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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d)
of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): August 24, 2013

AMGEN INC.
(Exact name of registrant as specified in its charter)

Delaware	**95-3540776**
(State or other jurisdiction of incorporation)	**(I.R.S Employer Identification No.)**

One Amgen Center Drive
Thousand Oaks, California 91320-1799
(Address, including zip code, of principal executive office)

805-447-1000
(Registrant's telephone number, including area code)

N/A
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☒ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

Merger Agreement

On August 24, 2013, Amgen Inc., a Delaware corporation (the "Company" or "Amgen"), entered into an Agreement and Plan of Merger (the "Merger Agreement") with Arena Acquisition Company, a Delaware corporation and a wholly owned subsidiary of the Company ("Merger Sub"), and Onyx Pharmaceuticals, Inc., a Delaware corporation ("Onyx"). The board of directors of Onyx has unanimously (i) determined that the Merger Agreement and the transactions contemplated by the Merger Agreement are advisable and in the best interests of Onyx and its stockholders, (ii) approved and declared advisable the Merger Agreement, the Offer (as defined below), the Merger (as defined below) and the transactions contemplated thereby in accordance with the requirements of Delaware law and (iii) resolved to recommend that the stockholders of Onyx accept the Offer and tender their shares to Merger Sub pursuant to the Offer (as defined below). The board of directors of the Company has approved the transaction.

Pursuant to the Merger Agreement, and upon the terms and subject to the conditions described therein, the Company has agreed to commence a tender offer (the "Offer") for all of Onyx's outstanding shares of common stock, par value $0.001 per share (the "Shares"), at a purchase price of $125.00 per Share, net to the seller in cash, without interest, less any applicable withholding taxes. The obligation of the Company and Merger Sub to consummate the Offer is subject to the condition that there be validly tendered in accordance with the terms of the Offer and not validly withdrawn prior to the expiration date of the Offer that number of Shares that, when added to the Shares then owned by Merger Sub, would represent one Share more than one-half (1/2) of the sum of (i) all Shares then outstanding and (ii) all Shares that Onyx may be required to issue upon the vesting (including vesting solely as a result of the consummation of the Offer), conversion, settlement or exercise of all then outstanding warrants, options, benefit plans, obligations or securities convertible or exchangeable into Shares, or other rights to acquire or be issued Shares (including all then outstanding options, restricted stock units, performance stock units and other awards consisting of Shares granted and outstanding under Onyx equity plans and the Onyx 4.00% Convertible Senior Notes due 2016 (including the effect of any make-whole provision and assuming conversions of the Onyx Convertible Senior Notes are settled in full in Shares, assuming the effectiveness thereof occurred on the expiration date of the Offer), regardless of the conversion or exercise price or other terms and conditions thereof). The consummation of the Offer is also subject to the satisfaction of other customary conditions, including the expiration of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended. Consummation of the Offer is not subject to any financing condition.

As soon as practicable following the completion of the Offer and subject to the satisfaction or waiver of the remaining conditions set forth in the Merger Agreement, Merger Sub will be merged with and into Onyx (the "Merger"), with Onyx surviving as a wholly owned subsidiary of the Company. The Merger will be governed by Section 251(h) of the General Corporation Law of the State of Delaware, with no stockholder vote required to consummate the Merger. At the effective time of the Merger, each Share issued and outstanding immediately prior to such effective time (other than (i) Shares then owned by the Company, Onyx or any of their respective direct or indirect wholly owned subsidiaries and (ii) Shares that are held by any stockholders who properly demand appraisal in connection with the Merger) will cease to be issued and outstanding, will be cancelled, will cease to exist and will be converted into the right to receive an amount in cash equal to the same amount in cash per Share that is paid pursuant to the Offer, without interest, less any applicable withholding taxes.

The Merger Agreement contains representations and warranties and covenants customary for a transaction of this nature.

Onyx may terminate the Merger Agreement under certain circumstances, including to accept, and enter into a definitive agreement with respect to, an unsolicited, bona fide written proposal made by a third party after the date of the Merger Agreement pursuant to which such third party would acquire 80% or more of the voting power or the assets of Onyx and its subsidiaries on a consolidated basis on terms that Onyx's board of directors determines, in good faith (after consultation with its financial advisors and outside legal counsel), to be more favorable to Onyx's stockholders from a financial point of view than the terms of the Offer and the Merger and is reasonably capable of being completed on the terms proposed taking into account all relevant factors. Such termination is subject to the conditions that Onyx has otherwise complied with certain terms of the Merger Agreement, including the determination by its board of directors that the failure to take such actions would constitute a breach of their fiduciary duties to stockholders under applicable law, payment of a $303 million fee by Onyx and the concurrent execution of such definitive agreement by Onyx.

The foregoing summary of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement furnished herewith as Exhibit 2.1, which is incorporated herein by reference. The Merger Agreement has been attached to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company, Merger Sub or Onyx, their respective businesses, or the actual conduct of their respective businesses during the period prior to the consummation of the Merger. The Merger Agreement contains representations and warranties that are the product of negotiations among the parties thereto and the parties made to, and solely for the benefit of, each other as of specified dates. The assertions embodied in those representations and warranties are subject to qualifications and limitations agreed to by the respective parties and are also qualified in important part by confidential disclosure schedules delivered in connection with the Merger Agreement. The representations and warranties may have been made for the purpose of allocating contractual risk between the parties to the agreements instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors.

In connection with the Merger, the Company entered into the financing transactions described below.

Commitment Letter for Term and Bridge Loans

On August 24, 2013, the Company entered into a Commitment Letter (the "Commitment Letter") with Bank of America, N.A. ("Bank of America"), Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), JPMorgan Chase Bank, N.A. ("JPMCB"), J.P. Morgan Securities LLC ("JPMS") and Barclays Bank PLC ("Barclays", together with Bank of America, MLPFS, JPMCB and JPMS, the "Commitment Parties") pursuant to which the Commitment Parties committed, subject to the terms of the Commitment Letter, to provide the Company with:

- up to $1.65 billion of an up to $5.0 billion senior unsecured term loan facility of the Company (the "Term Loan Facility");

- in the event the Bridge B Facility (as defined below) has been fully drawn or is terminated, up to $500.0 million in senior unsecured loans (the "Bridge A Facility"); and
- to the extent the Term Loan Facility is not syndicated and/or the Company has not issued other debt prior to the date of consummation of the Merger in connection with a successful Offer, up to $5.0 billion in senior unsecured loans (the "Bridge B Facility;" together with the Bridge A Facility, the "Bridge Facilities;" and, together with the Term Loan Facility, the "Credit Facilities").

The Credit Facilities are intended to finance the Offer and to pay fees and expenses incurred in connection with consummation of the Merger. The Term Loan Facility will mature five years after the closing date and is expected to bear interest, at a rate tied to the prime rate, the federal funds effective rate or LIBOR. The Bridge Facilities will mature 364 days after the closing date and are expected to bear interest at a rate tied to LIBOR, subject to periodic adjustments. The Company may only borrow amounts under the Credit Facilities upon consummation of the Merger in connection with a successful Offer, in accordance with the terms of the Merger Agreement, prior to February 24, 2014. The Credit Facilities are also subject to other terms and conditions customary for commitments of this type.

The foregoing summary of the Commitment Letter does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Commitment Letter, which is filed as Exhibit 10.1 hereto and incorporated herein by reference.

Repurchase Agreement

On August 24, 2013, the Company entered into a Master Repurchase Agreement (the "Repurchase Agreement") with Bank of America, N.A. (the "Purchaser"), pursuant to which the Company has the right, subject to the terms and conditions of the Repurchase Agreement summarized below, to sell to the Purchaser 34,097 shares of Class A Preferred Stock (the "Purchased Securities") of its wholly owned subsidiary, ATL Holdings Limited ("ATL Holdings"), in one or more transactions prior to February 24, 2014 for an aggregate purchase price of $3.1 billion in cash with respect to the Purchased Securities.

Pursuant to the Repurchase Agreement, the Company is obligated to repurchase from the Purchaser, and the Purchaser is obligated to resell to the Company, the Purchased Securities on the repurchase date, which is scheduled to be the date occurring five years after the initial sale of the Purchased Securities, for an aggregate repurchase price equal to the aggregate purchase price paid by the Purchaser for such Purchased Securities plus any accrued and unpaid "price differential" (as described below).

ATL Holdings is an entity distinct from the Company and its other subsidiaries, with separate assets and liabilities. The Class A Preferred Stock is fully participating with ATL Holdings' common stock as to earnings and appreciation, and provides for a liquidation preference of $100,000 per share and a quarterly dividend on the liquidation preference equal to the amount accumulated on the liquidation preference at a floating interest rate of the greater of (a) LIBOR minus 0.25% per annum and (b) 0.01% per annum. The Purchaser is required to remit to the Company any dividends and other distributions that it receives on the

Purchased Securities, unless an event of default with respect to the Company has occurred and is continuing under the Repurchase Agreement. Under the Repurchase Agreement, the Company is obligated to make monthly "price differential" payments to the Purchaser based on the outstanding purchase price of the Purchased Securities at a floating interest rate of LIBOR plus 1.10% which are calculated and accrue on a daily basis. Any unused commitments under the Repurchase Agreement will also be subject to an undrawn fee of 0.10% per annum.

The Repurchase Agreement contains events of default that are customary for repurchase agreements, including failure of the Company to transfer, or failure of the Purchaser to purchase, the Purchased Securities when required; failure of the Company to repurchase, or failure by the Purchaser to transfer, the Purchased Securities on the repurchase date; failure to pay amounts when due; insolvency events; breaches of representations; and unpermitted assignments. Under the Repurchase Agreement, the Company may repurchase all or, subject to certain limitations, a portion, of the Purchased Securities at any time. Upon the occurrence and continuance of an event of default, the non-defaulting party has the right to accelerate, or in the case of the occurrence of an insolvency event of the Company, the Purchaser will be deemed to have accelerated, the repurchase date.

In connection with the Repurchase Agreement, the Company will enter into an ancillary agreement with the Purchaser (the "Ancillary Agreement"), which contains a number of representations and covenants of the Company, including agreements by the Company intended to maintain the status of ATL Holdings as an entity distinct from the Company and its other subsidiaries.

The obligations of the Purchaser to purchase the Class A Preferred Stock are subject to conditions customary for transactions of this type. The Company expects to utilize the proceeds of any sales under the Repurchase Agreement to effectuate the Offer.

The foregoing summaries of the Repurchase Agreement and the Ancillary Agreement do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the agreements. The form of Repurchase Agreement is filed herewith as Exhibit 10.2, which is incorporated herein by reference. The form of the Certificate of Designations in respect of the Class A Preferred Stock is included as Exhibit IV to the Repurchase Agreement. The form of Ancillary Agreement is included as Exhibit III to the Repurchase Agreement.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information regarding the financing transactions set forth in Item 1.01 is incorporated herein by reference in its entirety.

Item 8.01. Other Events.

On August 25, 2013, the Company and Onyx issued a joint press release announcing the execution of the Merger Agreement. A copy of the press release is attached hereto as Exhibit 99.1 and incorporated herein by reference.

Additional Information

The Offer described in this current report on Form 8-K has not yet commenced, and this current report on Form 8-K is neither an offer to purchase nor a solicitation of an offer to sell any shares of the common stock of Onyx or any other securities. On the commencement

date of the Offer, a tender offer statement on Schedule TO, including an offer to purchase, a letter of transmittal and related documents, will be filed with the United States Securities and Exchange Commission (the "SEC"). The offer to purchase shares of Onyx common stock will only be made pursuant to the offer to purchase, the letter of transmittal and related documents filed as a part of the Schedule TO. **INVESTORS AND SECURITY HOLDERS ARE URGED TO READ BOTH THE TENDER OFFER STATEMENT AND THE SOLICITATION/RECOMMENDATION STATEMENT REGARDING THE OFFER, AS THEY MAY BE AMENDED FROM TIME TO TIME, WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION.** The tender offer statement will be filed with the SEC by the Company and Merger Sub, and the solicitation/recommendation statement will be filed with the SEC by Onyx. Investors and security holders may obtain a free copy of these statements (when available) and other documents filed with the SEC at the website maintained by the SEC at www.sec.gov or by directing such requests to the Information Agent for the tender offer that will be named in the tender offer statement.

Forward-Looking Statements

This current report on Form 8-K contains forward-looking statements that involve significant risks and uncertainties, including those discussed below and others that can be found in SEC reports filed by Amgen, including Amgen's Form 10-K for the year ended December 31, 2012, and in any subsequent periodic reports on Form 10-Q and Form 8-K. All statements, other than statements of historical fact, are statements that could be deemed forward-looking statements, including statements about the planned completion of the tender offer and the merger. Amgen is providing this information as of August 26, 2013 and does not undertake any obligation to update any forward-looking statements contained in this current report on Form 8-K as a result of new information, future events or otherwise.

No forward-looking statement can be guaranteed and actual results may differ materially from those Amgen projects. Risks and uncertainties include whether the proposed transaction described in this press release can be completed in a timely manner, and whether the anticipated benefits of the proposed transaction can be achieved. Amgen's results may be affected by its ability to successfully market both new and existing products domestically and internationally, clinical and regulatory developments (domestic or foreign) involving current and future products, sales growth of recently launched products, competition from other products (domestic or foreign) and difficulties or delays in manufacturing Amgen's products. Discovery or identification of new product candidates cannot be guaranteed and movement from concept to product is uncertain; consequently, there can be no guarantee that any particular product candidate will be successful and become a commercial product. Further, preclinical results do not guarantee safe and effective performance of product candidates in humans. The length of time that it takes for Amgen to complete clinical trials and obtain regulatory approval for product marketing has in the past varied and Amgen expects similar variability in the future. Amgen develops product candidates internally and through licensing collaborations, partnerships, joint ventures and acquisitions. Product candidates that are derived from relationships or acquisitions may be subject to disputes between the parties or may prove to be not as effective or as safe as Amgen may have believed at the time of entering into such relationship. In addition, sales of Amgen's products are affected by reimbursement policies imposed by third-party payers, including governments, private insurance plans and managed care providers and may be affected by regulatory, clinical and guideline developments and domestic and international trends toward managed care and healthcare cost containment as well as U.S. legislation affecting pharmaceutical pricing and reimbursement. Government and others' regulations and reimbursement policies may affect the development, usage and pricing of Amgen's products.

Furthermore, Amgen's research, testing, pricing, marketing and other operations are subject to extensive regulation by domestic and foreign government regulatory authorities. Amgen or others could identify safety, side effects or manufacturing problems with Amgen's products after they are on the market. Amgen's business may be impacted by government investigations, litigation and product liability claims. If Amgen fails to meet the compliance obligations in the corporate integrity agreement between Amgen and the U.S. government, Amgen could become subject to significant sanctions. Further, while Amgen routinely obtains patents for its products and technology, the protection offered by Amgen's patents and patent applications may be challenged, invalidated or circumvented by its competitors. Amgen depends on third parties for a significant portion of our manufacturing capacity for the supply of certain of its current and future products and limits on supply may constrain sales of certain of Amgen's current products and product candidate development. In addition, Amgen competes with other companies with respect to some of its marketed products as well as for the discovery and development of new products. Amgen's products may compete against products that have lower prices, established reimbursement, superior performance, are easier to administer, or that are otherwise competitive with Amgen's products. Further, some raw materials, medical devices and component parts for Amgen's products are supplied by sole third-party suppliers. Amgen's business performance could affect or limit the ability of its Board of Directors to declare a dividend or Amgen's ability to pay a dividend or repurchase its common stock.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of August 24, 2013, by and among Amgen Inc., Arena Acquisition Company and Onyx Pharmaceuticals, Inc.*
10.1	Commitment Letter, dated August 24, 2013, among Amgen Inc., Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC and Barclays Bank PLC
10.2	Master Repurchase Agreement, dated August 24, 2013, between Amgen Inc. and Bank of America, N.A.
99.1	Press Release dated August 25, 2013

* The Company will furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule or exhibit so furnished.

SIGNATURE

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: August 26, 2013

AMGEN INC.

By: /s/ David J. Scott
Name: David J. Scott
Title: Senior Vice President, General Counsel and Secretary

EXHIBIT INDEX

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of August 24, 2013, by and among Amgen Inc., Arena Acquisition Company and Onyx Pharmaceuticals, Inc.*
10.1	Commitment Letter, dated August 24, 2013, among Amgen Inc., Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC and Barclays Bank PLC
10.2	Master Repurchase Agreement, dated August 24, 2013, between Amgen Inc. and Bank of America, N.A.
99.1	Press Release dated August 25, 2013

* The Company will furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request; provided, however, that the Company may request confidential treatment pursuant to Rule 24b-2 of the Securities Exchange Act of 1934, as amended, for any schedule or exhibit so furnished.

Exhibit 2.1

AGREEMENT AND PLAN OF MERGER

by and among:

ONYX PHARMACEUTICALS, INC.,
a Delaware corporation;

AMGEN INC.,
a Delaware corporation; and

ARENA ACQUISITION COMPANY,
a Delaware corporation

Dated as of August 24, 2013

TABLE OF CONTENTS

AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER ("Agreement") is made and entered into as of August 24, 2013, by and among: **AMGEN INC.**, a Delaware corporation ("Parent"); **ARENA ACQUISITION COMPANY**, a Delaware corporation and a wholly owned subsidiary of Parent ("Purchaser"); and **ONYX PHARMACEUTICALS, INC.**, a Delaware corporation (the "Company"). Certain capitalized terms used in this Agreement are defined in **Exhibit A**.

RECITALS

A. Upon the terms and subject to the conditions of this Agreement, Purchaser has agreed to commence a cash tender offer (as it may be extended and amended from time to time as permitted under this Agreement, the "Offer") to acquire all of the outstanding shares of Company Common Stock ("Shares"), for $125.00 per share of Company Common Stock (such amount, or any different amount per share paid pursuant to the Offer to the extent permitted under this Agreement, being the "Offer Price"), net to the seller in cash, without interest.

B. Following the consummation of the Offer, upon the terms and conditions set forth herein, Purchaser will be merged with and into the Company (the "Merger") with the Company as the surviving corporation (the "Surviving Corporation") in accordance with the DGCL, whereby each Share, except as otherwise provided herein, will be converted into the right to receive the Offer Price, net to the seller in cash, without interest, upon the terms and subject to the conditions of this Agreement.

C. The Board of Directors of the Company has unanimously determined that this Agreement and the Transactions are advisable and in the best interests of the Company and its stockholders, has unanimously approved this Agreement and the Transactions in accordance with the DGCL, and has unanimously resolved to recommend that the stockholders of the Company accept the offer and tender their Shares to Purchaser pursuant to the Offer.

D. The Board of Directors of Parent has, on the terms and subject to the conditions set forth herein, approved the Transactions.

E. The Board of Directors of Purchaser has determined that, on the terms and subject to the conditions set forth herein, this Agreement and the Transactions are advisable and in the best interests of Purchaser and its stockholders, and has approved this Agreement and the Transactions.

F. The Merger shall be governed by Section 251(h) of the DGCL and shall be effected as soon as practicable following the consummation of the Offer upon the terms and subject to the conditions set forth in this Agreement.

The parties to this Agreement, intending to be legally bound, agree as follows:

Section 1. The Offer

1.1 The Offer.

(a) Provided that this Agreement shall not have been terminated in accordance with Section 8, and that all of the conditions set forth in clauses 2(a), (b), (c), (d), (g), (h) and (i) of **Annex I** shall then be satisfied (in the case of clause 2(d), with respect to covenants and obligations that the Company is required to comply with or to perform prior to such time) or waived by Parent or Purchaser, as promptly as practicable after the date of this Agreement but in no event more than ten (10) business days after the date of this Agreement, Purchaser shall (and Parent shall cause Purchaser to) commence (within the meaning of Rule 14d-2 under the Exchange Act) the Offer.

(b) Subject to the terms and conditions of this Agreement, including the prior satisfaction of the Minimum Condition and the satisfaction or waiver by Purchaser of the other conditions set forth in **Annex I** (collectively, the "Offer Conditions"), after the Expiration Date, as herein defined, Purchaser shall (and Parent shall cause Purchaser to) consummate the Offer in accordance with its terms, and promptly accept for payment and promptly thereafter pay for all Shares validly tendered and not properly withdrawn pursuant to the Offer.

(c) The Offer shall be made by means of an offer to purchase (the "Offer to Purchase") in accordance with the terms set forth in this Agreement, the Minimum Condition and the other Offer Conditions. Purchaser expressly reserves the right to (i) increase the Offer Price, (ii) waive any Offer Condition other than the Minimum Condition and (iii) make any other changes in the terms and conditions of the Offer not inconsistent with the terms of this Agreement; *provided*, *however*, that unless otherwise provided by this Agreement, without the prior written consent of the Company, Purchaser shall not (A) decrease the Offer Price, (B) change the form of consideration payable in the Offer, (C) decrease the maximum number of Shares sought to be purchased in the Offer, (D) impose conditions to the Offer in addition to the Offer Conditions, (E) amend or modify any of the Offer Conditions in a manner that adversely affects holders of Shares generally, (F) change the Minimum Condition, or (G) extend or otherwise change the Expiration Date in a manner other than as required or permitted by this Agreement. The Offer may not be terminated prior to the Expiration Date, unless this Agreement is terminated in accordance with Section 8.

(d) Unless extended pursuant to and in accordance with the terms of this Agreement, the Offer shall expire at midnight (New York City time) on the date that is twenty (20) business days (for this purpose calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) following the commencement (within the meaning of Rule 14d-2 under the Exchange Act) of the Offer (the "Initial Expiration Date") or, in the event the Initial Expiration Date has been extended pursuant to and in accordance with this Agreement, the date and time to which the Offer has been so extended (the Initial Expiration Date, or such later date and time to which the Initial Expiration Date has been extended pursuant to and in accordance with this Agreement, is referred to as the "Expiration Date").

(e) The Offer shall be extended from time to time as follows:

(1) If on the scheduled Expiration Date, the Minimum Condition has not been satisfied or any of the other Offer Conditions have not been satisfied, or waived by Parent or Purchaser if permitted hereunder, then Purchaser shall extend the Offer for one or more periods of not more than five (5) business days each (the length of such periods to be determined by Parent) or such other number of business days as the parties may agree (subject to the right of Purchaser to waive any Offer Condition (other than the Minimum Condition) in accordance with this Agreement and the parties' respective rights to terminate this Agreement in accordance with Section 8 of this Agreement, other than pursuant to Section 8.1(b)); and

(2) Purchaser shall extend the Offer for the minimum period required by applicable Legal Requirements, interpretation or position of the SEC or its staff or NASDAQ or its staff.

(f) The Offer Price shall be adjusted appropriately and proportionately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock), reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to Company Common Stock occurring on or after the date hereof and at or prior to the Offer Acceptance Time, and such adjustment to the Offer Price shall provide to the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such action; provided that nothing in this Section 1.1(f) shall be construed to permit the Company to take any action with respect to its securities that is prohibited by the terms of this Agreement.

(g) Purchaser may (and the Offer Documents may reserve the right of Purchaser to) provide for a subsequent offering period (within the meaning of Rule 14d-11 promulgated under the Exchange Act) in compliance with Rule 14d-11 under the Exchange Act of not less than three (3) nor more than twenty (20) business days (for this purpose calculated in accordance with Rule 14d-1(g)(3) under the Exchange Act) immediately following the expiration of the Offer. Subject to the terms and conditions set forth in this Agreement and the Offer, Parent shall cause Purchaser to, and Purchaser shall, accept and pay for all Shares validly tendered during any such subsequent offering period in compliance with Rule 14e-1(c) under the Exchange Act.

(h) In the event that this Agreement is terminated pursuant to the terms hereof, Purchaser shall (and Parent shall cause Purchaser to) promptly (and in any event within twenty-four (24) hours of such termination), irrevocably and unconditionally terminate the Offer, shall not acquire any Shares pursuant to the Offer and shall cause any depository acting on behalf of Purchaser to return, in accordance with applicable Legal Requirements, all tendered Shares to the registered holders thereof.

(i) As promptly as practicable on the date of commencement of the Offer (within the meaning of Rule 14d-2 under the Exchange Act), Parent and Purchaser shall

(i) file with the SEC a Tender Offer Statement on Schedule TO with respect to the Offer (together with all amendments and supplements thereto and including exhibits thereto, the "Schedule TO") that will contain or incorporate by reference the Offer to Purchase and form of the related letter of transmittal and (ii) cause the Offer to Purchase and related documents to be disseminated to holders of Shares. Parent and Purchaser agree that they shall cause the Schedule TO and all exhibits, amendments or supplements thereto (which together constitute the "Offer Documents") filed by either Parent or Purchaser with the SEC to comply in all material respects with the Exchange Act and the rules and regulations thereunder and other applicable Legal Requirements. Each of Parent, Purchaser and the Company agrees to promptly correct any information provided by it for use in the Offer Documents if and to the extent that such information shall have become false or misleading in any material respect, and Parent further agrees to use all reasonable efforts to promptly cause the Offer Documents as so corrected to be filed with the SEC and to promptly be disseminated to holders of Shares, in each case as and to the extent required by applicable Legal Requirements. The Company shall promptly furnish or otherwise make available to Parent and Purchaser or Parent's legal counsel all information concerning the Acquired Corporations and the Company's stockholders that may be required in connection with any action contemplated by this Section 1.1(i) including communicating the Offer to the record and beneficial holders of the Shares. The Company and its counsel shall be given reasonable opportunity to review and comment on the Offer Documents prior to the filing thereof with the SEC. Parent and Purchaser agree to provide the Company and its counsel with any comments Parent, Purchaser or their counsel may receive from the SEC or its staff with respect to the Offer Documents promptly after receipt of such comments. Each of Parent and Purchaser shall respond promptly to any comments of the SEC or its staff with respect to the Offer Documents or the Offer.

(j) Without limiting the generality of Section 9.12, Parent shall cause to be provided to Purchaser all of the funds necessary to purchase any Shares that Purchaser becomes obligated to purchase pursuant to the Offer, and shall cause Purchaser to perform, on a timely basis, all of Purchaser's obligations under this Agreement. Parent and Purchaser shall, and each of Parent and Purchaser shall ensure that all of their respective controlled Affiliates shall, tender any Shares held by them into the Offer.

1.2 Company Actions.

(a) The Company hereby consents to the Offer and represents that its Board of Directors, at a meeting duly called and held, has unanimously (i) determined that this Agreement and the Transactions are advisable and in the best interests of the Company's stockholders, (ii) approved and declared advisable this Agreement and the Transactions in accordance with the requirements of the DGCL, and (iii) resolved to recommend that stockholders of the Company accept the Offer and tender their Shares pursuant to the Offer (such recommendation set forth in this clause (iii) the "Company Board Recommendation"). Subject to Sections 1.2(b) and 1.2(c), the Company hereby consents to the inclusion of a description of the Company Board Recommendation in the Offer Documents.

(b) None of the Company, the Board of Directors of the Company or any committee thereof shall (i)(A) withhold, fail to include in (or remove from) the Schedule 14D-9, withdraw, qualify or modify (or resolve, determine or propose to withhold, fail to include

in (or remove from) the Schedule 14D-9, withdraw, qualify or modify) the Company Board Recommendation or (B) adopt, approve, recommend, submit to stockholders or declare advisable (or resolve, determine or propose to adopt, approve, recommend, submit to stockholders or declare advisable) any Acquisition Proposal (any action described in this clause (i) being referred to as an "Adverse Change Recommendation") or (ii) adopt, approve, recommend, submit to stockholders or declare advisable (or resolve, determine or propose to adopt, approve, recommend, submit to stockholders or declare advisable), or allow any Acquired Corporation to execute or enter into, any Contract constituting or related to, or that is intended to or would be reasonably likely to lead to, any Acquisition Transaction, or requiring or reasonably likely to cause the Company to abandon, terminate, delay or fail to consummate, or that would otherwise materially impede, interfere with or be inconsistent with, the Transactions (any such Contract, an "Alternative Acquisition Agreement"), except as expressly permitted by Section 1.2(c) or 5.4(a).

(c) Notwithstanding anything to the contrary contained in this Agreement, at any time prior to Purchaser accepting, for the first time, for payment Shares validly tendered and not properly withdrawn pursuant to the Offer (the "Offer Acceptance Time"), the Company's Board of Directors may make an Adverse Change Recommendation or terminate this Agreement to enter into a Specified Agreement if and only if: (i) the Company is not in breach of Section 5.4; (ii) the Company's Board of Directors determines in good faith, after consultation with the Company's outside legal counsel, that the failure to make the Adverse Change Recommendation or terminate this Agreement to enter into a Specified Agreement would constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements; (iii) Parent shall have received from the Company prior written notice of the Company's intention to make an Adverse Change Recommendation or terminate this Agreement to enter into a Specified Agreement at least four (4) business days prior to making any Adverse Change Recommendation or terminating this Agreement to enter into a Specified Agreement (a "Change of Recommendation Notice"); (iv) if the decision to make an Adverse Change Recommendation is not in connection with an Acquisition Proposal, then (A) an Intervening Event shall have occurred, and (B) the Company shall have complied with clauses (x) through (z) as follows: (x) the Change of Recommendation Notice shall have provided a reasonable description of the Intervening Event and the reasons for the Adverse Change Recommendation, (y) the Company shall have given Parent a four (4) business day period following Parent's receipt of the Change of Recommendation Notice to propose revisions to the terms of this Agreement or make other proposals and shall have negotiated in good faith with Parent (and caused its Representatives to negotiate with Parent) with respect to such proposed revisions or other proposals, if any, and (z) after considering the results of negotiations with Parent and taking into account the proposals made by Parent, if any, after consultation with its outside legal counsel, the Company's Board of Directors shall have determined, in good faith, that the failure to make the Adverse Change Recommendation would constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements; and (v) if the decision to make an Adverse Change Recommendation is in connection with an Acquisition Proposal or if the Company intends to terminate this Agreement to enter into a Specified Agreement, then the Company shall comply with clauses (A) through (E) as follows: (A) prior to giving effect to clauses (B) through (E), the Company's Board of Directors shall have determined in good faith, after consultation with its outside legal counsel and its financial advisor of nationally recognized reputation, that such Acquisition Proposal is a Superior Offer, (B) the Company shall have

provided to Parent in writing the material terms and conditions of such Acquisition Proposal and copies of all material documents relating to such Acquisition Proposal in accordance with Section 5.4, (C) the Company shall have given Parent the four (4) business day period following Parent's receipt of the Change of Recommendation Notice to propose revisions to the terms of this Agreement or make other proposals and shall have negotiated in good faith with Parent (and caused its Representatives to negotiate with Parent) with respect to such proposed revisions or other proposals, if any, so that the Acquisition Proposal would no longer constitute a Superior Offer and (D) after considering the results of negotiations with Parent and taking into account the proposals made by Parent, if any, after consultation with its outside legal counsel and its financial advisor of nationally recognized reputation, the Company's Board of Directors shall have determined in good faith that such Acquisition Proposal remains a Superior Offer and that the failure to make the Adverse Change Recommendation or terminate this Agreement to enter into a Specified Agreement would constitute a breach of the fiduciary duties of the Board of Directors of the Company to the Company's stockholders under applicable Legal Requirements and (E) if the Company intends to terminate this Agreement to enter into a Specified Agreement, the Company shall have complied with Section 8.1(f). For the avoidance of doubt, the provisions of this Section 1.2(c) shall also apply to any material amendment to any Acquisition Proposal or any successive Acquisition Proposals (except that any reference to four (4) business days shall instead be two (2) business days). Nothing contained in this Section 1.2(c) shall prohibit the Company's Board of Directors from taking and disclosing to the stockholders of the Company a position contemplated by Rule 14e-2(a) promulgated under the Exchange Act or making a statement contemplated by Item 1012(a) of Regulation M-A or Rule 14d-9(f) promulgated under the Exchange Act; *provided*, *however*, that any such disclosure does not contain either an express Adverse Change Recommendation or any other statements by or on behalf of the Company or the Board of Directors of the Company that would reasonably be expected to have the same effect as an Adverse Change Recommendation. Neither the Company nor its Board of Directors shall be permitted to recommend that the Company stockholders tender any securities in connection with any tender or exchange offer or otherwise approve, endorse or recommend any Acquisition Proposal, unless in each case, in connection therewith, the Company's Board of Directors effects an Adverse Change Recommendation in accordance with the terms of this Agreement.

