIII, either Party shall be permitted to disclose the existence and terms of this Agreement to the extent required, in the reasonable opinion of such Party's legal counsel, to comply with applicable Laws, including the rules and regulations promulgated by the SEC or any other governmental authority. Notwithstanding the foregoing, before disclosing this Agreement or any of the terms hereof pursuant to this Section 13.4(c), the Parties will coordinate in advance with each other in

connection with the redaction of certain provisions of this Agreement with respect to any filings with the SEC, the NASDAQ Stock Market or any other stock exchange on which securities issued by a Party or a Party's Affiliate are traded, and each Party shall use Commercially Reasonable Efforts to seek confidential treatment for such terms as may be reasonably requested by the other Party; provided that each Party will ultimately retain control over what information that Party discloses to their relevant exchange, and provided further that the Parties shall use Commercially Reasonable Efforts to file redacted versions with any governing bodies which are consistent with redacted versions previously filed with any other governing bodies. Other than such obligation, neither Party (nor its Affiliates) will be obligated to consult with or obtain approval from the other Party with respect to any filings to the SEC the NASDAQ Stock Market or any other stock exchange.

(d) Advisors. Either Party may disclose the existence and terms of this Agreement in confidence to its attorneys and advisors, and to potential acquirers (and their respective professional attorneys and advisors), in connection with a potential merger, acquisition or reorganization and to existing and potential investors or lenders of such Party, as a part of their due diligence investigations, or to existing and potential licensees or sublicensees or to permitted assignees, in each case under an agreement to keep the terms of confidentiality and non-use substantially no less rigorous than the terms contained in this Agreement and to use such information solely for the purpose permitted pursuant to this Section 13.4(d).

(e) Development Activity Publicity. Notwithstanding anything to the contrary in this ARTICLE XIII, either Party may issue a press release or make a public disclosure relating to this Agreement or the Parties' activities under this Agreement to the extent that such Party sponsored or is sponsoring a Clinical Trial, such Party may disclose (i) the commencement and/or "top-line" results of such Clinical Trial, (ii) the achievement of any Development events for the Licensed Product, or (iii) the filing for or receipt of Regulatory Approval with respect to the Licensed Product. Either Party may disclose amounts paid to or received by either Party in respect of the achievement of any milestone events, or the termination of this Agreement. Prior to making any such disclosure, the Party making the disclosure shall provide the other Party with a draft of such proposed disclosure at least [**] (or, to the extent timely disclosure of a material event is required by Law or stock exchange or stock market rules, such period of time sufficiently in advance of the disclosure so that the other Party will have the opportunity to comment upon the disclosure) prior to making any such disclosure, for the other Party's review and comment, which shall be considered in good faith by the disclosing Party. For clarity, the Party making such disclosure shall have the final say over the contents of such disclosure. Pursuant to the confidentiality provisions of this Agreement, neither Party shall have the right to disclose [**] for inclusion within this Agreement except that (i) either Party may disclose the [**] after [**] and (ii) Incyte may disclose [**] corresponding to Programs [**].

(f) For purposes of clarity, either Party may issue a press release or public announcement or make such other disclosure relating to this Agreement if the contents of such press release, public announcement or disclosure (i) has previously been made public other than through a breach of this Agreement by the Receiving Party or its Affiliates or (ii) is contained in such Party's financial statements prepared in accordance with Accounting Standards.

13.5 Publications.

(a) Incyte and its Affiliates shall have the right to make disclosures pertaining to any Licensed Antibody or Licensed Product (other than the Program 1 Antibody and Program 1 Product) to Third Parties in Publications in accordance with the following procedure: Incyte shall provide Merus with an advance copy of the proposed Publication, and Merus shall then have [**] prior to submission for any Publication in which to review and recommend any changes it reasonably believes are necessary to preserve any Patent Rights or Know-How belonging in whole or in part to Merus. If Merus informs Incyte that such Publication, in Merus's reasonable judgment, could be expected to have a material adverse effect on any patentable invention owned by or licensed, in whole or in part, to Merus, or on any Know-How which is Confidential Information of Merus, Incyte shall delay or prevent such Publication as follows: (i) with respect to a patentable invention, such Publication shall be delayed for a sufficient period of time (not to exceed [**]) to permit the timely preparation and filing of a patent application; and (ii) with respect to Know-How which is Confidential Information of Merus, such Know-How shall be deleted from the Publication. Incyte shall have the right to present its Publications, which Publications shall be subject to the requirements in this Section 13.5, at scientific conferences, including at any conferences in any country in the world.

(b) If either Party wishes to make disclosures pertaining to the Program 1 Antibody or Program 1 Product to Third Parties in Publications, the publishing Party shall provide the JSC with an advanced copy of the proposed Publication and the JSC shall then have [**] in which to review, recommend any changes it reasonably believes are necessary to preserve any Patent Rights or Know-How belonging in whole or in part to such Party, and approve such publication. If the JSC approves the Publication or the publishing Party elects to proceed without such approval, and the non-publishing Party informs the publishing Party that such Publication, in the non-publishing Party's reasonable judgment, could be expected to have a material adverse effect on any patentable invention owned by or licensed, in whole or in part, to the non-publishing Party (other than pursuant to a license granted under this Agreement), or on any Know-How which is Confidential Information of the non-publishing Party, the publishing Party shall delay or prevent such Publication as follows: (i) with respect to a patentable invention, such Publication shall be delayed for a sufficient period of time (not to exceed [**]) to permit the timely preparation and filing of a patent application; and (ii) with respect to Know-How which is Confidential Information of such non-publishing Party, such Know-How shall be deleted from the Publication.

13.6 Term. All obligations under this ARTICLE XIII shall expire [**] following expiration or earlier termination of this Agreement.

13.7 Return of Confidential Information. Upon the expiration or termination of this Agreement, the Receiving Party shall destroy (or, upon the Disclosing Party's request, return) all Confidential Information received by the Receiving Party from the Disclosing Party (and all copies and reproductions thereof) and any notes, reports or other documents prepared by the Receiving Party which contain Confidential Information of the Disclosing Party. Nothing in this Section 13.7 shall require the alteration, modification, deletion or destruction of archival tapes or other electronic back-up media made in the ordinary course of business; provided that the Receiving Party shall continue to be bound by its obligations of confidentiality and other obligations under

this ARTICLE XIII with respect to any Confidential Information contained in such archival tapes or other electronic back-up media. The destruction of Confidential Information shall be certified in writing to the Disclosing Party by an authorized officer of the Receiving Party supervising such destruction. Notwithstanding the foregoing, (i) the Receiving Party's legal counsel may retain one copy of the Disclosing Party's Confidential Information solely for the purpose of determining the Receiving Party's continuing obligations under this ARTICLE XIII and (ii) the Receiving Party may retain the Disclosing Party's Confidential Information and its own notes, reports and other documents (A) to the extent reasonably required (a) to exercise the rights and licenses of the Receiving Party expressly surviving expiration or termination of this Agreement; (b) to perform the obligations of the Receiving Party expressly surviving expiration or termination of this Agreement; or (B) to the extent it is impracticable to not do so without incurring disproportionate cost. Notwithstanding the return or destruction of the Disclosing Party's Confidential Information, the Receiving Party shall continue to be bound by its obligations of confidentiality and other obligations under this ARTICLE XIII.

**ARTICLE XIV
DISPUTE RESOLUTION**

14.1 **Dispute Resolution Process.** Matters before the JSC and Subcommittees shall be governed by the process specified in Section 3.5. Any controversy, claim or dispute arising out of or relating to this Agreement that is not subject to Section 3.5 shall be settled, if possible, through good faith negotiations between the Parties. If the Parties are unable to settle such dispute within [**], and a Party wishes to pursue the matter, the matter may be referred by either Party to the Executive Officers, who shall meet to attempt to resolve the dispute in good faith. Such resolution, if any, of a referred issue shall be final and binding on the Parties. All negotiations pursuant to this Section 14.1 are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the Executive Officers are unable to settle the dispute within [**] (or sooner if the circumstances require that the dispute be settled more rapidly) after referral thereto pursuant to Section 14.1, then each Party reserves its right to any and all remedies available under law or equity with respect to the dispute, subject to Section 14.2.

14.2 **Injunctive Relief.** Notwithstanding anything to the contrary in this ARTICLE XIV, any Party may seek immediate injunctive or other interim relief from any court of competent jurisdiction as necessary to enforce the provisions of ARTICLE XIII and to enforce and prevent infringement or misappropriation of the Patent Rights, Know-How or Confidential Information Controlled by such Party.

**ARTICLE XV
MISCELLANEOUS**

15.1 **Governing Law.** This Agreement (and any claims or disputes arising out of or related thereto or to the transactions contemplated thereby or to the inducement of any party to enter therein, whether for breach of contract, tortious conduct, or otherwise, and whether predicated on common law, statute, or otherwise) shall in all respects be governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity

and performance, in each case without reference to any conflict of law rules that might lead to the application of the laws of any other jurisdiction.

15.2 Consent to Jurisdiction. Each Party irrevocably submits to the exclusive jurisdiction of the United States District Court for the Southern District of New York or the United States District Court for the District of Delaware, for the purposes of any suit, action or other proceeding arising out of this Agreement. Each Party agrees to commence any such action, suit or proceeding either in the United States District Court for the Southern District of New York or the United States District Court for the District of Delaware or if such suit, action or other proceeding may not be brought in such court for jurisdictional reasons, in the Supreme Court of the State of New York, New York County. Each Party further agrees that service of any process, summons, notice or document by United States registered mail to such Party's respective address set forth in Section 15.6 shall be effective service of process for any action, suit or proceeding in New York or Delaware with respect to any matters to which it has submitted to jurisdiction in this Section 15.2. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement in (a) the United States District Court for the Southern District of New York or (b) the United States District Court for the District of Delaware, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Notwithstanding anything in this Section 15.2, if the Parties are unable to bring any suit, action, or other proceeding arising out of this Agreement in the United States District Court for the Southern District of New York or the United States District Court for the District of Delaware due to a lack of diversity jurisdiction, each Party irrevocably submits to the exclusive jurisdiction of the courts of the State of New York or the State of Delaware.

15.3 Assignment. Neither Party may assign or transfer its rights or obligations under this Agreement without the prior written consent of the other Party; except that without such prior written consent either Party may make such assignment or transfer to (a) an Affiliate or (b) to a Third Party acquirer in a Change of Control, in each case whether in a merger, sale of stock, sale of assets or any other transaction, in each case involving all or substantially all of the business to which this Agreement relates. Any purported assignment in contravention of this Section 15.3 shall be null and void and of no effect. No assignment or transfer shall release either Party from responsibility for the performance of any accrued obligation of such Party hereunder. This Agreement and the Parties' rights and obligations hereunder inure to the benefit of and shall be binding upon and enforceable against the successor to or any permitted assignee or transferee from either of the Parties.

15.4 Change of Control.

(a) A Party (or its successor) shall provide the other Party with written notice of any Change of Control of such Party within [**] following the closing date of such transaction if such transaction is not otherwise publically disclosed.

(b) In the event of a Change of Control of Merus, Incyte shall have the right, in its sole and absolute discretion, by written notice delivered to Merus (or its successor) at any time

prior to the date that is [**] after either the written notice contemplated by Section 15.4(a) or the date such Change of Control closing was publicly disclosed, as the case may be, to (i) terminate any or all provisions of this Agreement to the extent providing for any delivery by Incyte to Merus of information relating to Incyte's activities contemplated by this Agreement, except for the provisions of ARTICLE IX and except to the extent such information is required by Merus to perform its obligations under this Agreement or to which Merus is licensed or has a right to use hereunder; (ii) disband the JSC and each of its Subcommittees (other than the Program 1 JCC, Program 1 JDC, [**] JDC, Additional JDC, and JIPC), terminate the activities of the JSC and any of its Subcommittees (other than the Program 1 JCC, Program 1 JDC, [**] JDC, Additional JDC and JIPC), and thereafter undertake all such terminated activities solely and exclusively by itself; (iii) require Merus and the acquirer to adopt reasonable procedures to be agreed upon in writing to prevent disclosure to such acquirer of Confidential Information of Incyte; and (iv) subject to the remainder of this subsection (iv), terminate Merus's Co-Detailing Right or, if such right has already been exercised, terminate Merus's right to co-Detail pursuant to Section 7.3(b), and assume all detailing responsibility for the [**] Co-Development Product in the United States; provided that Merus may elect, upon written notice to Incyte given within [**] following notice from Incyte of its intent to terminate Merus's Co-Detailing right, for Merus (or such acquirer) to continue to exercise such Co-Detailing right for up to [**] following receipt of such notice from Incyte, to permit Merus or the acquirer adequate time to wind down and phase out sales force operations with respect to the [**] Co-Development Product.

(c) Notwithstanding anything to the contrary in this Agreement, with respect to any Intellectual Property Rights Controlled by the acquiring party or its Affiliates (other than the Party to this Agreement undergoing the Change of Control and its Affiliates prior to the effectiveness of such Change of Control) as of or prior to such Change of Control, or to the extent developed outside this Agreement, such Intellectual Property Rights shall not be included in the Intellectual Property Rights licensed to the other Party hereunder.

(d) In the event of a Change of Control of a Party, the development or commercialization of an Antibody or product that, as of the date of such Change of Control, is being developed or commercialized by the acquirer of such Party or any Affiliate of such acquirer, shall not, due to such development or commercialization, be in breach of the exclusivity provisions in Section 2.8 or the other terms of this Agreement; provided that (i) such acquirer or Affiliate keeps such development or commercialization program for such other Antibody or product separate from the Development and Commercialization of the Licensed Programs (including by using different personnel and (ii) the Party that experienced the Change of Control continues to meet its obligations hereunder.

15.5 Entire Agreement; Amendments. This Agreement and the Exhibits referred to in this Agreement together with the Share Subscription Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede all prior agreements and communications with respect to the subject matter hereof, whether written or oral, including the Prior Confidentiality Agreement. Any amendment or modification to this Agreement shall be made in writing and signed by authorized representatives of both Parties.

15.6 Notices.

Notices to Incyte shall be addressed to:

Incyte Corporation
1801 Augustine Cut-off
Wilmington, DE 19803
Attention: Vijay Iyengar, EVP, Global Strategy & Corporate Development
Email: [**]

with a copy to:
Incyte Corporation
1801 Augustine Cut-off
Wilmington, DE 19803
Attention: Eric Siegel, EVP & General Counsel
Email: [**]

with further copy to:

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540-6241
Attention: Randall B. Sunberg
Email: [**]

Notices to Merus shall be addressed to:

Merus N.V.
Yalelaan 62
3584 CM Utrecht
The Netherlands
Attention: The Management Board
Email: [**]

with a copy to:
Merus N.V.
Yalelaan 62
3584 CM Utrecht
The Netherlands
Attention: Head of Legal
Email: [**]

with further copy to:

Cooley LLP
3175 Hanover Street

Palo Alto, CA 94304-1130
United States of America
Attention: Barbara Kosacz
Email: [**]

Either Party may change its address to which notices shall be sent by giving notice to the other Party in the manner herein provided. All reports, approvals, and notices required or permitted by this Agreement to be given to a Party (each a “Notice”) shall be given in writing, by personal delivery, facsimile, electronic mail, or overnight courier, to the Party concerned at its address as set forth above (or at such other address as a Party may specify by written notice pursuant to this Section 15.6 to the other). All Notices shall be deemed effective, delivered and received (a) if given by personal delivery or by overnight courier, when actually delivered and signed for, or (b) if given by facsimile or electronic mail, when such facsimile or electronic mail is transmitted to the facsimile number or email address specified above and receipt therefor is confirmed.

15.7 Force Majeure. No failure or omission by either Party in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement or create any liability if the same arises from any Force Majeure Event; provided that such excuse from liability shall be effective only to the extent and duration of the Force Majeure Event(s) causing the failure or delay in performance and provided that the Party has not caused such Force Majeure Event(s) to occur. The Party affected by such Force Majeure Event shall promptly notify the other Party and use Commercially Reasonable Efforts to overcome such Force Majeure Event as soon as and to the extent practicable, provided, however, that in no event shall any Party be required to prevent or settled any labor disturbance or dispute. All delivery dates under this Agreement that have been affected by a Force Majeure Event shall be tolled for the duration of such Force Majeure Event.

15.8 Compliance With Laws. Each Party shall perform its obligations under this Agreement in compliance with all applicable Laws.

15.9 Independent Contractors. It is understood and agreed that the relationship between the Parties is that of independent contractors and that nothing in this Agreement shall be construed to create a joint venture or any relationship of employment, agency or partnership between the Parties to this Agreement. Neither Party is authorized to make any representations, commitments, or statements of any kind on behalf of the other Party or to take any action that would bind the other Party except as explicitly provided in this Agreement. Furthermore, none of the transactions contemplated by this Agreement shall be construed as a partnership for any tax purposes.

15.10 Headings. The captions or headings of the sections and other subdivisions hereof are inserted only as a matter of convenience and reference and shall not constitute any part of this Agreement and shall have no effect on the meaning of the provisions hereof.

15.11 No Implied Waivers; Rights Cumulative. No failure or delay on the part of either Party to exercise any right under this Agreement shall constitute a waiver of such right by such Party, or be construed as a waiver of any breach of this Agreement, nor shall any single or partial

exercise of any such right by a Party preclude any other or further exercise of such right or the exercise of any other right. Any waiver by a Party of a particular provision or right must be in writing, be specific to and reference a particular matter, and be signed by such Party.

15.12 Severability. If, under applicable Laws, any provision of this Agreement is adjudicated invalid or unenforceable by a court of competent jurisdiction, or otherwise directly or indirectly affects the validity of any other material provision(s) of this Agreement (such invalid or unenforceable provision, a “Severed Clause”), such adjudication shall not affect or impair the remaining provisions of this Agreement, which shall continue in full force and effect. Promptly following such adjudication, the Parties shall negotiate in good faith to agree upon a valid and enforceable provision that is a reasonable substitute for the Severed Clause in view of the intent of this Agreement.

15.13 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail shall be deemed to be original signatures.

15.14 No Third Party Beneficiaries. No Person other than Merus and Incyte (and their respective permitted assignees) shall be deemed an intended beneficiary hereunder or have any right to enforce any obligation of this Agreement.

15.15 Exhibits. In the event of inconsistencies between this Agreement and any exhibits or attachments hereto, the terms of this Agreement shall control.

15.16 Effective Date: HSR Act.

(a) The Parties shall make all filings required under the HSR Act and perform their obligations as set forth in Section 7 of the Share Subscription Agreement.

(b) Notwithstanding Section 15.16(c) and anything in this Agreement to the contrary, the following provisions of this Agreement shall be in full force and effect as of the Execution Date: ARTICLE I (to the extent applicable to the subsequent articles), ARTICLE XII, ARTICLE XIII, ARTICLE XIV, and ARTICLE XV. On any termination of this Agreement under this Section 15.16, then this Section 15.16(b) and ARTICLE XIII shall survive (other than Sections 13.1, 13.4(e), and 13.5) the termination thereof (not those specified in Section 10.7).

(c) Unless terminated earlier pursuant to subsection (d) below, this Agreement shall be effective upon the Closing of the Share Subscription Agreement (as such term is defined therein) (such date, the “Effective Date”).

(d) If the Share Subscription Agreement is terminated prior to the Closing of the Share Subscription Agreement (as such term is defined therein), this Agreement shall be terminated effective on the termination of the Share Subscription Agreement, unless otherwise mutually agreed by the Parties.

{Signature Page Follows}

CONFIDENTIAL TREATMENT REQUESTED

IN WITNESS WHEREOF, the Parties have caused their duly authorized officers to execute and acknowledge this Agreement as of the date first written above.

MERUS N.V.

INCYTE

By: /s/ Ton Logtenberg
Name: Ton Logtenberg
Title: Chief Executive Officer

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

By: /s/ Shelley Margetson
Name: Shelley Margetson
Title: Chief Operating Officer

{Signature Page to Collaboration and License Agreement}

Exhibit 1.37
Existing Program Patents

(i) *Program 1 and Program 2*
[**], and
[**].

(ii) *IMOD Pipeline Products*
[**], and
[**].

(iii) [**] *Program*
[**].

Exhibit 1.84
Target Pairs that are Not Available

[**]

Exhibit 11.2(a)(v)(A)
[] Intellectual Property Rights**

- (a) [**];
 - (b) [**];
 - (c) all patents and patent applications worldwide from which, at any time, the foregoing patents or patent applications referred to in (a) and/or (b) claimed priority;
 - (d) all patents and patent applications worldwide that, at any time, claimed priority from any of the foregoing patents or patent applications referred to in (a)–(c), including all continuations, continuation-in-parts, or divisionals of any of the foregoing patents and patent applications referred to in (a)–(c);
 - (e) all patents worldwide issuing from any of the foregoing applications referred to in (a)–(d); and
 - (f) all re-issues, re-examinations, and extensions (such as patent term extensions or supplemental protection certificates) of any of the foregoing patents referred to in (a)–(e).
-

Exhibit 11.2(a)(v)(B)
[] Intellectual Property Rights**

1. [**];
 2. [**];
 3. [**]; and
 4. [**];
 5. all patents and patent applications worldwide from which, at any time, the foregoing patents or patent applications referred to in (1), (2), (3), and/or (4) claimed priority;
 6. all patents and patent applications worldwide that, at any time, claimed priority from any of the foregoing patents or patent applications referred to in (1), (2), (3), (4), and/or (5); and
 7. all patents worldwide issuing from any of the foregoing applications referred to in (1), (2), (3), (4), (5), and/or (6).
-

Exhibit 12.3
Exceptions to Merus Representations

Exceptions to Section 12.3(a) :

Litigation in the United States filed by Regeneron for alleged infringement by Merus of U.S. Patent No. 8,502,018, case 1:14-CV-01650-KBF (SDNY), on appeal U.S. Court of Appeals for the Federal Circuit, No. 16-1346.

Litigation in the Netherlands filed by Regeneron for alleged infringement by Merus of EP Patent No. 1360287, reference number C/09/462691, case number 14/379.

Exceptions to Section 12.3(e):

Opposition filed by Regeneron against the following issued Merus Patent Rights:

1. JP 5749161 (patent maintained with amended claims)
 2. EP 2147594B (patent maintained without amendments)
 3. AU 2009263082 (outcome expected Q1 2017)
-

**Exhibit 12.3(k)
Existing IMOD Pipeline Products**

[**]

**Exhibit 12.3(l)
Existing Patents**

Part 1:

[**]

I. [**]

[**]

[**]	[**]	[**]	[**]	[**]	[**]	[**]
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II. [**]

[**]

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

Part 2:

None

**Exhibit 13.4(a)
Form of Press Release**

(see attached)

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

SHARE SUBSCRIPTION AGREEMENT

By and Between

INCYTE CORPORATION

and

MERUS N.V.

Dated as of December 20, 2016

MERUS N.V.

SHARE SUBSCRIPTION AGREEMENT

THIS SHARE SUBSCRIPTION AGREEMENT (the “ **Agreement** ”) is made and entered into as of December 20, 2016 (the “ **Signing Date** ”), by and between Merus N.V., a public company with limited liability (*naamloze vennootschap*) incorporated under the laws of the Netherlands (the “ **Company** ”), and Incyte Corporation, a Delaware corporation (the “ **Purchaser** ”).

WHEREAS, the Company and the Purchaser are entering into that certain Collaboration and License Agreement of even date herewith (the “ **Collaboration Agreement** ”);

WHEREAS, the obligations in the Collaboration Agreement are conditioned upon the execution and delivery of this Agreement, pursuant to which the Company will issue and sell to the Purchaser a number of its common shares, nominal value €0.09 per share (the “ **Common Shares** ”) as provided for herein; and

WHEREAS, the Purchaser desires to purchase and subscribe for, and the Company desires to sell and issue, the Common Shares on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions. When used in this Agreement, the following terms shall have the respective meanings specified below:

“ **Action** ” shall mean any action, cause or action, suit, prosecution, investigation, litigation, arbitration, hearing, order, claim, complaint or other proceeding (whether civil, criminal, administrative, investigative or informal) by or before any Governmental Authority or arbitrator.

“ **Affiliate** ” shall mean, with respect to any Person, another Person which controls, is controlled by or is under common control with such Person. A Person shall be deemed to control another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise. For the purposes of this Agreement, in no event shall the Purchaser or any of its Affiliates be deemed Affiliates of the Company or any of its Affiliates, nor shall the Company or any of its Affiliates be deemed Affiliates of the Purchaser or any of its Affiliates.

“ **beneficially owns** ” (including the correlative terms “ **beneficial ownership** ,” “ **beneficially owned,** ” “ **beneficial owner** ” or “ **beneficially owning** ”) shall mean beneficial ownership within the meaning of Rule 13d-3 and Rule 13d-5 under the Exchange Act.

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“ **Business Day** ” shall mean any day except Saturday, Sunday and any day on which banking institutions in New York, New York, generally are closed as a result of federal, state or local holiday.

“ **Change of Control** ” shall mean, with respect to a Person, any of the following events: (i) any Person is or becomes the beneficial owner (as such term is defined in Rule 13d-3 under the Exchange Act, except that a Person shall be deemed to have beneficial ownership of all shares that any such Person has the right to acquire, whether such right which may be exercised immediately or only after the passage of time), directly or indirectly, of a majority of the total voting power represented by all shares of such Person’s outstanding capital stock; (ii) such Person consolidates with or merges into another corporation or entity, or any corporation or entity consolidates with or merges into such Person, other than (A) a merger or consolidation which would result in the voting securities of such Person outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) a majority of the combined voting power of the voting securities of such Person or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (B) a merger or consolidation effected to implement a recapitalization of such Person (or similar transaction) in which no Person becomes the beneficial owner, directly or indirectly, of a majority of the total voting power of all shares of capital stock of such Person, or (iii) such Person conveys, transfers or leases all or substantially all of its assets, to any Person other than a wholly owned Affiliate of such Person.

“ **Code** ” shall mean the United States Internal Revenue Code of 1986, as amended.

“ **Common Share Equivalents** ” means any securities of the Company which would entitle the holder thereof to acquire at any time Common Shares, including, without limitation, any debt, preferred shares, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Shares.

“ **Consent** ” shall mean any, internal or external, approval, authorization, consent, license, franchise, Order, registration, notification, permit, certification, clearance, waiver or other confirmation of or by a Governmental Authority, other Person or company body.

“ **Contract** ” shall mean, with respect to any Person, any written agreement, contract, commitment, indenture, note, bond, loan, license, sublicense, lease, sublease, undertaking, statement of work or other arrangement to which such Person is a party or by which any of its properties or assets are subject.

“ **control** ” (including the correlative terms “ **controlled by** ,” “ **controlling** ,” and “ **under common control with** ”), as applied to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership or voting of securities, by contract or otherwise.

“ **Controlled Affiliate** ” shall mean, with respect to a Person, an Affiliate of such Person controlled by such Person.

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“ **Employee Benefit Plan** ” shall mean any “employee benefit plan” (as such term is defined in Section 3(3) of ERISA, whether or not subject to ERISA), any severance, employment, incentive or bonus, retention, change in control, deferred compensation, termination pay, profit sharing, retirement, welfare, post-employment welfare, fringe benefit, vacation or paid time off, equity or equity-based or any other plan, policy, program, agreement, contract or arrangement that is sponsored, maintained, contributed to, or required to be contributed to by the Company or any of its Subsidiaries or under or with respect to which the Company or any of its Subsidiaries has any current or contingent liability or obligation

“ **Environmental Law** ” shall mean all national, supra-national, federal, state, local and foreign Laws concerning public health and safety, worker health and safety, pollution or protection of the environment; including without limitation all those relating to the generation, handling, transportation, treatment, storage, disposal, release, exposure to or cleanup of hazardous materials, substances or wastes, including petroleum, asbestos, polychlorinated biphenyls, asbestos, noise or radiation.

“ **ERISA** ” shall mean the United States Employee Retirement Income Security Act of 1974, as amended, and the rulings and regulations thereunder.

“ **Exchange Act** ” shall mean the U.S. Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

“ **Governmental Authority** ” shall mean any court, agency, authority, department, regulatory body or other instrumentality of any government or country or of any national, federal, state, provincial, regional, county, city or other political subdivision of any such government or country or any supranational organization of which any such country is a member.

“**Health Care Laws**” means all applicable Laws relating to pricing, marketing, promotion, sale, distribution, coverage, or reimbursement of a drug, biological or medical device.

“ **Indebtedness** ” shall mean, with respect to any Person at any applicable time of determination, without duplication, (a) all liabilities and obligations for borrowed money, (b) all liabilities and obligations evidenced by bonds, debentures, notes or other similar instruments or debt securities, (c) all liabilities and obligations under or in respect of swaps, hedges or similar instruments, (d) all liabilities and obligations in respect of letters of credit and similar instruments, (e) all liabilities and obligations (contingent or otherwise) arising from or in respect of (i) deferred compensation arrangements, or (ii) pension plans, (f) all guaranties in connection with any of the foregoing, and (g) all accrued interest, prepayment premiums, fees, penalties, expenses or other amounts payable in respect of any of the foregoing.