(d) As promptly as practicable on the day that the Offer is commenced, the Company shall, following the filing of the Schedule TO, file with the SEC and disseminate to holders of Shares, in each case as and to the extent required by applicable federal securities laws, a Tender Offer Solicitation/Recommendation Statement on Schedule 14D-9 (together with any exhibits, amendments or supplements thereto, the "Schedule 14D-9") that, subject to Sections 1.2(b) and 1.2(c), shall reflect the Company Board Recommendation. The Schedule 14D-9 shall include as an exhibit an Information Statement pursuant to Section 14(f) of the Exchange Act and Rule 14f-l promulgated thereunder. The Company agrees that it will cause the Schedule 14D-9 to comply in all material respects with the Exchange Act and other applicable Legal Requirements. Each of Parent, Purchaser and the Company agrees to respond promptly to any comments of the SEC or its staff and to promptly correct any information provided by it for use in the Schedule 14D-9 if and to the extent that such information shall have become false or misleading in any material respect, and the Company further agrees to use all reasonable efforts to cause the Schedule 14D-9 as so corrected to promptly be filed with the SEC and to promptly be disseminated to holders of Shares, in each case as and to the extent required

by applicable federal securities laws. Parent and its counsel shall be given reasonable opportunity to review and comment on the Schedule 14D-9 and any amendment thereto prior to the filing thereof with the SEC. The Company agrees to provide Parent and its counsel with any comments the Company or its counsel may receive from the SEC or its staff with respect to the Schedule 14D-9 promptly after receipt of such comments. The Company shall respond promptly to any comments of the SEC or its staff with respect to the Schedule 14D-9.

(e) The Company shall promptly furnish Parent with a list of its stockholders, mailing labels and any available listing or computer file containing the names and addresses of all record holders of Shares and lists of securities positions of Shares held in stock depositories, in each case true and correct as of the most recent practicable date, and shall provide to Parent such additional information (including updated lists of stockholders, mailing labels and lists of securities positions) and such other assistance as Parent may reasonably request in connection with the Offer. Parent and Purchaser and their agents shall hold in confidence the information contained in any such labels, listings and files, shall use such information only in connection with the Offer and the Merger and, if this Agreement shall be terminated, shall, upon request, deliver, and shall use their reasonable efforts to cause their agents to deliver, to the Company (or destroy) all copies and any extracts or summaries from such information then in their possession or control.

1.3 Directors.

(a) Upon the Offer Acceptance Time and all times thereafter, subject to compliance with applicable Legal Requirements and the applicable Marketplace Rules of NASDAQ, Purchaser shall be entitled to elect or designate such number of directors, rounded up to the next whole number, on the Board of Directors of the Company as is equal to the product of (i) the total number of directors on the Board of Directors of the Company (after giving effect to the directors elected or designated by Purchaser pursuant to this sentence) multiplied by (ii) the percentage that the aggregate number of Shares beneficially owned by Parent, Purchaser and any of their Subsidiaries bears to the total number of Shares then outstanding, and Parent shall be entitled to have such designees be elected or appointed to such classes of the Board of Directors of the Company so as to be evenly distributed as possible among the three classes of directors of the Board of Directors of the Company. As used in this Agreement, the terms "beneficial ownership" (and its correlative terms) shall have the meaning assigned to such term in Rule 13d-3 under the Exchange Act. The Company and the Board of Directors of the Company shall, upon Purchaser's request at any time following the purchase of and payment for Shares pursuant to the Offer, take all such actions necessary to (A) appoint to the Board of Directors of the Company the individuals designated by Purchaser and permitted to be so designated by the first sentence of this Section 1.3(a), including promptly filling vacancies or newly created directorships on the Board of Directors of the Company, promptly increasing the size of the Board of Directors of the Company (including by amending the bylaws of the Company if necessary so as to increase the size of the Board of Directors of the Company) and/or promptly securing the resignations of such number of its incumbent directors as are necessary or desirable to enable Purchaser's designees to be so elected or designated to the Board of Directors of the Company, and (B) cause Purchaser's designees to be so appointed at such time. The Company shall, upon Purchaser's request following the Offer Acceptance Time, also cause Persons elected or designated by Purchaser to constitute the same percentage (rounded up to the next whole

number) as is on the Board of Directors of the Company of each committee of the Board of Directors of the Company to the extent permitted by applicable Legal Requirements and the NASDAQ Marketplace Rules. From and after the Offer Acceptance Time, the Company shall, at Parent's request, take all action necessary to elect to be treated as a "controlled company" as defined by NASDAQ Marketplace Rule 5615(c)(1) and make all necessary filings and disclosures associated with such status. The Company's obligations under this Section 1.3(a) shall be subject to Section 14(f) of the Exchange Act and Rule 14f-l promulgated thereunder. The Company shall promptly upon execution of this Agreement take all actions required pursuant to Section 14(f) of the Exchange Act and Rule 14f-l in order to fulfill its obligations under this Section 1.3(a), including mailing to stockholders (together with the Schedule 14D-9) the information required by Section 14(f) of the Exchange Act and Rule 14f-l as is necessary to enable Purchaser's designees to be elected or designated to the Board of Directors of the Company. Purchaser shall supply the Company with, and be solely responsible for, information with respect to Purchaser's designees and Parent's and Purchaser's respective officers, directors and Affiliates to the extent required by Section 14(f) of the Exchange Act and Rule 14f-l. The provisions of this Section 1.3(a) are in addition to and shall not limit any rights that any of Purchaser, Parent or any of their respective Subsidiaries may have as a record holder or beneficial owner of Shares as a matter of applicable Legal Requirements with respect to the election of directors or otherwise.

(b) In the event that Purchaser's designees are elected or designated to the Board of Directors of the Company pursuant to Section 1.3(a), then, until the Effective Time, the Company shall cause the Board of Directors of the Company to maintain three (3) directors who are members of the Board of Directors of the Company on or prior to the date hereof and who are not officers, directors or employees of Parent, Purchaser, or any of their Subsidiaries, each of whom shall be an "independent director" as defined by Rule 5605(a)(2) of the NASDAQ Marketplace Rules and eligible to serve on the Company's audit committee under the Exchange Act and NASDAQ Marketplace Rules, and at least one of whom shall be an "audit committee financial expert" as defined in Items 407(d)(5)(ii) and (iii) of Regulation S-K (the "Continuing Directors"); *provided*, *however*, that if any Continuing Director is unable to serve due to death, disability or resignation, the Company shall take all necessary action (including creating a committee of the Board of Directors of the Company) so that the Continuing Director(s) shall be entitled to elect or designate another Person (or Persons) to fill such vacancy, and such Person (or Persons) shall be deemed to be a Continuing Director for purposes of this Agreement. If no Continuing Director then remains, the other directors shall designate three (3) Persons who are not officers, directors or employees of Parent, Purchaser, or any of their Affiliates, and who do not otherwise have any material financial or other material interest in or material relationship with Parent, Purchaser or any of their Affiliates, to fill such vacancies and such Persons shall be deemed Continuing Directors for all purposes of this Agreement. Notwithstanding anything in this Agreement to the contrary, if Purchaser's designees constitute a majority of the Board of Directors of the Company after the Offer Acceptance Time and prior to the Effective Time, then the affirmative vote of a majority of the Continuing Directors shall (in addition to the approval rights of the Board of Directors of the Company or the stockholders of the Company as may be required by the Company Charter Documents or applicable Legal Requirements) be required (i) for the Company to amend or terminate this Agreement, (ii) to exercise or waive any of the Company's rights, benefits or remedies hereunder, if such action would adversely affect, or would reasonably be expected to adversely affect, the holders of Shares (other than Parent or

Purchaser), (iii) to amend the Company Charter Documents if such action would adversely affect the holders of Shares (other than Parent or Purchaser), or (iv) to take any other action of the Board of Directors of the Company under or in connection with this Agreement if such action would materially and adversely affect, or would reasonably be expected to materially and adversely affect, the holders of Shares (other than Parent or Purchaser). The Continuing Directors shall have, and Parent shall cause the Continuing Directors to have, the authority to retain such counsel (which may include counsel to the Company or the Board of Directors of the Company as of the date of this Agreement) in reasonable circumstances and other advisors at the expense of the Company as determined by the Continuing Directors, and the authority to institute any action on behalf of the Company to enforce performance of this Agreement.

Section 2. Merger Transaction

2.1 Merger of Purchaser into the Company. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, Purchaser shall be merged with and into the Company and the separate corporate existence of Purchaser shall thereupon cease. The Company shall be the surviving corporation in the Merger, and the separate corporate existence of the Company, with all its rights, privileges, immunities, powers and franchises, shall continue unaffected by the Merger, except as set forth in this Section 2.

2.2 Effect of the Merger. The Merger shall have the effects set forth in this Agreement and in the applicable provisions of the DGCL.

2.3 Closing; Effective Time. The consummation of the Merger (the "Closing") shall take place at the offices of Sullivan & Cromwell LLP, 1870 Embarcadero Road, Palo Alto, California 94303 at 9:00 a.m. local time as soon as practicable following the consummation of the Offer, but in any event no later than the third (3rd) business day after the satisfaction or waiver of the last to be satisfied or waived of the conditions set forth in Section 7 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions) (the date on which the Closing occurs, which date shall be designated by Parent, the "Closing Date"). Subject to the provisions of this Agreement, a certificate of merger satisfying the applicable requirements of the DGCL shall be duly executed by the Company and, concurrently with or as soon as practicable following the Closing, delivered to the Secretary of State of the State of Delaware for filing. The Merger shall become effective upon the date and time of the filing of such certificate of merger with the Secretary of State of the State of Delaware or such later date and time as is agreed upon in writing by the parties hereto and specified in the certificate of merger (such date and time, the "Effective Time"). From and after the Effective Time, the Surviving Corporation shall possess all the rights, powers, privileges, franchises and be subject to all of the obligations, liabilities, restrictions and disabilities of the Company and the Purchaser, all as provided in the DGCL.

2.4 Merger Without Meeting of Stockholders. The Merger shall be governed by Section 251(h) of the DGCL. The parties hereto agree to take all necessary and appropriate action to cause the Merger to become effective as soon as practicable following the consummation of the Offer, without a meeting of stockholders of the Company in accordance with Section 251(h) of the DGCL.

2.5 Certificate of Incorporation and Bylaws; Directors and Officers. Unless otherwise determined by Parent prior to the Effective Time:

(a) the Certificate of Incorporation of the Surviving Corporation shall be amended and restated in its entirety to be identical to the certificate of incorporation of Purchaser, as in effect immediately prior to the Effective Time;

(b) the Bylaws of the Surviving Corporation shall be amended and restated as of the Effective Time to conform to the Bylaws of Purchaser as in effect immediately prior to the Effective Time; and

(c) the directors and officers of the Surviving Corporation immediately after the Effective Time shall be the respective individuals who are designated as directors and officers of Purchaser immediately prior to the Effective Time.

2.6 Conversion of Shares.

(a) At the Effective Time, by virtue of the Merger and without any further action on the part of Parent, Purchaser, the Company or any stockholder of the Company:

(i) any Shares then held by the Company or any wholly owned Subsidiary of the Company (or held in the Company's treasury) shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(ii) any Shares then held by Parent, Purchaser or any other wholly owned Subsidiary of Parent shall be canceled and retired and shall cease to exist, and no consideration shall be delivered in exchange therefor;

(iii) except as provided in clauses (i) and (ii) above and subject to Section 2.6(b), each Share then outstanding (other than any Dissenting Shares, as defined below) shall be converted into the right to receive the Offer Price (the "Merger Consideration"), without interest, subject to any withholding of Taxes required by applicable Legal Requirements in accordance with Section 2.7(f); and

(iv) each share of the common stock, $0.0001 par value per share, of Purchaser then outstanding shall be converted into one share of common stock of the Surviving Corporation.

At the Effective Time, all such Shares shall cease to be outstanding and shall automatically be cancelled and retired and shall cease to exist, and any certificates evidencing such shares (the "Certificates") which immediately prior to the Effective Time represented any such Shares shall thereafter represent only the right to receive the Merger Consideration therefor.

(b) Without duplication of any adjustment made pursuant to Section 1.1(f), the Merger Consideration shall be adjusted appropriately and proportionately to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock), reorganization,

recapitalization, reclassification, combination, exchange of shares or other like change with respect to Company Common Stock occurring on or after the date hereof and at or prior to the Effective Time, and such adjustment to the Merger Consideration shall provide to the holders of Company Common Stock the same economic effect as contemplated by this Agreement prior to such action.

2.7 Surrender of Certificates; Stock Transfer Books.

(a) Prior to the Offer Acceptance Time, Parent shall designate a bank or trust company reasonably acceptable to the Company to act as agent (the "Paying Agent") for the holders of Shares to receive the funds to which holders of such Shares shall become entitled pursuant to this Agreement. Without limiting the generality of Sections 1.1(i) and 9.12, as of each of the Offer Acceptance Time and Effective Time, Parent shall, or shall take all steps necessary to enable and cause Purchaser to, deposit with the Paying Agent all of the funds necessary to purchase any Shares that Purchaser becomes obligated to purchase pursuant to the Offer and in respect of the aggregate Merger Consideration to be paid in respect of the Shares, as applicable (the "Payment Fund"). To the extent the Payment Fund diminishes for any reason below the level required to make prompt payment of the amounts described in the preceding sentence, Parent and Purchaser shall promptly replace or restore the lost portion of such fund so as to ensure that it is maintained at a level sufficient to make such payments. The Payment Fund shall be invested by the Paying Agent as directed by Parent.

(b) Promptly after the Effective Time, the Surviving Corporation shall cause to be mailed to each Person who was, at the Effective Time, a holder of record of Shares entitled to receive the Merger Consideration pursuant to Section 2.6 (i) a form of letter of transmittal (which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Paying Agent) and (ii) instructions for use in effecting the surrender of the Certificates or non-certificated Shares represented by book-entry (the "Book-Entry Shares") pursuant to such letter of transmittal. Upon surrender to the Paying Agent of Certificates or Book-Entry Shares, together with such letter of transmittal, duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificates or Book-Entry Shares shall be entitled to receive in exchange therefor the Merger Consideration for each Share formerly evidenced by such Certificates or Book-Entry Shares, and such Certificates and Book-Entry Shares shall then be canceled. No interest shall accrue or be paid on the Merger Consideration payable upon the surrender of any Certificates or Book-Entry Shares for the benefit of the holder thereof. If the payment of any Merger Consideration is to be made to a Person other than the Person in whose name the surrendered Certificates formerly evidencing Shares is registered on the stock transfer books of the Company, it shall be a condition of payment that the Certificate so surrendered shall be endorsed properly or otherwise be in proper form for transfer and that the Person requesting such payment shall have paid all transfer and other similar Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate surrendered, or shall have established to the satisfaction of the Surviving Corporation that such Taxes either have been paid or are not applicable. Payment of the applicable Merger Consideration with respect to Book-Entry Shares shall only be made to the Person in whose name such Book-Entry Shares are registered.

(c) At any time following the 180th day after the Effective Time, the Surviving Corporation shall be entitled to require the Paying Agent to deliver to it any funds which had been made available to the Paying Agent and not disbursed to holders of Certificates or Book-Entry Shares (including all interest and other income received by the Paying Agent in respect of all funds made available to it), and, thereafter, such holders shall be entitled to look to the Surviving Corporation (subject to abandoned property, escheat and other similar Legal Requirements) only as general creditors thereof with respect to any Merger Consideration that may be payable upon due surrender of the Certificates or Book-Entry Shares held by them. Notwithstanding the foregoing, neither the Surviving Corporation nor the Paying Agent shall be liable to any holder of Certificates or Book-Entry Shares for any Merger Consideration delivered in respect of such share to a public official pursuant to any abandoned property, escheat or other similar Legal Requirements.

(d) No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date on or after the Effective Time shall be paid to the holder of any unsurrendered Certificates or Book-Entry Shares.

(e) At the close of business on the day of the Effective Time, the stock transfer books of the Company with respect to Shares shall be closed and thereafter there shall be no further registration of transfers of Shares on the records of the Company. From and after the Effective Time, the holders of Shares outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Shares except as otherwise provided herein or by applicable Legal Requirements. If, after the Effective Time, any Certificate is presented to the Surviving Corporation, Parent or the Paying Agent for transfer, it shall be cancelled and exchanged for the cash amount in immediately available funds to which the holder thereof is entitled pursuant to this Section 2.7.

(f) The Surviving Corporation, Parent and Purchaser shall be entitled to deduct and withhold (or cause the Paying Agent to deduct and withhold) from the Merger Consideration payable to any holder of Shares such amounts as it is required by any Legal Requirement to deduct and withhold with respect to Taxes. Each such payor shall take all action that may be necessary to ensure that any such amounts so withheld are promptly and properly remitted to the appropriate Governmental Body. To the extent that amounts are so withheld and paid to the appropriate Governmental Body in accordance with all Legal Requirements, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of Shares in respect of which such deduction and withholding was made.

(g) In the event any Certificate shall have been lost, stolen or destroyed, upon the making of an effective affidavit of that fact by the Person claiming such Certificate to be lost, stolen or destroyed, which shall include an agreement to indemnify and defend and hold harmless Parent, the Surviving Corporation and the Paying Agent from and against any and all costs, claims, losses, judgments, damages, counsel fees, expenses and liabilities whatsoever which each may suffer, sustain or incur in connection with the failure of any statement, representation or warranty set forth in such affidavit, any payment for or transfer, exchange or delivery of such Certificate and such Person’s inability to locate such Certificate, and, if required by Parent, the posting by such Person of a bond in customary amount as indemnity against any claim that may be made against it with respect to such Certificate, the

Paying Agent will issue in exchange for such lost, stolen or destroyed Certificate a check in the amount (after giving effect to any required tax withholdings as provided in Section 2.7(f)) equal to the number of Shares represented by such lost, stolen or destroyed Certificate that have been surrendered multiplied by the per Share Merger Consideration.

2.8 Appraisal Rights. The Shares outstanding immediately prior to the Effective Time and held by a holder who is entitled to demand and properly demands appraisal for such Shares in accordance with Section 262 of the DGCL (the "Dissenting Shares") shall not be converted into the right to receive Merger Consideration and shall entitle such holder only to payment for such Dissenting Shares in accordance with and to the extent provided by Section 262 of the DGCL, unless such holder fails to perfect or withdraws or otherwise loses such holder's right to appraisal of its Shares. If after the Effective Time such holder fails to perfect or withdraws or loses such holder's right to appraisal, each such Share shall be treated as if it had been converted as of the Effective Time into a right to receive the Merger Consideration without any interest thereon (less any amounts entitled to be deducted or withheld pursuant to Section 2.7(f)). The Company shall give Parent prompt notice of any demands received by the Company for appraisal of Shares, and Parent shall have the right to participate in and direct all negotiations and proceedings with respect to such demands. The Company shall not, without the prior written consent of Parent, make any payment with respect to, or settle or offer to settle, any such demands. Parent shall not, except with the prior written consent of the Company, require the Company to make any payment with respect to any demands for appraisal or offer to settle or settle any such demands.

2.9 Further Action. If, at any time after the Effective Time, any further action is reasonably determined by Parent to be necessary or desirable to carry out the purposes of this Agreement or to vest the Surviving Corporation with full right, title and possession of and to all rights and property of Purchaser and the Company, the officers and directors of the Surviving Corporation and Parent shall be fully authorized (in the name of Purchaser, in the name of the Company and otherwise) to take such action.

Section 3. Representations and Warranties of the Company

The Company hereby represents and warrants to Parent and Purchaser as follows (it being understood that each representation and warranty contained in this Section 3 is subject to (a) exceptions and disclosures set forth in the part or subpart of the Company Disclosure Schedule corresponding to the particular Section or subsection in this Section 3; (b) any exception or disclosure set forth in any other part or subpart of the Company Disclosure Schedule to the extent it is reasonably apparent from the wording of such exception or disclosure that such exception or disclosure is intended to qualify such representation and warranty; and (c) disclosure in the Company SEC Documents filed after December 31, 2010 and prior to the date of this Agreement other than any information in the "Risk Factors" or "Special Note Regarding Forward-Looking Statements" sections of such Company SEC Documents or other forward-looking statements in such Company SEC Documents):

3.1 Due Organization; Subsidiaries, Etc.

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of Delaware and has all necessary corporate power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its assets in the manner in which its assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound.

(b) Part 3.1(b) of the Company Disclosure Schedule identifies each Subsidiary of the Company and indicates its jurisdiction of organization. Neither the Company nor any of its Subsidiaries owns any capital stock of, or any equity interest of, or any equity interest of any nature in, any other Entity, other than the Entities identified in Part 3.1(b) of the Company Disclosure Schedule. None of the Acquired Corporations has agreed or is obligated to make, or is bound by any Contract under which it may become obligated to make, any future investment in or capital contribution to any other Entity.

(c) Each Subsidiary is an Entity duly organized, validly existing and in good standing (or in compliance with any comparable concept in the applicable jurisdictions) under the laws of the jurisdiction of its organization, and has all necessary organizational power and authority: (i) to conduct its business in the manner in which its business is currently being conducted; (ii) to own and use its properties and assets in the manner in which such properties and assets are currently owned and used; and (iii) to perform its obligations under all Contracts by which it is bound.

(d) Each of the Acquired Corporations is qualified or licensed to do business as a foreign Entity, and is in good standing, in each jurisdiction where the nature of its business requires such qualification or licensing, except where the failure to be so qualified, licensed or in good standing, individually or in the aggregate, would not reasonably be likely to have a Material Adverse Effect.

3.2 Certificate of Incorporation and Bylaws; Minutes.

(a) The Company has delivered or made available to Parent or Parent's Representatives prior to the date of this Agreement accurate and complete copies of the certificate of incorporation, bylaws and other charter and organizational documents of each of the Acquired Corporations, including all amendments thereto, as in effect on the date hereof. The Acquired Corporations' certificates of incorporation, bylaws or other charter and organizational documents so delivered are in full force and effect.

(b) The Company has delivered or made available to Parent or Parent's Representatives prior to the date of this Agreement accurate and complete copies in all material respects of the corporate minutes of the Company since December 31, 2010 and such minutes reflect a true and materially complete summary of all meetings of the Board of Directors of the Company or committees thereof since December 31, 2010.

3.3 Capitalization, Etc.

(a) The authorized capital stock of the Company consists of: (i) 200,000,000 Shares, of which 73,430,031 Shares were issued and outstanding as of the close of business on the day immediately preceding the date of this Agreement (including the

Company Restricted Shares); and (ii) 5,000,000 shares of Company Preferred Stock. No shares of Company Preferred Stock have been issued or are outstanding. All of the outstanding Shares have been duly authorized and validly issued, and are fully paid and nonassessable. The Company has no shares of capital stock reserved for issuance, other than those as set forth in this Section 3.3.

(b) Except as set forth in the Company's certificate of incorporation, as amended prior to the date of this Agreement, (i) none of the outstanding Shares is entitled or subject to any preemptive right, antidilutive right, right of repurchase or forfeiture, right of participation, right of maintenance, conversion right, redemption right or any similar right; (ii) none of the outstanding Shares is subject to any right of first refusal in favor of the Company; (iii) there are no outstanding bonds, debentures, notes or other indebtedness of the Acquired Corporations having a right to vote (or convertible into or exercisable for such securities having the right to vote) on any matters on which the stockholders of the Company have a right to vote; (iv) there is no Company Contract relating to the voting or registration of, or restricting any Person from purchasing, selling, pledging or otherwise disposing of (or from granting any option or similar right with respect to), any Shares. None of the Acquired Corporations is under any obligation, or is bound by any Contract pursuant to which it may become obligated, to repurchase, redeem or otherwise acquire any outstanding Shares or other securities.

(c) The Company has no shares of capital stock reserved for issuance, except that, as of the date of this Agreement: (i) 5,493,657 Shares are subject to issuance pursuant to Company Options, 656,255 Shares are subject to issuance pursuant to Company RSUs, 101,425 Shares are subject to issuance pursuant to Company PSUs and no Shares are subject to issuance pursuant to Company Stock Awards, in each case granted and outstanding under the Company's 2005 Equity Incentive Plan, as amended (the "2005 Plan"); (ii) 11,323 Shares are subject to outstanding purchase rights (each outstanding purchase right, an "ESPP Purchase Right") pursuant to the Company's Employee Stock Purchase Plan (the "ESPP"); (iii) 5,800,635 Shares are issuable upon conversion of the Company's 4.00% Convertible Senior Notes due 2016 issued pursuant to the Supplemental Indenture in an initial aggregate principal amount of $230 million (the "Convertible Senior Notes"); and (iv) 21,804 Shares are subject to issuance pursuant to Company Options granted and outstanding under the Company's 1996 Non-Employee Directors' Stock Option Plan, as amended (the "1996 Director Plan") and the Company's 1996 Equity Incentive Plan, as amended (the "1996 Plan", and collectively with the 1996 Director Plan, the "Prior Plans"). The Company has delivered or otherwise made available to Parent or Parent's Representatives prior to the date of this Agreement true and complete copies of all Company Equity Plans covering the Company Options, Company RSUs, Company PSUs, Company Stock Awards and ESPP Purchase Rights outstanding as of the date of this Agreement, the forms of all stock award agreements evidencing such Company Options, Company RSUs, Company PSUs, Company Stock Awards and ESPP Purchase Rights (and any other stock award agreements to the extent there are variations from the form of agreement). Each (A) Company Option, Company RSU, Company PSU, Company Stock Award and ESPP Purchase Right was granted in compliance in all material respects with all applicable Legal Requirements and all of the terms and conditions of the Company Equity Plan pursuant to which it was issued, (B) Company Option and, if applicable, Company Stock Award, has an exercise price per Share equal to or greater than the fair market value of a Share as determined pursuant to the terms of the 2005 Plan, the 1996 Director Plan, or the 1996 Plan, as applicable, on the date of

such grant, (C) Company Option and, if applicable, Company Stock Award has a grant date identical to (or following) the date on which the Company's Board of Directors or compensation committee actually awarded such Company Option or, if applicable Company Stock Award, and (D) Company Option, Company RSU, Company PSU, Company Stock Award and ESPP Purchase Right does not trigger any liability for the holder thereof under Section 409A of the Code. Part 3.3(c) of the Company Disclosure Schedule contains a correct and complete list of each outstanding Company Option, Company RSU, Company PSU, Company Stock Award and ESPP Purchase Right as of August 23, 2013, including the holder's name, country and state of residence, date of grant, exercise or reference price (if applicable), number of Shares subject thereto, number of Shares vested as of such date, vesting schedule, whether any Company Option is intended to qualify as an Incentive Stock Option (within the meaning of the Code), and the Company Equity Plan under which such Company Option, Company RSU, Company PSU, Company Stock Award and ESPP Purchase Right was granted. Part 3.3(c) of the Company Disclosure Schedule contains a list of each individual who has a Pending Equity Grant as of the date of this Agreement and a brief description thereof. Part 3.3(c) of the Company Disclosure Schedule sets forth the conversion rate for the Convertible Senior Notes.

(d) All of the outstanding capital stock or other voting securities of, or ownership interests in, each Subsidiary of the Company are duly authorized, validly issued, fully paid and nonassessable and owned by the Company, free and clear of any Encumbrance (except for Permitted Encumbrances). None of the Acquired Corporations own any voting interest in any Person except for the voting interests in the Subsidiaries of the Company.

(e) Except as set forth in Section 3.3(c), there is no: (i) outstanding subscription, option, call, warrant, agreement, arrangement, commitment or other right (whether or not currently exercisable) to acquire any shares of the capital stock, restricted stock unit, stock-based performance unit, shares of phantom stock, stock appreciation right, profit participation right or any other right that is linked to, or the value of which is in any way based on or derived from, the value of any shares of capital stock or securities of any of the Acquired Corporations; (ii) outstanding security, instrument, bond, debenture, note or obligation that is or may become convertible into or exchangeable for any shares of the capital stock or other securities of any of the Acquired Corporations; or (iii) stockholder rights plan (or similar plan commonly referred to as a "poison pill") or Contract under which any of the Acquired Corporations is or may become obligated to sell or otherwise issue any shares of its capital stock or any other securities.

3.4 SEC Filings; Financial Statements.

(a) Since December 31, 2010, the Company has filed on a timely basis all reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) required to be filed with or furnished to the SEC by the Company (such documents and any documents filed with or furnished to the SEC after the date of this Agreement, the "Company SEC Documents"). As of their respective dates, the Company SEC Documents complied, or if filed or furnished subsequent to the date of this Agreement, will comply, in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the rules and regulations of the SEC promulgated thereunder applicable to such Company SEC Documents. Except to the extent that information contained in any

Company SEC Document has been revised, amended, modified or superseded (prior to the date of this Agreement) by a later filed Company SEC Document, none of the Company SEC Documents when filed or furnished contained, and any Company SEC Document filed with or furnished to the SEC subsequent to the date of this Agreement will not contain, any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

(b) The financial statements (including any related notes) contained or incorporated by reference in the Company SEC Documents: (i) complied or, if filed with or furnished to the SEC subsequent to the date of this Agreement, will comply as to form in all material respects with the published rules and regulations of the SEC applicable thereto; (ii) were prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods covered (except as may be indicated in the notes to such financial statements or, in the case of unaudited financial statements, as permitted by Form 10-Q, Form 8-K or any successor form under the Exchange Act, and except that the unaudited financial statements may not contain footnotes and are subject to normal and recurring year-end adjustments that will not be material in amount or effect); and (iii) fairly present, in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as of the respective dates thereof and the consolidated statements of operations and cash flows of the Company and its consolidated Subsidiaries for the periods covered thereby. No financial statements of any Person other than the Acquired Corporations are required by GAAP to be included in the consolidated financial statements of the Company. The books and records of the Acquired Corporations have been, and are being, maintained in all material respects in accordance with GAAP.