“ **HSR Act** ” shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereto.

“ **Knowledge** ” means the knowledge of Ton Logtenberg, Ph.D., Shelley Margetson, Mark Throsby, Ph.D., Hui Liu, Ph.D. or John de Kruij, Ph.D. after reasonable inquiry.

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“ **Law** ” or “ **Laws** ” shall mean all laws, statutes, rules, regulations, orders, judgments, injunctions and ordinances of any Governmental Authority.

“ **Leased Real Property** ” shall mean all leasehold or subleasehold estates and all other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property held by the Company or any of its Subsidiaries pursuant to any Lease.

“ **Leases** ” shall mean all leases, subleases, licenses, concessions and other Contracts pursuant to which the Company or any of its Subsidiaries holds any Leased Real Property as tenant, sublease, licensee or concessionaire (including the rights to all security deposits and other amounts and instruments deposited by or on behalf of the Company or and of its Subsidiaries thereunder) and all material amendments, extensions, renewals, guaranties and other agreements with respect thereto.

“ **Liens** ” shall mean a lien, charge, security interest, encumbrance, right of first refusal, preemptive right or other restriction.

“ **Material Adverse Effect** ” shall mean any change, event or occurrence (each, an “ **Effect** ”) that, individually or when taken together with all other effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, is or is reasonably likely to be materially adverse to the business, clinical or pre-clinical programs, intellectual property, condition (financial or other), assets, liabilities or results of operations of the Company and its Subsidiaries, taken as a whole; provided, however, that in no event shall any of the following occurring after the date hereof, alone or in combination, be deemed to constitute, or be taken into account in determining whether a Material Adverse Effect has occurred: (i) changes in the Company’s industry generally or in conditions in the Netherlands or global economy or capital or financial markets generally, including changes in interest or exchange rates, (ii) any Effect caused by the announcement or pendency of the transactions contemplated by the Transaction Agreements, or the identity of the Purchaser or any of its Affiliates as the purchaser in connection with the transactions contemplated by this Agreement or as a participant in the Collaboration Agreement, (iii) the performance of this Agreement, the Collaboration Agreement and the transactions contemplated hereby and thereby, including compliance with the covenants set forth herein and therein, or any action taken or omitted to be taken by the Company at the request or with the prior consent of the Purchaser, (iv) changes in general legal, regulatory, political, economic or business conditions or changes to IFRS (as hereinafter defined) or interpretations thereof occurring after the date hereof that, in each case, generally affect the biotechnology or biopharmaceutical industries, (v) acts of war, sabotage or terrorism occurring after the date hereof, or any escalation or worsening of any such acts of war, sabotage or terrorism, or (vi) earthquakes, hurricanes, floods or other natural disasters occurring after the date hereof, provided, however, that with respect to clauses (i), (iv), (v) and (vi), such effects, alone or in combination, may be deemed to constitute, or be taken into account in determining whether a Material Adverse Effect has occurred, but only to the extent such effects disproportionately affect the Company and its Subsidiaries compared to other participants in the biotechnology or biopharmaceutical industries.

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“ **Material Contract** ” shall mean any Contract entered into by the Company or any of its Subsidiaries that is required under the Exchange Act to be filed as an exhibit to a Company SEC Document pursuant to Item 601(b)(10) of Regulation S-K.

“ **NASDAQ** ” shall mean the NASDAQ Stock Market LLC.

“ **Order** ” shall mean any assessment, award, decision, injunction, judgment, order, ruling, verdict or writ entered, issued, made, or rendered by any court, administrative agency, or other Governmental Authority or by any arbitrator.

“ **Permitted Liens** ” shall mean (a) mechanics’, materialman’s, workmens’, repairmens’, warehousemen’s, supplier’s, vendor’s, carrier’s and other similar Liens arising or incurred in the ordinary course of business by operation of Law securing amounts that are not yet due and payable, (b) Liens for Taxes, assessments and other charges of Governmental Authorities not yet due and payable, (c) Liens arising under original purchase price conditional sales Contracts and equipment leases with third parties, (d) pledges or deposits to secure obligations under workers or unemployment compensation Laws or to secure other statutory obligations, (e) easements, covenants, conditions and restrictions of record affecting title to the Leased Real Property which do not or would not materially impair the use or occupancy of any Leased Real Property in the operation of the business conducted thereon as of the date of this Agreement, and (f) any zoning, or other governmentally established restrictions of encumbrances.

“ **Person** ” shall mean any individual, partnership, limited liability company, firm, corporation, trust, unincorporated organization, government or any department or agency thereof or other entity, as well as any syndicate or group that would be deemed to be a Person under Section 13(d)(3) of the Exchange Act.

“ **SEC** ” shall mean the U.S. Securities and Exchange Commission.

“ **Securities Act** ” shall mean the U.S. Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“ **Tax** ” or “ **Taxes** ” shall mean any federal, state, local, or non-U.S. income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

“ **Tax Return** ” shall mean any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“ **Third Party** ” shall mean any Person (other than a Governmental Authority) other than the Purchaser, the Company or any Affiliate of the Purchaser or the Company.

“ **Trading Day** ” shall mean a day on which the Trading Market is open for trading.

“ **Trading Market** ” shall mean the NASDAQ Global Market or New York Stock Exchange to the extent that the Common Shares are then listed on such exchange, as applicable.

“ **Transaction Agreements** ” shall mean this Agreement and the Collaboration Agreement.

“ **Transfer** ” by any Person means directly or indirectly, to sell, transfer, assign, pledge, encumber, hypothecate or similarly dispose of, either voluntarily or involuntarily, or to enter into any contract, option or other arrangement or understanding with respect to the sale, transfer, assignment, pledge, encumbrance, hypothecation or similar disposition of, any securities beneficially owned by such Person or of any interest (including any voting interest) in any securities beneficially owned by such Person. For the avoidance of doubt, a transfer of control of the direct or indirect beneficial ownership of securities is a Transfer of such securities for purposes of this Agreement.

“ **Transfer Agent** ” shall mean American Stock Transfer & Trust Company, LLC, or any successor transfer agent of the Company.

“ **WARN Act** ” shall mean the Worker Adjustment and Retraining Notification Act of 1988, as amended and any similar or related Law.

2. Closing, Delivery and Payment.

2.1 Closing . Subject to the terms and conditions hereof, and in reliance on the representations, warranties, covenants and other agreements hereinafter set forth, at the closing of the transactions contemplated hereby (the “ **Closing** ”), the Company hereby agrees to issue to the Purchaser, and the Purchaser agrees to subscribe for, 3,200,000 Common Shares (the “ **Shares** ”), at a purchase price of \$25.00 per Common Share, free and clean of all Liens (other than Liens imposed by applicable securities Laws or contained herein), for an aggregate issue price of Eighty Million Dollars (\$80,000,000) (the “ **Purchase Price** ”). The Closing shall take place remotely via the exchange of documents and signatures, as soon as practicable, but in no event later than at 10:00 a.m. on the first Business Day immediately following the date on which the last of the conditions set forth in Article 6 has been satisfied or waived (other than those conditions that by their nature can only be satisfied at the Closing), or at such other date and time as the Company and Purchaser shall mutually agree (which date and time are designated as the “ **Closing Date** ”).

2.2 Delivery and Payment . At the Closing, subject to the terms and conditions hereof, the Company will instruct the Company’s transfer agent to deliver to the Purchaser, via book entry to the applicable balance account registered in the name of the Purchaser, the Shares, against payment of the Purchase Price in U.S. dollars by wire transfer of immediately available funds to the order of the Company.

2.3 Deliveries at Closing .

(a) Deliveries by the Company . At the Closing, the Company shall deliver or cause to be delivered to the Purchaser the following items:

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(i) a true copy of the Articles of Association of the Company, as amended and converted into the Articles of Association for a Dutch public company with limited liability (*naamloze vennootschap*), issued not more than ten (10) days prior to the Closing Date;

(ii) evidence of the filing of the Listing of Additional Shares notification to NASDAQ as it relates to the Shares;

(iii) a copy of the irrevocable instructions to the Transfer Agent instructing the Transfer Agent to deliver the Shares to Purchaser on an expedited basis;

(iv) a legal opinion of Eversheds B.V., the Company's Dutch counsel, dated as of the Closing Date, in the form attached hereto as Exhibit A;

(v) an opinion of Latham & Watkins LLP, counsel for the Company, addressed to the Purchaser, and dated the Closing Date, in substantially the form of the draft provided to the Purchaser on the date hereof;

(vi) a certificate, dated as of the Closing Date, signed by the members of the Company's management board, confirming that the conditions to the Closing set forth in Section 6.1 have been satisfied;

(vii) a private deed of issue of the Shares; and

(viii) all such other documents, certificates and instruments as the Purchaser may reasonably request in order to give effect to the transactions contemplated hereby and by the other Transaction Agreements.

(b) **Deliveries by the Purchaser** . At the Closing, the Purchaser shall deliver or cause to be delivered to the Company the Purchase Price, by wire transfer of immediately available funds to one or more accounts designated by the Company, such designation to be made no later than two (2) Business Days prior to the Closing Date.

3. Representations and Warranties of the Company . Except as (A) set forth in the schedules delivered herewith (the "**Disclosure Schedules**"), which Disclosure Schedules shall be deemed a part hereof and shall qualify any representation made herein to the extent of the disclosure contained in the corresponding section of the Disclosure Schedules and (B) as set forth in the Company SEC Documents (as defined herein), and only to the extent such Company SEC Documents are specifically referenced in such representation or warranty, the Company hereby represents and warrants to the Purchaser that as of the date hereof:

3.1 Organization, Good Standing and Qualification .

(a) The Company is duly incorporated and validly exists as a public company with limited liability (*naamloze vennootschap*) under the laws of the Netherlands and has not been declared bankrupt, granted a suspension of payments or is otherwise subject to insolvency proceedings. The Company has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver the Transaction Agreements, to issue and

sell the Shares, and to carry out the provisions of the Transaction Agreements and to carry on its business as presently conducted and as presently proposed to be conducted. Each of the Company's Subsidiaries (as defined herein) is an entity duly incorporated or otherwise organized, validly existing and in good standing (to the extent such concept exists in the relevant jurisdiction) under the Laws of the jurisdiction of its incorporation or organization, as applicable, and has all requisite power and authority to carry on its business to own and use its properties. Neither the Company nor any of its Subsidiaries is in violation or default of any of the provisions of its respective articles of association, charter, certificate of incorporation, bylaws, limited partnership agreement or other organizational or constitutive documents. Each of the Company and its Subsidiaries is duly qualified to do business as a foreign entity and is in good standing (to the extent such concept exists in the relevant jurisdiction) in each jurisdiction in which the conduct of its business or its ownership or leasing of property makes such qualification necessary, except to the extent any failure to so qualify has not had and would not reasonably be expected to have a Material Adverse Effect. During the twelve (12) months preceding the Signing Date, neither the Company nor any of its Subsidiaries has taken any action nor have any other steps been taken or Actions commenced or, to the Company's Knowledge, threatened against any of them, for their winding up or dissolution or for any of them to enter into any arrangement, scheme or composition for the benefit of creditors, or for the appointment of a receiver, administrator, liquidator, trustee or similar officer of any of them, or any of their respective properties, revenues or assets.

(b) During the twelve (12) months preceding the Signing Date, neither the Company nor any of its Subsidiaries has taken any action nor have any other steps been taken or Actions commenced or, to the Company's Knowledge, threatened against any of them, for their winding up or dissolution or for any of them to enter into any arrangement, scheme or composition for the benefit of creditors, or for the appointment of a receiver, administrator, liquidator, trustee or similar officer of any of them, or any of their respective properties, revenues or assets.

3.2 Subsidiaries . The Company has disclosed all of its subsidiaries required to be disclosed in an exhibit to its Registration Statement on Form F-1 filed with the SEC (the "**Subsidiaries**"). The Company owns, directly or indirectly, all of the capital stock or other equity interests of each Subsidiary free and clear of any Liens, and all of the issued and outstanding shares of capital stock of each Subsidiary are validly issued and are fully paid and, if applicable in the relevant jurisdiction, non-assessable, and free of preemptive and similar rights to subscribe for or purchase securities.

3.3 Capitalization .

(a) The authorized share capital (*maatschappelijk kapitaal*) of the Company, immediately prior to the Signing Date, consists of 21,569,280 Common Shares, 16,085,851 of which were issued and outstanding, and 21,569,280 preferred shares, nominal value €0.09 per share, none of which were issued and outstanding. Under the Company's 2016 Supervisory Board Compensation Program, 2010 Employee Option Plan and 2016 Incentive Award Plan (together, the "**Plans**"), immediately prior to the Signing Date, (i) options to acquire 1,231,337 Common Shares have been granted and are outstanding, (ii) no restricted share units have been granted and are outstanding, and (iii) 989,888 Common Shares remained available for future issuance to supervisory or management board members, senior executives, employees and

consultants of the Company and its Subsidiaries. Since the Signing Date, the Company has not issued any equity securities, other than those issued pursuant to the Plans.

(b) Except as disclosed in the Company SEC Documents, including its Articles of Association, dated May 19, 2016 (the “**Articles of Association**”), and other than the Common Shares reserved for issuance under the Plans and the Stichting Continuïteit Merus’ call option in relation to preferred shares in the share capital of the Company, there are no outstanding options, rights (including conversion or preemptive rights and rights of first refusal), proxy or shareholder agreements, or agreements of any kind for the purchase or acquisition from the Company or any of its Subsidiaries of any of its securities, including the Shares. Except as stipulated in the Articles of Association, no Person is entitled to preemptive rights, rights of first refusal, rights of participation or similar rights with respect to any securities of the Company or any of its Subsidiaries, including with respect to the issuance of Shares contemplated hereby. There are no voting agreements, registration rights agreements or other agreements of any kind among the Company or any of its Subsidiaries and any other Person relating to the securities of the Company or any of its Subsidiaries, including the Shares.

(c) All of the issued and outstanding Common Shares have been duly authorized and validly issued and are fully paid and were issued in compliance with all applicable Laws concerning the issuance of securities. The Shares have been duly and validly authorized and, when issued and paid for pursuant to this Agreement, (i) will be validly issued, and fully paid, (ii) will form part of the same class of Common Shares and will have the same profit entitlement and voting rights as the Common Shares, (iii) will not be subject to pre-emptive rights, and (iv) shall be free and clear of all Liens, except for restrictions on transfer imposed by applicable securities Laws or contained herein.

(d) Neither the Company nor any of its Subsidiaries owns or holds the right to acquire any stock, partnership, interest, joint venture interest or other equity ownership interest in any Person, and, except as disclosed in the Company SEC Documents, the Company owns, directly or indirectly, all of the capital stock or other equity interests of each of its Subsidiaries, free and clear of any Liens.

3.4 Authorization; Binding Obligations . All corporate action on the part of the Company and its supervisory and management boards necessary for the authorization of the Transaction Agreements, the performance of all obligations of the Company hereunder and thereunder at the Closing and the authorization, sale, issuance and delivery of the Shares pursuant hereto has been taken, including (i) the approval by the management board of the Company to issue the Shares, to exclude rights of pre-emption in respect of such issuance, and to approve payment in U.S. dollars for the Shares, (ii) the approval of the supervisory board of the Company of the foregoing resolutions of the management board of the Company, (iii) the execution of the Deed of Issue by the Company with respect to the Shares being issued, and (iv) the reservation of a sufficient number of Common Shares from the Company’s authorized share capital to provide for the issuance of the Shares. Aside from (i) through (iv) above, no other action is required on the part of the Company, its supervisory board, its management board, or its shareholders prior to the Closing for the consummation of the transactions contemplated by the Transaction Agreements. Each of the Transaction Agreements has been duly executed and delivered by the Company and,

assuming due authorization, execution and delivery by the Purchaser, constitutes valid and binding obligations of the Company enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other Laws of general application affecting enforcement of creditors' rights, (b) general principles of equity that restrict the availability of equitable remedies and (c) to the extent that the enforceability of indemnification provisions may be limited by applicable Laws.

3.5 Company SEC Documents; Financial Statements; NASDAQ; Indebtedness .

(a) Since May 18, 2016, the Company has timely filed with the SEC all of the reports and other documents required to be filed by it under the Exchange Act and Securities Act and any required amendments to any of the foregoing (the “ **Company SEC Documents** ”). As of their respective filing dates, each of the Company SEC Documents complied in all material respects with the requirements of the Securities Act and the Exchange Act applicable to such Company SEC Documents, and, when filed, no Company SEC Documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the Company's Subsidiaries is subject to the periodic reporting requirements of the Exchange Act. As of the date hereof, there are no outstanding or unresolved comments in comment letters from the SEC staff with respect to any of the Company SEC Documents and the Company has not been notified that any of the Company SEC Documents is the subject of ongoing SEC review or outstanding investigation.

(b) The financial statements of the Company included in the Company SEC Documents when filed complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, have been prepared in accordance with International Financing Reporting Standards as issued by the International Accounting Standards Board and endorsed/adopted by the European Union (“ **IFRS** ”) applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the financial position of the Company as of the dates thereof and the results of its operations and cash flows for the periods then ended. Except (i) as set forth in the Company SEC Documents or (ii) for liabilities incurred in the ordinary course of business subsequent to the date of the most recent balance sheet contained in the Company SEC Documents, the Company has no liabilities, whether absolute or accrued, contingent or otherwise, other than those that would not, individually or in the aggregate, be material to the Company and its Subsidiaries taken as a whole. Neither the Company nor any of its Subsidiaries has or is subject to any “Off-Balance Sheet Arrangement” (as defined in Item 303(a)(4)(ii) of Regulation S-K promulgated under the Securities Act).

(c) The Common Shares are listed on the NASDAQ Global Market, and the Company has not received any notification that, and has no Knowledge that, NASDAQ is contemplating terminating such listing.

(d) As of the date hereof, neither the Company nor any of its Subsidiaries has any material Indebtedness that is not reflected on its most recent balance sheet included in the Company SEC Documents.

3.6 Obligations to Related Parties . There are no obligations of the Company or any of its Subsidiaries to supervisory or management board members, senior executives, shareholders, Affiliates, or employees of the Company or any of its Subsidiaries other than (a) for payment of salary for services rendered, (b) reimbursement for reasonable expenses incurred on behalf of the Company and any of its Subsidiaries, and (c) for other standard employee benefits made generally available to all employees (including equity award agreements outstanding under any equity incentive plan approved by the supervisory board of the Company). None of the supervisory or management board members, affiliates, senior executives, key employees or, to the Company's Knowledge, 5% shareholders of the Company or any members of their immediate families, is indebted to the Company or party to a transaction with the Company required to be disclosed in the Company SEC Documents under Item 404 of Regulation S-K that is not so disclosed.

3.7 Compliance with Other Instruments . Neither the Company nor any of its Subsidiaries is in violation or default of any term of its articles of association, charter, certificate of incorporation, bylaws, limited partnership agreement, or other organizational or constitutive documents, or of any provision of any mortgage, indenture, contract, lease, agreement, instrument or Contract to which it is party or by which it is bound or of any Order. The execution, delivery, and performance of and compliance with the Transaction Agreements, and the issuance and sale of the Shares pursuant hereto, will not, with or without the passage of time or giving of notice, (i) conflict with or result in a violation of the articles of association, charter, certificate of incorporation, bylaws, limited partnership agreement, or other organizational or constitutive documents of the Company or any of its Subsidiaries, in each case as in effect on Closing Date, (ii) result in any violation of any Law or Order to which the Company, any of its Subsidiaries or any of their respective assets is subject, (iii) (A) conflict with or result in a breach, violation of, or constitute a default under, (B) give any third party the right to modify, terminate or accelerate, or cause any modification, termination or acceleration of, any obligation under, or (C) require Consent under, any Contract to which the Company or any of its Subsidiaries is a party, or (iv) result in the creation of any Lien upon any of the Company's or any Subsidiary's assets or capital stock, except in the case of any of clauses (ii), (iii) and (iv) above, as would not reasonably be expected to have a Material Adverse Effect. Neither the execution, delivery or performance of any Transaction Agreement by the Company, nor the consummation by it of the obligations and transactions contemplated hereby and thereby (including the issuance of the Shares) requires any Consent, other than (i) filings required under applicable U.S. federal and state securities Laws, (ii) the notification of the issuance and sale of the Shares to NASDAQ, (iii) the registration of the related capital increase with the Dutch Trade Register, (iv) a resolution of the management board to issue the Shares to the Purchaser and the exclusion of any pre-emptive rights of current shareholders, approved by the supervisory board, (v) deed of issue in relation to the issuance of the Common Shares, and (vi) consent of the Company for the payment in U.S. Dollars (rather than Euros) for the Shares.

3.8 Litigation . Except as disclosed in the Company SEC Documents filed prior to the Signing Date, there is no material: (i) Action pending or, to the Company's Knowledge, threatened, against the Company or any of its Subsidiaries or (ii) Order in effect against the Company or any of its Subsidiaries.

3.9 Compliance with Laws; Permits . The Company and its Subsidiaries are not, and since January 1, 2014 have not been, in violation in any material respect of any applicable Law (including any Health Care Law) in respect of the conduct of its business or the ownership of its properties. No Consents are required to be filed in connection with the execution and delivery of this Agreement or the issuance of the Shares, except under the HSR Act or those that have been filed or obtained. The Company and each of its Subsidiaries has all franchises, permits, licenses and any similar authority necessary for the conduct of its business as now being conducted by it, except those the lack of which would not reasonably be expected to have a Material Adverse Effect.

3.10 Offering Valid . Assuming the accuracy of the representations and warranties of the Purchaser contained in Section 4.5 hereof, the offer, sale and issuance of the Shares will be exempt from the registration requirements of the Securities Act, and will have been registered or qualified (or are exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities Laws. Neither the Company nor any agent on its behalf has solicited or will solicit any offers to sell or has offered to sell or will offer to sell all or any part of the Shares to any person or persons so as to bring the sale of such Shares by the Company within the registration requirements of the Securities Act or the securities Laws of The Netherlands.

3.11 Investment Company . The Company is not, and after giving effect to the transactions contemplated by the Transaction Agreements will not be, an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

3.12 Sarbanes-Oxley; Internal Accounting Controls . The Company is in compliance in all material respects with the requirements of the Sarbanes-Oxley Act of 2002, including the rules and regulations of the SEC promulgated thereunder, applicable to it as of the date hereof. As of the Signing Date, the Company qualifies as an "emerging growth company" as defined in the Jumpstart Our Business Startups Act of 2012 (the "**JOBS Act**"). The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (i) transactions are executed in accordance with management's general or specific authorizations, (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with IFRS and to maintain asset accountability, (iii) access to assets is permitted only in accordance with management's general or specific authorization, and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences. The Company has established disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the Company and designed such disclosure controls and procedures to provide reasonable assurance that information required to be disclosed by the Company in the reports it files or submits

under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms.

3.13 Absence of Changes. Since June 30, 2016, (a) the Company and each of its Subsidiaries has conducted its business operations in the ordinary course of business consistent with past practice and (b) there has not occurred any event, change, development, circumstance or condition that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

3.14 Tax Matters .

(a) Except as set forth in the Company SEC Documents filed prior to the Signing Date, (i) the Company and each of its Subsidiaries has timely prepared and filed all federal and all other material Tax Returns required to have been filed by each of them with all appropriate Governmental Authorities and timely paid all Taxes shown thereon, (ii) all such Tax Returns are true, correct and complete in all material respects and (iii) all Taxes that the Company or any of its Subsidiaries is required to withhold or to collect for payment have been duly withheld and collected and paid to the proper Governmental Authority or third party when due;

(b) Except as set forth in the Company SEC Documents filed prior to the Signing Date, (i) neither the Company nor any of its Subsidiaries (A) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was the Company) or (B) has any liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under U.S. Treas. Reg. § 1.1502-6 (or any similar provision of state, local, or non-U.S. Law), as a transferee or successor, by Contract, or otherwise (excluding Contracts entered into in the ordinary course of business and not primarily related to Taxes);

(c) Neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or 361 of the Code;

(d) Neither the Company nor any of its Subsidiaries is or has been a party to any "listed transaction," as defined in Section 6707A(c)(2) of the Code and U.S. Treas. Reg. § 1.6011-4(b)(2); and

(e) Neither the Company nor any Subsidiary has ever been, nor will they be at the Closing, a United States Real Property Holding Corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

3.15 Property . The Company does not own any real property. Except as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect, (a) the Company and each of its Subsidiaries has the right to use or occupy the Leased Real Property under valid and binding leases and (b) the Company and its Subsidiaries have good and valid title to, or a valid license to use or leasehold interest in, all of their respective material tangible assets, free and clear of all Liens (other than Permitted Liens).

3.16 Employee Benefits Matters .

(a) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Employee Benefit Plan (and each related trust, insurance Contract, or fund) has been maintained, funded and administered in accordance with its terms and in compliance with the applicable requirements of Law, including ERISA and the Code and other applicable Laws and (ii) all contributions, distributions, reimbursements and premium payments due with respect to each Employee Benefit Plan have been timely made or properly accrued. Each Employee Benefit Plan that is intended to meet the requirements of a “qualified plan” under Section 401(a) of the Code has received a favorable determination letter (or may rely on a favorable opinion letter) issued by the United States Internal Revenue Service and to the Company’s Knowledge, nothing has occurred that would reasonably be expected to have a material adverse effect on the qualification of such Employee Benefit Plan.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, (i) neither the Company nor any of its Subsidiaries maintains, sponsors, contributes to, has any obligation to contribute to, or has any current or potential liability or obligation under or with respect to (A) a “defined benefit plan” (as such term is defined in Section 3(35) of ERISA), (B) a “multiple employer plan” (within the meaning of Section 210 of ERISA or Section 413(c) of the Code), (C) a “multiemployer plan” as defined in Section 3(37) of ERISA, or (D) a “multiple employer welfare arrangement” (as such term is defined in Section 3(40) of ERISA); (ii) no Employee Benefit Plan provides and neither the Company nor any of its Subsidiaries has any current or potential obligation to provide post-termination or post-retirement health, life or other welfare benefits other than as required under Section 4980B of the Code or any similar state Law; and (iii) neither the Company nor any of its Subsidiaries has any current or potential liability or obligation by reason of at any time being treated as a single employer under Section 414 of the Code with any other Person.

(c) Except as would not reasonably be expected to have a Material Adverse Effect,, (i) there have been no prohibited transactions (as defined in Section 406 of ERISA or Section 4975 of the Code) and no breach of fiduciary duty (as determined under ERISA) with respect to any Employee Benefit Plan, (ii) the Company and its Subsidiaries have, for purposes of each Employee Benefit Plan, correctly classified those individuals performing services for the Company or any of its Subsidiaries as employees or non-employees, and (iii) there do not exist any pending or, to the Company’s Knowledge, threatened claims (other than routine undisputed claims for benefits) or Actions with respect to any Employee Benefit Plan.

(d) The transactions contemplated by the Transaction Agreements will not (either alone or in combination with another event) (i) cause the acceleration of vesting in, or payment of, any material benefits or compensation under any Employee Benefit Plan, (ii) require the funding of any material amount of compensation or benefits due to any manager, employee, officer, director, shareholder or other service provider (whether current, former or retired) of the Company or any of its Subsidiaries or their beneficiaries and, (iii) otherwise materially accelerate or materially increase any liability or obligation under any Employee Benefit Plan.

3.17 Labor Matters .

(a) Neither the Company nor any of its Subsidiaries is a party to or bound by any collective bargaining agreement or other Contract or relationship with any union, labor organization, or other collective bargaining representative. There are no strikes, work stoppages or any other material labor disputes against the Company or any of its Subsidiaries pending or, to the Company's Knowledge, threatened, and no such disputes have occurred since January 1, 2015. No union organization or decertification activities are underway or, to the Company's Knowledge, threatened with respect to employees of the Company or any of its Subsidiaries.

(b) Each of the Company and its Subsidiaries is, and at all times since January 1, 2015, has been in compliance in all material respects with all applicable Laws respecting employment and employment practices, including provisions thereof relating to terms and conditions of employment, wages and hours, overtime, classification of employees and independent contractors, immigration, and the withholding and payment of social security and other employment Taxes.

(c) Since January 1, 2015, neither the Company nor any of its Subsidiaries has implemented any plant closing or layoff of employees that could implicate the WARN Act and result in material liability to the Company and its Subsidiaries, taken as a whole.

3.18 Intellectual Property . The representations of the Company contained in Section 12.3 of the Collaboration Agreement are, subject to the exceptions and qualifications contained therein and disclosures related thereto, true, correct and complete.