(c) The Company maintains, and at all times since December 31, 2011 has maintained, a system of internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act) which is designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP, and includes those policies and procedures that:

(i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Acquired Corporations; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and that receipts and expenditures are being made only in accordance with authorizations of management and directors of the Company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Acquired Corporations that could have a material effect on the financial statements. The Company's management has completed an assessment of the effectiveness of the Company's system of internal control over financial reporting in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act for the fiscal year ended December 31, 2012, and such assessment concluded that such controls were effective and the Company's independent registered accountant has issued (and not subsequently withdrawn or qualified) an attestation report concluding that the Company maintained effective internal control over financial reporting as of December 31, 2012.

The Company has continued to maintain an effective system of internal controls and there were no changes in the Company's internal control over financial reporting since December 31, 2012 that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting. Since December 31, 2011, none of the Acquired Corporations nor, to the knowledge of the Company, the Company's independent registered accountant has identified or been made aware of: (a) any significant deficiency or material weakness in the design or operation of internal control over financial reporting utilized by the Acquired Corporations; (b) any illegal act or fraud, whether or not material, that involves the Company's management or other employees; or (c) any claim or allegation regarding any of the foregoing.

(d) The Company maintains effective disclosure controls (as defined by Rule 13a-15 or 15d-15 under the Exchange Act). The Company is in compliance in all material respects with all current listing and corporate governance requirements of the NASDAQ Global Select Market.

(e) None of the Acquired Corporations is a party to or has any obligation or other commitment to become a party to any securitization transaction, off-balance sheet partnership or any similar Contract (including any Contract relating to any transaction or relationship between or among the Acquired Corporations, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose Entity, on the other hand, or any "off-balance sheet arrangements" (as defined in Item 303(a) of Regulation S-K under the Exchange Act)) where the result, purpose or intended effect of such Contract is to avoid disclosure of any material transaction involving, or material liabilities of, any Acquired Corporation in any Acquired Corporation's published financial statements or other Company SEC Documents.

(f) Other than as publicly available in the Electronic Data Gathering, Analysis and Retrieval database of the SEC ("EDGAR"), there have been no written inquiries, interrogatories or comments with respect to any of the Company SEC Documents from the SEC received since December 31, 2011, and the Company has not been made aware of any such inquiries, interrogatories or comments that were oral. As of the date of this Agreement, there are no outstanding or unresolved comments in comment letters received from the SEC with respect to the Company SEC Documents. To the knowledge of the Company, none of the Company SEC Documents is the subject of ongoing SEC review and there are no inquiries or investigations by the SEC or any internal investigations pending or threatened, in each case regarding any accounting practices of the Acquired Corporations.

(g) Except as permitted by the Exchange Act, including Sections 13(k)(2) and (3), since the enactment of the Sarbanes-Oxley Act of 2002, neither the Company nor any of its Affiliates acting on behalf of any of the Acquired Corporations has made, arranged, modified (in any material respect) or forgiven personal loans to any executive officer or director of the Acquired Corporations.

(h) Since December 31, 2010, (i) none of the Acquired Corporations or, to the knowledge of the Company, any Company Associate, auditor, accountant or representative of the Acquired Corporations has received or otherwise had or obtained

knowledge of any material complaint, allegation, assertion or claim, whether written or oral, regarding the accounting or auditing practices, procedures, methodologies or methods of the Acquired Corporations or their respective internal accounting controls relating to periods after December 31, 2010, including any material complaint, allegation, assertion or claim that any Acquired Corporation has engaged in questionable accounting or auditing practices (except for any of the foregoing after the date of this Agreement which have no reasonable basis), and (ii) to the knowledge of the Company, no attorney representing any Acquired Corporation, whether or not employed by any Acquired Corporation, has reported evidence of a material violation of securities Legal Requirements relating to periods after December 31, 2011, by the Company or any Company Associate or agents to the Board of Directors of the Company or any committee thereof or, to the knowledge of the Company, to any director or officer of the Company.

3.5 Absence of Changes. (i) Since December 31, 2012, and through the date of this Agreement, the Acquired Corporations have operated in the ordinary course of business consistent with past practices and there has not occurred any event, change, action, failure to act or transaction that, individually or in the aggregate, has had or would be reasonably likely to have a Material Adverse Effect. (ii) Since December 31, 2012 and through the date of this Agreement, none of the Acquired Corporations has taken any actions which, had such actions been taken after the execution and delivery of this Agreement, would have breached in any material respect any of the covenants set out in Section 5.3.

3.6 Title to Assets. The Acquired Corporations have good and valid title to all assets owned by them as of the date of this Agreement, including all assets (other than capitalized leases) reflected on the unaudited balance sheet in the Quarterly Report on Form 10-Q for the quarter ended June 30, 2013 (the "Balance Sheet") filed by the Company with the SEC (except for assets sold or otherwise disposed of in the ordinary course of business since the date of such Balance Sheet). All of said assets are owned by the Acquired Corporations free and clear of any Encumbrances (other than Permitted Encumbrances).

3.7 Real Property; Equipment.

(a) Part 3.7(a) of the Company Disclosure Schedule sets forth an accurate and complete list of the real property that may be owned by any Acquired Corporation at the Closing Date (the "Owned Real Property"). With respect to the Owned Real Property, (A) the Company or the applicable Subsidiary will have good and marketable title to the Owned Real Property, free and clear of any Encumbrance, and (B) there will be no outstanding options or rights of first refusal to purchase the Owned Real Property, or any portion of the Owned Real Property or interest therein, in each case as of the Closing Date.

(b) Part 3.7(b) of the Company Disclosure Schedule sets forth an accurate and complete list of each lease or sublease pursuant to which any of the Acquired Corporations leases real property to or from any other Person (the "Leased Real Property"). Part 3.7(b) of the Company Disclosure Schedule contains a complete and accurate list of all Contracts for personal property leased, subleased, licensed or otherwise conveyed to or by any Acquired Corporation involving annual payments in excess of $1,000,000 ("Leased Personal Property"). True and complete copies of all such leases or subleases with respect to all Leased Real Property and all Leased Personal Property have been delivered or made available to Parent

prior to the date of this Agreement and each such lease or sublease is in full force and effect. The Company or the applicable Subsidiary holds a valid and existing leasehold interest in each Leased Real Property and each Leased Personal Property. None of the Acquired Corporations is in material breach or material default of its obligations under such leases. No lessor, lender of any lessor or subtenant of any Leased Real Property has given any written notice to any Acquired Corporation for the purpose of terminating or threatening to terminate any term, term extension, option or similar renewal right, right of first refusal (or right of first offer) to lease or purchase any property, lease expansion right or any similar right under the Leased Real Property or Leased Personal Property. To the knowledge of the Company, each other party to each lease or sublease with respect to Leased Real Property and Leased Personal Property has performed in all material respects all obligations required to be performed by it under such lease or sublease.

(c) To the knowledge of the Company (i) the Leased Real Property is, and, as of the Closing Date, the Owned Real Property will be, structurally sound, with no material defects, and all building systems contained therein are in good operating condition and repair, subject to ordinary wear and tear, (ii) the use and operation of the Leased Real Property is, and with respect to the Owned Real Property, as of the Closing Date will be, in compliance in all material respects with all applicable zoning, land use, building, fire and other applicable Legal Requirements, and (iii) there is no existing plan or study by any Governmental Body or by any other Person that challenges or otherwise adversely affects the continuation of the present use or operation of any Leased Real Property or, as of the Closing Date, the Owned Real Property. There are no, and as of the Closing Date with respect to the Owned Real Property, there will be no, subleases, sublicenses, occupancy agreements or other contractual obligations that grant the right to use or occupancy of any of the Leased Real Property or the Owned Real Property, as applicable, to any Person other than the Acquired Corporations, and there is no, and as of the Closing Date with respect to the Owned Real Property, there will be no, Person in possession of any Leased Real Property or Owned Real Property, as applicable, other than the Acquired Corporations.

(d) All material items of equipment and other tangible assets owned by or leased to the Acquired Corporations are adequate for the uses to which they are being put, are in good and safe operating condition and repair (ordinary wear and tear excepted and ongoing maintenance excepted).

3.8 Intellectual Property.

(a) Part 3.8(a) of the Company Disclosure Schedule identifies (i) the current owner, (ii) the jurisdiction of application/registration, (iii) the application or registration number, and (iv) the date of filing or issuance for each item of Registered IP owned by any Acquired Corporation or otherwise registered or the subject of any application for registration in the name of any Acquired Corporation or exclusively licensed to any Acquired Corporation and relating to any Key Products (the Registered IP set forth in this Section 3.8(a) is referred to collectively as, the "Company Registered IP"). As of the date of this Agreement, no cancellation, interference, opposition, reissue, reexamination or other similar proceeding is pending or, to the knowledge of the Company, threatened, in which the validity, enforceability or ownership of any owned Company Registered IP, or to the knowledge of the Company, any other Company Registered IP, is being contested or challenged (other than office actions or

similar communications issued by any Governmental Body in the ordinary course of prosecution of any pending applications for registration of any such Company Registered IP). To the knowledge of the Company, each of the patents and patent applications included in the Company Registered IP that is owned by any of the Acquired Corporations claiming any Key Product identifies by name each inventor of the claims thereof as determined in accordance with the Legal Requirements of the jurisdiction in which such patent is issued or such patent application is pending. As of the date of this Agreement, (A) all registration, renewal, maintenance and other similar payments that are or have become due with respect to the owned Company Registered IP, and with respect to any other Company Registered IP to the extent any Acquired Corporation is primarily responsible for the prosecution or maintenance of such Company Registered IP or the costs thereof (together with the owned Company Registered IP, the "Company Managed IP"), have been timely paid by or on behalf of the Company or another Acquired Corporation, and (B) the Company Managed IP is subsisting and, to the knowledge of the Company, valid and enforceable and in full force and effect and has not lapsed (except for any patents within the Company Managed IP having lapsed or expired at the end of their statutory term), been abandoned, been disclaimed, been cancelled or been forfeited, except in each case of (A) and (B) for such exceptions as have not had or would not reasonably be expected to have a Material Adverse Effect on the Acquired Corporations or a material adverse impact on any Key Product.

(b) The Company or another Acquired Corporation is the sole and exclusive owner of all right, title and interest in the patents and patent applications set forth on Part 3.8(b)(i) of the Company Disclosure Schedule, free and clear of all Encumbrances (other than Permitted Encumbrances and other than non-exclusive licenses granted by an Acquired Corporation in the ordinary course of business), except for any exceptions which have not had or would not reasonably be expected to have a Material Adverse Effect on the Acquired Corporations or a material adverse impact on any Key Product, and provided, however, that the foregoing is not a representation of non-infringement, non-misappropriation or other non-violation of the Intellectual Property Rights of another Person, which representation is solely set forth in Section 3.8(e) below. Since December 31, 2010 and except as set forth on Part 3.8(b)(ii) of the Company Disclosure Schedule, no Acquired Corporation has received a written notice from any third party (including any employee or consultant) pursuant to which such third party claims to own or have any right or interest in or to (other than any inalienable moral right or any other inalienable right or interest retained pursuant to applicable Legal Requirements), or to have any right to receive any royalty or other material payment (other than any remuneration not exceeding $1,000,000 per year in aggregate due to inventors pursuant to applicable Legal Requirements or any remuneration not exceeding $1,000,000 per year in aggregate due to consultants pursuant to any Contract other than clinical trial Contracts or contract research Contracts entered into in the ordinary course of business) for the Acquired Corporations' use or exploitation of, any Owned Company IP with respect to any Key Product. The Acquired Corporations own, or hold a license or other right to use, all Intellectual Property Rights necessary for the conduct of the Acquired Corporations' business as currently conducted and, to the same extent the Acquired Corporations' business is currently conducted in the United States, for the conduct of such business on a worldwide basis, except for any exceptions which have not had or would not reasonably be expected to have a Material Adverse Effect on the Acquired Corporations or a material adverse impact on any Key Product, and provided, however, that the foregoing is not a representation of non-infringement, non-misappropriation or other non-violation

of the Intellectual Property Rights of another Person, which representation is solely set forth in Section 3.8(e) below. Except as set forth on Part 3.8(b)(iii) of the Company Disclosure schedule, to the knowledge of the Company, all assignments made to an Acquired Corporation for any registered Owned Company IP relating to any Key Product are valid and enforceable and have been recorded in compliance with applicable Legal Requirements.

(c) Part 3.8(c) of the Company Disclosure Schedule identifies (i) each Company Contract pursuant to which any Intellectual Property Rights or Intellectual Property of another Person (other than an Affiliate of the Company), in each case that is material to the business of the Acquired Corporations as currently conducted, or, to the same extent the business of the Acquired Corporations is currently conducted in the United States, to such business on a worldwide basis, is licensed to any Acquired Corporation (other than (A) software license agreements for any third-party non-customized commercially available software and (B) clinical trial agreements only if an Acquired Corporation retains at least a non-exclusive right to use and otherwise exploit any Intellectual Property Rights generated in connection with such agreement) (each, an "Inbound License"), and (ii) each Company Contract pursuant to which any material Intellectual Property Rights or material Intellectual Property owned by any of the Acquired Corporations is licensed to another Person (other than an Affiliate of the Company) other than any non-exclusive outbound license entered into in the ordinary course of business consistent with past practice (each, an "Outbound License").

(d) As of the date of this Agreement, none of the Owned Company IP relating to any Key Product is subject to any pending or outstanding injunction, directive, order, decree, award, settlement, judgment or other disposition of dispute that would reasonably be expected to adversely restrict the use, transfer, registration or licensing of any such Owned Company IP by the Acquired Corporations, or otherwise would reasonably be expected to adversely affect the validity or enforceability of any such Owned Company IP.

(e) To the knowledge of the Company, the operation of the business of the Acquired Corporations as currently conducted does not, and, to the same extent the Acquired Corporations' business is currently conducted in the United States, the operation of such business on a worldwide basis would not, infringe, misappropriate or otherwise violate any Intellectual Property Rights owned by another Person, except as has not had or would not reasonably be expected to have a Material Adverse Effect on the Acquired Corporations or a material adverse impact on any Key Product. Except as set forth on Part 3.8(e) of the Company Disclosure Schedule and since December 31, 2010, (i) no Legal Proceeding has been asserted, is pending or, to the knowledge of the Company, is being threatened, against any of the Acquired Corporations relating to any infringement, misappropriation or violation of any Intellectual Property Rights of another Person by any of the Acquired Corporations, and (ii) none of the Acquired Corporations has received any written notice (including any written offers to license) alleging any infringement, misappropriation or violation of any Intellectual Property Rights of another Person by any of the Acquired Corporations. As of the date of this Agreement and except as set forth on Part 3.8(e) of the Company Disclosure Schedule, none of the material Intellectual Property Rights owned by any of the Acquired Corporations is subject to any pending or outstanding injunction, directive, order, decree, award, settlement or judgment that would reasonably be expected to restrict the ownership, use, validity or enforceability of any such Intellectual Property Rights.

(f) To the knowledge of the Company, no other Person is infringing, misappropriating or otherwise violating any Intellectual Property Rights owned by any of the Acquired Corporations, except as would not reasonably be expected to have a Material Adverse Effect on the Acquired Corporations or a material adverse impact on any Key Product.

(g) Each Person who is or was involved in the creation or development of any Owned Company IP relating to any Key Product has signed a valid, enforceable agreement containing an assignment of Intellectual Property Rights to the Acquired Corporations and reasonable confidentiality provisions protecting such Owned Company IP which, to the Company's knowledge, has not been breached by such Person. The Acquired Corporations have taken commercially reasonable actions to maintain the confidentiality of the material proprietary information held by any of the Acquired Corporations, or purported to be held by any of the Acquired Corporations, as a trade secret. To the knowledge of the Company, no trade secrets included in the material Intellectual Property Rights owned by any of the Acquired Corporations have been disclosed to or used by any Person except pursuant to a non-disclosure agreement which, to the knowledge of the Company, has not been breached by any such Person.

(h) To the knowledge of the Company, no funding, facilities or personnel of any Governmental Body or any university, college, research institute or other educational institution has been used to create any material Intellectual Property Rights owned by any of the Acquired Corporations, except for any such funding or use of facilities or personnel that has not resulted in such Governmental Body or institution obtaining ownership rights to such Intellectual Property Rights.

3.9 Contracts.

(a) Part 3.9(a) of the Company Disclosure Schedule identifies each Company Contract (excluding this Agreement) that constitutes a Material Contract as of the date of this Agreement. For purposes of this Agreement, each of the following types of Company Contracts (along with each Inbound License and each Outbound License) shall be deemed to constitute a "Material Contract":

(i) any material Company Contract of an Acquired Corporation relating to the manufacture or supply of any Company Product;

(ii) any Company Contract requiring or reasonably likely to require payments to any Acquired Corporation by a third Person in excess of $1,000,000 per year;

(iii) any Company Contract constituting a Company Employee Agreement pursuant to which any of the Acquired Corporations is or may become obligated to (1) make any severance, termination, tax gross-up or similar payment to any Company Associate or any spouse, heir or Representative of any Company Associate in excess of $350,000 per beneficiary, except for severance, termination or similar payments required by applicable Legal Requirements; (2) make any bonus, deferred compensation or similar payment (other than payments constituting base salary or commissions paid in the ordinary course of business) in excess of $350,000 to any Company Associate; or (3)

grant or accelerate the vesting of, or otherwise modify, any Company Option, Company RSU, Company PSU, Company Stock Award or ESPP Purchase Right other than accelerated vesting provided in Company Equity Plans;

(iv) any Company Contract that provides for: (A) reimbursement of any Company Associate for, or advancement to any Company Associate of, material legal fees or other material expenses associated with any Legal Proceeding or the defense thereof; or (B) indemnification of any Company Associate;

(v) any Company Contract under which any Acquired Corporation has agreed to indemnify any Person against any infringement, violation or misappropriation of the Intellectual Property Rights of a third Person other than Company Contracts entered into in the ordinary course of business;

(vi) any Company Contract (A) materially limiting the freedom or right of any Acquired Corporation (or, after the consummation of the Offer, Parent or its Subsidiaries) to engage in any line of business, including the research, development and commercialization of Products (other than with respect to the scope of any licenses set forth in such Company Contracts), to make use of any material Owned Company IP or to compete with any other Person in any location or line of business, or (B) containing any "most favored nations" terms and conditions (including with respect to pricing), exclusivity obligations, any arrangement that grants any right of first refusal, right of first offer or similar right or any other term, condition or clause that, in the case of each of the foregoing, individually or in the aggregate, limits or purports to limit in any material respect the ability of the Acquired Corporations to own, operate, manufacture, sell, distribute, transfer, pledge or otherwise dispose of any material assets or business of the Acquired Corporations (or, after the consummation of the Offer, Parent or its Subsidiaries);

(vii) any Company Contract relating to the lease or sublease of Leased Real Property;

(viii) any Company Contract or series of related Company Contracts that (A) required the payment or delivery of cash or other consideration by the Acquired Corporations to any third Person in an amount in excess of $2,000,000 in the fiscal year ended on December 31, 2012, or (B) (1) requires or is reasonably likely to involve the payment or delivery of cash or other consideration by the Acquired Corporations to any third Person in an amount in excess of $2,000,000 during any future fiscal year or (2) requires or is reasonably likely to involve, the payment or delivery of cash or other consideration by the Acquired Corporations to any third Person in an amount in excess of $10,000,000 in the aggregate over the term of such Contract from and after the date hereof and, in each case in clause (B), cannot be cancelled by the Company or such Subsidiary without penalty or further payment without more than ninety (90) days' notice (other than payments for services rendered to date);

(ix) any Company Contract relating to Debt (whether incurred, assumed, guaranteed or secured by any asset) of any Acquired Corporation in excess of $500,000 individually;

(x) any Company Contract with respect to any Key Product constituting a joint venture, partnership, strategic alliance, collaboration, co-promotion or limited liability corporation or requiring any Acquired Corporation to reimburse any Person for clinical development costs except pursuant to clinical research organization agreements, clinical trial services agreements or similar service agreements;

(xi) any Company Contract pursuant to which any Person has the right to acquire any assets of any Acquired Corporation (or, after giving effect to the consummation of the Offer or the Merger, Parent or any of its Subsidiaries) with a purchase price of more than $1,000,000 individually or $5,000,000 in the aggregate (excluding agreements relating to the disposal of non-material equipment entered into in the ordinary course of business and license agreements);

(xii) any Company Contract that contains a put, call or similar right pursuant to which an Acquired Corporation would be required to purchase or sell, as applicable, any equity interests of any Person that have a fair market value or purchase price of more than $1,000,000;

(xiii) any Company Contract that requires or permits an Acquired Corporation, or any successor, to, or acquirer of an Acquired Corporation, to make any material payment to another person as a result of a change of control of such Acquired Corporation (a "Change of Control Payment"), gives another Person a right to receive or elect to receive a Change of Control Payment or is subject to material modification or termination as a result of a change of control of an Acquired Corporation;

(xiv) any Government Contract (excluding Company Contracts with universities entered into in the ordinary course of business);

(xv) any other Company Contract that is currently in effect and has been filed (or is required to be filed) by the Company as an exhibit pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act or that would be required to be disclosed under Item 404 of Regulation S-K under the Securities Act;

(xvi) any Company Contracts that provide for payments by or to any Acquired Corporation between any Acquired Corporation and any stockholder holding five percent or more of any class of outstanding equity securities of the Company or, to the Company's knowledge, any Affiliate of such Person; and

(xvii) any Inbound License and any Outbound License.

(b) The Company has either delivered or otherwise made available to Parent prior to the date of this Agreement or has publicly made available on EDGAR and listed in the exhibit index to a Company SEC Document filed after December 31, 2010 an accurate and complete unredacted copy of each Material Contract. Neither the Acquired Corporations nor, to

the knowledge of the Company, the other party is in material breach of or material default under any Material Contract and, neither the Acquired Corporations, or to the knowledge of the Company, the other party has taken or failed to take any action that with or without notice, lapse of time or both would constitute a material breach of or material default under any Material Contract. Each Material Contract is a valid agreement, binding, in full force and effect and, to the knowledge of the Company, enforceable by the applicable Acquired Corporation in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies. No Acquired Corporation has received any written notice regarding any violation or breach or default under any Material Contract that has not since been cured, except for violations or breaches that are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect. The Acquired Corporations have not waived in writing any rights under any Material Contract, the waiver of which would be reasonably likely to have, either individually or in the aggregate, a Material Adverse Effect. No party to any Material Contract has given any Acquired Corporation (1) written or, to the knowledge of the Company, oral, notice of its intention to cancel or terminate any Material Contract, or (2) written notice of its intention to change the scope of rights under or fail to renew any Material Contract (other than failures to renew in the ordinary course of business), except in each case of subclause (1) and (2) as would not, individually or in the aggregate, reasonably be likely to have a Material Adverse Effect.

(c) Part 3.9(c) of the Company Disclosure Schedule sets forth a true and complete list of Material Contracts pursuant to which consents or waivers are or may be required prior to or upon consummation of the Transactions.

(d) None of the Company or any of its Subsidiaries is a party to a Contract with a Person that is a Specially Designated National or Blocked Person as defined by the Office of Foreign Asset Control of the United States Department of the Treasury.

3.10 Liabilities. The Acquired Corporations have no liabilities or obligations, whether or not accrued, contingent or otherwise and whether or not required to be disclosed, except for: (i) liabilities and obligations reflected on the Balance Sheet (including any related notes); (ii) liabilities and obligations incurred in the ordinary course of business consistent with past practice since June 30, 2013; (iii) liabilities to pay or perform under Company Contracts in accordance with the terms thereof and without any breach of any provision thereof; (iv) liabilities or obligations that individually or in the aggregate have not had and would not reasonably be expected to have a Material Adverse Effect; and (v) liabilities and obligations incurred in connection with the Transactions.

3.11 Compliance with Legal Requirements.

(a) The business of each Acquired Corporation and, to the knowledge of the Company, its Collaboration Partners (with respect to the Company Products) have not been during the last three (3) years, and are not being, conducted in violation of any applicable Legal Requirement in any material respect. No investigation or review by any Governmental Body with respect to any Acquired Corporation or, to the knowledge of the Company, any of its Collaboration Partners (with respect to any Company Product) is pending or, to the knowledge of

the Company, threatened. To the knowledge of the Company, (i) no material change is required in any Acquired Corporation's or Collaboration Partners' (with respect to the Company Products), processes, properties or procedures in order to bring them into compliance in all material respects with any applicable Legal Requirements, and (ii) none of the Acquired Corporations has received any written notice or written communication of any noncompliance in any material respect with any applicable Legal Requirements that has not been cured as of the date of this Agreement.

(b) Since December 31, 2010, none of the Acquired Corporations or, to the knowledge of the Company, any Company Associate has been convicted of, or, to the knowledge of the Company, has been charged by any Governmental Body with any violation of any Legal Requirement related to fraud, theft, embezzlement, breach of fiduciary responsibility, financial misconduct, obstruction of an investigation, or controlled substance in the case of senior management, in each case for a matter involving one of the Acquired Corporations.

(c) Since December 31, 2010, to the knowledge of the Company, none of the Acquired Corporations has been a party to any contract or bid with, and has not conducted business or participated in any transaction involving, directly or indirectly, any Prohibited Persons.

3.12 Regulatory Matters.

(a) The Acquired Corporations and, to the knowledge of the Company, the Collaboration Partners (with respect to the Company Products) have obtained all material clearances, authorizations, licenses, registrations and other Governmental Authorizations required by any foreign or domestic Governmental Body (including the FDA and EMA) to permit the conduct of its business as currently conducted and all such Governmental Authorizations are valid, and in full force and effect. To the knowledge of the Company, none of the Governmental Authorizations have been or are being revoked or challenged, except where such revocation or challenge does not and would not, individually or in the aggregate, be likely to have a Material Adverse Effect. The Acquired Corporations and, to the knowledge of the Company, the Collaboration Partners (with respect to the Company Products) have filed with the applicable regulatory authorities (including the FDA and EMA or any other Governmental Body performing functions similar to those performed by the FDA) all required filings, representations, declarations, listings, registrations, reports or submissions, including adverse event reports and all other submitted data relating to the Company Products. All such filings, representations, declarations, listings, registrations, reports or submissions were in material compliance with applicable Legal Requirements when filed, and no deficiencies which are material in the aggregate have been asserted by any applicable Governmental Body with respect to any such filings, representations, declarations, listing, registrations, reports or submissions.

(b) To the knowledge of the Company, except as set forth in documents either delivered or otherwise made available to Parent or Parent's Representatives prior to the date of this Agreement, the business of the Acquired Corporations and all preclinical and clinical investigations sponsored by the Acquired Corporations and, to the Company's knowledge, its Collaboration Partners (with respect to the Company Products), and all manufacturing operations with respect to the Company Products, are being conducted in material

compliance with applicable Legal Requirements, rules, regulations, directives and guidances, including, Good Clinical Practice requirements, Good Laboratory Practice requirements, Good Manufacturing Practice requirements, ICH requirements, and federal and state laws, rules, regulations and guidances restricting the use and disclosure of individually identifiable health information with respect to manufacturing, clinical research and development, and future potential marketing and sale of the Company Products. The Acquired Corporations have not, and to the Company's knowledge, none of its Collaboration Partners (with respect to the Company Products) has, received since December 31, 2008 any material written notices or other material correspondence from the FDA, EMA or any other foreign, federal, state or local Governmental Body performing functions similar to those performed by the FDA with respect to any ongoing clinical or pre-clinical studies or tests requiring the termination, suspension or material modification of such studies or tests that have not been disclosed or made available to Parent or its Representatives on or prior to the date of this Agreement. There are no pending or, to the knowledge of the Company, threatened actions or proceedings by the FDA, EMA or any other Governmental Body which would prohibit or impede the potential future commercial sale of any Company Product. To the knowledge of the Company, there are no Company Contracts, including settlements with Governmental Bodies, which would reasonably be expected to impose obligations for independent review and oversight of marketing and sales practices or limit in any material respect the ability of any Acquired Corporation or Collaboration Partner (with respect to any Company Product) to develop, manufacture, market or sell any of the Company Products.

(c) None of the Acquired Corporations or, to the knowledge of the Company, any Collaboration Partner (with respect to any Company Product) has (i) made an untrue statement of a material fact or fraudulent statement to the FDA, EMA or any Governmental Body, (ii) failed to disclose a material fact required to be disclosed to the FDA, EMA or other Governmental Body or (iii) committed any other act, made any statement or failed to make any statement, that (in any such case) establishes a reasonable basis for the FDA to invoke its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy or for any other Governmental Body to invoke a similar remedy. None of the Acquired Corporations is the subject of any pending or, to the Company's knowledge, threatened investigation by the FDA pursuant to its Fraud, Untrue Statements of Material Facts, Bribery, and Illegal Gratuities Final Policy or by any other Governmental Body pursuant to any similar Legal Requirement.

(d) Except as would not reasonably be expected to have a Material Adverse Effect, each of the Acquired Corporations, and to the Company's knowledge, each of its Collaboration Partners (with respect to the Company Products) is in compliance and has, for the past three years, been in compliance with all healthcare Legal Requirements applicable to the operation of its business as currently conducted, including, (i) any and all federal, state and local fraud and abuse laws, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.) and the regulations promulgated pursuant to such statutes and any foreign equivalents; (ii) the Clinical Laboratory Improvement Amendments of 1988 and any foreign equivalents; and (iii) Legal Requirements relating to the billing or submission of claims, collection of accounts receivable, underwriting the cost of, or provision of management or administrative services in connection with, any and all of the foregoing, by the Company. None of the Acquired Corporations is, and to the Company's knowledge, none of the Collaboration Partners (with respect to the Company Products) is currently subject to any

enforcement, regulatory or administrative proceedings against or affecting any Company Product relating to or arising under the FDCA, PHSA or similar Legal Requirements, and, to the Company's knowledge, no such enforcement, regulatory or administrative proceeding has been threatened.

(e) All Pharmaceutical Products, and to the knowledge of the Company, Collaboration Pharmaceutical Products are being developed, labeled, stored, tested and distributed in material compliance with all applicable requirements under all applicable Legal Requirements, including the FDCA, the PHSA, their implementing regulations, and all federal, state, local and foreign regulatory requirements of any Governmental Body, including those relating to investigational use, premarket clearance and applications or abbreviated applications to market a new Product.