3.19 Environmental Matters . Except as would not reasonably be expected to, individually or in the aggregate, have a Material Adverse Effect: (i) no notice, notification, demand, request for information, citation, summons, complaint or Order has been received since January 1, 2015 by, and no Action is pending or, to the Company's Knowledge, threatened by any Person against, the Company or any of its Subsidiaries, and no penalty has been assessed against the Company or any of its Subsidiaries, in each case, with respect to any matters relating to or arising out of any Environmental Law and (ii) the Company and its Subsidiaries are, and since January 1, 2015 have been, in compliance in all material respects with all applicable Environmental Laws, including any Consent required by Environmental Laws.

3.20 Insurance. Except as has not had, and would not reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect, (a) all insurance policies ("Policies") with respect to the business and assets of the Company and its Subsidiaries are in full force and effect, (b) neither the Company nor any of its Subsidiaries is in breach or default, and neither the Company nor any of its Subsidiaries has taken any action or failed to take any action that, with notice or the lapse of time, would constitute such a breach or default, or permit termination or modification of any of the Policies, and (c) the Company and its Subsidiaries have not received any written notice of cancellation or threatened cancellation of any of the Policies or of any claim pending regarding the Company or any of its Subsidiaries under any of such Policies as to which coverage has been questioned, denied or disputed by the underwriters of such Policies. The Company and its Subsidiaries maintain insurance with reputable insurers in such amounts and

against such risks as is customary for the industries in which it and its Subsidiaries operate and as the management of the Company has in good faith determined to be prudent and appropriate.

3.21 Contracts . Neither the Company nor any of its Subsidiaries is in violation, default or breach under any of its Material Contracts. All Material Contracts required to be filed with the Company SEC Documents have been timely filed.

3.22 Application of Takeover Protections . Except as disclosed in the Company SEC Documents filed prior to the Signing Date, there is no control share acquisition, business combination, poison pill or other similar anti-takeover provision under the articles of association of the Company, its bylaws or, to the Company's Knowledge, the Laws of the Netherlands that is or could become applicable to, or is or could be to the detriment of, the Purchaser as a result of the Purchaser and the Company fulfilling their respective obligations or exercising their respective rights under the Transaction Agreements, including as a result of the issuance or ownership of the Shares.

3.23 Anti-Corruption and Anti-Bribery Laws . Neither the Company and its Subsidiaries, nor, to the Company's Knowledge, any of their respective director, officer, agent, employee or other authorized person acting on behalf of the Company is aware of or has taken any action, directly or indirectly, that could result in a violation or a sanction for violation by such persons of the Foreign Corrupt Practices Act of 1977 or the U.K. Bribery Act 2010, each as may be amended, or similar law of any other relevant jurisdiction, or the rules or regulations thereunder; and the Company has instituted and maintain policies and procedures to ensure compliance therewith. No part of the proceeds from the sale of the Shares will be used, directly or indirectly, in violation of the Foreign Corrupt Practices Act of 1977 or the U.K. Bribery Act 2010, each as may be amended, or similar law of any other relevant jurisdiction, or the rules or regulations thereunder.

3.24 Economic Sanctions . Neither the Company and its Subsidiaries, nor, to the Company's Knowledge, any of their respective director, officer, agent, employee or other authorized person acting on behalf of the Company: (i) is, or is controlled or 50% or more owned in the aggregate by or is acting on behalf of, one or more individuals or entities that are currently the subject of any sanctions administered or enforced by the United States or The Netherlands (collectively, "**Sanctions** " and such persons, "**Sanctioned Persons** " and each such person, a "**Sanctioned Person** ") or (ii) has, within the last five (5) years, done the Company's business in a country or territory that was, or whose government was, at such time the subject of Sanctions that broadly prohibit dealings with that country or territory. Within the past five (5) years, to the Knowledge of the Company, it has neither been the subject of any governmental investigation or inquiry regarding compliance with Sanctions nor has it been assessed any fine or penalty in regard to compliance with Sanctions.

3.25 Accountants . The Company's registered public accounting firm is KPMG Accountants N.V. To the Company's Knowledge, KPMG Accountants N.V. are independent public accountants with respect to the Company within the meaning of the Securities Act and Exchange Act and the applicable published rules and regulations thereunder.

3.26 Money Laundering . The operations of the Company and its Subsidiaries are and have been conducted at all times in compliance with applicable financial record-keeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970, as amended, applicable money laundering statutes and applicable rules and regulations thereunder (collectively, the “**Money Laundering Laws** ”), and no action, suit or proceeding by or before any court or governmental agency, authority or body or any arbitrator involving the Company with respect to the Money Laundering Laws is pending or, to the Company’s Knowledge, threatened.

3.27 No “Bad Actor” Disqualification . The Company has conducted a factual inquiry including the procurement of relevant questionnaires from each Covered Person (as defined below) or other means to determine whether any Covered Person (as defined below) is subject to any of the “bad actor” disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (“**Disqualification Events** ”). Neither the Company, nor, to the Company’s Knowledge, after conducting such factual inquiries, any other Covered Person, is subject to a Disqualification Event, except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3) under the Securities Act. The Company has complied, to the extent applicable, with any disclosure obligations under Rule 506(e) under the Securities Act. “**Covered Persons** ” are those persons specified in Rule 506(d)(1) under the Securities Act, including the Company; any predecessor or affiliate of the Company; any director, executive officer, other officer participating in the offering, general partner or managing member of the Company; any beneficial owner of 20% or more of the Company’s outstanding voting equity securities, calculated on the basis of voting power; any promoter (as defined in Rule 405 under the Securities Act) connected with the Company in any capacity at the time of the sale of the Shares; and any person that has been or will be paid (directly or indirectly) remuneration for solicitation of purchasers in connection with the sale of the Shares (a “**Solicitor** ”), any general partner or managing member of any Solicitor, and any director, executive officer or other officer participating in the offering of any Solicitor or general partner or managing member of any Solicitor.

4. Representations and Warranties of the Purchaser . The Purchaser hereby represents and warrants as of the date hereof to the Company as follows:

4.1 Organization; Good Standing . The Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. The Purchaser has or will have all requisite power and authority to enter into the Transaction Agreements, to subscribe for the Shares and to perform its obligations under and to carry out the other transactions contemplated by the Transaction Agreements, and no further approval or authorization by any of its stockholders, partners, members or other equity owners, as the case may be, is required.

4.2 Requisite Power and Authority . The Purchaser has all necessary power and authority to execute and deliver the Transaction Agreements and all action on the Purchaser’s part required for the lawful execution and delivery of the Transaction Agreements has been taken. The Transaction Documents been duly and validly executed and delivered by the Purchaser and the Transaction Agreements are, assuming due authorization, execution and delivery by the Company, valid and binding obligations of the Purchaser, enforceable in accordance with their terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or

other Laws of general application affecting enforcement of creditors' rights, (b) as limited by general principles of equity that restrict the availability of equitable remedies, and (c) to the extent that the enforceability of indemnification provisions may be limited by applicable Laws.

4.3 No Conflicts . The execution, delivery and performance of the Transaction Agreements and compliance with the provisions thereof by the Purchaser will not, with or without the passage of time or giving of notice: (i) conflict with or result in a violation of the certificate of incorporation, bylaws, or other organizational or constitutive documents of the Purchaser as in effect on the Closing Date, (ii) result in any violation of any Law or Order to which the Purchaser or any of its assets is subject, (iii) (A) conflict with or result in a breach, violation of, or constitute a default under, or (B) give any third party the right to modify, terminate or accelerate, or cause any modification, termination or acceleration of, any obligation under any Contract to which the Purchaser is a party, or (iv) result in the creation of any Lien upon any of the Purchaser's assets or capital stock, except in the case of any of clauses (ii), (iii) and (iv) above, as would not reasonably be expected to materially impair of the ability of the Purchaser to perform its obligations under the Transaction Agreements and the transactions contemplated thereby in any material respect.

4.4 No Governmental Authority or Third Party Consents . No Consent is required to be obtained or filed by the Purchaser in connection with the authorization, execution and delivery of any of the Transaction Agreements or with the subscription for the Shares, except under the HSR Act or such as have been obtained or filed.

4.5 Investment Representations . Purchaser understands that the Shares have not been registered under the Securities Act. The Purchaser also understands that the Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon the Purchaser's representations contained in the Agreement. The Purchaser hereby represents and warrants as follows:

(a) Purchaser Acknowledgements . The Purchaser acknowledges that the Shares have not been registered under the Securities Act or under any state or foreign securities laws. The Purchaser (i) acknowledges that it is acquiring the Shares pursuant to an exemption from registration under the Securities Act solely for investment with no present intention to distribute any of the Shares to any person in violation of applicable securities Laws, (ii) will not sell or otherwise dispose of any of the Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities Laws, (iii) has such knowledge and experience in financial and business matters and in investments of this type that it is capable of evaluating the merits and risks of its investment in the Shares and of making an informed investment decision, (iv) is an "accredited investor" (as that term is defined by Rule 501 of the Securities Act) and (v) (A) has been furnished with or has had full access to all the information that it considers necessary or appropriate to make an informed investment decision with respect to the Shares, (B) has had an opportunity to discuss with management of the Company the intended business and financial affairs of the Company and, in connection therewith, obtained information necessary to verify any information furnished to it or to which it had access (it being agreed and understood that this Clause (v) does not affect the Company's representations and warranties contained in Section 3) and (C) can bear the economic risk of (x) an investment in the Shares indefinitely and (y) a total loss in respect of such investment. The Purchaser has such

knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of and form an investment decision with respect to its investment in the Shares and to protect its own interest in connection with such investment. The Purchaser understands that there is no assurance that any exemption from registration under the Securities Act will be available to transfer the Shares and that, even if available, such exemption may not allow the Purchaser to transfer all or any portion of the Shares under the circumstances, in the amounts or at the times the Purchaser might propose.

(b) **No “Bad Acts .”** The Purchaser’s responses in its Private Placement “Bad Actor” Questionnaire, dated December 17, 2016, are true and correct.

(c) **Financial Capability .** The Purchaser has funds necessary to consummate the Closing on the terms and conditions contemplated by this Agreement.

(d) **Ownership .** Neither the Purchaser nor any of its Controlled Affiliates is the owner of record or the beneficial owner of Common Shares or Common Share Equivalents.

4.6 Transfer Restrictions .

(a) The Purchaser understands that the Shares shall be subject to restrictions on resale pursuant to this Agreement and applicable securities Laws and that any certificates representing the Shares or the applicable balance account of the Purchaser with the Company’s transfer agent shall bear transfer restrictions with the effect of the following applicable legends:

(i) “These securities have not been registered under the Securities Act of 1933. They may not be sold, offered for sale, pledged or hypothecated in the absence of a registration statement in effect with respect to the securities under the Securities Act or an opinion of counsel (which counsel shall be reasonably satisfactory to Merus N.V.) that such registration is not required or unless sold pursuant to Rule 144 of the Securities Act.”;

(ii) “These securities are subject to transfer and other restrictions set forth in a Share Subscription Agreement, dated December 20, 2016, copies of which are on file with Merus N.V.”; and

(iii) any legend required by other applicable securities Laws.

(b) The Shares shall not bear the transfer restrictions set forth in Section 4.6(a) (i) hereof: (i) following a sale of Shares pursuant to an effective registration statement covering the resale of such Shares, (ii) following any sale of Shares pursuant to Rule 144 promulgated under the Securities Act (“ **Rule 144** ”) (or any successor provision then in effect), or (iii) if such legend is not required under applicable requirements of the Securities Act (including judicial interpretations and pronouncements issued by the staff of the Commission). In addition, the Shares shall not bear the transfer restrictions set forth in Section 4.6(a)(iii) hereof following a sale of Shares if, following a sale, the shares are not required to carry a legend pursuant to such applicable securities Laws referred to in (iii) of the immediately preceding sentence.

Notwithstanding the foregoing, the Company shall direct the Transfer Agent to remove the transfer restriction set forth in Section 4.6(a)(i) applicable to the Shares upon: (y) the written request of the Purchaser, within two (2) Business Days of such request, at such time as the Shares may be transferred without the requirement that the Company be in compliance with the public information requirements and without volume or manner-of-sale restrictions under Rule 144 or (z) the determination by counsel satisfactory to the Company that the Shares are no longer Registrable Shares (as defined below) pursuant to Section 5.11(c)(ii)(B).

(c) The Shares shall not bear the transfer restriction set forth in Section 4.6(a)(ii) hereof upon the termination of the restrictions set forth in Section 5.3.

5. Covenants and Agreements.

5.1 Further Assurances . Subject to the terms and conditions of this Agreement, each of the Company and the Purchaser agrees to use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and assist the other party hereto in doing, all things reasonably necessary, proper or advisable to obtain satisfaction of the conditions precedent to the consummation of the transactions contemplated at the Closing, including: (a) obtaining all necessary Consents and the making of all filings and the taking of all steps as may be necessary, including convening any prerequisite meetings of bodies of the Company, to obtain a required Consent or avoid an Action by any Governmental Authority, (b) the defending of any Actions challenging this Agreement or any other Transaction Agreements or the consummation of the transactions contemplated hereby or thereby, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (c) the execution and delivery of any additional instruments necessary to consummate the transactions contemplated by, and to fully carry out the purposes of, this Agreement and the other Transaction Agreements.

5.2 Standstill . During the period commencing on the Closing Date and ending on the earliest of (i) the [**] anniversary of the Closing Date, (ii) the date the Company publicly announces its intent to initiate or consummate any merger, consolidation, acquisition, scheme, business combination or other extraordinary transaction in which the Company or any of its Subsidiaries is a constituent entity or party, (iii) the submission or announcement of the intent to make any bona fide offer or attempt by any third party to acquire all or a substantial portion of the securities or assets of the Company through any means, process or structure and (iv) the termination of the Collaboration Agreement (the “ **Standstill Period** ”), the Purchaser agrees that, without the prior approval of the Company, the Purchaser will not, directly or indirectly, through its Controlled Affiliates or as a “group” (within the meaning of Section 13(d)(3) of the Exchange Act) with any other Person:

(a) purchase, offer to purchase, or agree to purchase or otherwise acquire beneficial ownership of any Common Shares or Common Share Equivalents, provided that, after the issuance by the Company of Common Shares as a result of an equity financing, the Purchaser may purchase Common Shares in routine trading transactions in an amount up to such number of shares as would result in the Purchaser maintaining its percentage ownership of the issued and outstanding Common Shares as of immediately prior to such issuance;

(b) make, or in any way participate in, any solicitation of proxies to vote, or seek to advise or influence any person with respect to the voting of, any voting securities of the Company or any of its Subsidiaries, or seek or propose to influence, advise, change or control the management, supervisory board, management board, policies, affairs or strategy of the Company by way of any public communication or other communications to securityholders intended for such purpose;

(c) make a proposal for, or offer of (with or without conditions) any acquisition of or extraordinary transaction involving the Company or any of its Subsidiaries or any of their respective securities or assets;

(d) effect or seek to effect (including, without limitation, by entering into discussions, negotiations, agreements or understandings with any third person), offer or propose (whether publicly or otherwise) to effect, or cause or participate in, or in any way assist or facilitate any other person to effect or seek, offer or propose (whether public or otherwise) to effect or participate (except as a holder of Common Shares) in a merger, consolidation, division, acquisition or exchange of substantially all assets or equity, change of control transaction, recapitalization, restructuring, liquidation or similar transaction involving the Company or any of its Subsidiaries;

(e) enter into any discussions, negotiations, arrangements or understandings with or form a group with, any third party in connection with such third party's taking, planning to take, or seeking to take any of the actions prohibited by clauses (a) through (d) of this Section 5.2 or otherwise act, alone or in concert with others, to seek to control or influence the supervisory and management boards or the management or policies of the Company, including its Subsidiaries; or

(f) publicly disclose any intention, plan or arrangement regarding any of the actions prohibited by clauses (a) through (e) of this Section 5.2; provided that, the foregoing restrictions of this Section 5.2 shall not (i) restrict private, non-public discussions regarding a transaction otherwise prohibited by this Section 5.2 with the supervisory board or management board of the Company; (ii) prohibit the Purchaser or its subsidiaries from acquiring securities of, or from entering into any merger or other business combination with, another Person that beneficially owns securities of the Company; provided, that the purpose of entering into such transaction is not to circumvent the terms in this Section 5.2; or (iii) limit the ability of the Purchaser to exercise its rights under Section 5.12.

5.3 Restrictions on Transfer .

(a) During the period commencing on the Closing Date and ending on the earlier of (i) the eighteen (18) month anniversary of the Closing Date and (ii) the expiration of the Standstill Period (the “ **Lock-Up Period** ”), the Purchaser will not Transfer any Shares (or Common Shares purchased pursuant to Section 5.2(a) hereof). Notwithstanding this Section 5.3, the Purchaser shall be permitted to Transfer any portion or all of its Shares at any time under the following circumstances:

(i) Transfers to any Affiliate, but only if the transferee agrees in writing for the benefit of the Company (in form and substance satisfactory to the Company and with a copy thereof to be furnished to the Company) to be bound by the terms of this Agreement and if the transferee and the transferor agree for the express benefit of the Company that the transferee shall Transfer Shares so Transferred back to the transferor at or before such time as the transferee ceases to be an Affiliate of the transferor; or

(ii) Transfers that have been approved in writing by the Company; or

(iii) if, following the Closing Date, the (A) Purchaser exceeds 20% ownership of the Company's voting securities solely as a result of an action taken by the Company and (B) as a result of (iii)(A), the Purchaser's auditors determine that the Company's financial results must be consolidated with the Purchaser's in the Purchaser's financial statements pursuant to the principles of consolidation under U.S. generally accepted accounting principles ("U.S. GAAP"), Transfers made in order to reduce the Purchaser's ownership of the Company voting securities to the greater of (y) 19.99% and (z) such amount as would not require such consolidation under U.S. GAAP.

(b) From the period commencing on the date of the expiration of the Lock-Up Period (the "**Lock-Up Expiration Date**") until the three (3) year anniversary of the Lock-Up Expiration Date, the Purchaser will not, without the prior written consent of the Company, Transfer more than (i) one-third (1/3) of the Shares during any twelve (12) month period or (ii) ten percent (10%) of the Shares during any three (3) month period; provided, that if the Standstill Period is terminated other than in connection with the three (3) year anniversary of the Closing Date, the volume limitations on Transfer set forth in this Section 5.3(b) shall also terminate.

5.4 Voting of Shares . During the Standstill Period, in any vote of the shareholders of the Company (including, without limitation, with respect to the election of members of the management board and supervisory board), the Purchaser shall, and shall cause its Controlled Affiliates to, vote with respect to all voting securities of the Company as to which it is entitled to vote in accordance with the recommendation of a majority of the supervisory board. Notwithstanding this Section 5.4, the Purchaser and its Affiliates may vote any or all of the voting securities of the Company as to which they are entitled to vote, as they may determine in their sole discretion with respect to (i) any transaction the consummation of which would result in a Change of Control of the Company, (ii) any resolution to issue Common Shares or to grant rights to subscribe for Common Shares or to designate the management board as the authorized body to issue Common Shares or grant rights to subscribe for Common Shares, (iii) any resolution to authorize the management board to repurchase more than 20% of the issued and outstanding Common Shares on the date of such resolution, (iv) any resolution to approve resolution of the management board regarding a significant change in the identity or nature of the Company pursuant to section 2:107a of the Dutch Civil Code, (v) any resolution to amend the articles of association of the Company that would (A) materially affect the voting rights of the Common Shares or (B) disproportionately (or uniquely) and adversely affect the rights or benefits attached to or derived from the Common Shares owned by the Purchaser and its subsidiaries as compared

to the other holders of Common Shares, (vi) any resolution to dissolve or liquidate the Company or (vii) any resolution to merge or demerge the Company. During the Standstill Period, the Purchaser shall, and shall cause each of its Controlled Affiliates to, (a) be present in person or represented by proxy at all meetings of shareholders of the Company so that all voting securities of the Company as to which they are entitled to vote shall be counted as present for the purpose of determining the presence of a quorum at such meeting, provided that, if the Purchaser or Controlled Affiliate is represented by proxy, the Purchaser or Controlled Affiliate shall designate a third party to act as such proxy who is not a member of the Company's supervisory board, the Company's management board, or is an officer or employee of the Company; and (b) vote with respect to all voting securities of the Company as to which each is entitled to vote and not to abstain from any vote.

5.5 Securities Law Disclosure; Publicity . No public release or announcement concerning the transactions contemplated hereby or by any other Transaction Agreement, including the public filing of any Transaction Agreement pursuant to applicable securities Laws, shall be issued by the Company or the Purchaser without the prior consent of the Company (in the case of a release or announcement by the Purchaser) or the Purchaser (in the case of a release or announcement by the Company) (which consents shall not be unreasonably withheld, conditioned or delayed), except for any such release or announcement as may be required by securities Law or other applicable Law or the applicable rules or regulations of any securities exchange or securities market, in which case the Company or the Purchaser, as the case may be, shall allow the Purchaser or the Company, as applicable, reasonable time to comment on such release or announcement in advance of such issuance and the disclosing party shall consider the other party's comments in good faith. Following execution and delivery of this Agreement, the Company and the Purchaser shall issue a joint press release substantially in the form set forth in Exhibit B.

5.6 NASDAQ Matters . Prior to the Closing, the Company shall (a) take all actions which are necessary, including providing appropriate notice to NASDAQ of the transactions contemplated by this Agreement, for the Shares purchased at the Closing to remain listed on the NASDAQ Global Market and (b) comply with all listing, reporting, filing, and other obligations under the rules of NASDAQ and of the SEC.

5.7 Interim Operations of the Company . Prior to the Closing Date or the earlier termination of this Agreement in accordance with its terms, the Company shall not voluntarily delist from the NASDAQ Global Market. Between the date hereof and the Closing Date, the Company will not amend its articles of association in a manner that is adverse to the Purchaser's rights under the Transaction Agreements, and will not take or knowingly omit to take any action, or permit its Subsidiaries to take or to knowingly omit to take any action, that would or could reasonably be expected to have a Material Adverse Effect.

5.8 Integration . The Company shall not sell, offer for sale or solicit offers to buy or otherwise negotiate in respect of any security (as defined in the Securities Act) that would be integrated with the offer or sale of the Shares to be issued to the Purchaser hereunder for purposes of the rules and regulations of any of the following markets or exchanges on which the Common Shares or the Company is listed or quoted for trading on the date in question: the Pink

OTC Markets, the OTC Bulletin Board, the NASDAQ Capital Market, the NASDAQ Global Market, the NASDAQ Global Select Market, the NYSE MKT or the New York Stock Exchange.

5.9 Notification. After the date hereof and prior to the Closing Date, the Company shall promptly deliver to the Purchaser a written notice of any event or development that would, or could reasonably be expected to, result in any condition to Closing set forth in Section 6, not to be satisfied.

5.10 Use of Proceeds . The net proceeds received by the Company from each Closing shall be used for general corporate purposes at the direction of the management board of the Company.

5.11 Registration Rights . The Company covenants and agrees as follows:

(a) On June 1, 2017, or such earlier time as the Company in its sole discretion may agree in writing, or such later time as the Purchaser in its sole discretion may agree in writing, the Company shall file a registration statement to register the resale of the Registrable Shares on a Form F-3 registration statement (or such other form appropriate for such purpose if the Company does not meet the eligibility requirements for use of Form F-3) under the Securities Act and use reasonable best efforts to have such registration statement declared effective and maintain the effectiveness of such registration statement for a period ending on the date the Purchaser no longer holds Registrable Shares.

(b) All expenses, other than Selling Expenses (as defined below), incurred in connection with registrations, filings or qualifications pursuant to this Section 5.11, including all registration, filing and qualification fees; printers' and accounting fees; fees and disbursements of counsel for the Company; and the reasonable fees and disbursements, shall be borne and paid by the Company. All Selling Expenses shall be borne by the Purchaser; or if there are other selling shareholders with shares being registered pursuant to such registration statement, then pro rata by the selling shareholders based on the number of shares sold by such selling shareholder in the offering.

(c) For the purposes of this Section 5.11,

(i) “ **Losses** ” means any loss, damage, claim or liability (joint or several) to which a party hereto may become subject under the Securities Act, the Exchange Act, or other federal or state law, insofar as such loss, damage, claim or liability arises out of and is based upon: (A) any untrue statement or alleged untrue statement of a material fact contained in any registration statement of the Company registering the resale of the Registrable Shares, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto or (B) an omission or alleged omission to state in such registration statement a material fact required to be stated therein, or necessary to make the statements therein not misleading.

(ii) “ **Registrable Shares** ” means the Shares held by Purchaser including, without limitation, any Common Shares paid, issued or distributed in respect of any such Shares by way of stock dividend, stock split or distribution, or in connection with a

combination of shares, recapitalization, reorganization, merger or consolidation, or otherwise, but excluding Common Shares acquired in the open market before or after the date hereof, provided, however, that the Shares will not be “Registrable Shares” (A) after the Shares have been sold pursuant to an effective registration statement or in compliance with Rule 144, (B) when the remaining Shares held by the Purchaser could, in the opinion of counsel satisfactory to the Company, be sold by the Purchaser in a single transaction under the terms of this Agreement and the volume and manner of sale limitations under Rule 144, or (C) upon such time as the registration statement registering the resale of the Registrable Shares has been effective for forty two (42) months following the Lock-up Expiration Date (regardless of whether such months are consecutive).

(iii) “ **Selling Expenses** ” means the fees and disbursements of counsel for the Purchaser.

(d) With a view to making available to the Purchaser the benefits of Rule 144, during the twelve (12) month period following the expiration of the Lock-Up Period, the Company covenants that it will use commercially reasonable efforts to (i) file in a timely manner all reports and other documents required, if any, to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted thereunder and (ii) make available information necessary to comply with Rule 144 with respect to resales of the Shares under the Securities Act, at all times, to the extent required from time to time to enable the Purchaser to resell Shares without registration under the Securities Act within the limitation of the exemptions provided by (A) Rule 144 (if available with respect to resales of the Shares), as such rule may be amended from time to time or (B) any other rules or regulations now existing or hereafter adopted by the SEC.

(e) To the extent permitted by law, the Company will indemnify and hold harmless the Purchaser, and the partners, members, officers and directors of the Purchaser and each Person, if any, who controls the Purchaser (collectively, “ **Purchaser Indemnified Parties** ”), against any Losses, and the Company will pay to the Purchaser Indemnified Parties any legal or other reasonable and documented expenses incurred thereby in connection with investigating or defending any claim or proceeding from which Losses may result, as such expenses are incurred; provided, however, that the indemnity agreement contained in this Section 5.11(e) shall not apply to amounts paid in settlement of any such claim or proceeding if such settlement is effected without the consent of the Company, which consent shall not be unreasonably withheld, nor shall the Company be liable for any Losses to the extent that they arise out of or are based upon actions or omissions made in reliance upon and in conformity with written information furnished by or on behalf of any Purchaser Indemnified Party expressly for use in connection with such registration.

(f) Promptly after receipt by the Purchaser under this Section 5.11 of notice of the commencement of any action (including any governmental action) for which a Purchaser Indemnified Party may be entitled to indemnification hereunder, the Purchaser Indemnified Party will, if a claim in respect thereof is to be made against the Company under this Section 5.11, give the Company notice of the commencement thereof. The Company shall have the right to participate in such action and, to the extent the Company so desires, and to assume the

defense thereof with counsel mutually satisfactory to the Purchaser Indemnified Parties; provided, however, that the Purchaser Indemnified Parties shall have the right to retain one separate counsel for all such Purchaser Indemnified Parties, with the reasonable and documented fees and expenses to be paid by the Company, if representation of the Purchaser by the counsel retained by the Company would be inappropriate due to actual or potential conflict of interest between the Purchaser Indemnified Parties and the Company. The failure to give notice to the Company within a reasonable time of the commencement of any such action shall relieve the Company of any liability to the Purchaser Indemnified Parties under this Section 5.11, only to the extent that such failure materially prejudices the Company's ability to defend such action. The failure to give notice to the Company will not relieve it of any liability that it may have to the Purchaser otherwise than under this Section 5.11.