(f) No Company Product has been recalled, suspended, discontinued or the subject of a refusal to file, clinical hold, deficiency or similar action letter (including any correspondence questioning data integrity) as a result of any action by the FDA or any other similar foreign Governmental Body by the Company or any of its Subsidiaries or, to the knowledge of the Company, any Collaboration Partner, in the United States or outside of the United States.

(g) To the knowledge of the Company, there are no facts, circumstances or conditions that would reasonably be expected to form the basis for any investigation, audit, suit, claim, action or proceeding with respect to any action to withdraw or delay approval of, place restrictions on the production, dosing, clinical use or testing, or sales or marketing of, or request the recall, suspension or discontinuation of, any Company Product.

3.13 Product Registration Files. The product and product candidate registration files, dossiers and supporting materials of the Acquired Corporations, and to the knowledge of the Company, each of its Collaboration Partners (with respect to the Company Products), have been maintained in all material respects in accordance with reasonable industry standards. Each of the Acquired Corporations and, to the knowledge of the Company, each of its Collaboration Partners (with respect to the Company Products), has in its possession copies of all the material documentation filed in connection with filings made by the Acquired Corporations or such Collaboration Partners in all jurisdictions for regulatory approval or registration of the Company Products, as the case may be.

3.14 Certain Business Practices. Each of the Acquired Corporations (a) is in compliance in all material respects with the Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act and any other U.S. or foreign Legal Requirement concerning corrupt payments applicable to any Acquired Corporation and (b) between January 1, 2011 and the date of this Agreement, none of the Acquired Corporations has, to the knowledge of the Company, been investigated by any Governmental Body with respect to, or been given notice by a Governmental Body of, any violation by any of the Acquired Corporations of the Foreign Corrupt Practices Act of 1977, as amended, the U.K. Bribery Act, or any other U.S. or foreign Legal Requirements concerning corrupt payments. None of the Acquired Corporations nor, to the knowledge of the Company, any Company Associate or agent authorized to act, and acting, on behalf of an Acquired Corporation has paid or given, offered or promised to pay or give, or

authorized or ratified the payment or giving, directly or indirectly, of any monies or anything of value to any national, provincial, municipal or other government official or employee or any political party or candidate for political office or Governmental Body for the direct or indirect purpose of influencing any act or decision of such Person or of the Governmental Body to obtain or retain business, or direct business to any person or to secure any other improper benefit or advantage that has or would reasonably be likely to result in a violation of applicable Legal Requirements. For purposes of this provision, an "official or employee" includes any known official or employee of any directly or indirectly government-owned or – controlled entity, and any known officer or employee of a public international organization, as well as any person known to be acting in an official capacity for or on behalf of any such government or department, agency, or instrumentality, or for or on behalf of any such public international organization.

3.15 Communications. The Company has made available to Parent prior to the date of this Agreement true and complete copies of (i) all material filings made by an Acquired Corporation with the FDA, the EMA or equivalent Governmental Body in its possession or control and (ii) all material correspondence with the FDA, EMA or equivalent Governmental Body (including communications regarding marketing applications, potential product labels, status of review, potential for requiring a Risk Evaluation and Mitigation Strategy, Special Protocol Assessments documentation, Scientific Advice documentation, orphan drug designation, pricing and reimbursement) in its possession or control, in each case with regard to the Company Products.

3.16 Tax Matters.

(a) (i) Each of the Tax Returns required to be filed by or on behalf of the respective Acquired Corporations with any Governmental Body on or before the Closing Date (the "Acquired Corporation Returns") have been or will be filed on or before the applicable due date (including any extensions of such due date), and have been, or will be when filed, prepared in material compliance with all applicable Legal Requirements and are true and correct in all material respects, and (ii) all amounts shown on the Acquired Corporation Returns to be due or required to be withheld on or before the Closing Date (and all other material Taxes, whether or not shown as due on any Acquired Corporation Returns) have been or will be paid or withheld on or before the Closing Date.

(b) Each of the Acquired Corporations has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party, and all Forms W-2 and 1099 required with respect thereto have been completed and timely filed in material compliance with all applicable Legal Requirements.

(c) The Company's financial statements accrue all actual and contingent liabilities for unpaid material Taxes of the Acquired Corporations with respect to all periods through the dates thereof in accordance with GAAP. The Company shall establish, in the ordinary course of business and consistent with its past practices, reserves adequate for the payment of all material unpaid Taxes by or on behalf of the Acquired Corporations for the period from the date of the Balance Sheet through the Closing Date.

(d) There are (i) no current examinations or audits of any Acquired Corporation Return in progress involving Taxes and (ii) no written notice of a claim or pending investigation has ever been received by any of the Acquired Corporations from any Governmental Body in any jurisdiction where an Acquired Corporation does not file Tax Returns or pay Taxes that such Acquired Corporation is or may be subject to Taxes in that jurisdiction or may have a duty to file Tax Returns in that jurisdiction. The Company has delivered or made available to Parent or Parent's Representatives prior to the date of this Agreement accurate and complete copies of all audit reports and similar documents (to which the Company has access) relating to Acquired Corporation Returns. No extension or waiver of the limitation period applicable to any of the Acquired Corporation Returns has been requested or granted or is currently in effect.

(e) To the knowledge of the Company, no Legal Proceeding is pending or threatened in writing against or with respect to the Acquired Corporations in respect of any Tax. No deficiency of material Taxes in respect of the Acquired Corporations has been asserted in writing as a result of any audit or examination by any Governmental Body that is not adequately reserved for in the Company's financial statements in accordance with GAAP or has not been otherwise resolved or paid in full.

(f) None of the Acquired Corporations has ever been a member of an affiliated combined, consolidated or unitary Tax group for purposes of filing any Tax Return other than a group of which the Company was the common parent, or incurred any liability for the Taxes of any Person (other than the Company or any of the other Acquired Corporations) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local or foreign law), as a transferee or successor, or otherwise.

(g) Other than commercial agreements entered into in the ordinary course of business, the principal purpose of which is not related to Taxes, none of the Acquired Corporations is a party to, bound by, or has any obligation under any Tax sharing, Tax allocation or Tax indemnity agreement.

(h) None of the Acquired Corporations have been either a "distributing corporation" or a "controlled corporation" in a distribution of stock intended to qualify for tax-free treatment under Section 355 of the Code.

(i) None of the Acquired Corporations has entered into any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b)(2).

(j) The Acquired Corporations (i) have properly reported to the IRS any "reportable transaction" within the meaning of Treasury Regulations Section 1.6011-4, and (ii) as of the date of this Agreement, have not entered into any such "reportable transactions" that are not yet required to be reported to the IRS.

(k) None of the Acquired Corporations will be required to include any material item of income in, or exclude any material item of deduction from, the computation of taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any (i) change in method of accounting for a taxable period ending on or prior to the

Closing Date, (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law) executed on or prior to the Closing Date, (iii) installment sale or open transaction disposition made on or prior to the Closing Date, or (iv) prepaid amount received on or prior to the Closing Date outside the ordinary course of business.

(l) None of the Acquired Corporations is a "passive foreign investment company" within the meaning of Section 1297 of the Code or a "controlled foreign corporation" within the meaning of Section 957 of the Code. Part 3.16(l) of the Company Disclosure Schedule sets forth (i) the classification of the Acquired Corporations for U.S. federal income tax purposes and (ii) each election under Treasury Regulations Section 301.7701-3(c) that has been filed with respect to the Acquired Corporations.

(m) None of the Acquired Corporations has or has had a permanent establishment, as defined in an applicable Tax treaty or convention, in a country other than the country in which it is resident for tax purposes. Each Acquired Corporation has collected all material sales, use, value added, and similar Taxes (such Taxes being material either individually or in the aggregate) required to be collected and have timely remitted (taking into account any applicable extensions) such Taxes to the appropriate Governmental Body.

(n) The Company has made available to Parent or Parent's Representatives prior to the date of this Agreement true and correct copies of the U.S. federal, state and local income and franchise Tax Returns and all non-U.S. income Tax Returns filed by or with respect to the Acquired Corporations for each of the fiscal years ended December 31, 2011, and 2010, and true and correct copies of all examination reports and statements of deficiencies assessed against or agreed to by the Acquired Corporations or any of its or their respective predecessors since December 31, 2009 with respect to Taxes of any type.

(o) There are no Encumbrances for Taxes upon the assets of the Acquired Corporations (other than with respect to liens for Taxes incurred in the ordinary course of business consistent with past practice that are not yet due and payable).

(p) The Company is not, and has not been at any time during the five-year period ending on the Closing Date, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code.

(q) No Acquired Corporation has entered into any material closing agreement, private letter ruling, technical advice memoranda, or similar agreement or ruling with any Tax authority, nor has any been issued by any Tax authority.

3.17 Employee Matters; Benefit Plans.

(a) Except as required by applicable Legal Requirements, the employment of each of the Acquired Corporation's employees is terminable by the applicable Acquired Corporation at will.

(b) None of the Acquired Corporations is a party to, or has a duty to bargain for or is currently negotiating in connection with entering into, any collective bargaining

agreement or other Contract with a labor organization or works council representing any of its employees and there are no labor organizations or works councils representing, purporting to represent or, to the knowledge of the Company, seeking to represent any employees of any of the Acquired Corporations. No collective agreements applicable to the Company exist at any of the Acquired Corporations. There has not been any strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question concerning representation, union organizing activity, or any threat thereof, or any similar activity or dispute, affecting any of the Acquired Corporations or any of their employees. There is not now pending, and, to the knowledge of the Company, no Person has threatened to commence, any such strike, slowdown, work stoppage, lockout, job action, picketing, labor dispute, question regarding representation or union organizing activity or any similar activity or dispute. There is no claim or grievance pending or, to the knowledge of the Company, threatened relating to any Employee Plan, wages and hours, leave of absence, plant closing notification, employment statute or regulation, privacy right, labor dispute, workers' compensation policy or long-term disability policy, safety, retaliation, immigration or discrimination matters involving any Company Associate, including charges of unfair labor practices (including equal employment opportunity laws), terms and conditions of employment, occupational safety and health, affirmative action, employee privacy or harassment complaints. The Acquired Corporations are in material compliance with any affirmative action plans and requirements. The Acquired Corporations are in material compliance with all Legal Requirements respecting labor, employment, fair employment practices (including equal employment opportunity laws), terms and conditions of employment, workers' compensation, occupational safety and health, affirmative action, employee privacy, notice and other requirements under the Worker Adjustment and Retraining Notification Act of 1988 ("WARN") and any other similar applicable foreign, state, or local statutes or regulations of any jurisdiction relating to any plant closing or mass layoff (or similar triggering event), and wages and hours.

(c) None of the Acquired Corporations is delinquent in payments to any Company Associate for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or amounts required to be reimbursed to such Company Associates. None of the Acquired Corporations is liable for any payment to any trust or other fund or to any Governmental Body, with respect to unemployment compensation benefits, social security or other benefits or obligations for Company Associates (other than routine payments to be made in the ordinary course of business consistent with past practice) and freelancer/independent contractors.

(d) Part 3.17(d) of the Company Disclosure Schedule sets forth a true and complete list of the material Employee Plans (excluding consulting agreements with independent contractors who are not natural persons). Part 3.17(d) of the Company Disclosure Schedule separately identifies (i) each Employee Plan that contains a change in control provision and (ii) each Employee Plan that is maintained primarily for the benefit of Company Associates outside the United States, including each retirement plan, pension plan, deferred compensation and life insurance plan (each, an "International Employee Plan"). The Company has made available to Parent or Parent's Representatives on or prior to the date of this Agreement with respect to each Employee Plan: (A) all material plan documents and all amendments thereto, and all related trust agreements, insurance contracts or other funding documents, (B) all determination letters, rulings, opinion letters, information letters or advisory opinions issued by the IRS or the United States Department of Labor ("DOL") during the last three years, (C) the

most recent annual actuarial valuation (including relevant actuarial assumptions), if any, the most recent statement of plan assets and liabilities (or book reserves and any funding arrangements made with respect to such plans) and annual reports (Form Series 5500 and all schedules and financial statements attached thereto), (D) the most recent summary plan descriptions and any material modifications thereto, (E) the most recent nondiscrimination tests performed under the Code (including 401(k) and 401(m) tests) for each Employee Plan, and (F) all material correspondence to or from the IRS, the DOL, or any other Governmental Body for the last three years, including any filings under the IRS' Employee Plans Compliance Resolution System Program or any of its predecessors or the DOL Delinquent Filer Program.

(e) None of the Employee Plans is (i) subject to Title IV of ERISA and none of the Acquired Corporations nor any of their ERISA Affiliates have incurred any direct or indirect liability under or by operation of Title IV of ERISA, (ii) a "multiemployer plan" as defined in Section 3(37) of ERISA, or (iii) subject to Section 412 of the Code.

(f) Each of the Employee Plans that is intended to be qualified under Section 401(a) of the Code has obtained a favorable determination letter (or opinion letter, if applicable) as to its qualified status under the Code, including all currently effective amendments to the Code, and to the knowledge of the Company, nothing has occurred that would be reasonably expected to result in the loss of such qualification or exemption, except for such events that can be remedied without material liability to the Acquired Corporations; any such plan that has been terminated by an Acquired Corporation during the last three years has been terminated in accordance with all applicable Legal Requirements (including ERISA and the Code), and such Acquired Corporation has obtained (or has an application pending for) a favorable determination letter regarding the qualification status of such Employee Plan under Section 401(a) of the Code upon its termination. Each of the Employee Plans (including any related trust) is now and has for the last six years been operated in accordance with its terms and all applicable Legal Requirements, including ERISA and the Code, except where the failure to operate such Employee Plans in accordance with their terms and applicable Legal Requirements did not and could not, individually or in the aggregate, result in any material liability to the Acquired Corporations. For the last six years, the Acquired Corporations have performed in all material respects all obligations required to be performed by them under, are not in any material respect in default under or in violation of, and, to the knowledge of the Company, there is no default or violation by any other party to, any Employee Plan, and no event has occurred and, to the knowledge of the Company, there exists no condition or set of circumstances, that the Company would reasonably expect to subject any Acquired Corporation to any material liability under the terms of, or with respect to, such Employee Plans, ERISA, the Code or any other applicable Legal Requirement. None of the Acquired Corporations, nor, to the knowledge of the Company, any other Person or entity, has made any commitment to modify, change or terminate any Employee Plan in a manner to materially increase the liability of any Acquired Corporation to provide benefits, other than with respect to a modification, change or termination required by applicable Legal Requirements, including ERISA and the Code, and there has been no action with respect to or amendment to, or written interpretation or announcement by any Acquired Corporation regarding any Employee Plan that would materially increase the expense of maintaining such Employee Plan above the level of expense incurred with respect to that plan for the fiscal year ended December 31, 2012 (including any announcement regarding any increase in any Acquired Corporation's discretionary contribution under any Employee Plan intended to be qualified under Section 401(a) of the Code).

(g) (i) No Acquired Corporation, any Employee Plan nor, to the knowledge of the Company, any trustee, administrator or other third-party fiduciary and/or party-in-interest thereof, has engaged in any breach of fiduciary responsibility or any "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) to which Section 406 of ERISA or Section 4975 of the Code applies and which could subject any Acquired Corporation or any of their ERISA Affiliates, any Employee Plan or trustee, administrator or other third-party fiduciary and/or party-in-interest thereof to a material tax or penalty on prohibited transactions imposed by Section 4975 of the Code, (ii) no suit, administrative proceeding, action or other litigation has been brought, or to the knowledge of the Company is threatened, against or with respect to any such Employee Plan, any fiduciaries thereof with respect to their duties to the Employee Plans or the assets of any of the trusts under any of the Employee Plans, including any audit or inquiry by the IRS, the DOL, the United States Pension Benefit Guaranty Corporation, or the United States Department of Health and Human Services, except as would not individually or in the aggregate be reasonably likely to result in a Material Adverse Effect, (iii) with respect to each Employee Plan all Tax, annual reporting and other governmental filings required by ERISA and the Code have been timely filed with the appropriate Governmental Body and all notices and disclosures required under applicable Legal Requirements have been timely provided to participants, except as would not result in any material liability to any Acquired Corporation, (iv) all contributions and payments to such Employee Plan are deductible under Code Sections 162 or 404, and (v) no assets of any Employee Plan are subject to a material amount of Tax as unrelated business taxable income under Section 511 of the Code.

(h) None of the Acquired Corporations nor any ERISA Affiliate is subject to any material liability or penalty under Sections 4976 through 4980 of the Code or Title I of ERISA with respect to any Employee Plan. All required contributions in respect of any Employee Plan have been timely made or properly accrued on the financial statements included in or incorporated by reference into the Company SEC Documents.

(i) Except to the extent required under an applicable Legal Requirement, neither the Acquired Corporations nor any Employee Plan has any present or future obligation to make any payment to, or with respect to, any present or former Company Associate pursuant to any post-employment or retiree medical benefit plan or other post-employment retiree welfare plan. None of the Acquired Corporations have any material unsatisfied obligations to pay or reimburse insurance premiums to any present or former Company Associates or their qualified beneficiaries pursuant to the Consolidated Omnibus Reconciliation Act of 1985, as amended, and the regulations (including proposed regulations) thereunder, the Health Insurance Portability and Accountability Act of 1996, as amended, and the regulations thereunder, or any other applicable Legal Requirement governing health care coverage extension or continuation. No Acquired Corporation nor any ERISA Affiliate has ever maintained, established, sponsored, participated in or contributed to any self-insured "employee welfare benefit plan" within the meaning of Section 3(2) of ERISA, including any such plan pursuant to which a stop-loss policy or contract applies (other than a health care reimbursement plan under Section 125 of the Code).

(j) Part 3.17(j)(A) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date of this Agreement, of the following with respect to each Company Associate who is an active employee on the date hereof: (i) employee identification number assigned by the Acquired Corporations, (ii) name and title/position, except for those international Company Associates, (iii) annual base salary or hourly wage, (iv) annual bonus target for the 2013 calendar year, (v) equity grant target for the 2013 calendar year, and if there was no such equity grant target, the value of the equity granted in 2013, (vi) accrued vacation, (vii) date of hire, (viii) geographic location, (ix) functional area and (x) the Company's (or its Subsidiary's) classification of such Company Associate as exempt or non-exempt with respect to the Fair Labor Standards Act and any applicable state, local or foreign wage and hour laws, to the extent applicable. Part 3.17(j)(B) of the Company Disclosure Schedule sets forth a complete and accurate list, as of the date of this Agreement, of the following with respect to each Company Associate who is an active independent contractor (who is a natural person) on the date hereof: (i) name, and (ii) department to which the contractor is assigned. No Acquired Corporation is obligated to employ or to rehire persons not listed on Part 3.17(j) of the Company Disclosure Schedule, except as required by applicable Legal Requirements.

(k) To the knowledge of the Company, all International Employee Plans comply in all material respects with the applicable local Legal Requirements. None of the Acquired Corporations have any material unfunded liabilities with respect to any such International Employee Plans. As of the date of this Agreement, to the knowledge of the Company, there is no pending or threatened litigation relating to any International Employee Plan.

(l) There has not been in the last three years, and there is not pending or, to the knowledge of the Company, threatened, any claim, lawsuit, audit, investigation or arbitration that has been asserted or instituted against any Acquired Corporation by any Governmental Body relating to the legal status or classification of an individual classified by any Acquired Corporation as a non-employee (such as an independent contractor, a leased employee, a consultant or special consultant). Part 3.17(l) of the Company Disclosure Schedule lists any filings made by any Acquired Corporation under the IRS' Voluntary Classification Settlement Program.

(m) There are no loans by any Acquired Corporation to any Company Associates outstanding on the date of this Agreement (other than loans under any Employee Plan intended to qualify under Section 401(k) of the Code and routine travel advances made in the ordinary course of business).

(n) With respect to each Employee Plan that is a "nonqualified deferred compensation plan" (as defined for purposes of Section 409A(d)(l) of the Code), (i) such plan has been operated in all material respects since January 1, 2005 in good faith compliance with Section 409A of the Code and all applicable IRS guidance promulgated thereunder to the extent such plan is subject to Section 409A of the Code and so as to avoid any Tax, interest or penalty thereunder and (ii) the document or documents that evidence each such plan have complied with the provisions of Section 409A of the Code and the final regulations under Section 409A of the Code in all material respects since January 1, 2009. No payments on account of the transactions contemplated by this Agreement would cause any material liability to an Acquired Corporation under Section 409A of the Code.

(o) No amount that could be received by any employee, officer or director of any Acquired Corporation in connection with the transactions contemplated hereby would fail to be deductible under Section 280G of the Code or result in an excise tax under Section 4999 of the Code. On or prior to the date hereof, the Company has delivered to Parent or Parent's Representatives a reasonable estimate of the Company's good faith calculations related to any potential liability of any Acquired Corporation, or any Company Associate thereof, under Section 280G or Section 4999 of the Code, respectively.

(p) None of the Acquired Corporations have any obligation to provide (whether pursuant to an Employee Plan or otherwise) a "gross-up", indemnity payment or otherwise to compensate any individual with respect to the additional taxes or interest pursuant to Section 280G of the Code, Section 4999 of the Code or Section 409A of the Code.

(q) Neither the execution and delivery of this Agreement or other related agreements, nor the consummation of the Offer, the Merger and the other Transactions will or may (either alone or in conjunction with any other event, such as termination of employment), (i) result in any payment (including severance but excluding unemployment compensation required by Legal Requirements) becoming due to any Company Associate under any Employee Plan, (ii) increase any benefits otherwise payable under any Employee Plan, (iii) result in any acceleration of the time of payment or vesting of any benefits under any Employee Plan, (iv) result in the forgiveness of any indebtedness, (v) result in the imposition of any restrictions with respect to the amendment or termination of any of the Employee Plans, (vi) result in any obligation to fund a trust or similar instrument for future benefits under any of the Employee Plans or (vii) result in any payment under any Employee Plan which would not be deductible under Section 162(m) of the Code. No individual who is a party to a Company Employee Agreement listed in Part 3.17(q) of the Company Disclosure Schedule has terminated employment or been terminated by an Acquired Corporation, nor has any event occurred that could give rise to a termination event, in either case under circumstances that have given, or could give, rise to a severance obligation on the part of an Acquired Corporation under such agreement.

3.18 Environmental Matters.

(a) Each Acquired Corporation is, and has at all times been, in compliance in all material respects with all applicable Environmental Laws (except where the failure to comply with Environmental Laws did not and would not individually or in the aggregate, reasonably be expected to impose or result in a material liability that is the responsibility of the Acquired Corporations). During the past three (3) years, neither the Company, nor any other Acquired Corporation, has received any written notice from a Governmental Body that alleges that any Acquired Corporation has been in violation of, or is subject to liability under, in any material respect any Environmental Law. To the knowledge of the Company, no current or prior owner of any property leased, owned or controlled by the Acquired Corporations has received any written notice from a Governmental Body that alleges that such current or prior owner or any Acquired Corporation has been in violation of, or is

subject to liability under, in any material respect any Environmental Law. Neither the Company nor any other Acquired Corporation has installed or used any of the following in connection with its business, and to the knowledge of the Company, none of the following are present at the Leased Real Property: (i) underground storage tanks for Hazardous Materials; (ii) any landfill, wastewater impoundment or other unit for the treatment or disposal of Hazardous Materials; (iii) filled in land or wetlands; (iv) PCBs; (v) toxic mold; (vi) lead-based paint; or (vii) asbestos-containing materials. Except as would not result in any material liability to the Acquired Corporations, there has not been, and the Acquired Corporations have not caused, any Release of Hazardous Materials at, on, under or from any real property currently or formerly owned, operated or leased by the Acquired Corporations, during the period of such ownership, operation, or tenancy, and to the Company's knowledge, there has been no Release of Hazardous Materials at, on, under, or from the Leased Real Property. Except as would not result in any material liability to the Acquired Corporations, the Acquired Corporations have not disposed or recycled, or arranged for the disposal or recycling, of any Hazardous Materials at any third party property. None of the Acquired Corporations is subject to any order, decree, injunction or other arrangement with any Governmental Body relating to liability or obligations under any Environmental Law. To the knowledge of the Company, there are no other circumstances or conditions involving any Acquired Corporation that could reasonably be likely to result in any material claim, liability, investigation, cost or restriction on the ownership, operation, use, or transfer of any property pursuant to any Environmental Law.

(b) The Acquired Corporations have made available to Parent or Parent's Representatives prior to the date of this Agreement copies of all environmental assessments, reports, studies, memoranda, sampling data, audits and all material documents in their possession (in each case, that is dated within the last four (4) years) that relate to their compliance with, or liability under, Environmental Laws or the environmental condition of any real property that the Company or any other Acquired Corporation has owned, operated or leased that would reasonably be expected to result in any material liability of any of the Acquired Corporations.

3.19 Insurance.

(a) Part 3.19 of the Company Disclosure Schedule sets forth a list of each insurance policy under which any Acquired Corporation is an insured or otherwise the principal beneficiary of coverage, and all material self-insurance programs and arrangements relating to the business, assets and operations of the Acquired Corporations. The Company has delivered or otherwise made available to Parent or Parent's Representatives prior to the date of this Agreement true and complete copies of all such policies, programs and arrangements and all such policies, programs and arrangements are in full force and effect. The Acquired Corporations are presently insured for reasonable amounts with financially sound and reputable insurance companies against such risks as companies engaged in a similar business would, in accordance with good business practice, customarily be insured.

(b) As of the date of this Agreement, there is no claim pending under any of the Acquired Corporations' insurance policies or fidelity bonds as to which coverage has been questioned, denied or disputed, in whole or in part, by the underwriters of such policies or bonds. The Acquired Corporations are in compliance in all material respects with the terms of

such policies and bonds and, to the knowledge of the Company, no event has occurred which, with notice or lapse of time, would constitute a breach or default, or permit termination or modification, under any such policy or bond. The Company has no knowledge as of the date of this Agreement of any threatened termination of, or material premium increase with respect to, or the future unavailability on substantially the same terms of, any of such policies or bonds. At no time subsequent to December 31, 2011 has any Acquired Corporation (a) been denied any material insurance or indemnity bond coverage which it has requested or (b) made any material reduction in the scope or amount of its insurance coverage.

3.20 Transactions with Affiliates. Between January 1, 2012 and the date of this Agreement, there is no transaction, or series of similar transactions, agreements, arrangements or understandings, nor is there any proposed transaction or series of similar transactions, agreements, arrangements or understandings to which any of the Acquired Corporations was or is to be a party that would be required to be reported by the Company pursuant to Item 404 of Regulation S-K promulgated by the SEC.

3.21 Legal Proceedings; Orders.

(a) There is no Legal Proceeding pending and served (or, to the knowledge of the Company, pending and not served or threatened) against the Acquired Corporations, including those relating to environmental and occupational safety and health matters, or any other facts or circumstances of which the Company has knowledge that would reasonably be expected to result in any claims against, or obligations or liabilities of, the Acquired Corporations that (i) individually or in the aggregate, if determined adversely to an Acquired Corporation would reasonably be expected to have a Material Adverse Effect or (ii) as of the date of this Agreement, challenge the validity of, or seek to prevent consummation of, the Offer, the Merger or any other Transaction.

(b) There is no order, writ, injunction, decree, arbitration ruling, award, judgment or other finding to which any Acquired Corporation is subject that is, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

(c) To the Company's knowledge, no investigation or review by any Governmental Body with respect to the Acquired Corporations is pending or is being overtly threatened, other than any investigations or reviews that, individually or in the aggregate, would not reasonably be likely to have a Material Adverse Effect.

3.22 Authority; Binding Nature of Agreement. Assuming the transactions contemplated by this Agreement are consummated in accordance with Section 251(h) of the DGCL and assuming the accuracy of Parent's and Purchaser's representation and warranty set forth in Section 4.8, the Company has the corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Transactions. The Board of Directors of the Company (at a meeting duly called and held) has unanimously (a) determined that this Agreement and the Transactions are advisable and in the best interests of the Company and its stockholders, (b) approved and declared advisable this Agreement, the Offer, the Merger and the other Transactions in accordance with the requirements of the DGCL, (c) resolved to recommend that

stockholders of the Company accept the Offer and tender their Shares pursuant to the Offer and (d) to the extent necessary, adopted a resolution having the effect of causing the Merger, this Agreement and the transactions contemplated by this Agreement not to be subject to any state takeover law or similar Legal Requirement that might otherwise apply to the Merger or any of the other transactions contemplated by this Agreement. Except in compliance with Sections 1.2(c) and 5.4 of this Agreement, none of the foregoing resolutions by the Board of Directors of the Company have been amended, rescinded or modified. This Agreement has been duly executed and delivered by the Company and constitutes the legal, valid and binding obligation of the Company and assuming due authorization, execution and delivery by Parent and Purchaser, is enforceable against the Company in accordance with its terms, subject to (i) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (ii) rules of law governing specific performance, injunctive relief and other equitable remedies.

3.23 Section 203 of the DGCL, Etc. Not Applicable. As of the date hereof and at all times on or prior to the Offer Acceptance Time and assuming the accuracy of Parent's and Purchaser's representation and warranty set forth in Section 4.8, the Board of Directors of the Company has taken and will take all actions so that the restrictions (whether procedural, voting, approval, fairness or otherwise) applicable to business combinations contained in Section 203 of the DGCL are, and will be, inapplicable to the execution, delivery and performance of this Agreement and the timely consummation of the Transactions and will not restrict, impair or delay the ability of Parent or Purchaser to vote or otherwise exercise all rights as a stockholder of the Company. No "fair price," "moratorium," "control share acquisition" or other similar anti-takeover statute or regulation or any anti-takeover provision in the Company's certificate of incorporation or bylaws is, or at the Effective Time will be, applicable to the Shares, the Offer, the Merger or the other Transactions.

3.24 Vote Required. Assuming the transactions contemplated by this Agreement are consummated in accordance with Section 251(h) of the DGCL and assuming the accuracy of Parent's and Purchaser's representation and warranty set forth in Section 4.8, no stockholder votes or consents are necessary to authorize this Agreement or to consummate the Transactions.

3.25 Non-Contravention; Consents. Assuming compliance with the applicable provisions of the DGCL, the HSR Act and the listing requirements of the NASDAQ Global Select Market, the execution, delivery and performance of this Agreement by the Company and the consummation by the Company of the transactions contemplated by this Agreement will not: (a) result in a breach or violation of, or default under, any of the provisions of the certificate of incorporation or bylaws of the Company or the comparable governing instruments of any of the other Acquired Corporations; (b) with or without notice or lapse of time or both, result in a breach or violation of, a termination (or right of termination) or default under, any change in or acceleration or creation of any obligations or the creation of any Encumbrance on any assets of any Acquired Corporation or change or loss of rights pursuant to, any Company Material Contract, in each case, that would be binding upon any Acquired Corporation, except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect; or (c) result in a material breach or violation of any Legal Requirement applicable to any Acquired Corporation. Except as may be required by the Exchange Act and state takeover laws, the DGCL, the HSR Act and the rules and regulations of NASDAQ, neither the Company nor

any of its Affiliates is required to give notice to, deliver any report to, make any filing with, or obtain any Consent from any Person at any time prior to the Closing in connection with the execution, delivery and performance of this Agreement, or the consummation by the Company of the Offer, the Merger and the other Transactions, except those that the failure to make or obtain are not, individually or in the aggregate, reasonably likely to have a Material Adverse Effect.