(g) To provide for just and equitable contribution to joint liability under the Securities Act in any case in which contribution under the Securities Act may be required on the part of the Purchaser Indemnified Parties, then such parties will contribute to the aggregate losses, claims, damages, liabilities, or expenses to which they may be subject (after contribution from others) in such proportion as is appropriate to reflect the relative fault of the Company and each Purchaser Indemnified Party in connection with the statements, omissions, or other actions that resulted in such loss, claim, damage, liability, or expense, as well as to reflect any other relevant equitable considerations. The relative fault of the Company and each Purchaser Indemnified Party shall be determined by reference to, among other things, whether the untrue or allegedly untrue statement of a material fact, or the omission or alleged omission of a material fact, relates to information supplied by the Company or by a Purchaser Indemnified Party and the parties' relative intent, knowledge, access to information, and opportunity to correct or prevent such statement or omission; provided, however, that, in any such case (x) the Purchaser will not be required to contribute any amount in excess of the public offering price of all such Registrable Shares offered and sold by the Purchaser pursuant to such registration statement, and (y) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

5.12 Participation in Future Financing .

(a) Subject to compliance with applicable securities laws, until the earlier of (i) such time as the Purchaser Transfers more than [**] of the Shares and (ii) termination of the Standstill Period, upon any issuance of Common Shares by the Company in a private placement to institutional investors for cash consideration (a "**Subsequent Financing**"), the Company agrees at least [**] Trading Days prior to the closing of the Subsequent Financing, to deliver to the Purchaser written notice of its intention to effect a Subsequent Financing (the "**Subsequent Financing Notice**"). The Subsequent Financing Notice shall describe in reasonable detail the proposed terms of such Subsequent Financing, the amount of proceeds intended to be raised thereunder and the Person or Persons through or with whom such Subsequent Financing is proposed to be effected. Upon receipt of the Subsequent Financing Notice, the Company and the Purchaser shall in good faith discuss the Purchaser's participation in the Subsequent Financing up to the Purchaser's Pro-Rata Share (as defined below) on the same terms, conditions and price provided for in the Subsequent Financing. For purposes of this Agreement, the Purchaser's

“ **Pro-Rata Share** ” shall be equal to the number of Common Shares deemed to be beneficially owned by the Purchaser immediately prior to the date of the Subsequent Financing Notice (based upon documentation or written representation reasonably satisfactory to the Company), divided by the total number of Common Shares outstanding (including any Common Shares issuable upon conversion or exercise of outstanding Common Share Equivalents deemed to be beneficially owned by the Purchaser and included in the numerator of its pre-Subsequent Financing Notice beneficial ownership calculation) immediately prior to the closing of the Subsequent Financing.

(b) If the Purchaser desires to participate in such Subsequent Financing, the Purchaser must provide written notice to the Company, by not later than 5:30 p.m. (New York City time) on the [**] Trading Day after the Purchaser has received the Subsequent Financing Notice (the “ **Participation Deadline** ”), that the Purchaser is willing to participate in the Subsequent Financing and stating the amount of the Purchaser’s elected participation, but in no event shall such amount of Common Shares that would cause the Purchaser to exceed its Pro-Rata Share. If the Company receives no such notice from the Purchaser as of the Participation Deadline, the Purchaser shall be deemed to have notified the Company that it does not elect to participate in the Subsequent Financing.

(c) Notwithstanding anything to the contrary in this Section 5.12, it is understood and agreed that: (i) the foregoing agreement to engage in good faith discussions with respect to a Subsequent Financing only applies in the event of a private placement with institutional investors (*i.e.* , not a public offering or in connection with a strategic transaction) and (ii) the Company will neither be obligated to include the Purchaser as an investor in any such private placement nor will the Purchaser be obligated to invest in any such private placement.

(d) If, by the [**] day following delivery of the Subsequent Financing Notice, no public disclosure regarding a transaction with respect to the Subsequent Financing has been made, such Subsequent Financing shall be deemed to have been abandoned and the Purchaser shall not be in possession of any material, non-public information with respect to the Company, unless the Company advises the Purchaser that the Subsequent Financing has not been abandoned. The Company understands and confirms that the Purchaser may rely on this Section 5.12(d) when effecting transactions in securities of the Company.

5.13 PFIC Reporting . For so long as the Purchaser holds Shares, the Company hereby agrees to reasonably cooperate with the Purchaser in order to permit the Purchaser to determine whether the Company is at any time a “passive foreign investment company” (as defined in Section 1297(a) of the Code) (a “ **PFIC** ”). In furtherance of the foregoing, the Company shall notify the Purchaser if, in good faith, the Company reasonably believes the Company or any of its controlled Subsidiaries was a PFIC during the prior taxable year. If the Company determines that the Company or any of its controlled subsidiaries is a PFIC, the Company shall (i) promptly after such determination notify the Purchaser, (ii) timely provide such information to the Purchaser as the Purchaser may reasonably request to enable the Purchaser to complete its U.S. Internal Revenue Service Form 8621 with respect to such entity and (iii) use reasonable efforts to provide such statements, information and documentation as the Purchaser reasonably believes is necessary for it to make an election to treat such subsidiary as a “qualified electing fund” under Section 1295 of the Code.

5.14 Controlled Foreign Corporation . For so long as the Purchaser is a “United States shareholder” within the meaning of Section §951(b) of the Code (a “ **10% U.S. Shareholder** ”) of the Company at any point during a taxable year, then the Company hereby agrees to reasonably cooperate with the Purchaser in order to permit the Purchaser to determine whether the Company is a “controlled foreign corporation” within the meaning of Section 957 of the Code (a “ **CFC** ”). If the Company is or is likely to have become a CFC, then the Company shall use reasonable efforts to provide to the Purchaser such information as it may reasonably request to assist the Purchaser to timely comply with its filing obligations under the Code, including but not limited to Internal Revenue Service Form 5471.

6. Conditions to Closing .

6.1 Conditions to Purchaser’s Obligations at the Closing . The Purchaser’s obligation to purchase Shares at the Closing is subject to the satisfaction, at or prior to the Closing Date, of the following conditions (unless waived in writing by the Purchaser):

(a) Representations and Warranties . The representations and warranties made by the Company in Section 3 hereof shall be true and correct in all material respects as of the Signing Date and the Closing Date as if made on such date, except to the extent any such representation and warranty is (i) already qualified by materiality, in which case it shall be true and correct as of such dates or (ii) specifically made as of a particular date, in which case it shall be true and correct as of such date.

(b) Performance of Obligations . The Company shall have performed and complied in all material respects with all agreements and conditions herein required to be performed or complied with by the Company on or before the Closing Date.

(c) Legal Investment . The sale and issuance of the Shares shall be legally permitted by all Laws to which the Purchaser and the Company are subject.

(d) No Orders . No Order shall be in effect preventing the consummation of the transactions contemplated by the Transaction Agreements.

(e) Closing Deliverables . The Company shall deliver or cause to be delivered to the Purchaser all items listed in Section 2.3(a).

(f) Collaboration Agreement . The Company shall have executed the Collaboration Agreement, the only remaining condition to the effectiveness of the Collaboration Agreement shall be the Closing, the Effective Date (as such term is defined in the Collaboration Agreement) of the Collaboration Agreement shall occur concurrently with the Closing, no breach by the Company of any term of or obligation under the Collaboration Agreement shall have occurred and be continuing, and the Collaboration Agreement shall not have been terminated in accordance with its terms.

(g) Consents, Permits, and Waivers . All Consents necessary or appropriate for consummation of the transactions contemplated by the Transaction Agreements shall have been obtained, including the approval of the supervisory board of the Company. All

filings to be made under the HSR Act or any other similar antitrust Laws (including but not limited to the Netherlands), with respect to the Transaction Agreements and the transactions contemplated hereby and thereby, shall have been made and the applicable waiting period, including all extensions thereof, under the HSR Act or any other similar antitrust Laws (including but not limited to the Netherlands), shall have expired or been terminated.

(h) **Material Adverse Effect** . No Material Adverse Effect shall have occurred and be continuing.

(i) **The Company's NASDAQ Listing** . The Company's Common Shares shall continue to be listed on the NASDAQ Global Market.

(j) **No Outstanding Preference Shares**. Stichting Continuïteit Merus shall not have exercised, either in whole or in part, its call option to have preference shares issued to it, or Stichting Continuïteit Merus shall have exercised, either in whole or in part, its call option to have preference shares issued to it in circumstances where such exercise is not detrimental to the Purchaser, to be determined in the Purchaser's reasonable discretion.

6.2 Conditions to Company's Obligations at the Closing . The Company's obligation to issue and sell Shares at the Closing is subject to the satisfaction, on or prior to the Closing Date, of the following conditions (unless waived in writing by the Company):

(a) **Representations and Warranties** . The representations and warranties in Section 4 made by the Purchaser shall be true and correct in all material respects as of the Signing Date and the Closing Date as if made on such date, except to the extent any such representation and warranty is (i) already qualified by materiality, in which case it shall be true and correct as of such dates or (ii) specifically made as of a particular date, in which case it shall be true and correct as of such date.

(b) **Performance of Obligations** . The Purchaser shall have performed and complied with all agreements and conditions herein required to be performed or complied with by the Purchaser on or before the Closing Date.

(c) **Legal Investment** . The sale and issuance of the Shares shall be legally permitted by all Laws to which the Purchaser and the Company are subject.

(d) **No Orders** . No Order shall be in effect preventing the consummation of the transactions contemplated by the Transaction Agreements.

(e) **Closing Deliverables** . The Purchaser shall deliver or cause to be delivered to the Company all items listed in Section 2.3(b).

(f) **Collaboration Agreement** . The Purchaser shall have executed the Collaboration Agreement, the only remaining condition to the effectiveness of the Collaboration Agreement shall be the Closing, the Effective Date (as such term is defined in the Collaboration Agreement) of the Collaboration Agreement shall occur concurrently with the Closing, no breach by the Purchaser of any term of or obligation under the Collaboration Agreement shall have

occurred and be continuing, and the Collaboration Agreement shall not have been terminated in accordance with its terms.

(g) **Consents, Permits, and Waivers** . All Consents necessary or appropriate for consummation of the transactions contemplated by the Transaction Agreements shall have been obtained. All filings to be made under the HSR Act or any other similar antitrust Laws (including but not limited to the Netherlands), with respect to the Transaction Agreements and the transactions contemplated hereby and thereby, shall have been made and the applicable waiting period, including all extensions thereof, under the HSR Act or any other similar antitrust Laws (including but not limited to the Netherlands), shall have expired or been terminated.

7. Notification under the HSR Act

7.1 As a result of the aggregate consideration being paid by the Purchaser under this Agreement and the Collaboration Agreement, which satisfies the size of transaction jurisdictional threshold under the HSR Act, the parties shall, as soon as practicable, and, in any event, no later than five (5) Business Days after the Signing Date, file or cause to be filed with the Federal Trade Commission (the “**FTC**”) and the Department of Justice (the “**DOJ**”) the notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder with respect to the transactions contemplated by this Agreement. The parties will use all reasonable efforts to respond on a timely basis to any requests for additional information made by either of such agencies. Each party will be responsible for its own costs and expenses and the Purchaser will be responsible for all filing fees associated with any notifications required to be filed under the HSR Act and the rules and regulations promulgated thereunder.

7.2 The Purchaser and the Company shall: (i) reasonably cooperate with each other in connection with any investigation or other inquiry relating to the transactions contemplated by the Transaction Agreements; (ii) reasonably keep the other party informed of any communication received by such party from, or given by such party to, the FTC, the DOJ or any other merger control authority and of any communication received or given in connection with any proceeding by a private party, in each case regarding the transactions contemplated by the Transaction Agreements; (iii) promptly respond to and certify substantial compliance with any inquiries or requests received from the FTC or the DOJ for additional information or documentation; (iv) reasonably consult with each other in advance of any meeting or conference with the FTC, the DOJ or any other merger control authority, and to the extent permitted by the FTC, the DOJ or such other merger control authority and reasonably determined by such party to be appropriate under the circumstances, give the other party or their counsel the opportunity to attend and participate in such meetings and conferences; and (v) permit the other party or their counsel to the extent reasonably practicable to review in advance, and in good faith consider the views of the other party or their counsel concerning, any submission, filing or communication (and documents submitted therewith) intended to be given by it to the FTC, the DOJ or any other merger control authority; provided, however, such party shall be under no obligation to reschedule any meetings or conferences with the FTC, the DOJ or any other merger control authority to enable the other party to attend.

8. Miscellaneous

8.1 Termination . This Agreement may be terminated at any time prior to the Closing by:

- (a) mutual written consent of the Company and the Purchaser;
- (b) either the Company or the Purchaser, upon written notice to the other no earlier than ninety (90) days after the Signing Date (the “ **Termination Date** ”), if the Closing has not been consummated by the Termination Date;
- (c) either the Company or the Purchaser, upon written notice to the other, if any of the conditions to the Closing set forth in Section 6.1(c), 6.1(d), 6.1(g), 6.2(c), 6.2(d) or 6.2(g) as applicable, despite the use of reasonable efforts shall have become incapable of fulfillment by the Termination Date and shall not have been waived in writing by the other party within ten (10) Business Days after receiving receipt of written notice of an intention to terminate pursuant to this clause (c); provided, however, that the right to terminate this Agreement under this Section 8.1(c) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure to consummate the transactions contemplated hereby prior to the Termination Date;
- (d) the Company, upon written notice to the Purchaser, so long as the Company is not then in breach of its representations, warranties, covenants or agreements under this Agreement such that any of the conditions set forth in Section 6.1(a) despite the use of reasonable efforts could not be satisfied by the Termination Date, (i) upon a material breach of any covenant or agreement on the part of the Purchaser set forth in this Agreement, or (ii) if any representation or warranty of the Purchaser shall have been or become untrue, in each case such that any of the conditions set forth in Section 6.2(a) or 6.2(b), as applicable, could not be satisfied by the Termination Date; or
- (e) the Purchaser, upon written notice to the Company, so long as the Purchaser is not then in breach of its representations, warranties, covenants or agreements under this Agreement such that any of the conditions set forth in Section 6.2(a) or 6.2(b), as applicable, despite the use of reasonable efforts could not be satisfied by the Termination Date, (i) upon a breach of any covenant or agreement on the part of the Company set forth in this Agreement, or (ii) if any representation or warranty of the Company shall have been or become untrue, in each case such that any of the conditions set forth in Section 6.1(a) or 6.1(b), 6.1(h), 6.1(i) or 6.1(j) as applicable, could not be satisfied by the Termination Date.

8.2 Effect of Termination . In the event of the termination of this Agreement pursuant to Section 8.1 hereof, (a) this Agreement (except for this Section 8 (other than Section 8.10 and 8.17), and any definitions set forth in this Agreement and used in such sections) shall forthwith become void and have no effect, without any liability on the part of any party hereto or its Affiliates, and (b) all filings, applications and other submissions made pursuant to this Agreement, to the extent practicable, shall be withdrawn from the agency or other Person to which they were made or appropriately amended to reflect the termination of the transactions contemplated hereby; provided, however, that nothing contained in this Section 8.2 shall relieve any party from liability for fraud or any intentional or willful breach of this Agreement.

8.3 Governing Law; Waiver of Jury Trial . This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, without regard to the conflict of laws principles thereof that would require the application of the Law of any other jurisdiction, provided, that (i) the issue of the Shares as described in Section 2.1 and the private deed of issue of the Shares as described in Section 2.3(vii), (ii) the transfer of the Shares as described in Section 2.2, (iii) Section 3.1(a) to the extent relating to the Company, (iv) the capitalization of the Company as described in Section 3.3(a), (v) Section 3.4, to the extent relating to the Company and (vi) Section 3.22 (clauses (i) through (vi) above, jointly, the “ **Dutch Law Matters** ”), shall be governed exclusively by, and construed in accordance with, the laws of the Netherlands, without regard to the conflict of laws principles thereof that would require the application of the Law of any other jurisdiction. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York solely and specifically for the purposes of any action or proceeding arising out of or in connection with this Agreement, provided that the courts of the Netherlands shall have exclusive jurisdiction over the Dutch Law Matters. EACH OF THE PARTIES TO THIS AGREEMENT HEREBY AGREES THAT JURISDICTION AND VENUE IN ANY SUIT, ACTION OR PROCEEDING BROUGHT BY ANY PARTY ARISING OUT OF OR RELATING TO THIS AGREEMENT (INCLUDING ANY SUIT, ACTION OR PROCEEDING SEEKING EQUITABLE RELIEF) SHALL PROPERLY AND EXCLUSIVELY LIE IN THE STATE AND FEDERAL COURTS LOCATED IN THE STATE OF NEW YORK OR, IN ACCORDANCE WITH THIS SECTION 8.3, THE COURTS OF THE NETHERLANDS (THE “ **CHOSEN COURTS** ”). EACH PARTY HERETO FURTHER AGREES NOT TO BRING ANY SUCH SUIT, ACTION OR PROCEEDING IN ANY COURT OTHER THAN THE CHOSEN COURTS PURSUANT TO THE FOREGOING SENTENCE (OTHER THAN UPON APPEAL). BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY SUBMITS TO THE JURISDICTION OF THE CHOSEN COURTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY WITH RESPECT TO SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES HERETO IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN EACH OF THE CHOSEN COURTS, AND HEREBY WAIVE ANY OBJECTION THAT ANY SUCH CHOSEN COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH SUIT, ACTION OR PROCEEDING. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE) INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 8.3 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 8.3 WITH ANY COURT AS WRITTEN

EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

8.4 Survival . The representations, warranties, covenants and agreements made herein shall survive for three (3) years following the Closing. The representations, warranties, covenants and obligations of the Company, and the rights and remedies that may be exercised by the Purchaser, shall not be limited or otherwise affected by or as a result of any information furnished to, or any investigation made by or knowledge of, the Purchaser or its representatives.

8.5 Successors and Assigns . Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon the parties hereto and their respective successors, assigns, heirs, executors and administrators and shall inure to the benefit of and be enforceable by each person who shall be a holder of the Shares from time to time; provided, however, that prior to the receipt by the Company of adequate written notice of the transfer of any Shares specifying the full name and address of the transferee, the Company may deem and treat the person listed as the holder of such Shares in its records as the absolute owner and holder of such Shares for all purposes. This Agreement may not be assigned by any party hereto without the consent of the other party, provided, that the Purchaser may assign its rights and obligations hereunder in whole or in part to any Affiliate of the Purchaser or to any successor of the Purchaser as a result of a Change of Control of the Purchaser, provided further, that in the case of such assignment the assignee shall agree in writing to be bound by the provisions of this Agreement and the Purchaser shall not be relieved of its obligations hereunder.

8.6 Entire Agreement . This Agreement, the exhibits and schedules hereto, the other Transaction Agreements, and the other documents delivered pursuant hereto constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and no party shall be liable for or bound to any other in any manner by any oral or written representations, warranties, covenants and agreements except as specifically set forth herein and therein.

8.7 Severability . In the event one or more of the provisions of this Agreement should, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein. Upon such determination that any provision of this Agreement, or the application of any such provision, is invalid, illegal, void or unenforceable, the Company and the Purchaser shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Company and the Purchaser as closely as possible to the fullest extent permitted by Law in an acceptable manner to the end that the transactions contemplated hereby and the other Transaction Agreements are fulfilled to the greatest extent possible.

8.8 Amendment . No provision in this Agreement shall be supplemented, deleted or amended except in a writing executed by an authorized representative of each of the Purchaser and the Company. Any amendment effected in accordance with this Section 8.8 shall be binding upon each holder of Shares purchased under this Agreement at the time outstanding,

each future holder of all such Shares, and the Company, and any amendment not effected in accordance with this Section 8.8 shall be void and of no effect.

8.9 Waivers; Delays or Omissions . It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any Consent of any kind or character on any party's part of any breach, default or noncompliance under this Agreement or any waiver on such party's part of any provisions or conditions of the Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by Law, or otherwise afforded to any party, shall be cumulative and not alternative. Any waiver effected in accordance with this Section 8.9 shall be binding upon each holder of Shares purchased under this Agreement at the time outstanding, each future holder of all such Shares, and the Company, and any waiver not effected in accordance with this Section 8.9 shall be void and of no effect.

8.10 Equitable Relief . Each of the Company and the Purchaser hereby acknowledges and agrees that the failure of the Company to perform its respective agreements and covenants hereunder will cause irreparable injury to the Purchaser, for which damages, even if available, will not be an adequate remedy. Accordingly, the Company hereby agrees that the Purchaser shall be entitled to seek the issuance of equitable relief by any court of competent jurisdiction to compel performance of the Company's obligations.

8.11 Notices . All notices and other communications under this Agreement must be in writing and are deemed duly delivered when (a) delivered if delivered personally or by nationally recognized overnight courier service (costs prepaid), (b) sent by facsimile with confirmation of transmission by the transmitting equipment (or, the first Business Day following such transmission if the date of transmission is not a Business Day) or (c) received or rejected by the addressee, if sent by United States of America certified or registered mail, return receipt requested; in each case to the following addresses or facsimile numbers and marked to the attention of the individual (by name or title) designated below (or to such other address, facsimile number or individual as a party may designate by notice to the other parties):

If to the Company:

Merus N.V.
Yalelaan 62
3584 CH Utrecht
The Netherlands
Attention: Management Board of Merus N.V.
Anne Noordzij, Head of Legal

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

Latham & Watkins LLP

200 Clarendon Street
Boston, MA 02116
Facsimile: [**]
Attention: Peter N. Handrinos

and

Eversheds B.V.
De Cuserstaat 85a
1008 AC Amsterdam
The Netherlands
Facsimile: [**]
Attention: Tom van Wijngaarden

If to the Purchaser:

Incyte Corporation
1801 Augustine Cut-Off
Wilmington, DE 19803
United States of America
Facsimile: [**]
Attention: General Counsel

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

Morgan, Lewis & Bockius LLP
502 Carnegie Center
Princeton, NJ 08540
United States of America
Facsimile: [**]
Attention: Randall Sunberg
Emilio Ragosa

8.12 Expenses . Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

8.13 Attorneys' Fees . In the event that any Action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

8.14 Titles and Subtitles . The titles of the sections and subsections of the Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

8.15 Counterparts . This Agreement may be executed in any number of counterparts (including via facsimile, PDF or other electronic signature), each of which shall be an original, but all of which together shall constitute one instrument.

8.16 Broker's Fees . Each party hereto represents and warrants that no agent, broker, investment banker, person or firm acting on behalf of or under the authority of such party hereto is or will be entitled to any broker's or finder's fee or any other commission directly or indirectly in connection with the transactions contemplated herein. Each party hereto further agrees to indemnify each other party for any claims, losses or expenses incurred by such other party as a result of the representation in this Section 8.16 being untrue.

8.17 Pronouns . All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require. The words "include," "includes" and "including" will be deemed to be followed by the phrase "without limitation". The meanings given to terms defined herein will be equally applicable to both the singular and plural forms of such terms. All references to "dollars" or "\$" will be deemed references to the lawful money of the United States of America. All exhibits attached hereto and all other attachments hereto are hereby incorporated herein by reference and made a part hereof.

8.18 Third Party Beneficiaries . None of the provisions of this Agreement shall be for the benefit of or enforceable by any Third Party, including any creditor of any party hereto. No Third Party shall obtain any right under any provision of this Agreement or shall by reason of any such provision make any claim in respect of any debt, liability or obligation (or otherwise) against any party hereto.

8.19 No Strict Construction . This Agreement has been prepared jointly and will not be construed against either party. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party hereto by virtue of the authorship of any provisions of this Agreement.

[*Signature Page to Follow*]

CONFIDENTIAL TREATMENT MATERIAL

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

Company:

MERUS N.V.

By: /s/ Ton Logtenberg
Name: Ton Logtenberg
Title: Chief Executive Officer

By: /s/ Shelley Margetson
Name: Shelley Margetson
Title: Chief Operating Officer

[Signature Page to the Merus Share Subscription Agreement]

CONFIDENTIAL TREATMENT MATERIAL

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the first paragraph hereof.

Purchaser:

INCYTE CORPORATION

By: /s/ Hervé Hoppenot

Name: Hervé Hoppenot

Title: President and CEO

[Signature Page to the Merus Share Subscription Agreement]

CONFIDENTIAL TREATMENT MATERIAL

EXHIBIT A

FORM OF OPINION OF EVERSHEDES B.V.

CONFIDENTIAL TREATMENT MATERIAL

EXHIBIT B

JOINT PRESS RELEASE

COMPUTATION OF RATIOS OF EARNINGS TO FIXED CHARGES

	Year Ended December 31,				
	2012	2013	2014	2015	2016
	(in thousands)				
Income (loss) before provision for income taxes	\$ (44,146)	\$ (82,848)	\$ (48,547)	\$ 7,556	\$ 107,404
Fixed charges	22,818	17,131	11,793	11,937	7,684
Total earnings and fixed charges	\$ (21,328)	\$ (65,717)	\$ (36,754)	\$ 19,493	\$ 115,088
Fixed charges	22,818	17,131	11,793	11,937	7,684
Ratio of earnings to fixed charges(1)(2)	NM	NM	NM	1.6	15.0

(1) The ratio of earnings to fixed charges is computed by dividing income (loss) before provision for income taxes plus fixed charges by fixed charges. Fixed charges consist of interest expense (including interest expense from capital leases) and the estimated portion of rental expense deemed by us to be representative of the interest factor of rental payments under operating leases, plus amortization of debt issuance expenses. Earnings were insufficient to cover fixed charges by \$44.1 million, \$82.8 million and \$48.5 million for the years ended December 31, 2012, 2013 and 2014 respectively.

(2) NM—Not meaningful.

SUBSIDIARIES

<u>Subsidiary</u>	<u>Jurisdiction of Incorporation</u>
Incyte Pharma UK Ltd.	United Kingdom
Incyte Holdings Corporation	Delaware
Incyte International Holdings S.à r.l.	Luxembourg
Incyte Europe S.à r.l.	Switzerland
Incyte Spain S.L.	Spain
Incyte Italy S.r.l.	Italy
Incyte Germany GmbH	Germany
Incyte Biosciences Luxembourg S.à r.l	Luxembourg
Incyte Biosciences International S.à r.l.	Switzerland
Incyte Biosciences Denmark ApS	Denmark
Incyte Biosciences Finland Oy	Finland
Incyte Biosciences Germany GmbH	Germany
Incyte Biosciences Benelux B.V.	Netherlands
Incyte Biosciences Iberia S.L.	Spain
Incyte Biosciences UK Ltd	United Kingdom
Incyte Biosciences Austria GmbH	Austria
Incyte Biosciences Israel Ltd	Israel
Incyte Biosciences France	France
Incyte Biosciences Italy S.R.L.	Italy
Incyte Biosciences Norway AS	Norway
Incyte Biosciences Nordic AB	Sweden
Incyte Biosciences Canada ULC	Canada

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the Registration Statements (Form S-8 Nos. 333-93668, 333-91556, 333-125995, and 333-160006) pertaining to the 1993 Directors' Stock Option Plan of Incyte Corporation, (Form S-8 Nos. 333-47178, 333-63069, 333-67598, 333-83291, 333-91542, 333-143753, 333-151716, and 333-160005) pertaining to the 1991 Stock Plan of Incyte Corporation, (Form S-8 Nos. 333-108013, 333-134472, 333-151715, 333-160007, 333-167528, 333-174919, and 333-212102) pertaining to the 1997 Employee Stock Purchase Plan of Incyte Corporation, (Form S-8 Nos. 333-167526, 333-174918, 333-182218, 333-189424, 333-197907, and 333-212104) pertaining to the 2010 Stock Incentive Plan of Incyte Corporation, (Form S-8 No. 333-193333) pertaining to the 2014 Restricted Stock Unit Award Agreement between Incyte Corporation and Hervé Hoppenot, as applicable, of our reports dated February 14, 2017, with respect to the consolidated financial statements of Incyte Corporation and the effectiveness of internal control over financial reporting of Incyte Corporation, included in this Annual Report (Form 10-K) for the year ended December 31, 2016.

/s/ Ernst & Young LLP

Philadelphia, Pennsylvania
February 14, 2017

CERTIFICATION

I, Hervé Hoppenot, certify that:

1. I have reviewed this annual report on Form 10-K of Incyte Corporation;
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 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(s) 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 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 fourth fiscal quarter 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(s) 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 functions):
 - 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 data; 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: February 14, 2017

/s/ Hervé Hoppenot

Hervé Hoppenot
Chief Executive Officer

CERTIFICATION

I, David W. Gryska, certify that:

1. I have reviewed this annual report on Form 10-K of Incyte Corporation;
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 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(s) 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 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 fourth fiscal quarter 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(s) 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 functions):
 - 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 data; 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: February 14, 2017

/s/ David W. Gryska

David W. Gryska
Chief Financial Officer

**STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350**

With reference to the Annual Report of Incyte Corporation (the "Company") on Form 10-K for the year ended December 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Hervé Hoppenot, Chief Executive Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ Hervé Hoppenot

Hervé Hoppenot
Chief Executive Officer
February 14, 2017

**STATEMENT PURSUANT TO
18 U.S.C. SECTION 1350**

With reference to the Annual Report of Incyte Corporation (the "Company") on Form 10-K for the year ended December 31, 2016, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David W. Gyska, Chief Financial Officer of the Company, certify, for the purposes of 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) the information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

/s/ David W. Gyska

David W. Gyska
Chief Financial Officer
February 14, 2017