3.26 Fairness Opinion. The Company's Board of Directors has received the written opinion of Centerview Partners LLC as financial advisor to the Company (the "Company Financial Advisor"), dated the date of this Agreement, to the effect that, as of the date of such opinion, and subject to the assumptions, qualifications and limitations set forth therein, the Offer Price is fair, from a financial point of view, to the Company stockholders (other than Parent and its Affiliates). The Company will make available to Parent solely for informational purposes a signed copy of the fairness opinion as soon as possible following the execution of this Agreement (and, in any event, within two (2) business days following the execution of this Agreement).

3.27 Financial Advisor. Neither the Company nor any of its officers, directors or employees has employed any broker or finder or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the Offer, the Merger or the other Transactions, except that the Company has employed the Company Financial Advisor, and the Company has made available to Parent prior to the execution of this Agreement a true and complete copy of all agreements between the Company and the Company Financial Advisor pursuant to which such firm would be entitled to any payment relating to the Offer, the Merger and the other Transactions.

3.28 Conflict Minerals. No Conflict Minerals are necessary to the functionality or production of a product manufactured or contracted by the Company to be manufactured or any product currently proposed to be manufactured by the Company or any of the Subsidiaries or on its behalf in the future. "Conflict Minerals" means: (1) columbite-tantalite (coltan), cassiterite, gold, wolframite, or their derivatives, which are limited to tantalum, tin, and tungsten, unless the Secretary of State of the United States determines that additional derivatives are financing conflict in the Democratic Republic of the Congo or a country that shares an internationally recognized border with the Democratic Republic of the Congo; and (2) any other mineral or its derivatives determined by the Secretary of State of the United States to be financing conflict in the Democratic Republic of the Congo or a country that shares an internationally recognized border with the Democratic Republic of the Congo.

3.29 Disclosure.

(a) None of the information with respect to the Acquired Corporations supplied or to be supplied by or on behalf of the Company for inclusion in the Offer Documents will, at the time of the filing of the Offer Documents, at any time it is amended or supplemented or at the time of any distribution or dissemination of the Offer Documents and at the time of the consummation of the Offer, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. At the time of the

filing, at any time it is amended or supplemented and at the time of publication, distribution and dissemination to the Company's stockholders, the Schedule 14D-9 (i) will comply in all material respects with the requirements of the Exchange Act and the rules and regulations promulgated thereunder and (ii) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. For clarity, the representations and warranties in this Section 3.29(a) will not apply to statements or omissions included or incorporated by reference in the Offer Documents or the Schedule 14D-9 based upon information supplied to the Company by Parent or Purchaser or any of their Representatives specifically for inclusion therein.

(b) The Company Financing Information is Compliant.

(c) Except for the representations and warranties made by the Company in this Agreement, neither the Company nor any other Person makes any express or implied representation or warranty with respect to the Company or its Subsidiaries, or their respective businesses, operations, assets, liabilities or conditions (financial or otherwise) in connection with this Agreement or the transactions contemplated hereby, and the Company hereby disclaims any such other representations and warranties.

Section 4. Representations and Warranties of Parent and Purchaser

Parent and Purchaser hereby represent and warrant to the Company as follows:

4.1 Due Organization. Except with respect to matters that, individually or in the aggregate, would not materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions, each of Parent and Purchaser is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and has all necessary power and authority: (a) to conduct its business in the manner in which its business is currently being conducted; and (b) to own and use its assets in the manner in which its assets are currently owned and used. Parent has delivered or made available to Company or Company's Representatives prior to the date of this Agreement accurate and complete copies of the certificate of incorporation, bylaws and other charter and organizational documents of Purchaser, including all amendments thereto.

4.2 Purchaser. Purchaser was formed solely for the purpose of engaging in the transactions contemplated hereby and has not engaged in any business activities or conducted any operations other than in connection with the transactions contemplated hereby. Parent owns beneficially and of record all of the outstanding capital stock of Purchaser.

4.3 Authority; Binding Nature of Agreement. Parent and Purchaser have the corporate power and authority to execute and deliver and perform their obligations under this Agreement; and the execution, delivery and performance by Parent and Purchaser of this Agreement have been duly authorized by all necessary action on the part of Parent and Purchaser and their respective boards of directors, and no other corporate proceedings on the part of Parent or Purchaser are necessary to authorize this Agreement or to consummate the transactions contemplated hereby, other than, with respect to the Merger, the filing of the Certificate of

Merger with the Secretary of State of the State of Delaware in accordance with the DGCL. This Agreement constitutes the legal, valid and binding obligation of Parent and Purchaser, and assuming due authorization, execution and delivery by the Company, is enforceable against them in accordance with its terms, subject to (a) laws of general application relating to bankruptcy, insolvency and the relief of debtors, and (b) rules of law governing specific performance, injunctive relief and other equitable remedies. This Agreement has been duly adopted immediately following its execution by Parent as the sole stockholder of Purchaser in accordance with the DGCL.

4.4 Non-Contravention; Consents. Assuming compliance with the applicable provisions of the HSR Act, the execution, delivery and performance of this Agreement by Parent and Purchaser, and the consummation by Parent and Purchaser of the transactions contemplated by this Agreement, will not: (a) result in a breach or violation of, or default under, any of the provisions of the certificate of incorporation or bylaws of Parent or Purchaser; (b) result in a breach or violation by Parent or Purchaser of any Legal Requirement applicable to Parent or Purchaser, or to which they are subject; or (c) with or without notice or lapse of time or both, result in a breach or violation of, a termination (or right of termination) or default under, any change in or acceleration or creation of any obligations or the creation of any Encumbrance on the assets of Parent or Purchaser or change or loss of rights pursuant to, any Contract, in each case, that would be binding upon Parent or Purchaser, except as, individually or in the aggregate, would not materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions. Except as may be required by the Exchange Act, blue sky Legal Requirements and state takeover laws, the DGCL or the HSR Act and the rules and regulations of NASDAQ, neither Parent nor Purchaser, nor any of Parent's other Affiliates, is required to make any filing with or give any notice or report to, or to obtain any Consent from, any Person at or prior to the Closing in connection with the execution, delivery and performance of this Agreement by Parent or Purchaser or the consummation by Parent or Purchaser of the Offer, the Merger and the other Transactions contemplated hereby, except those that the failure to make or obtain, individually or in the aggregate, would not materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions. No vote of Parent's stockholders is necessary to approve this Agreement or any of the transactions contemplated by this Agreement.

4.5 Disclosure.

(a) None of the information with respect to Parent or Purchaser supplied or to be supplied by or on behalf of Parent or Purchaser for inclusion in the Schedule 14D-9 will, at the time of the filing of the Schedule 14D-9, at any time it is amended or supplemented or at the time of any distribution or dissemination of the Schedule 14D-9, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. At the time of the filing of the Offer Documents, at any time any Offer Document is amended or supplemented and at the time of the distribution and dissemination of the Offer Documents and at the time of the consummation of the Offer, the Offer Documents (i) will comply in all material respects with the requirements of the Exchange Act and the rules and regulations promulgated thereunder and (ii) will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which

they are made, not misleading. For clarity, the representations and warranties in this Section 4.5(a) will not apply to statements or omissions included or incorporated by reference in the Offer Documents based upon information supplied to Parent by the Acquired Corporations or any of their Representatives specifically for inclusion therein.

(b) Except for the representations and warranties made by Parent and Purchaser in this Agreement, none of Parent, Purchaser and any other person makes any express or implied representation or warranty with respect to Parent, Purchaser, their Subsidiaries or their respective businesses, operations, assets, liabilities or conditions (financial or otherwise) in connection with this Agreement or the transactions contemplated hereby, and each of Parent and Purchaser hereby disclaims any such other representations and warranties.

4.6 Absence of Litigation. As of the date of this Agreement, there is no Legal Proceeding pending and served or, to the knowledge of Parent, pending and not served or threatened against Parent or Purchaser that would materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions contemplated hereby. Neither Parent nor Purchaser is subject to any continuing order of, consent decree, settlement agreement or similar written agreement with, or, to the knowledge of Parent, continuing investigation by, any Governmental Body, or any order, writ, judgment, injunction, decree, determination or award of any Governmental Body that would materially and adversely affect Parent's or Purchaser's ability to consummate the Transactions contemplated hereby.

4.7 Funds.

(a) At the Offer Acceptance Time and the Closing, Parent will have, and will cause Purchaser to have, the funds necessary to consummate the Transactions, including without limitation payment in cash of the aggregate Offer Price at the Offer Acceptance Time and the aggregate Merger Consideration on the Closing Date and to pay all related fees and expenses. Parent acknowledges that its obligations under this Agreement are not contingent or conditioned in any manner on obtaining any financing.

(b) Parent has delivered to the Company, prior to the date of this Agreement, a true and complete copy of an executed commitment letter among Parent, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America, N.A., JPMorgan Chase Bank, N.A., J.P. Morgan Securities LLC and Barclays Bank PLC, including all exhibits, schedules and annexes thereto, and excerpts of those portions of each fee letter associated therewith that contain any conditions to funding (including market flex provisions) (other than fee amounts, pricing caps and other economic terms that could not adversely affect the conditionality, enforceability, availability, termination or aggregate principal amount of the debt financing contemplated by such commitment letter) regarding the terms of the debt financing to be provided thereby (collectively, the "Commitment Letter"), pursuant to which the parties thereto (other than Parent) have committed to provide, subject to the terms and conditions set forth therein, debt financing in the amounts set forth therein (the "Financing"). As of the date of this Agreement, (i) the Commitment Letter is (A) a legal, valid and binding obligation of Parent and, to the knowledge of Parent, each of the other parties thereto, (B) enforceable in accordance with its terms against Parent and, to the knowledge of Parent, each of the other parties thereto, except as such enforceability (x) may be limited by bankruptcy, insolvency, fraudulent transfer,

reorganization, moratorium and other similar laws of general application affecting or relating to the enforcement of creditors' rights generally and (y) is subject to general principles of equity, whether considered in a proceeding at law or in equity, and (C) in full force and effect, (ii) the Commitment Letter has not been amended or modified, (iii) none of the respective obligations and commitments contained in the Commitment Letter has been withdrawn, terminated or rescinded in any respect, (iv) no event has occurred which (with or without notice or lapse of time, or both) would constitute a default or breach on the part of Parent or, to the knowledge of Parent, any other parties thereto under the Commitment Letter, and (v) Parent does not have any reason to believe that any of the conditions to the Financing will not be satisfied or that the Financing will not be available to Parent at the Offer Acceptance Time and Closing Date, as applicable. Parent has fully paid or caused to be paid any and all commitment fees or other fees in connection with the Commitment Letter that are payable on or prior to the date hereof. The Commitment Letter contains all of the conditions precedent or other contingencies to the obligations of the parties thereunder to make the full amount of the Financing available to Parent on the terms therein. As of the date hereof, there are no side letters or other agreements, arrangements or understandings (including fee letters) to which Parent or any of its Affiliates is a party that would affect the availability of the full amount of the Financing other than as expressly set forth in the Commitment Letter.

(c) Without limiting Section 9.5, in no event shall the receipt or availability of any funds or financing by or to Parent, Purchaser or any of their respective Affiliates or any other financing transaction be a condition to any of the obligations of Parent or Purchaser hereunder.

4.8 Ownership of Company Common Stock. Neither Parent nor Purchaser is, nor at any time for the past three years has been, an "interested stockholder" of the Company as defined in Section 203 of the DGCL. Neither Parent nor any of Parent's Subsidiaries directly or indirectly owns, and at all times for the past three years, neither Parent nor any of Parent's Subsidiaries has owned, beneficially or otherwise, any Shares or any securities, contracts or obligations convertible into or exercisable or exchangeable for Shares.

Section 5. Certain Covenants of the Company

5.1 Access and Investigation.

(a) During the period from the date of this Agreement until the Effective Time, upon reasonable advance notice to the Company, the Company shall, and shall cause the respective Representatives of the Acquired Corporations to: (a) provide Parent and Parent's Representatives with reasonable access during normal business hours of the Company to the Acquired Corporations' Representatives, personnel, properties, assets and to all existing books, Contracts, projections, plans, records, filings, submissions, Tax Returns, work papers and other documents and information relating to the Acquired Corporations; and (b) furnish promptly to Parent and Parent's and its Subsidiaries' Representatives with such copies of the existing books, contracts, projections, plans, records, filings, submissions, Tax Returns, work papers and other documents and information relating to the Acquired Corporations, and with such additional financial, operating and other data and information regarding the Acquired Corporations' business, properties, prospects and personnel, as Parent may reasonably request; *provided*,

however, that any such access shall be conducted at Parent's expense, at a reasonable time, under the supervision of appropriate personnel of the Company, and in such a manner as to not to interfere unreasonably with the normal operation of the business of the Company; *provided*, *further* that no investigation pursuant to this Section 5.1 shall affect or be deemed to modify any representation or warranty made by the Company in this Agreement. With respect to the information disclosed pursuant to this Section 5.1, Parent shall comply with, and shall instruct the applicable Representatives of Parent to comply with, all of its confidentiality obligations under the Confidentiality Agreement dated July 12, 2013, between the Company and Parent (the "Confidentiality Agreement").

(b) Nothing herein shall require the Company to disclose any information to Parent if such disclosure would, in its reasonable discretion (i) jeopardize any attorney client or other legal privilege (*provided*, that the Company will nonetheless provide Parent and the applicable Representatives of Parent with appropriate information regarding the factual basis underlying any circumstances that resulted in the preparation of such privileged analyses) or (ii) contravene any applicable Legal Requirement, fiduciary duty or binding agreement entered into prior to the date of this Agreement, including any confidentiality agreement to which the Company or its Affiliates is a party (*provided*, that the Company shall use its commercially reasonable efforts to obtain the consent of any such agreement's counterparty to such inspection or disclosure). The Company and Parent will each use its commercially reasonable efforts to make appropriate substitute arrangements to permit reasonable disclosure under circumstances in which the restrictions of the preceding sentence apply.

5.2 Notification of Certain Events. Subject to Antitrust Laws and other Legal Requirements, the Company shall (a) provide Parent with advance notice of and an opportunity for one executive of Parent to participate as an observer in any meetings or conference calls the Company has with (i) the FDA or its advisory committees or the EMA or its advisory committees and (ii) subject to the prior written consent of the Collaboration Partner, any executive committee of the Company's and its Collaboration Partner's representatives that has been established pursuant to any agreement with such Collaboration Partner with respect to the development, marketing, distribution, manufacturing, labeling, commercialization and sales of Company Products pursuant to such agreement, and (b) consider in good faith and, to the extent reasonable to do so, incorporate, any comments or other input provided by Parent in respect of the foregoing.

5.3 Operation of the Company's Business.

(a) During the Pre-Closing Period: (i) except (x) as required or otherwise contemplated under this Agreement, (y) with the written consent of Parent (not to be unreasonably withheld, conditioned or delayed), or (z) as set forth in Part 5.3 of the Company Disclosure Schedule, the Company shall ensure that each of the Acquired Corporations conducts its business and operations (A) in the ordinary course and in substantially the same manner as previously conducted and (B) using its commercially reasonable efforts to maintain compliance with all applicable Legal Requirements and the requirements of all Material Contracts; and (ii) the Company shall promptly notify Parent of (A) any notice or other communication from any Person alleging that the Consent of such Person is or may be required in connection with any of

the transactions contemplated by this Agreement, and (B) any Legal Proceeding commenced, or, to its knowledge threatened, relating to or involving or otherwise affecting any of the Acquired Corporations that relates to the consummation of the transactions contemplated by this Agreement. The Company shall use commercially reasonable efforts to preserve intact the components of its current business organization, including keeping available the services of current officers and use commercially reasonable efforts to maintain its relations and good will with its suppliers, Collaboration Partners, distributors, clinical trial managers, customers and other business associates and Governmental Bodies; *provided*, *however*, that the Acquired Corporations shall be under no obligation to put in place any new retention programs or include additional personnel in existing retention programs.

(b) Without limiting the generality of the foregoing, during the Pre-Closing Period, except (x) as required or otherwise contemplated under this Agreement, (y) with the written consent of Parent (not to be unreasonably withheld, conditioned or delayed), or (z) as set forth in Part 5.3 of the Company Disclosure Schedule, the Company shall not, and shall not permit any of the other Acquired Corporations to:

(i) declare, accrue, set aside or pay any dividend or make any other distribution in respect of any shares of the Company's capital stock, or repurchase, redeem or otherwise reacquire any shares of the Company's capital stock or Convertible Senior Notes, other than dividends or distributions between or among any of the Acquired Corporations to the extent consistent with past practices, and other acquisitions of Shares in satisfaction by holders of Company Stock Awards, Company Restricted Shares or Company Options of the exercise price and/or withholding taxes or as a result of forfeiture, as applicable;

(ii) sell, issue, grant or authorize the issuance or grant of (A) any capital stock or other security, (B) any option, call, warrant, share of phantom stock or phantom stock right, stock purchase or stock appreciation right, restricted stock unit, performance stock unit or right to acquire any capital stock or other security, or (C) any instrument convertible into or exchangeable for any capital stock or other security (except that the Company may issue (1) Shares upon the valid exercise of Company Options or pursuant to other stock-based awards, in each case outstanding as of the date of this Agreement, (2) Shares issuable upon conversion of the Convertible Senior Notes, or (3) Company Options, Company RSUs and Company PSUs under the Company Equity Plans in satisfaction of Pending Equity Grants consistent with past practice);

(iii) split, combine or reclassify its outstanding shares of capital stock of the Company or enter into any agreement with respect to voting of any of the capital stock of any of the Acquired Corporations or any securities convertible into or exchangeable for such capital stock;

(iv) except as contemplated by Section 6.2, to the extent required by applicable Legal Requirements or as required pursuant to an Employee Plan in effect prior to the date of this Agreement and set forth Part 3.17(d) of the Company Disclosure Schedule, (A) enter into, establish, adopt, modify, amend or terminate any

Employee Plan or any employment, consulting, collective bargaining, bonus or other incentive compensation, health or other welfare, pension, retirement, severance, deferred compensation or other compensation or benefit plan with, for or in respect of any shareholder, director, officer, other employee or consultant that would constitute an Employee Plan had it been in effect as of the date of this Agreement, (B) grant any new awards under any Employee Plan other than additional ESPP Purchase Rights accrued under the ESPP in accordance with the terms thereof and grants in satisfaction of Pending Equity Grants, (C) take any action to amend, modify or waive any of its rights under, or accelerate the vesting criteria or vesting requirements of payment of any compensation or benefit under, any Employee Plan, (D) amend or modify any outstanding award under any Employee Plan, (E) increase in any manner the compensation, bonuses, severance pay, termination pay, pension or welfare benefits, fringe benefits or any other benefits of any current or former Company Associate, (F) pay any bonus to any current or former Company Associate, except for, to the extent unpaid as of the date of this Agreement, commissions and bonuses under field performance incentive plans, which shall be determined in accordance with the terms of the applicable Employee Plan in effect as of the date of this Agreement and determined in good faith in the ordinary course of business and consistent with past practice, (G) promote any employee other than the completion of promotions contemplated as of the date of this Agreement as set forth in Schedule 5.3(b)(iv), (H) hire any employee or engage any temporary employee or independent contractor (who is a natural person) other than (x) the commencement of employment of employees who have accepted offers of employment as of the date of this Agreement as set forth in Schedule 5.3(b)(iv) and (y) the engagement of temporary employees and independent contractors (who are natural persons) consistent with past practice and pursuant to arrangements that are terminable on no more than 30 days' notice, (I) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Employee Plan, to the extent not already provided in any such Employee Plan, (J) change any actuarial or other assumptions used to calculate funding obligations with respect to any Employee Plan or change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP or (K) issue or forgive any loans (other than routine travel advances issued in the ordinary course of business and the use of Acquired Corporation credit cards in accordance with the Acquired Corporation's policy) to Company Associates; *provided, however,* that the Acquired Corporations: (a) may provide, as set forth in Schedule 5.3(b)(iv), routine, reasonable salary increases to non-executive officer employees in the ordinary course of business and consistent with past practices in connection with the Acquired Corporation's customary employee review process, in amounts not to exceed 15% per individual and 4% in the aggregate; (b) may amend any Employee Plans to the extent required by applicable Legal Requirements and (c) may accelerate or pro-rate customary annual bonus payments for eligible Company Associates whose employment is terminated before payment of annual bonuses for the year of termination, in accordance with bonus plans existing on the date of this Agreement;

(v) communicate with employees of the Acquired Corporations regarding the compensation, benefits or other treatment they will receive in connection with the Offer or the Merger, unless any such communications are consistent with prior

directives or documentation provided to the Acquired Corporations by Parent (in which case, the Acquired Corporations shall provide Parent with prior notice of and the opportunity to review and comment upon any such communications);

(vi) amend, modify, waive any provision of or permit the adoption of any amendment to its certificate of incorporation or bylaws or other charter or organizational documents;

(vii) form any Subsidiary, acquire any equity interest or other interest in any other Entity or enter into any joint venture, partnership, limited liability corporation or similar arrangement;

(viii) incur any indebtedness for borrowed money or issue any debt securities or warrants or other rights to acquire debt securities of the Company or any of its Subsidiaries or assume, guarantee or endorse, as an accommodation or otherwise, the obligations of any other Person, in the case of any of the foregoing, involving an aggregate principal amount or potential guaranteed amount in excess of $250,000 individually or $500,000 in the aggregate, or otherwise incur or modify any material indebtedness or liability;

(ix) pre-pay any long-term debt or accelerate or delay any material payments or the collection of payment due to the Company, except in the ordinary course of business consistent with past practice;

(x) make any capital expenditure (except that the Acquired Corporations may make any capital expenditure that: (A) is provided for in the Company's capital expense forecast attached as Part 5.3(b)(x) of the Company Disclosure Schedule; or (B) when added to all other capital expenditures made on behalf of all of the Acquired Corporations since the date of this Agreement but not provided for in the Company's capital expense forecast attached as Part 5.3(b)(x) of the Company Disclosure Schedule, does not exceed $500,000 individually and $2,000,000 in the aggregate during any calendar quarter);

(xi) acquire, lease, license or sublicense any right or other asset, including Intellectual Property Rights, from any other Person or sell or otherwise dispose of, or lease, license or sublicense, any right or other asset, including Intellectual Property Rights, to any other Person (other than in the ordinary course of business and consistent with past practices), or waive or relinquish, abandon, allow to lapse or encumber (except for any Permitted Encumbrance) any right or asset, including Intellectual Property Rights, other than pursuant to transactions where the amount of consideration paid or transferred in connection with such transactions would not exceed $1,000,000 individually or $2,000,000 in the aggregate;

(xii) lend money or make capital contributions to or make investments in, any Person except in the ordinary course of business, or incur or guarantee any indebtedness except for short-term borrowings incurred in the ordinary course of business;

(xiii) enter into, modify, amend or terminate any Contract or waive, release or assign any rights or claims thereunder, which if so entered into, modified, amended, terminated, waived, released or assigned would be reasonably likely to (i) adversely affect the Company (or, following consummation of the Offer, the Merger, Parent or any Affiliate of Parent) in any material respect; (ii) limit or restrict the Surviving Corporation, any Affiliate of the Surviving Corporation or any of their successors and assigns from engaging or competing in any line of business or in any geographical area; or (iii) if in effect as of the date hereof, would constitute a Material Contract (for this purpose replacing the dollar amount in Section 3.9(a)(viii) with $500,000) in any material respect;

(xiv) enter into any Contract providing for the distribution of Kyprolis outside of the U.S. that cannot be cancelled by the Company or any of its Subsidiaries without penalty or further payment without more than thirty (30) days' notice;

(xv) except to the extent required by applicable Legal Requirements, make or change any material Tax election, settle or compromise any material Tax liability, claim or assessment, change any annual Tax accounting period, change or consent to any change in any Tax accounting method, take any material position on any material Tax Return filed on or after the date of this Agreement, file any amended material Tax Return, enter into any closing agreement, surrender any right to claim a material Tax refund, waive or extend or consent to any extension or waiver of the statute of limitations period applicable to any material Taxes, Tax claim or assessment, or incur any material liability for Tax outside the ordinary course of business;

(xvi) commence any Legal Proceeding, except with respect to: (A) routine matters in the ordinary course of business and consistent with past practices; (B) in such cases where the Company reasonably determines in good faith that the failure to commence suit would result in a material impairment of a valuable aspect of its business (provided that the Company consults with Parent and considers the views and comments of Parent with respect to such Legal Proceedings prior to commencement thereof); or (C) in connection with a breach of this Agreement or any other agreements contemplated hereby;

(xvii) settle any Legal Proceeding, other than pursuant to a settlement: (A) that results solely in a monetary obligation involving payment by the Acquired Corporations of not more than the amount specifically reserved in accordance with GAAP with respect to such Legal Proceedings on the Balance Sheet; (B) that results solely in a monetary obligation involving only the payment of monies by the Acquired Corporations of not more than $500,000 individually or $2,500,000 in the aggregate; or (C) results solely in a monetary obligation that is funded by an insurance policy of the Acquired Corporations and the payment of monies by the Acquired Corporations that together with any settlement made under subsection (B) are not more than $500,000 individually or $2,500,000 in the aggregate (not funded through insurance policies);

(xviii) change any of its methods of accounting or accounting practices in any material respect unless required by GAAP or applicable Legal Requirements;

(xix) enter into any collective bargaining, agreement to form a work council or other union or similar agreement or commit to enter into any such agreements; or

(xx) agree or commit to take any of the actions described in clauses (i) through (xix) of this Section 5.3(b).

Notwithstanding the foregoing, nothing contained herein shall give to Parent or Purchaser, directly or indirectly, rights to control or direct the operations of the Acquired Corporations prior to the Offer Acceptance Time. In addition, notwithstanding the foregoing, nothing in this Section 5.3 shall restrict the Acquired Corporations from, or require the consent of Parent, prior to engaging or entering into any transaction or agreement exclusively among the Acquired Corporations if such transaction or agreement is set forth in Part 5.3 of the Company Disclosure Schedule.

(c) The Company shall take the actions set forth in Part 5.3(c) of the Company Disclosure Schedule.

5.4 No Solicitation.

(a) During the Pre-Closing Period, the Company shall not, and shall cause the other Acquired Corporations and their Representatives not to, directly or indirectly: (i) solicit, initiate, or knowingly induce, facilitate or encourage the submission or announcement of any Acquisition Proposal (including by granting any waiver under Section 203 of the DGCL) or any inquiry, indication of interest, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal; (ii) furnish any information regarding any of the Acquired Corporations to any Person in connection with or in response to an Acquisition Proposal or an inquiry, indication of interest, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal; (iii) participate or engage in discussions or negotiations with any Person with respect to any Acquisition Proposal or an inquiry, indication of interest, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal; (iv) adopt, approve, recommend, submit to stockholders or declare advisable any Acquisition Proposal; (v) enter into any letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or similar document or any Contract contemplating or otherwise relating to any Acquisition Transaction or modify, amend or waive any provision in any Contract in connection with any Acquisition Proposal; or (vi) release or permit the release during the Pre-Closing Period of any Person from, or waive or permit the waiver of any provision of, or fail to enforce or cause to be enforced, any confidentiality, "standstill", or similar agreement to which any of the Acquired Corporations is a party; *provided*, *however*, that prior to the Offer Acceptance Time, this Section 5.4 shall not prohibit the Company from furnishing information regarding the Acquired Corporations to, or entering into discussions with, any Person (and waiving such Person's noncompliance with the provisions of any "standstill" agreement to the extent (but only to the extent) necessary to permit such discussions) in response to a bona-fide written Acquisition

Proposal that is submitted after the date of this Agreement to the Company by such Person (and not withdrawn) if (1) neither the Company nor any Representative of any of the Acquired Corporations shall have breached any of the provisions set forth in Section 1.2(c) or this Section 5.4, (2) the Board of Directors of the Company concludes in good faith, after consultation with its outside legal counsel and its financial advisor of nationally recognized reputation, that such bona-fide written Acquisition Proposal constitutes a Superior Offer or would reasonably be expected to lead to a Superior Offer and that the failure to take such action would constitute a breach of the fiduciary duties of the Company's Board of Directors to the Company's stockholders under applicable Legal Requirements, (3) at least twenty-four (24) hours prior to furnishing any such information to, or entering into discussions with, such Person, Parent receives written notice from the Company of the identity of such Person and of the Company's intention to furnish information to, or enter into discussions with, such Person, and the Company receives from such Person an executed confidentiality agreement in a customary form that is no less favorable to the Company than the Confidentiality Agreement (an "Acceptable Confidentiality Agreement") (which the Company may negotiate with the Person during the twenty-four (24) hour notice period and enter into during such period or thereafter), and (4) the Company concurrently furnishes all such information to Parent (to the extent such information has not been previously furnished or made available by the Company to Parent or Parent's Representatives). Without limiting the generality of the foregoing, the Company acknowledges and agrees that any breach of any of the restrictions set forth in the preceding sentence by any Representative of the Company or any Acquired Corporation, whether or not such Representative is purporting to act on behalf of the Company or any Acquired Corporation, shall be deemed to constitute a breach of this Section 5.4 by the Company. Notwithstanding anything to the contrary contained in this Agreement, the Acquired Corporations and their Representatives may, following receipt of an Acquisition Proposal from any Person, communicate with such Person to the extent necessary to direct such Person to the provisions of this Section 5.4.

(b) During the Pre-Closing Period, the Company shall promptly (and in no event later than twenty-four (24) hours after receipt thereof) advise Parent orally and in writing of any Acquisition Proposal, any inquiry, indication of interest, proposal, offer or request that could reasonably be expected to lead to an Acquisition Proposal or any request for nonpublic information relating to any of the Acquired Corporations, including (A) the identity of the Person making or submitting such Acquisition Proposal, inquiry, indication of interest, proposal, offer or request, (B) a copy of all written materials provided in connection with such Acquisition Proposal, inquiry, indication of interest, proposal, offer or request and (C) a written summary of all material oral communications made by any Person during the Pre-Closing Period. After receipt of the Acquisition Proposal, inquiry, indication of interest or request, the Company shall continue promptly (and in any event within twenty-four (24) hours) to keep Parent informed orally or in writing of the status, terms and pertinent details of any such Acquisition Proposal, inquiry, indication of interest, proposal, offer or request (including by providing prompt notice of all material amendments or proposed material amendments thereto) and shall promptly (and in any event within twenty-four (24) hours) provide to Parent a copy of all written materials subsequently provided in connection with such Acquisition Proposal, inquiry, indication of interest, proposal, offer or request.

(c) As of the date of this Agreement, the Company shall immediately cease and cause to be terminated any existing discussions with any Person that relate to any

Acquisition Proposal or any inquiry or indication of interest that could reasonably be expected to lead to an Acquisition Proposal. The Company shall promptly (but in no event later than forty-eight (48) hours following the execution of this Agreement) demand that each Person that has heretofore executed a confidentiality agreement with the Company or any of its Affiliates or Subsidiaries or any of its or their Representatives with respect to such Person's consideration of a possible Acquisition Proposal at any time after January 1, 2013 (other than agreements that have expired by their terms) to immediately return or destroy (which destruction shall subsequently be certified in writing by such Person to the Company if such Person is required to do so pursuant to the terms of the non-disclosure or confidentiality agreement between such Person and the Company) all confidential information heretofore furnished by the Company, any of its Subsidiaries or any of its or their Affiliates or Representatives to such Person, its Subsidiaries or any of its or their Affiliates or Representatives.

5.5 Third Party Notices. The Company and Parent shall coordinate and cooperate with each other in the preparation and distribution of notices informing all material Collaboration Partners of the Offer and Merger. The Company shall also provide Parent with reasonable status updates in respect of any change of control notices required to be delivered pursuant to any Material Contract.

Section 6. Additional Covenants of the Parties

6.1 Filings and Approvals.

(a) Without limiting the generality of anything contained in this Section 6.1, the Company and Parent shall cooperate with each other and use (and shall cause their respective Subsidiaries to use) their commercially reasonable efforts to take or cause to be taken all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under this Agreement, and Legal Requirements to consummate and make effective the Offer and the Transactions as soon as reasonably practicable, including preparing and filing as promptly as reasonably practicable all documentation to effect all necessary notices, reports and other filings and to obtain as promptly as practicable all consents, registrations, approvals, permits and authorizations necessary or advisable to be obtained from any Governmental Body in order to consummate the Offer and the Transactions.

(b) In furtherance and not in limitation of the foregoing, each of the Company, Parent and Purchaser (and their respective Affiliates, if applicable) shall: (i) promptly, but in no event later than September 20, 2013 (or such later date that the Company and Parent may mutually agree to), file (and in any event the Company shall file within five (5) days after Parent files (or, if the fifth day is a Saturday or Sunday, the next subsequent business day)) any and all notices, reports and other documents required to be filed by such party under the HSR Act with respect to the Offer and the Merger and the other transactions contemplated hereby; and shall use reasonable best efforts promptly to cause the expiration or termination of any applicable waiting periods under the HSR Act; (ii) as promptly as reasonably practicable provide such information as may reasonably be requested by any Governmental Body in connection with the Transactions as well as any information required to be submitted to comply with a request for additional information in order to commence or end a statutory waiting period, (iii) use reasonable best efforts to cause to be taken, on a timely basis, all other actions necessary or

appropriate for the purpose of consummating and effectuating the Transactions, and (iv) promptly take, and cause its Affiliates to take, all reasonable actions and steps requested or required by any Governmental Body as a condition to granting any consent, permit, authorization, waiver, clearance and approvals, and to cause the prompt expiration or termination of any applicable waiting period and to resolve such objections, if any, as the FTC and the DOJ, or other Governmental Bodies of any other jurisdiction for which consents, permits, authorizations, waivers, clearances, approvals and expirations or terminations of waiting periods are required with respect to the Transactions; *provided* that the Acquired Corporations will only be required to take or commit to take any such action, or agree to any such condition or restriction, if such action, commitment, agreement, condition or restriction is binding on the Acquired Corporations only in the event the Closing occurs; *provided*, *further* that, subject to the requirements set forth in Section 6.1(d), the Acquired Corporations shall only be permitted to take or commit to take any such action, or agree to any such condition or restriction, with the prior written consent of Parent.

(c) Without limiting the generality of anything contained in this Section 6.1, each party hereto shall (i) give the other parties prompt notice of the making or commencement of any request, inquiry, investigation, action or Legal Proceeding by or before any Governmental Body with respect to the Transactions, (ii) keep the other parties reasonably informed as to the status of any such request, inquiry, investigation, action or Legal Proceeding and (iii) promptly inform the other parties of any communication to or from the FTC, DOJ or any other Governmental Body to the extent regarding the Transactions or regarding any such request, inquiry, investigation, action or Legal Proceeding, and provide a copy of all written communications. Subject to Legal Requirements relating to the sharing of information, Parent shall have the right to direct all matters with respect to the FTC and DOJ hereunder (including to direct the parties to pull and refile any notice under the HSR Act, in which event the Company shall pull and refile any such notice), consistent with its obligations hereunder. Parent and the Company shall have the right to review in advance, and to the extent practicable each will consult the other on, all the information relating to Parent or the Company, as the case may be, and any of their respective Subsidiaries that appear in any filing made with, or written materials submitted to, any third party and/or any Governmental Body in connection with the Offer and the Transactions (including the Offer Documents) and shall incorporate all comments reasonably proposed by Parent or the Company, as the case may be; *provided, however*, that with respect to any documents or materials required to be filed under the HSR Act, or other laws of any other applicable jurisdiction that contain information that is confidential or proprietary to the providing party (including any so called 4(c) or 4(d) documents), such information shall be provided solely to those individuals acting as outside antitrust counsel for the other parties provided that such counsel shall not disclose such information to such other parties and shall enter into a joint defense agreement with the providing party; *and provided further that*, the individuals acting as outside antitrust counsel for Company may redact from such information any information related to Company's transaction process, including third party bidders, third party offers, financial advice and the value of the Transaction. In addition, except as may be prohibited by any Governmental Body or by any Legal Requirement, in connection with any such request, inquiry, investigation, action or Legal Proceeding in respect of the Transactions, each party hereto will permit authorized Representatives of the other party to be present at each meeting or conference relating to such request, inquiry, investigation, action or Legal Proceeding and to have access to and be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Body in connection with such request, inquiry, investigation, action or Legal Proceeding.

(d) Nothing in this Section 6.1 or elsewhere in this Agreement shall require, or be construed to require, Parent or any of its Affiliates (i) to agree, consent or commit to any divestitures or licenses or other undertakings or to proffer to, or agree or consent to, hold separate, sell, license, transfer or assign, before or after the Effective Time, (A) any Product or any interest in any Product (including any Intellectual Property Rights therein or thereto) of Parent or any of its Affiliates, or (B) any Product or any interest in any Product (including any Intellectual Property Rights therein or thereto) of the Company or any of its Affiliates with respect to which the Company or any such Affiliate has a Material Interest (any such Product, a "Covered Product"), (ii) to agree or consent to any changes or restrictions in the operations of any business relating to such Products of Parent or any of its Affiliates or Covered Products, or (iii) to take any other action under this Section 6.1 if the DOJ, the FTC or any other Governmental Body authorizes its staff to seek a preliminary injunction or restraining order to enjoin consummation of the Offer or the Merger or otherwise challenge the Offer or the Merger, provided that Parent and its Affiliates have otherwise complied with their obligations under this Section 6.1 with respect to Products of the Company or any of its Affiliates that are not Covered Products. For purposes of this Section 6.1(d), "Material Interest" means, with respect to any Product, the right (arising out of ownership, contractual rights or otherwise) to receive, as of the date of this Agreement, a royalty or other payment of twenty five percent (25%) or more of the net sales, revenues or profits resulting from sales of the Product in the United States.

6.2 Company Options, Company RSUs, Company PSUs, Company Stock Awards, ESPP Purchase Rights.

(a) Company Options. At the Effective Time, each outstanding Company Option, whether vested or unvested or exercisable or unexercisable under the Company Equity Plans, shall, automatically and without any required action on the part of the holder thereof, be cancelled and converted into only the right to receive (without interest), an amount in cash (less applicable Tax withholdings), equal to (i) for each Company Option that is vested and exercisable as of the Effective Time, the product of (A) the excess, if any, of (1) the Offer Price over (2) the exercise price per share of such Company Option, and (B) the number of Shares underlying such Company Option, payable in a lump sum as soon as reasonably practicable (but no later than the second payroll period) after the Effective Time and (ii) for each Company Option that is not vested as of the Effective Time, an amount in cash equal to the excess, if any, of (1) the Offer Price over (2) the exercise price per share of such Company Option, and (B) the number of Shares underlying such Company Option, payable no later than the second payroll period after the applicable vesting date of such former Company Option, *provided* that the unvested former Company Option shall remain subject to the same vesting schedule and other relevant terms as in effect immediately before the Effective Time and the holder of such former Company Option must remain in service to Parent, the Company or any of their affiliates through the applicable vesting date to receive payment in respect thereof; *provided*, *further*, that any former Company Option that, per its terms, remains outstanding and unvested as of December 15, 2013, shall vest on December 15, 2013 and the cash amount determined pursuant to Section 6.2(a)(ii) in respect thereof shall be paid no later than December 31, 2013 or shall vest in full earlier if the Company Option holder's service to Parent, the

Company or their affiliates terminates without "Cause" (within the meaning of the Company's Employee Severance Plan as in effect immediately before the date hereof) or for Good Reason, in which case payment of the amounts herein shall be made by no later than the second payroll period after the date of such termination of employment without "Cause" or for Good Reason. The foregoing conversion shall be determined and interpreted in a manner consistent with the requirements of Section 409A of the Code. Notwithstanding the foregoing, any unvested Company Option held by an individual who is a non-employee member of the Board of Directors of the Company at the Effective Time shall become vested and exercisable in full upon the Effective Time and will be treated in accordance with Section 6.2(a)(i). "Good Reason" means the resignation of a Continuing Employee following, without the Continuing Employee's consent, (i) a reduction in the Continuing Employee's annual base salary or base hourly wage rate or bonus opportunity as set forth in the second sentence of the first paragraph of Section 6.3, (ii) a relocation of a Continuing Employee's primary location of employment by more than fifty (50) miles from their employment location immediately prior to the Effective Time or (iii) a materially adverse diminution of a Continuing Employee's duties, causing such duties to be fundamentally inconsistent with those in effect immediately before the Effective Time, that remains uncured thirty (30) days after Parent's receipt of written notice of such diminution from the Continuing Employee, but expressly excluding any change resulting from the Company becoming a subsidiary of Parent, any change in who the Continuing Employee reports to and any requirement to assist with transitioning the Continuing Employee's work to another person.

(b) Company RSUs and Company PSUs. At the Effective Time, each outstanding Company Restricted Stock Unit granted under the Company Equity Plans ("Company RSU") and each Company Performance Stock Unit granted under the Company Equity Plans ("Company PSU"), whether vested or unvested, shall, automatically and without any required action on the part of the holder thereof, be cancelled and converted into only the right to receive (without interest), an amount in cash (less applicable Tax withholdings), payable in a lump sum as soon as reasonably practicable (but no later than the second payroll period) after the date such former Company RSU or Company PSU vests, equal to the product of (A) the Offer Price, and (B) the number of Shares underlying such Company RSU or Company PSU, as applicable, immediately prior to the Effective Time; *provided* that any unvested Company RSU or Company PSU shall remain subject to the same vesting schedule and other relevant terms as in effect immediately before the Effective Time and the holder of such Company RSU or Company PSU must remain in service to Parent, the Company or any of their affiliates through the applicable vesting date to receive payment in respect thereof; *provided*, *further*, that any former Company RSU or Company PSU that, per its terms, remains outstanding and unvested as of December 15, 2013, shall vest on December 15, 2013 and the cash amount determined pursuant to this Section 6.2(b) in respect thereof shall be paid no later than December 31, 2013 or shall vest in full earlier if the Company RSU or Company PSU holder's service to Parent, the Company or their affiliates terminates without "Cause" (within the meaning of the Company's Employee Severance Plan as in effect immediately before the date hereof) or for Good Reason, in which case payment of the amounts herein shall be made by no later than the second payroll period after the date of such termination. Notwithstanding the foregoing, any unvested Company RSU held by an individual who is a non-employee member of the Board of Directors of the Company at the Effective Time shall become vested and exercisable in full upon the Effective Time and will be treated in accordance with this Section 6.2(b).

(c) Other Stock-Based Awards. At the Effective Time, each right of any kind, contingent or accrued, to receive Shares or benefits measured by the value of a number of Shares, and each award of any kind consisting of Shares (including any Shares subject to vesting restrictions and/or forfeiture or repurchase by the Company ("Company Restricted Shares")), granted under any of the Company Equity Plans that is outstanding immediately prior to the Effective Time (other than the Company Options, Company RSUs, Company PSUs and the ESPP Purchase Rights) (each, a "Company Stock Award") shall, automatically and without any required action on the part of the holder thereof, be cancelled and converted into only the right to receive (without interest), an amount in cash (less applicable Tax withholdings) equal to the product of (A) the Offer Price and (B) the number of Shares underlying such Company Stock Award, payable in a lump sum as soon as reasonably practicable (but no later than the second payroll period) after the date such Company Stock Award vests; *provided* that any unvested former Company Stock Award shall remain subject to the same vesting schedule and other relevant terms as in effect immediately before the Effective Time and the holder of such Company Stock Award must remain in service to Parent, the Company or any of their affiliates through the applicable vesting date to receive payment in respect thereof; *provided*, *further*, that any former Company Stock Award that, per its terms, remains outstanding and unvested as of December 15, 2013, shall vest on December 15, 2013 and the cash amount determined pursuant to this Section 6.2(c) in respect thereof shall be paid no later than December 31, 2013 or shall vest in full earlier if the Company Stock Award holder's service to Parent, the Company or their affiliates terminates without "Cause" (within the meaning of the Company's Employee Severance Plan as in effect immediately before the date hereof) or for Good Reason, in which case payment of the amounts herein shall be made by no later than the second payroll period after the date of such termination. Notwithstanding the foregoing, any unvested Company Restricted Shares held by an individual who is a non-employee member of the Board of Directors of the Company at the Effective Time shall become vested and exercisable in full upon the Effective Time and will be treated in accordance with this Section 6.2(c).

(d) ESPP Purchase Rights. An ESPP Purchase Right is not a Company Option for purposes of this Agreement. As soon as administratively practicable following the date of this Agreement, but not later than the day immediately prior to the date on which the first (1st) offering period that is regularly scheduled to commence under the ESPP after the date of this Agreement, the Company shall take all actions necessary or required under the ESPP (including, if appropriate, amending the terms of the ESPP) and Legal Requirements to (i) suspend the ESPP so that no further offering periods shall commence after the date of this Agreement; and (ii) cause the ESPP to terminate as of the Effective Time. With respect to the offering periods that are in effect on the date of this Agreement, each ESPP Purchase Right shall be exercised in accordance with the terms of the ESPP on the regularly scheduled purchase dates for such offering period; provided that if the Closing Date occurs prior to a purchase date for an offering period, then each ESPP participant's accumulated payroll deductions under the ESPP shall be used to purchase Shares in accordance with the terms of the ESPP and the ESPP Purchase Right for such offering period shall be exercised immediately prior to the Effective Time; provided, further, that the applicable purchase price per Share as set forth in the ESPP shall not be decreased below levels set forth in the ESPP as of the date hereof. All Shares purchased under the ESPP, shall, as of the Effective Time, be cancelled and converted into only the right to receive (without interest), an amount in cash (less applicable Tax withholdings), payable as soon as reasonably practicable (but no later than the second payroll period) after the Effective Time, equal to the product of (i) the Offer Price and (ii) the number of such Shares purchased by such holder in the ESPP that is cancelled.

(e) At or prior to the Effective Time, the Acquired Corporations, the Board of Directors of the Company and the Compensation Committee (as defined below), as applicable, shall adopt any resolutions and take any actions that are necessary to (x) effectuate the provisions of Section 6.2(a), (b), (c) and (d). The Company shall take all actions necessary to ensure that from and after the Effective Time neither Parent nor the Surviving Corporation will be required to deliver Shares or other capital stock of the Company to any Person pursuant to or in settlement of Company Options, Company RSUs or Company PSUs after the Effective Time.

6.3 Employee Benefits. For a period commencing upon the Effective Time and continuing through December 31, 2014, Parent shall provide to each employee of the Acquired Corporations who continues to be employed by Parent or the Surviving Corporation (or any Subsidiary thereof) (the "Continuing Employees") base salary or base hourly rate, "employee pension benefits" and "employee welfare benefits" (within the meaning of Sections 3(2) and 3(1) of ERISA, respectively, other than, for the avoidance of doubt, equity-based compensation and retention benefits) that are substantially similar in the aggregate to the base salary or base hourly rate, employee pension benefits and employee welfare benefits provided as of the date hereof by the Company to such employees. Parent shall pay to each Continuing Employee who is otherwise entitled to an annual cash bonus for the 2013 bonus year an annual cash bonus for the 2013 bonus year at the time such annual cash bonus would otherwise be paid in the ordinary course of business in accordance with the terms of the applicable Employee Plan, based on a performance level of 145% of target (which, for the avoidance of doubt, is the performance level at which the Company's 2013 bonus payout was accrued for financial reporting purposes as of the date hereof); *provided* that any Continuing Employee whose employment with the Company, Parent or their affiliates is terminated without "Cause" (within the meaning of the Company's Employee Severance Plan as in effect immediately before the date hereof) or for Good Reason shall receive an annual cash bonus, *prorated* based on the number of full months employed during the 2013 bonus year, no later than the second payroll period after the date of such termination. In addition, (i) notwithstanding the foregoing, Continuing Employees shall be eligible for severance benefits as set forth in Part 6.3 of the Company Disclosure Schedule and (ii) Parent shall assume and honor the terms of the Company Employee Agreements set forth on Part 6.3(ii) of the Company Disclosure Schedule. Without limiting the foregoing:

(a) With respect to any accrued but unused personal, sick or vacation time to which any Continuing Employee is entitled pursuant to the personal, sick or vacation policies applicable to such Continuing Employee immediately prior to the Effective Time, Parent shall, or shall cause the Surviving Corporation to and instruct its Subsidiaries to, as applicable, assume the liability for such accrued personal, sick or vacation time and allow such Continuing Employee to use such accrued personal, sick or vacation time in accordance with the practice and policies of the applicable Acquired Corporation subject to the cap on vacation accrual set forth in Parent's vacation policy; *provided* that the accrued but unused personal, sick or vacation time of each such Continuing Employee in excess of 80% of such cap shall be paid as soon as practicable to such Continuing Employee at such employee's compensation rate in effect as of the Effective Time.

(b) Between the date of this Agreement and the Effective Time, the Acquired Corporations shall use their reasonable best efforts to assist Parent in entering into Parent's standard "on-boarding" documents with each of the Continuing Employees, which documents will be effective at the Effective Time and shall constitute (i) at-will agreements, (ii) proprietary information and inventions agreements, (iii) mutual agreements to arbitrate claims, and (iv) background check agreements, copies of which have previously been provided to the Company.

(c) If requested by Parent at least ten (10) business days prior to the Offer Acceptance Time, the Acquired Corporations shall terminate any and all Employee Plans intended to qualify under Section 401(k) of the Code, effective not later than the business day immediately preceding the Offer Acceptance Time. In the event that Parent requests that such 401(k) plan(s) be terminated, the Acquired Corporations shall provide Parent with evidence that such 401(k) plan(s) have been terminated pursuant to resolution of the Company's Board of Directors (the form and substance of which shall be subject to review and approval by Parent) not later than two (2) business day(s) immediately preceding the Offer Acceptance Time.

(d) Parent agrees that all Continuing Employees shall be eligible to continue to participate in the Surviving Corporation's health and welfare benefit plans to the extent that they were eligible to participate in such plans prior to the Closing; *provided, however,* that (i) nothing in this Section 6.3 or elsewhere in this Agreement shall limit the right of Parent or the Surviving Corporation to amend or terminate any such health or welfare benefit plan at any time, and (ii) if Parent or the Surviving Corporation terminates any such health or welfare benefit plan, then (upon expiration of any appropriate transition period) Parent shall use commercially reasonable efforts to cause the Continuing Employees to be eligible to participate in Parent's health and welfare benefit plans, to substantially the same extent as similarly situated employees of Parent (taking into account job location). To the extent that service is relevant for eligibility, vesting or allowances (including paid time off) under any health or welfare benefit plan of Parent and/or the Surviving Corporation, then Parent shall use commercially reasonable efforts to cause such health or welfare benefit plan to (to the extent that it would not result in any duplication of benefits), for purposes of eligibility, vesting and allowances (including paid time off) but not for purposes of benefit accrual under any defined benefit pension plan, credit Continuing Employees for service prior to the Effective Time with the Acquired Corporations to the same extent that such service was recognized prior to the Effective Time under the corresponding health or welfare benefit plan of the Company.

(e) With respect to all employees, the Acquired Corporations shall be responsible for providing any notices required to be given and otherwise complying with the WARN or similar statutes or regulations of any jurisdiction relating to any plant closing or mass layoff (or similar triggering event) caused by the Acquired Corporations prior to the Effective Time. If, prior to the Effective Time, Parent determines that an event would trigger WARN obligations (or obligations arising under similar statutes or regulations) within sixty (60) days following the Effective Time, the Acquired Corporations shall, at Parent's request, provide notices to all employees as are required to be provided under WARN (or any similar statute or regulation), in a form that is compliant with applicable regulations.

(f) Nothing in this Section 6.3 or elsewhere in this Agreement is intended nor shall be construed to (i) be treated as an amendment to any particular Employee Plan, (ii) prevent Parent from amending or terminating any of its benefit plans in accordance their terms, (iii) create a right in any employee to employment with Parent, the Surviving Corporation or any other Subsidiary of the Surviving Corporation and the employment of each Continuing Employee shall be "at will" employment or (iv) create any third-party beneficiary rights in any employee of the Acquired Corporations or the Surviving Corporation, any beneficiary or dependent thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and/or benefits that may be provided to any Continuing Employee by Parent or the Company or under any benefit plan which Parent, any Acquired Corporation or the Surviving Corporation may maintain.

6.4 Compensation Arrangements. Prior to the Offer Acceptance Time, the Compensation Committee of the Board of Directors of the Company (the "Compensation Committee") will cause each Employee Plan and Company Employment Agreement pursuant to which consideration is payable to any officer, director or employee who is a holder of any security of the Company to be approved by the Compensation Committee (comprised solely of "independent directors") in accordance with the requirements of Rule 14d-10(d)(2) under the Exchange Act and the instructions thereto as an "employment compensation, severance or other employee benefit arrangement" within the meaning of Rule 14d-10(d)(2) under the Exchange Act and satisfy the requirements of the non-exclusive safe harbor set forth in Rule 14d-10(d) of the Exchange Act.

6.5 Indemnification of Officers and Directors.

(a) All rights to indemnification by the Acquired Corporations existing as of the date of this Agreement in favor of those Persons who are current or former directors, officers or employees of any Acquired Corporation (when acting in such capacity) (the "Indemnified Persons") for their acts and omissions occurring prior to the Effective Time, as provided in the certificate of incorporation and bylaws of the Acquired Corporations (as in effect on the date of this Agreement) and as provided in the Indemnity Agreements (as in effect on the date of this Agreement), shall survive the Merger and shall be honored by the Surviving Corporation and its Subsidiaries to the fullest extent available under Delaware law for a period of six years from the Effective Time, and any claim made requesting indemnification pursuant to such indemnification rights within such six-year period shall continue to be subject to this Section 6.5(a) and the indemnification rights provided under this Section 6.5(a) until disposition of such claim.

(b) From the Effective Time until the sixth anniversary of the date on which the Effective Time occurs, Parent and the Surviving Corporation (together with its successors and assigns, the "Indemnifying Parties") shall, to the fullest extent that the Acquired Corporations would have been permitted to under applicable Legal Requirements and their respective certificates of incorporation or by-laws or other organizational documents in effect on the date of this Agreement, indemnify, defend and hold harmless each Indemnified Person in his or her capacity as an officer or director of an Acquired Corporation against all losses, claims, damages, liabilities, fees, expenses, judgments or fines incurred by such Indemnified Person as an officer or director of an Acquired Corporation, to the extent arising out of or pertaining to any

and all matters pending, existing or occurring at or prior to the Effective Time, whether asserted or claimed prior to, at or after the Effective Time, including any such matter arising under any claim with respect to the transactions contemplated herein. Without limiting the foregoing, the Indemnifying Parties shall also, to the fullest extent permitted under applicable Legal Requirements, advance reasonable costs and expenses (including attorneys' fees) incurred by the Indemnified Persons in connection with matters for which such Indemnified Persons are eligible to be indemnified pursuant to this Section 6.5(b) within fifteen (15) days after receipt by Parent of a written request for such advance, subject to the execution by such Indemnified Persons of appropriate undertakings to repay such advanced costs and expenses if it is ultimately determined that such Indemnified Person is not entitled to indemnification.

(c) From the Effective Time until the sixth anniversary of the Effective Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain in effect, for the benefit of the Indemnified Persons with respect to their acts and omissions occurring prior to the Effective Time, the existing policy of directors' and officers' liability insurance maintained by the Company as of the date of this Agreement in the form made available by the Company to Parent or Parent's Representatives on or prior to the date of this Agreement on terms with respect to coverage, deductibles and amounts no less favorable than such existing policy; *provided*, *however*, that in satisfying its obligation under this Section 6.5(c), the Surviving Corporation shall not be obligated to pay annual premiums in excess of 300% of the amount set forth on Part 6.5(c) of the Company Disclosure Schedule (the "Current Premium") and if such premiums for such insurance would at any time exceed 300% of the Current Premium, then the Surviving Corporation shall cause to be maintained policies of insurance that provide the maximum coverage available at an annual premium equal to 300% of the Current Premium. The provisions of the immediately preceding sentence shall be deemed to have been satisfied if prepaid "tail" or "runoff" policies have been obtained by the Company prior to the Offer Acceptance Time, which policies shall provide such directors and officers with coverage for an aggregate period of six (6) years with respect to claims arising from facts or events that occurred on or before the Effective Time, including, in respect of the transactions contemplated by this Agreement, but shall not otherwise provide terms with respect to coverage, deductibles and amounts more favorable in the aggregate than the existing policy referred to in the previous sentence; *provided*, *however*, that the amount paid for such prepaid policies does not exceed 300% of the Current Premium. If such prepaid policies have been obtained prior to the Offer Acceptance Time, the Surviving Corporation shall (and Parent shall cause the Surviving Corporation to) maintain such policies in full force and effect for their full term, and continue to honor the obligations thereunder.

(d) In the event the Company or the Surviving Corporation or its Subsidiaries or any of their respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or Entity of such consolidation or merger or (ii) transfers all or substantially all of its properties and assets to any Person, then, and in each such case, Parent shall ensure that the successors and assigns of the Company or the Surviving Corporation or its Subsidiaries, as the case may be, or at Parent's option, Parent, shall assume the obligations set forth in this Section 6.5.

(e) The provisions of this Section 6.5 shall survive the acceptance of Shares for payment pursuant to the Offer and the consummation of the Merger and are

(i) intended to be for the benefit of, and will be enforceable by, each of the Indemnified Persons and their successors, assigns and heirs and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by contract or otherwise. This Section 6.5 may not be amended, altered or repealed after the Offer Acceptance Time without the prior written consent of the affected Indemnified Person.

6.6 Securityholder Litigation. The Company shall give Parent the right to review and comment on all material filings or responses to be made by the Company in connection with any securityholder litigation against the Company and/or its directors relating to the Transactions, and the right to consult on the settlement with respect to such securityholder litigation, and the Company will in good faith take such comments into account, and, no such settlement shall be agreed to without Parent's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed). The Company shall promptly notify Parent of any such securityholder litigation brought, or threatened, against the Company and/or members of its Board of Directors.

6.7 Third Party Consents. The Company shall use commercially reasonable efforts, and shall cause its Subsidiaries to use commercially reasonable efforts, to take all actions reasonably requested by Parent to obtain waivers and consents from any and all third parties with respect to each Contract listed in Part 3.9(c) of the Company Disclosure Schedule; *provided*, that, in connection with obtaining such waivers and consents, the Company shall not agree to any change to such Contracts that would be materially adverse to the interest of the Company, its Subsidiaries or, after the Merger, Parent without the prior written consent of Parent.

6.8 Treatment of Convertible Senior Notes. The Company, the Surviving Corporation and Parent shall take all necessary action to execute and deliver a supplemental indenture to the Trustee (as defined in that certain Indenture, dated as of August 12, 2009 (the "Base Indenture"), and that certain First Supplemental Indenture to the Base Indenture, dated as of August 12, 2009, under which the Convertible Senior Notes were issued (the "Supplemental Indenture" and, together with the Base Indenture, the "Indenture"), in each case between the Company and Wells Fargo Bank, National Association, as Trustee, to the Indenture to provide, among other things, that on and after the Effective Time, each holder of Convertible Senior Notes shall have the right to convert such Convertible Senior Notes into the conversion consideration determined by reference to the consideration receivable upon consummation of the Merger in respect of each Share in accordance with, and subject to, the provisions of the Supplemental Indenture governing the conversions of the Convertible Senior Notes issued thereunder (including any applicable increase in the "Conversion Rate" or decrease in the "Conversion Price" thereunder in connection with the Merger) in each case in accordance with, and subject to, the Indenture (including without limitation the time periods specified therein). In addition, the Company and the Surviving Corporation shall take commercially reasonable efforts to take all such actions as may be required in accordance with, and subject to, the terms of the Indenture (including without limitation the time periods specified therein), including the giving of any notices that may be required in connection with any repurchases or conversions of the Convertible Senior Notes occurring as a result of the transactions contemplated by this Agreement constituting a "Fundamental Change" and/or "Make-Whole Fundamental Change" as such terms are defined in the Supplemental Indenture, and delivery of any supplemental indentures, legal opinions, officers' certificates or other documents or instruments required in

connection with the consummation of the Merger. The Company shall not make any settlement election under the Supplemental Indenture relating to the Convertible Senior Notes without the prior written consent of Parent, which consent shall not be unreasonably withheld or delayed. The Company shall provide Parent, Purchaser and their counsel reasonable opportunity to review and comment on any written notice or communication to or with holders of Convertible Senior Notes or with the Trustee under the Indenture prior to the dispatch or making thereof, and the Company shall give reasonable and good faith consideration to any comment made by Parent, Purchaser or their counsel.

6.9 Disclosure. The initial press release relating to this Agreement shall be a joint press release issued by the Company and Parent and thereafter the Acquired Corporations shall use commercially reasonable efforts to consult with Parent, and Parent shall use commercially reasonable efforts to consult with the Company before issuing any press release or otherwise making any public statement with respect to the Offer, the Merger or any of the other Transactions. Notwithstanding the foregoing, and except as otherwise provided in this Agreement, including the Company's obligations under Sections 1.2 and 5.4: (a) each party may, without complying with the foregoing obligations, make any public statement in response to questions from the press, analysts, investors or those attending industry conferences, make internal announcements to employees and make disclosures in Company SEC Documents, to the extent that such statements are consistent with previous press releases, public disclosures or public statements made jointly by the parties and otherwise in compliance with this Section 6.9; (b) a party may, without complying with the foregoing obligations, issue any such press release or make any such public announcement or statement as may be required by Legal Requirement; (c) the Company need not comply with the foregoing obligations in connection with any press release, public statement or filing to be issued or made with respect to any bona-fide written Acquisition Proposal (including any "stop, look and listen" release), Superior Offer or Adverse Change Recommendation; *provided*, *however*, that upon issuing any such release as provided in clause (b) or (c) above, the Company shall, as soon as reasonably practicable thereafter, give Parent notice of and a written copy of such release, announcement or statement; and (d) Parent need not comply with the foregoing obligations in connection with any press release, public statement or filing to be issued or made in connection with any matter described in clause (c) above or any actions taken or to be taken in connection therewith, provided that, Parent shall, as soon as reasonably practicable thereafter, give the Company notice of and a written copy of such release, announcement or statement. In addition, during the Pre-Closing Period, the parties shall coordinate with each other and the other's Representatives with respect to communications with Company Associates regarding post-Closing transition, integration and related matters; *provided*, *however*, that any such communications shall be conducted at a reasonable time, jointly and under the supervision of personnel of the Company and conducted in such a manner as to not interfere unreasonably with the normal operation of the business of the Company.

6.10 Resignation of Directors. The Company shall use its best efforts to obtain and deliver to Parent on or prior to the Offer Acceptance Time the resignation of the Company's directors as required by Section 1.3.

6.11 Takeover Laws; Advice of Changes.

(a) If any Takeover Law may become, or may purport to be, applicable to the transactions contemplated in this Agreement, the Company and its Board of Directors will grant such approvals and take such actions as are necessary so that the transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms and conditions contemplated hereby and thereby and otherwise act to eliminate the effect of any Takeover Law on any of the transactions contemplated by this Agreement.

(b) Each of the Company and Parent will give prompt notice to the other (and will subsequently keep the other informed on a current basis of any developments related to such notice) upon its becoming aware of the occurrence or existence of any fact, event or circumstance that (i) has, (x) with respect to the Company, had or would reasonably be expected to result in any Material Adverse Effect with respect to it and (y) with respect to Parent or Purchaser, had or would reasonably be expected to have any material adverse effect with respect to the ability of Parent or Purchaser to consummate the Transactions, (ii) would cause or constitute a material breach of any of its representations, warranties or covenants contained herein or (iii) is reasonably likely to result in any of the conditions set forth in Section 7 or in **Annex I** not being able to be satisfied prior to the End Date.

6.12 Section 16 Matters. The Company's Board of Directors shall, to the extent necessary, take appropriate action, prior to or as of the Offer Acceptance Time, to approve, for purposes of Section 16(b) of the Exchange Act, the disposition of Shares in the Offer and the deemed disposition and cancellation of Shares and, as applicable, Company Options, Company RSUs, Company PSUs, other stock awards and Shares purchased pursuant to the exercise of ESPP Purchase Rights in the Merger by applicable individuals.

6.13 Stock Exchange Delisting; Deregistration. Prior to the Closing Date, the Company shall cooperate with Parent and use reasonable best efforts to take, or cause to be taken, all actions, and do or cause to be done all things, reasonably necessary, proper or advisable on its part under applicable laws and rules and policies of NASDAQ to enable the delisting by the Surviving Corporation of the Shares from NASDAQ and the deregistration of the Shares under the Exchange Act as promptly as practicable after the Effective Time, and in any event no more than ten (10) days after the Closing Date.

6.14 Financing.

(a) (i) Subject to the terms and conditions of this Agreement, and except to the extent that Parent has completed an offering of debt securities or another financing the net cash proceeds of which replace amounts that were to be provided under the Commitment Letter, Parent shall use its reasonable best efforts to obtain the Financing on the terms and conditions (including the flex provisions) described in the Commitment Letter, and shall not permit any amendment or modification to be made to, or any waiver of any provision under, the Commitment Letter if such amendment, modification or waiver (A) with respect to the Commitment Letter, reduces (or could have the effect of reducing) the aggregate amount of the Financing (including by increasing the amount of fees to be paid or original issue discount unless the Financing is increased by a corresponding amount or the Financing is otherwise made available to fund such fees or original issue discount), or (B) imposes new or additional conditions or otherwise expands, amends or modifies any of the conditions to the Financing, or

otherwise expands, amends or modifies any other provision of the Commitment Letter, in a manner that would reasonably be expected to (x) materially adversely affect the ability of Parent to fund its obligations at the Offer Acceptance Time and the Closing Date or (y) adversely impact the ability of Parent to enforce its rights against the other parties to the Commitment Letter or the definitive agreements with respect thereto, in each of clauses (x) and (y) in any material respect (provided that, subject to compliance with the other provisions of this Section 6.14, Parent may amend the Commitment Letter to add additional lenders, arrangers, bookrunners and agents or in a manner that would not materially adversely affect the ability of Parent to fund its obligations at the Offer Acceptance Time and the Closing Date). Parent shall promptly deliver to the Company copies of any such amendment, modification or replacement. For purposes of this Section 6.14, references to "Financing" shall include the financing contemplated by the Commitment Letter as permitted to be amended, modified or replaced by this Section 6.14(a) and references to "Commitment Letter" shall include such documents as permitted to be amended, modified or replaced by this Section 6.14(a).

(b) Except to the extent that Parent has completed an offering of debt securities or another financing the net cash proceeds of which replace amounts that were to be provided under the Commitment Letter, Parent shall use its reasonable best efforts (A) to maintain in effect the Commitment Letter, (B) to negotiate and enter into definitive agreements with respect to the Commitment Letter on the terms and conditions (including the flex provisions) contained in the Commitment Letter (or on other terms that do not materially impair the ability of Parent to fund its obligations at the Offer Acceptance Time and the Closing Date) (which with respect to the bridge facilities documentation shall not be required until reasonably necessary in connection with the funding of the Financing), (C) to satisfy on a timely basis all conditions to funding in the Commitment Letter and such definitive agreements thereto and to consummate the Financing at or prior to the Offer Acceptance Time and the Closing Date, as applicable, including using its reasonable best efforts to cause the lenders and the other persons committing to fund the Financing at the Offer Acceptance Time and on the Closing, as applicable (the "Financing Sources"), (D) to enforce its rights under the Commitment Letter and (E) to comply with its obligations under the Commitment Letter. Parent shall keep the Company reasonably informed of the status of its efforts to arrange the Financing and provide to the Company copies of the executed material definitive agreements for the Financing. Without limiting the generality of the foregoing, Parent and Purchaser shall give the Company prompt notice (x) of any material breach or material default by any party to any of the Commitment Letter or definitive agreements related to the Financing of which Parent or Purchaser become aware, (y) of the receipt of (A) any written notice or (B) other written communication, in each case from any Financing Source with respect to any actual or potential material breach, material default, termination or repudiation by any party to any of the Commitment Letter or definitive agreements related to the Financing of any provisions of the Commitment Letter or definitive agreements related to the Financing and (z) if at any time for any reason Parent or Purchaser believes in good faith that it will not be able to obtain all or any portion of the Financing on the terms and conditions, in the manner or from the Financing Sources contemplated by any of the Commitment Letter or definitive agreements related to the Financing. As soon as reasonably practicable, but in any event within two (2) business days of the date the Company delivers to Parent or Purchaser a written request, Parent and Purchaser shall provide any information reasonably requested by the Company relating to any circumstance referred to in clause (x), (y) or (z) of the immediately preceding sentence; provided, that Parent and Purchaser need not

provide any information believed to be privileged. Upon the occurrence of any circumstance referred to in clause (x), (y)(A) or (z) of the second preceding sentence or if any portion of the Financing otherwise becomes unavailable, and such portion is reasonably required to fund consummation of the Transactions (including without limitation the aggregate Offer Price at the Offer Acceptance Time or the aggregate Merger Consideration on the Closing Date and all fees, expenses and other amounts contemplated to be paid by Parent and Purchaser pursuant to this Agreement), Parent and Purchaser shall use their reasonable best efforts to arrange and obtain in replacement thereof alternative financing from alternative sources in an amount sufficient to fund consummation of the Transactions with terms and conditions not materially less favorable to Parent and Purchaser (or their Affiliates) than the terms and conditions set forth in the Commitment Letter as promptly as reasonably practicable following the occurrence of such event. Parent shall deliver to the Company true and complete copies of all agreements, arrangements or understandings (including and side letters or (subject to customary redactions) fee letters) pursuant to which any such alternative source shall have committed to provide any portion of the Financing.

(c) Prior to the Effective Time, the Company shall, and shall cause its Subsidiaries to, use their respective commercially reasonable efforts to cooperate with Parent in connection with the Financing or another financing. Without limiting the generality of the foregoing, upon reasonable request by Parent, the Company shall, and shall cause its Subsidiaries to use their respective commercially reasonable efforts to (a) the extent reasonably necessary in connection with the Financing, make senior officers of the Company available to attend reasonable number of meetings (A) with prospective lenders, investors and ratings agencies, (B) in connection with a "roadshow", (C) in connection with customary due diligence sessions and drafting sessions and sessions with ratings agencies, at such times as coordinated reasonably in advance thereof, (b) assist Parent with the preparation of customary materials for rating agency presentations, road-show presentations, offering documents, private placement memoranda, bank information memoranda and similar documents (to the extent such customary materials contain disclosure reflecting or referring to the Company and its Subsidiaries) reasonably necessary or advisable in connection with the Financing, (c) furnish in a timely fashion the Company's most recently completed audited financial statements, the Company's interim financial statements for the Company's current fiscal year and all other information regarding the Company and its Subsidiaries reasonably required for the Parent to prepare pro forma financial statements and other pro forma financial data that would be (A) required to be included in a registration statement on Form S-3 for a registered public offering of debt securities, (B) customarily included in private placements of debt securities under Rule 144A (with the understanding that financial statements or footnotes pursuant to Rule 3-09, 3-10 or 3-16 under Regulation S-X are not customarily provided in private placements of debt securities under Rule 144A), and (C) customarily included in bank information memoranda for the syndication of term loan and bridge loan commitments contemplated under the Commitment Letter (collectively, the "Company Financing Information"), in each case, only to the extent that the Financing is pursuant to a registered offering, a private placement of debt securities under Rule 144A or a syndication of a term loan and bridge loan commitment, as the case may be; provided that with respect to the foregoing clauses (A) through (C), no such financial statements or other information are required to be provided with respect to any of the Company or its Subsidiaries on an unconsolidated basis; (d) assist with the preparation of definitive financing documents and provide the financial institutions that have committed to provide the Financing (the "Financing Sources") with

reasonable access to the properties, books and records of the Company and its Subsidiaries during normal working hours (to the extent practicable) and upon reasonable notice, (e) cause its independent registered public accounting firm to (A) consent to SEC filings and offering memoranda that include or incorporate the Company's consolidated financial information and their reports thereon, in each case, to the extent such consent is required, (B) deliver to Parent and Parent's board of directors and any underwriter of the Financing a customary auditor "comfort letter" to the extent such Financing constitutes a registered or 144A offering of debt securities, (C) reasonable assistance in the preparation of pro forma financial statements by the Parent and (D) provide reasonable assistance and cooperation to Parent, including attending customary accounting due diligence sessions, (f) only to the extent required in connection with the Financing, to permit Parent to display the logos of the Acquired Corporation in a format approved by the Company in materials distributed in connection with the Financing, provided, that Parent and its Affiliates comply with all reasonable instructions of the Company with respect to such display and ceases any and all such use by the Effective Time or the date of termination of this Agreement, (g) reasonably cooperate with the Parent and the Financing Source or any of their respective agents and counsel with respect to their due diligence, including by giving access to documentation reasonably and customarily requested by persons in connection with capital markets transactions, (h) ensure that the marketing and syndication of the Financing benefits from the Company's commercial banking relationships and (i) provide reasonable assistance in the preparation of and executing and delivering (or using commercially reasonable efforts to obtain from its advisors), and causing its Subsidiaries to execute and deliver (or use commercially reasonable efforts to obtain from their advisors), customary certificates, legal opinions and other documents and instruments relating to the Financing as may be reasonably requested by Parent as necessary and customary in connection with the Financing; provided, that the actions contemplated in the first sentence of this Section 6.14(c) and the foregoing clauses (a) through (i) do not (A) unreasonably interfere with the operations of the Company or any of its Subsidiaries, (B) require the Company or any of its Subsidiaries to pay any out-of-pocket fees or expenses prior to Closing Date that are not promptly reimbursed by Parent, or (C) require the Company or any of its Subsidiaries to incur any other liability or obligation in connection with the Financing or otherwise.

(d) Parent and its Affiliates shall indemnify and hold harmless the Company and its Subsidiaries and their respective officers, directors, employees, agents, Affiliates, and representatives (collectively, the "Financing Indemnitees") for and against any and all losses suffered or incurred by them in connection with the arrangement of the Financing and any information utilized in connection therewith (other than information provided by the Company and its Subsidiaries). The immediately preceding sentence shall survive the consummation of the Merger and any termination of this Agreement, and is intended to benefit, and may be enforced by, the Financing Indemnitees and their respective Affiliates. Section 6.14(d) may not be amended, altered or repealed after the Offer Acceptance Time without the prior written consent of the affected Financing Indemnitee.

Section 7. Conditions Precedent to The Merger

The obligations of the parties to effect the Merger are subject to the satisfaction, at or prior to the Closing, of each of the following conditions:

7.1 No Restraints. No temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Merger shall have been issued by any Governmental Body of competent jurisdiction and remain in effect, and there shall not be any Legal Requirement enacted or deemed applicable to the Merger that makes consummation of the Merger illegal.

7.2 Consummation of Offer. Purchaser (or Parent on Purchaser's behalf) shall have accepted for payment and paid for all of the Shares validly tendered pursuant to the Offer and not withdrawn.

Section 8. Termination

8.1 Termination. This Agreement may be terminated prior to the Effective Time:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company by written notice to the other if the Offer shall have expired without the acceptance for payment of Shares pursuant to the Offer; *provided*, *however*, that a party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(b) if a breach by such party of any provision of this Agreement shall have proximately caused the failure of the acceptance for payment of Shares pursuant to the Offer;

(c) by either Parent or the Company by written notice to the other if a court of competent jurisdiction or other Governmental Body shall have issued a final and nonappealable order, decree or ruling, or shall have taken any other action, having the effect of permanently restraining, enjoining or otherwise prohibiting the acceptance for payment of Shares pursuant to the Offer or the Merger or making consummation of the Offer or the Merger illegal;

(d) by Parent by written notice to the Company at any time prior to the Offer Acceptance Time, if, whether or not permitted to do so, (i) the Company, the Company's Board of Directors or any committee thereof shall have made an Adverse Change Recommendation, (ii) the Company, the Board of Directors of the Company or any committee thereof shall have adopted, approved, recommended, submitted to stockholders, declared advisable, executed or entered into (or resolved, determined or proposed to adopt, approve, recommend, submit to stockholders, declare advisable, execute or enter into) any Alternative Acquisition Agreement (other than an Acceptable Confidentiality Agreement entered into pursuant to Section 5.4(a)), or (iii) the Company's Board of Directors fails to publicly reaffirm the Company Board Recommendation (A) within ten (10) business days after receipt of a written request by Parent to provide such reaffirmation following the commencement by a third party of a tender offer or exchange offer related to the Shares or (B) within five (5) business days after receipt of a written request by Parent to provide such reaffirmation following public disclosure of an Acquisition Proposal other than a commenced tender offer or commenced exchange offer;

(e) by either Parent or the Company by written notice to the other if the Offer Acceptance Time shall not have occurred on or prior to the close of business on the date that is the End Date; *provided*, *however*, that neither party shall be permitted to terminate this Agreement pursuant to this Section 8.1(e) if a breach by it of any provision of this Agreement shall have proximately caused the failure of the Offer Acceptance Time to have so occurred;

(f) by the Company by written notice to Parent at any time prior to the Offer Acceptance Time, in order to accept a Superior Offer and enter into the Specified Agreement (as defined below) relating to such Superior Offer, if (i) such Superior Offer shall not have resulted from any breach of Section 5.4, (ii) the Board of Directors of the Company, after satisfying all of the requirements set forth in Section 1.2(c) and Section 5.4, shall have authorized the Company to enter into a binding written definitive acquisition agreement providing for the consummation of a transaction constituting a Superior Offer (a "Specified Agreement"); and (iii) the Company shall pay the Termination Fee concurrently, and enter into the Specified Agreement concurrently with, the termination of this Agreement pursuant to this Section 8.1(f);

(g) by Parent by written notice to the Company at any time prior to the Offer Acceptance Time, if a breach of any representation or warranty or failure to perform any covenant or obligation contained in this Agreement on the part of the Company shall have occurred that would cause a failure of the conditions in **Annex I** to exist; *provided*, *however*, that, for purposes of this Section 8.1(g), if such a breach is curable by the Company within the earlier of the End Date and twenty (20) business days of the date Parent gives the Company notice of such breach and the Company is continuing to use its reasonable best efforts to cure such breach, then Parent may not terminate this Agreement under this Section 8.1(g) on account of such breach unless such breach shall remain uncured upon the earlier of the End Date and the expiration of such twenty (20) business day period; or

(h) by the Company by written notice to Parent at any time prior to the Offer Acceptance Time, if a breach in any material respect of any representation or warranty or failure to perform in any material respect any covenant or obligation contained in this Agreement on the part of Parent shall have occurred, in each case if such breach or failure has had or would reasonably be expected to prevent Parent or Purchaser from consummating the Transactions; *provided*, *however*, that, for purposes of this Section 8.1(h), if such a breach is curable by Parent within the earlier of the End Date and twenty (20) business days of the date the Company gives Parent notice of such breach and Parent is continuing to use its reasonable best efforts to cure such breach, then the Company may not terminate this Agreement under this Section 8.1(h) on account of such breach unless such breach shall remain uncured upon the earlier of the End Date and the expiration of such twenty (20) business day period.

8.2 Effect of Termination. In the event of the termination of this Agreement as provided in Section 8.1, this Agreement shall be of no further force or effect; *provided*, *however*, that (a) Section 6.14(d), this Section 8.2, Section 8.3 and Section 9 shall survive the termination of this Agreement and shall remain in full force and effect, (b) the Confidentiality Agreement shall survive the termination of this Agreement and shall remain in full force and effect in accordance with its terms; and (c) the termination of this Agreement shall not relieve any party from any liability for any breach prior to the date of termination.

8.3 Expenses; Termination Fee.

(a) Except as set forth in Section 8.3(b), all fees and expenses incurred in connection with this Agreement and the Transactions shall be paid by the party incurring such expenses, whether or not the Offer and Merger are consummated.

(b) If (i) (A) this Agreement is terminated by Parent or the Company pursuant to Section 8.1(b), Section 8.1(e) or Section 8.1(g), (B) after the date of this Agreement and prior to the time of the termination of this Agreement an Acquisition Proposal shall have been publicly made, commenced or submitted or announced and not withdrawn prior to the tenth business day prior to such termination, and (C) the Company consummates or is subject to a Specified Acquisition Transaction within 365 days after such termination or the Company or any of its Representatives signs a definitive agreement within 365 days after such termination providing for a Specified Acquisition Transaction, (ii) this Agreement is terminated by Parent pursuant to Section 8.1(d), or (iii) this Agreement is terminated by the Company pursuant to Section 8.1(f), then the Company shall pay to Parent, in cash at the time specified in the next sentence a nonrefundable fee in the amount equal to $303 million (the "Termination Fee"). Any Termination Fee: (x) in the case of clause (i) of the preceding sentence of this Section 8.3(b), upon the earlier of two (2) business days after the entry into an agreement with respect to a Specified Acquisition Transaction or concurrent with the consummation of a Specified Acquisition Transaction, (y) in the case of clause (ii) of the preceding sentence of this Section 8.3(b), within two (2) business days following termination of this Agreement, and (z) in the case of clause (iii) of the preceding sentence of this Section 8.3(b), concurrently with a termination of this Agreement under Section 8.1(f).

(c) Any Termination Fee due under this Section 8.3 shall be paid by wire transfer of immediately available funds to an account designated in writing by Parent. For the avoidance of doubt, the Termination Fee shall be payable only once and not in duplication even though the Termination Fee may be payable under one or more provisions hereof. The Company and Parent acknowledge and agree that the agreements contained in this Section 8.3 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, Parent would not enter into this Agreement. Accordingly, if the Company fails promptly to pay any amount due pursuant to this Section 8.3, and, in order to obtain such payment, Parent commences a suit that results in a judgment against the Company for the Termination Fee, the Company shall pay to Parent its costs and expenses (including invoiced attorneys' fees and expenses) in connection with such suit, together with interest on the amount of the Termination Fee from the date such payment was required until the date of payment at the prime rate of Citibank, N.A. in effect on the date such payment was required to be made.

Section 9. Miscellaneous Provisions

9.1 Amendment. Prior to the Effective Time, subject to Sections 1.3, 6.5(e) and 6.14(d), this Agreement may be amended with the mutual agreement of the Company and Parent at any time. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

9.2 Waiver. No failure on the part of any party to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any party in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such

power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy. No party shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such party; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given. Notwithstanding anything to the contrary in this Agreement, none of this Section 9.2, Section 9.5, Section 9.7 or Section 9.8 (or any related definitions as they affect such Sections) may be amended or modified in a manner that is adverse in any material respect to the Financing Sources or the Finance Related Parties without the prior written consent of the lead arrangers representing a majority of the commitments at the date hereof under the Financing.

9.3 No Survival of Representations and Warranties. None of the representations and warranties contained in this Agreement or in any certificate or schedule or other document delivered pursuant to this Agreement shall survive the Merger.

9.4 Entire Agreement; Counterparts. This Agreement and the other agreements referred to herein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, among or between any of the parties with respect to the subject matter hereof and thereof; *provided*, *however*, that the Confidentiality Agreement shall not be superseded and shall remain in full force and effect. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by facsimile or PDF shall be sufficient to bind the parties to the terms and conditions of this Agreement.

9.5 Applicable Legal Requirements; Jurisdiction; Specific Performance; Remedies.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof; *provided*, *however*, the provisions of this Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New York with respect to any action including any Financing Source or any of the Finance Related Parties. In any action between any of the parties arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement (except as otherwise set forth in this Section 9.5(a)): (i) each of the parties irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the state and federal courts located in the State of Delaware; (ii) if any such action is commenced in a state court, then, subject to applicable Legal Requirements, no party shall object to the removal of such action to any federal court located in Delaware; (iii) each of the parties irrevocably waives the right to trial by jury; and (iv) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid, to the address at which such party is to receive notice in accordance with Section 9.9. Each of the parties agrees that it will not, and will not permit its Affiliates to, bring or support any proceeding of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, against the Financing Sources or any of the

Finance Related Parties in any way relating to this Agreement or any of the transactions contemplated by this Agreement, including with respect to any dispute arising out of or relating in any way to the Financing or the performance thereof, in any forum other than the United States District Court for the Southern District of New York or any court of the State of New York sitting in the Borough of Manhattan in the City of New York and agree that the waiver of jury trial set forth in this Section 9.5 hereof shall be applicable to any such proceeding.

(b) The parties agree that irreparable damage would occur and that the parties would not have any adequate remedy at law in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached or the Offer were revoked, withdrawn, amended, modified or supplemented prior to the Expiration Date otherwise than in the accordance with this Agreement. It is accordingly agreed that the parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement, to prevent revocation, withdrawal, modification or supplementation of the Offer prior to the Expiration Date and to enforce specifically the terms and provisions of this Agreement, the Offer and the Merger, this being in addition to any other remedy to which they are entitled at law or in equity. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

9.6 Assignability. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto, in whole or in part (whether by operation of law or otherwise), without the prior written consent of the other parties, and any attempt to make any such assignment without such consent shall be null and void, except that (a) Purchaser may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any entity that is wholly-owned directly by Parent without the consent of the Company and (b) Parent may assign, in its sole discretion, any or all of its rights, interests and obligations under this Agreement to any entity that is wholly-owned directly by Parent without the consent of the Company, provided that Parent shall not be relieved of any of its obligations hereunder.

9.7 Third Party Beneficiaries. Except as set forth in Sections 6.5 and 6.14(d) and in the next sentence, nothing in this Agreement, express or implied, is intended to or shall confer upon any Person (other than the parties hereto) any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. The Financing Sources and Finance Related Parties shall be express third party beneficiaries of, and shall be entitled to rely on, Section 9.2, Section 9.5, Section 9.8 and this Section 9.7.

9.8 No Recourse to Financing Sources. Notwithstanding anything herein to the contrary, the Company agrees, on behalf of itself and each of its former, current or future officers, directors, managers, employees, member, partners, agents and other representatives and Affiliates (the "Company Parties") that Purchaser's Financing Sources, each other lender participating in the financing and each of their respective former, current or future general or limited partners, stockholders, managers, members, agents, Representatives and Affiliates and each of their successors and assigns (collectively, "Finance Related Parties") shall be subject to no liability or claims to Company Parties in connection with the Financing or in any way relating to this Agreement or any of the transactions contemplated hereby or thereby, whether at law, in equity, in contract, in tort or otherwise. Notwithstanding anything to the contrary in this

Agreement, (a) no amendment or modification to this Section 9.8 (or amendment or modification with respect to any related definitions as they affect this Section 9.8) shall be effective without the prior written consent of each Financing Source and Finance Related Party and (b) each Financing Source and Finance Related Party shall be an express third party beneficiary of, and shall have the right to enforce, this Section 9.8.

9.9 Notices. Any notice or other communication required or permitted to be delivered to any party under this Agreement shall be in writing and shall be deemed properly delivered and received (a) upon receipt when delivered by hand, (b) two business days after sent by registered mail or by courier or express delivery service, (c) if sent by facsimile or email transmission prior to 6:00 p.m. recipient's local time, upon transmission when receipt is confirmed if transmitted by facsimile transmission, or (d) if sent by facsimile after 6:00 p.m. recipient's local time and receipt is confirmed, the business day following the date of transmission; *provided* that in each case the notice or other communication is sent to the physical address or facsimile number set forth beneath the name of such party below (or to such other physical address or facsimile number as such party shall have specified in a written notice given to the other parties hereto):

if to Parent or Purchaser:

Amgen Inc.
One Amgen Center Drive
Thousand Oaks, California 91320
Attn: General Counsel
Facsimile No. 805-499-4531

with a copy to (which shall not constitute notice):

Sullivan & Cromwell LLP
Attn: Francis J. Aquila
Matthew G. Hurd
Sarah P. Payne
125 Broad Street
New York, New York 10004
Facsimile No. 212-558-3588

if to the Company:

Onyx Pharmaceuticals, Inc.
249 E. Grand Avenue
South San Francisco, California 94080
Attn: Suzanne Shema, Executive Vice President,
General Counsel and Corporate Secretary
Facsimile No. 650-266-0100

with a copy to (which shall not constitute notice):

Goodwin Procter LLP
Attn: Stuart Cable
James Matarese
53 State Street
Boston, Massachusetts 02109
Facsimile No. 617-523-1231

9.10 Cooperation. Each party to this Agreement agrees to reasonably cooperate with the other parties to this Agreement and to execute and deliver such further documents, certificates, agreements and instruments and to take such other actions as may be reasonably requested by such other party to evidence or reflect the transactions contemplated by this Agreement and to carry out the intent and purposes of this Agreement.

9.11 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

9.12 Obligation of Parent. Parent shall ensure that each of Purchaser and the Surviving Corporation duly performs, satisfies and discharges on a timely basis each of the covenants, obligations and liabilities of Purchaser and the Surviving Corporation under this Agreement and, following the Effective Time, Parent shall be jointly and severally liable with Purchaser and the Surviving Corporation for the due and timely performance and satisfaction of each of said covenants, obligations and liabilities.

9.13 Construction.

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include masculine and feminine genders.

(b) The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words “include” and “including,” and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words “without limitation.”

(d) Except as otherwise indicated, all references in this Agreement to “Sections,” “Exhibits,” “Annexes” and “Schedules” are intended to refer to Sections of this Agreement and Exhibits, Annexes or Schedules to this Agreement.

(e) The bold-faced headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement and shall not be referred to in connection with the construction or interpretation of this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first above written.

ONYX PHARMACEUTICALS, INC.

By: /s/ N. Anthony Coles
Name: N. Anthony Coles
Title: Chairman and Chief Executive Officer

AMGEN INC.

By: /s/ David J. Scott
Name: David J. Scott
Title: Senior Vice President, General Counsel and Secretary

ARENA ACQUISITION COMPANY

By: /s/ Jonathan M. Peacock
Name: Jonathan M. Peacock
Title: President and Chief Executive Officer

EXHIBIT A

CERTAIN DEFINITIONS

For purposes of the Agreement (including this **Exhibit A** and **Annex I**):

"***1996 Director Plan***" is defined in Section 3.3(c) of the Agreement.

"***1996 Plan***" is defined in Section 3.3(c) of the Agreement.

"***2005 Plan***" is defined in Section 3.3(c) of the Agreement.

"***Acceptable Confidentiality Agreement***" is defined in Section 5.4(a) of the Agreement.

"***Acquired Corporation Returns***" is defined in Section 3.16(a)(i) of the Agreement.

"***Acquired Corporations***" shall mean the Company and each of its Subsidiaries, collectively.

"***Acquisition Proposal***" shall mean any offer or proposal (other than an offer or proposal made or submitted by Parent) contemplating any Acquisition Transaction.

"***Acquisition Transaction***" shall mean any transaction or series of transactions (other than the Transactions) involving:

(a) any merger, consolidation, business combination (including by way of share exchange, joint venture or any similar transaction) or similar transaction involving any Acquired Corporation;

(b) any direct or indirect sale, license, lease, transfer, exchange or other disposition, in one transaction or a series of transactions, including by merger, consolidation, business combination, share exchange, joint venture, extraordinary dividend, recapitalization, corporate reorganization or otherwise, of any business or tangible or intangible assets representing 15% or more of the consolidated assets, net revenues or net income of the Acquired Corporations, taken as a whole;

(c) any issuance, sale, or other disposition, in one transaction or series of transactions, including by way of merger, consolidation, business combination, share exchange, joint venture or any similar transaction, of securities (or options, rights or warrants to purchase, or securities convertible into or exchangeable for, such securities) representing 15% or more of the voting power of the Company (or 15% or more of the voting power of any of the other Acquired Corporations);

(d) any transaction, including any tender offer or exchange offer, that if consummated would result in or would reasonably be expected to result in any Person or group beneficially owning 15% or more of the voting power of the Company (or in the case of the other Acquired Corporations, 15% or more of the voting power of any such Acquired Corporation) or in which any Person or group shall acquire the right to acquire

beneficial ownership of 15% or more of the outstanding voting power of the Company (or in the case of the other Acquired Corporations, 15% or more of the voting power of any such Acquired Corporation); or

(e) any combination of the foregoing.

"***Adverse Change Recommendation***" is defined in Section 1.2(b)(i) of the Agreement.

"***Affiliate***" shall mean, as to any Person, any other Person that, directly or indirectly, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" (including, with its correlative meanings, "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a Person, whether through the ownership of securities or partnership or other ownership interests, by contract or otherwise.

"***Agreement***" shall mean the Agreement and Plan of Merger to which this **Exhibit A** is attached, as it may be amended from time to time.

"***Alternative Acquisition Agreement***" is defined in Section 1.2(b) of the Agreement.

"***Antitrust Laws***" shall mean the Sherman Act, as amended, the Clayton Act, as amended, the HSR Act, the Federal Trade Commission Act, as amended, all applicable foreign anti-trust laws and all other applicable Legal Requirements issued by a Governmental Body that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition.

"***Balance Sheet***" is defined in Section 3.6 of the Agreement.

"***Base Indenture***" is defined in Section 6.8 of the Agreement.

"***beneficial ownership***" is defined in Section 1.3(a).

"***Book-Entry Shares***" is defined in Section 2.7(b) of the Agreement.

"***business day***" shall have the meaning assigned to such term in Rule 14d-1(g)(3) under the Exchange Act.

"***Certificates***" is defined in Section 2.6(a) of the Agreement.

"***Change of Control Payment***" is defined in Section 3.9(a)(xiii) of the Agreement.

"***Change of Recommendation Notice***" is defined in Section 1.2(c) of the Agreement.

"***Closing***" is defined in Section 2.3 of the Agreement.

"***Closing Date***" is defined in Section 2.3 of the Agreement.

"***Code***" shall mean the Internal Revenue Code of 1986, as amended.

"***Collaboration Partners***" means any of the Company's licensees or research, development, collaboration, supply, manufacturing or similar commercialization partners with respect to the Company Products.

"***Collaboration Pharmaceutical Products***" shall mean all Products with respect to which the Company or any of the Acquired Corporations has the right to receive fees, milestones, royalties or other consideration, including funding for or reimbursement of development or other costs.

"***Commitment Letter***" is defined in Section 4.7(b) of the Agreement.

"***Company***" is defined in the preamble to the Agreement.

"***Company Associate***" means any current or former employee (including officers) and any other individual who is an independent contractor, consultant or a director, in each case, of any of the Acquired Corporations.

"***Company Board Recommendation***" is defined in Section 1.2(a) of the Agreement.

"***Company Charter Documents***" shall mean the Company's certificate of incorporation and bylaws, each as amended.

"***Company Common Stock***" shall mean the common stock, $0.001 par value per share, of the Company.

"***Company Contract***" shall mean any Contract: (a) to which any of the Acquired Corporations is a party; or (b) by which any of the Acquired Corporations or any Owned Company IP or any other asset of any of the Acquired Corporations is bound or under which any of the Acquired Corporations has any obligation.

"***Company Disclosure Schedule***" shall mean the disclosure schedule that has been prepared by the Company in accordance with the requirements of the Agreement and that has been delivered by the Company to Parent immediately prior to the execution of the Agreement.

"***Company Employee Agreement***" shall mean each management, employment, severance, termination pay, stay-bonus, retention, transaction bonus, change in control, consulting, relocation, repatriation or expatriation agreement or other Contract between: (a) any of the Acquired Corporations; and (b) any Company Associate, other than any such Contract that is terminable "at will" (or following a notice period imposed by applicable Legal Requirements) without any contractual obligation on the part of any Acquired Corporation to make any severance, termination, change in control or similar payment or to provide any benefit (including accelerated vesting of any award under an Employee Plan).

"***Company Equity Plans***" shall mean the 2005 Plan, the Prior Plans and ESPP.

"***Company Financial Advisor***" is defined in Section 3.26 of the Agreement.

"***Company Financing Information***" is defined in Section 6.14(c) of the Agreement.

"***Company IP***" shall mean (a) Owned Company IP and (b) all material Intellectual Property Rights licensed to any of the Acquired Corporations.

"***Company Managed IP***" is defined in Section 3.8(a) of this Agreement.

"***Company Registered IP***" is defined in Section 3.8(a) of this Agreement.

"***Company Options***" shall mean all options to purchase shares of Company Common Stock (whether granted by the Company pursuant to the Company Equity Plans, assumed by the Company in connection with any merger, acquisition or similar transaction or otherwise issued or granted).

"***Company Parties***" is defined in Section 9.8 of the Agreement.

"***Company Preferred Stock***" shall mean the preferred stock, $0,001 par value per share, of the Company.

"***Company Products***" shall mean, collectively, the Pharmaceutical Products and the Collaboration Pharmaceutical Products.

"***Company PSU***" is defined in Section 6.2(b) of the Agreement.

"***Company Restricted Shares***" is defined in Section 6.2(c) of the Agreement.

"***Company RSU***" is defined in Section 6.2(b) of the Agreement.

"***Company SEC Documents***" is defined in Section 3.4(a) of the Agreement.

"***Company Stock Award***" is defined in Section 6.2(c) of the Agreement.

"***Compensation Committee***" is defined in Section 6.4 of the Agreement.

"***Compliant***" means, with respect to the Company Financing Information that such Company Financing Information does not contain any untrue statement of material fact or omit to state a material fact necessary in order to make such Company Financing Information, in light of the circumstances under which it was made, not misleading.

"***Confidentiality Agreement***" is defined in Section 5.1(a) of the Agreement.

"***Conflict Minerals***" is defined in Section 3.28 of the Agreement.

"***Consent***" shall mean any approval, consent, ratification, permission, waiver or authorization (including any Governmental Authorization).

"***Continuing Directors***" is defined in Section 1.3(b) of the Agreement.

"***Continuing Employees***" is defined in Section 6.3 of the Agreement.

"***Contract***" shall mean any written or oral agreement, contract, subcontract, lease, sublease, understanding, instrument, bond, debenture, note, mortgage, indenture, loan, credit agreement, arrangement, option, warrant, warranty, purchase order, license, sublicense, insurance policy, benefit plan or legally binding commitment or undertaking of any nature, including all amendments, supplements or modifications thereto.

"***Convertible Senior Notes***" is defined in Section 3.3(c) of the Agreement.

"***Covered Product***" is defined in Section 6.1(d) of the Agreement.

"***Current Premium***" is defined in Section 6.5(c) of the Agreement.

"***Debt***" shall mean the Company's and the other Acquired Corporations (a) liabilities for borrowed money, whether secured or unsecured, and obligations evidenced by bonds, debentures, notes or similar debt instruments, (b) liabilities for the deferred purchase price of any property, (c) liabilities in respect of any lease of (or other arrangements conveying the right to use) real or personal property, or a combination thereof, which liabilities are required to be classified and accounted for under GAAP as capital leases, (d) obligations under derivative contracts (valued at the termination value thereof) and any interest rate agreements and currency agreements, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired, (f) liabilities for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction securing obligations of a type described in the foregoing clauses (a) through (e) to the extent of the obligation secured, and (g) all liabilities for guarantees of another Person (other than the Company or any of its Subsidiaries) in respect of liabilities of the type set forth in the foregoing clauses (a) through (f).

"***DGCL***" shall mean the Delaware General Corporation Law, as amended.

"***Dissenting Shares***" is defined in Section 2.8 of the Agreement.

"***DOJ***" shall mean the U.S. Department of Justice.

"***DOL***" is defined in Section 3.17(d) of the Agreement.

"***EDGAR***" is defined in Section 3.4(f) of the Agreement.

"***Effective Time***" is defined in Section 2.3 of the Agreement.

"***Employee Plan***" shall mean any employment, salary, bonus, vacation, deferred compensation, incentive compensation, stock purchase, stock option, stock appreciation rights, restricted stock, restricted stock units, performance stock units, stock-based, severance pay, termination pay, death and disability benefits, hospitalization, medical, life or other insurance, flexible benefits, supplemental unemployment benefits, vacation or paid-time off, profit-sharing, pension or retirement plan, policy, program, agreement or arrangement (including any Company Employee Agreement) and each other employee benefit plan, program, policy, practice or arrangement, in each case whether written or unwritten, including any "employee benefit plans" within the meaning of Section 3(3) of the ERISA, that are sponsored, maintained, contributed to

or required to be contributed to by any of the Acquired Corporations or with respect to which any potential liability is borne by any Acquired Corporation or any trade or business (whether or not incorporated) that is or at any relevant time was treated as a single employer with the Company within the meaning of Section 414 of the Code, in each case, for the benefit of any Company Associate.

"***EMA***" shall mean the European Medicines Agency.

"***Encumbrance***" shall mean any lien, pledge, hypothecation, charge, mortgage, security interest, encumbrance, option, right of first refusal, preemptive right, community property interest or restriction of any nature (including any restriction on the voting of any security, any restriction on the transfer of any security or other asset, any restriction on the receipt of any income derived from any asset, any restriction on the use of any asset and any restriction on the possession, exercise or transfer of any other attribute of ownership of any asset).

"***End Date***" shall mean February 24, 2014.

"***Entity***" shall mean any corporation (including any non-profit corporation), general partnership, limited partnership, limited liability partnership, joint venture, estate, trust, company (including any company limited by shares, limited liability company or joint stock company), firm, society or other enterprise, association, organization or entity.

"***Environmental Law***" shall mean any federal, state, local or foreign Legal Requirement or Governmental Authorization relating to pollution or protection of human health or the environment (including ambient air, surface water, ground water, land surface or subsurface strata), including any law or regulation relating to emissions, discharges, releases or threatened releases of Hazardous Materials, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, handling of, or exposure to, Hazardous Materials.

"***ERISA***" shall mean the Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Affiliate***" shall mean any employers, whether or not incorporated, that would be treated together with any Acquired Corporation as a single employer within the meaning of Section 414 of the Code.

"***ESPP***" is defined in Section 3.3(c) of the Agreement.

"***ESPP Purchase Right***" is defined in Section 3.3(c) of the Agreement.

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

"***Expiration Date***" is defined in Section 1.1(d) of the Agreement.

"***FDA***" shall mean the United States Food and Drug Administration.

"***FDCA***" shall mean the Federal Food, Drug and Cosmetics Act, as amended, and all related rules, regulations and guidelines.

"***Finance Related Parties***" is defined in Section 9.8 of the Agreement.

"***Financing***" is defined in Section 4.7(b) of the Agreement.

"***Financing Indemnitees***" is defined in Section 6.14(d) of the Agreement.

"***Financing Sources***" is defined in Section 6.14(b) of the Agreement.

"***FTC***" shall mean the U.S. Federal Trade Commission.

"***GAAP***" is defined in Section 3.4(b) of the Agreement.

"***Good Clinical Practice***" shall have the meaning set forth in the FDCA.

"***Good Laboratory Practice***" shall have the meaning set forth in the FDCA.

"***Good Manufacturing Practice***" shall have the meaning set forth in the FDCA.

"***Good Reason***" is defined in Section 6.2(a) of the Agreement.

"***Government Contract***" shall mean any Contract to which an Acquired Corporation is a party and that involves the supply of goods or services directly to a Governmental Body, including a subcontract at any tier or level below a prime contract.

"***Governmental Authorization***" shall mean all material licenses, permits, franchises, variances, exemptions, orders and other governmental authorizations, consents, approvals and clearances, including all authorizations under the FDCA, the PHSA and the regulations of the FDA promulgated thereunder, applicable European Directives and any other Governmental Body that is concerned with the quality, identify, strength, purity, safety, efficacy or manufacturing of the Company Products tested or sold by the Acquired Corporations or Collaboration Partners (with respect to the Company Products).

"***Governmental Body***" shall mean any: (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign or other government; or (c) governmental or quasi-governmental authority of any nature (including any governmental division, department, agency, commission, instrumentality, official, ministry, fund, foundation, center, organization, unit, body or Entity and any court or other tribunal).

"***Hazardous Materials***" shall mean any waste, material, or substance that is listed, regulated or defined under any Environmental Law and includes any pollutant, chemical substance, hazardous substance, hazardous waste, special waste, solid waste, asbestos, mold, radioactive material, polychlorinated biphenyls, lead-based paint, petroleum or petroleum-derived substance or waste.

"***HSR Act***" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"***Inbound License***" is defined in Section 3.8(c) of the Agreement.

"***Indemnified Persons***" is defined in Section 6.5(a) of the Agreement.

"***Indemnifying Parties***" is defined in Section 6.5(b) of the Agreement.

"***Indemnity Agreements***" shall mean any agreements between any Acquired Corporation and the Indemnified Persons.

"***Indenture***" is defined in Section 6.8 of the Agreement.

"***Initial Expiration Date***" is defined in Section 1.1(d) of the Agreement.

"***Intellectual Property***" shall mean United States, foreign and international patents, patent applications, including provisional applications, statutory invention registrations, invention disclosures, inventions and all related continuations, continuations-in-part, divisionals, reissues, re-examinations, substitutions, and extensions thereof, trademarks, service marks, trade names, domain names, URLs, trade dress, logos and other source identifiers, copyrights, software, formulae, trade secrets, know-how, methods, processes, protocols, specifications, techniques, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such samples, studies and summaries) and other intellectual property, whether patentable or not.

"***Intellectual Property Rights***" shall mean and includes all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) all registrations, renewals, extensions, combinations, divisions, or reissues of, and applications for, any of the rights referred to in clauses (a) through (f) above.

"***International Employee Plan***" is defined in Section 3.17(d) of the Agreement.

"***Intervening Event***" shall mean a material event, occurrence, fact or change occurring or arising after the date of this Agreement that was not known or reasonably foreseeable to the Board of Directors of the Company as of the date of this Agreement, which event, occurrence, fact or change becomes known to the Board of Directors of the Company prior to the Offer Acceptance Time; provided that in no event shall the receipt, existence of or terms of an Acquisition Proposal, or any inquiry, indication of interest, proposal or offer that could reasonably be expected to lead to an Acquisition Proposal, or the consequences thereof, constitute an Intervening Event.

"***IRS***" shall mean the Internal Revenue Service.

"***Key Products***" means the products of the Company known as "Kyprolis" and "oprozomib".

"***knowledge***" with respect to (a) the Company shall mean the actual knowledge of the individuals named in Part A.1 of the Company Disclosure Schedule after due inquiry of the matter in question (it being understood and agreed that due inquiry shall only require an inquiry with each of the Company Associates set forth on Part A.2 of the Company Disclosure Schedule) and (b) Parent or Purchaser shall mean with respect to any matter in question the actual knowledge of Parent's executive officers after due inquiry of the matter in question. With respect to matters involving Intellectual Property, knowledge does not require that any of such Entity's executive officers conduct or have conducted or obtain or have obtained any freedom-to-operate opinions or similar opinions of counsel or any Intellectual Property clearance searches, and no knowledge of any third party Intellectual Property that would have been revealed by such inquiries, opinions or searches will be imputed to such executive officers or any other Company Associates.

"***Leased Real Property***" is defined in Section 3.7(b) of the Agreement.

"***Leased Personal Property***" is defined in Section 3.7(b) of the Agreement.

"***Legal Proceeding***" shall mean any action, suit, litigation, arbitration, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), hearing, inquiry, audit, examination or investigation commenced, brought, conducted or heard by or before, or otherwise involving, any court or other Governmental Body or any arbitrator or arbitration panel.

"***Legal Requirement***" shall mean any federal, state, local, municipal, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, directive, ruling, judgment, order, injunction, arbitration award, agency requirement, license, permit or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body (or under the authority of NASDAQ).

"***Material Adverse Effect***". An event, occurrence, violation, inaccuracy, circumstance or other matter will be deemed to have a "**Material Adverse Effect**" if such event, occurrence, violation, inaccuracy, circumstance or other matter, individually or in the aggregate with other events, occurrences, violations, inaccuracies, circumstances or matters, had or would reasonably be likely to have a material adverse effect on (a) the assets, liabilities, business, financial condition or results of operations of the Acquired Corporations taken as a whole or (b) the ability of the Company to consummate the Transactions; *provided, however*, that none of the following shall be deemed in and of themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there is, or would reasonably likely to be, a Material Adverse Effect: (i) any change in the market price or trading volume of the Shares; (ii) any event, occurrence, circumstance, change or effect arising from the announcement or pendency of the Transactions; (iii) any event, circumstance, change or effect in the national or international economy, biopharmaceutical industry or financial markets generally, except to the extent such event, circumstance, change or effect materially and disproportionately

impacts the Acquired Corporations, taken as a whole, as compared to other participants in the biopharmaceutical industry; (iv) any event, occurrence, circumstance, change or effect proximately caused by any act of terrorism, war or national or international calamity, except to the extent such event, circumstance, change or effect materially and disproportionately impacts the Acquired Corporations, taken as a whole, as compared to other participants in the biopharmaceutical industry; (v) the failure of the Acquired Corporations to meet internal or analysts' expectations or projections; (vi) any adverse effect arising directly from any action taken by the Acquired Corporations that is expressly required by the terms of this Agreement or resulting from the failure of the Acquired Corporations to take any action that the Acquired Corporations are specifically prohibited by Section 5.3(b) from taking and that was not consented to by Parent; and (vii) any event, circumstance, change or effect arising from any change in any Legal Requirement or GAAP (or interpretations of any Legal Requirement or GAAP), except to the extent such event, circumstance, change or effect materially and disproportionately impacts the Acquired Corporations, taken as a whole, as compared to other participants in the biopharmaceutical industry; *provided, however*, that the exceptions in clauses (i) and (v) shall not apply to the underlying causes of any such change or failure or prevent any of such underlying causes from being taken into account in determining whether a Material Adverse Effect has occurred.

"***Material Contract***" is defined in Section 3.9(a) of the Agreement.

"***Material Interest***" is defined in Section 6.1(d) of the Agreement.

"***Merger***" is defined in Recital B of the Agreement.

"***Merger Consideration***" is defined in Section 2.6(a)(iii) of the Agreement.

"***Minimum Condition***" is defined in Section (l)(b) of **Annex I** to the Agreement.

"***NASDAQ***" shall mean The NASDAQ Global Select Market.

"***OFAC***" shall mean the Office of Foreign Assets Control, within the U.S. Department of Treasury.

"***Offer***" is defined in Recital A of the Agreement.

"***Offer Acceptance Time***" is defined in Section 1.2(c) of the Agreement.

"***Offer Conditions***" is defined in Section 1.1(b) of the Agreement.

"***Offer Documents***" is defined in Section 1.1(i) of the Agreement.

"***Offer Price***" is defined in Recital A of the Agreement.

"***Offer to Purchase***" is defined in Section 1.1(c) of the Agreement.

"***Outbound License***" is defined in Section 3.8(c) of the Agreement.

"***Owned Company IP***" shall mean all Intellectual Property Rights that are owned or purported to be owned by any of the Acquired Corporations.

"***Owned Real Property***" is defined in Section 3.7(a) of the Agreement.

"***Parent***" is defined in the preamble to the Agreement.

"***Paying Agent***" is defined in Section 2.7(a) of the Agreement.

"***Payment Fund***" is defined in Section 2.7(a) of the Agreement.

"***Pending Equity Grant***" shall mean a written promise of a grant of an option or other equity award to a Company Associate under a Company Equity Plan that has not been granted, or an award of a Company PSU to a Company Associate that has been delayed and which collectively are set forth on Part 3.3(c) to the Company Disclosure Schedule.

"***Permitted Encumbrance***" shall mean any Encumbrance that (a) arises out of Taxes not in default and payable without penalty or interest or the validity of which is being contested in good faith by appropriate proceedings, (b) represents the rights of customers, suppliers and subcontractors in the ordinary course of business under the terms of any Contracts to which the relevant party is a party or under general principles of commercial or government contract law or (c) in the case of any Contract, are restrictions against the transfer or assignment thereof that are included in the terms of such Contract.

"***Person***" shall mean any individual, Entity or Governmental Body.

"***Pharmaceutical Products***" shall mean all Products being researched, tested, developed, manufactured or distributed by the Company or any of its Subsidiaries.

"***PHSA***" shall mean the Public Health Service Act of 1944, as amended.

"***Pre-Closing Period***" shall mean the period from the date of this Agreement until the earlier of the Offer Acceptance Time and the termination of this Agreement pursuant to Section 8.1.

"***Prior Plans***" is defined in Section 3.3(c) of the Agreement.

"***Products***" shall mean all "drugs" and "devices" as those terms are defined in Section 201 of the FDCA including all biological, pharmaceutical and drug candidates, compounds or products and any antibody, monoclonal antibody or therapeutic agent directed at a specific antigen or other target or in any therapeutic area.

"***Prohibited Person***" shall mean (i) any Person identified on OFAC's list of Specially Designated Nationals and Blocked Persons or targeted by an OFAC Sanctions Program; (ii) the government, including any political subdivision, agency, instrumentality, or national thereof, of any country with respect to which the United States or any jurisdiction in which any Acquired Corporation is operating, located or incorporated or organized administers or imposes economic or trade sanctions or embargoes; (iii) any Person acting, directly or indirectly, on behalf of, or an

entity that is owned or controlled by, a Specially Designated National and Blocked Person or by a government or Person identified in clause (ii) above, or (iv) a Person on any other similar export control, terrorism, money laundering or drug trafficking related list administered by any Governmental Body either within or outside the U.S. with whom it is illegal to conduct business pursuant to applicable Legal Requirements.

"***Purchaser***" is defined in the preamble to the Agreement.

"***Registered IP***" shall mean all Intellectual Property Rights that are registered, issued, filed or applied for under the authority of any Governmental Body.

"***Release***" shall mean any presence, emission, spill, seepage, leak, escape, leaching, discharge, injection, pumping, pouring, emptying, dumping, disposal, migration, or release of Hazardous Materials from any source into or upon the environment, including the air, soil, improvements, surface water, groundwater, the sewer, septic system, storm drain, publicly owned treatment works, or waste treatment, storage, or disposal systems.

"***Representatives***" shall mean officers, directors, employees, attorneys, accountants, investment bankers, consultants, agents, advisors and representatives.

"***Schedule 14D-9***" is defined in Section 1.2(d) of the Agreement.

"***Schedule TO***" is defined in Section 1.1(i) of the Agreement.

"***SEC***" shall mean the United States Securities and Exchange Commission.

"***Securities Act***" shall mean the Securities Act of 1933, as amended.

"***Shares***" is defined in Recital A of the Agreement.

"***Specified Acquisition Transaction***" shall mean any transaction or series of transactions involving:

(a) any merger, consolidation, business combination (including by way of share exchange, joint venture or any similar transaction) or similar transaction involving any Acquired Corporation;

(b) any direct or indirect sale, license, lease, transfer, exchange or other disposition, in one transaction or a series of transactions, including by merger, consolidation, business combination, share exchange, joint venture, extraordinary dividend, recapitalization, corporate reorganization or otherwise, of any business or assets representing 50% or more of the consolidated assets, net income or net revenues of the Acquired Corporations, taken as a whole;

(c) any issuance, sale, or other disposition, in one transaction or series of transactions, including by way of merger, consolidation, business combination, share exchange, joint venture or any similar transaction, of securities (or options, rights or warrants to purchase, or securities convertible into or exchangeable for, such securities) representing 50% or more of the voting power of the Company;

(d) any transaction, including any tender offer or exchange offer, that if consummated would result in or would reasonably be expected to result in any Person or group beneficially owning 50% or more of the voting power of the Company or in which any Person or group shall acquire the right to acquire beneficial ownership of 50% or more of the outstanding voting power of the Company; or

(e) any combination of the foregoing.

"***Specified Agreement***" is defined in Section 8.1(f) of the Agreement.

"***Subsidiary***" An Entity shall be deemed to be a "Subsidiary" of another Person if such Person directly or indirectly owns or purports to own, beneficially or of record, (a) an amount of voting securities or other interests in such Entity that is sufficient to enable such Person to elect at least a majority of the members of such Entity's Board of Directors or other governing body, or (b) at least 50% of the outstanding equity or economic interests of such Entity.

"***Superior Offer***" shall mean an unsolicited, bona-fide written Acquisition Proposal made by a third party after the date of this Agreement and not resulting from a breach of Section 5.4 pursuant to which such third party would acquire 80% or more of the voting power of the Company or the assets of the Acquired Corporations on a consolidated basis on terms that the Board of Directors of the Company determines, in good faith, after consultation with its outside legal counsel and its financial advisor of nationally recognized reputation, to be more favorable to the Company's stockholders from a financial point of view than the terms of the Offer and the Merger and is reasonably capable of being completed on the terms proposed taking into account all relevant factors, including the terms and conditions of the Acquisition Proposal, including price, form of consideration, closing conditions, anticipated timing of consummation of the transaction, and for which financing, if a cash transaction, is not a condition to the consummation of the purchase transaction and is reasonably determined to be available by the Company's Board of Directors.

"***Supplemental Indenture***" is defined in Section 6.8 of the Agreement.

"***Surviving Corporation***" is defined in Recital B of the Agreement.

"***Takeover Laws***" shall mean (a) any "moratorium," "control share acquisition," "fair price," "supermajority," "affiliate transactions," or "business combination statute or regulation" or other similar state anti-takeover laws and regulations and (b) Section 203 of the DGCL.

"***Tax***" shall mean any tax (including any federal, state, local and foreign income tax, franchise tax, profits tax, capital gains tax, gross receipts tax, value added tax, surtax, estimated tax, unemployment tax, payroll tax, national health insurance tax, excise tax, Code Section 59A tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, capital stock tax, severances tax, disability tax, production tax, occupancy tax, withholding tax or payroll tax), levy, assessment, tariff, duty (including any customs duty), and any charge or amount (including any fine, penalty, interest or addition and any interest in respect of such penalties, fines and additions) related to any tax, imposed, assessed or collected by or under the authority of any Governmental Body.

"***Tax Return***" shall mean any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"***Termination Fee***" is defined in Section 8.3(b) of the Agreement.

"***Transactions***" shall mean (a) the execution and delivery of the Agreement, and (b) all of the transactions contemplated by this Agreement, including the Offer and the Merger.

"***WARN***" is defined in Section 3.17(b) of the Agreement.

ANNEX I

CONDITIONS OF THE OFFER

(1) Notwithstanding any other terms or provisions of the Offer or the Agreement and Plan of Merger to which this **Annex I** is attached (the "Agreement"), Purchaser shall not be obligated to accept for payment, and, subject to the rules and regulations of the SEC (including Rule 14e-l(c) promulgated under the Exchange Act), shall not be obligated to pay for, or may delay the acceptance for payment of or payment for, any validly tendered Shares pursuant to the Offer (and not theretofore accepted for payment or paid for), if immediately prior to the Expiration Date, there shall not have been validly tendered (not including as tendered Shares tendered pursuant to guaranteed delivery procedures and not actually delivered prior to the Expiration Date) and not validly withdrawn that number of Shares that when added to the Shares then owned by Purchaser would represent one Share more than one-half (1/2) of the sum of:

(a) all Shares then outstanding, and

(b) all Shares that the Company may be required to issue upon the vesting (including vesting solely as a result of the consummation of the Offer), conversion, settlement or exercise of all then outstanding warrants, options, benefit plans, obligations or securities convertible or exchangeable into Shares, or other rights to acquire or be issued Shares (including all then outstanding Company Options, Company RSUs, Company PSUs, Company Stock Awards, ESPP Purchase Rights and the Convertible Senior Notes (after giving effect to any Make-Whole Fundamental Change (as defined in the Supplemental Indenture and assuming conversions are settled in full in Shares), assuming the effectiveness thereof occurred on the Expiration Date), regardless of the conversion or exercise price or other terms and conditions thereof) (such condition in this clause (1) being, the "Minimum Condition").

(2) Notwithstanding any other term or provision of the Offer or the Agreement, and in addition to (and not in limitation of) Purchaser's rights to extend and amend the Offer (subject to the provisions of the Agreement), and subject to any applicable rules and regulations of the SEC, Purchaser shall not be required to accept for payment or pay for any Shares tendered pursuant to the Offer if at the Expiration Date (i) the Minimum Condition has not been satisfied, or (ii) any of the following conditions shall not be satisfied or have been waived:

(a) the representations and warranties of the Company set forth in Sections 3.1(a)-(c), 3.3(d) 3.22, 3.23, 3.24 and 3.26 of the Agreement shall each have been accurate in all material respects as of the date of the Agreement, and shall be accurate in all material respects at and as of the Expiration Date as if made on and as of such Expiration Date (it being understood that, for purposes of determining the accuracy of such representations and warranties, (i) all "Material Adverse Effect" qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded, (ii) any update of or modification to the Company Disclosure Schedule purported to have been made after the date of the Agreement shall be disregarded and (iii) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured only as of such date);

(b) the representations and warranties of the Company set forth in Section 3.3(a) and 3.3(c) shall each have been accurate in all respects as of the date of the Agreement, and shall be accurate in all respects at and as of the Expiration Date as if made on and as of such Expiration Date, in each case except for such inaccuracies as are *de minimis* in nature and amount relative to each such representation and warranty taken as a whole (it being understood that, for purposes of determining the accuracy of such representations and warranties, (i) any update of or modification to the Company Disclosure Schedule purported to have been made after the date of the Agreement shall be disregarded and (ii) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured only as of such date);

(c) the representations and warranties of the Company set forth in the Agreement (other than those referred to in clauses (a) and (b) above) shall have been accurate in all respects as of the date of the Agreement, and shall be accurate in all respects at and as of the Expiration Date as if made on and as of such Expiration Date, except that any inaccuracies in such representations and warranties will be disregarded if the circumstances giving rise to all such inaccuracies (considered collectively) do not constitute, and would not reasonably be expected to have, a Material Adverse Effect on the Acquired Corporations taken as a whole (it being understood that, for purposes of determining the accuracy of such representations and warranties, (i) all "Material Adverse Effect" qualifications and other materiality qualifications contained in such representations and warranties shall be disregarded, (ii) any update of or modification to the Company Disclosure Schedule purported to have been made after the date of the Agreement shall be disregarded and (iii) the truth and correctness of those representations or warranties that address matters only as of a specific date shall be measured only as of such date);

(d) the Company shall have performed or complied in all material respects with all covenants and obligations that the Company is required to comply with or to perform under the Agreement prior to the Expiration Date;

(e) Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer or Chief Financial Officer of the Company to the effect that the conditions in clauses (2)(a), (b), (c) and (d) above have been satisfied;

(f) the waiting period applicable to the Offer under the HSR Act shall have expired or been terminated;

(g) since the date of this Agreement, there shall not have occurred a Material Adverse Effect or any change, event, circumstance or development that is, individually or in the aggregate, reasonably likely to result in a Material Adverse Effect;

(h) there shall not have been issued by any court of competent jurisdiction or remain in effect any temporary restraining order, preliminary or permanent injunction or other order preventing the consummation of the Offer or the Merger nor shall any action have been taken, or any Legal Requirement or order promulgated, entered, enforced, enacted, issued or deemed applicable to the Offer or the Merger by any Governmental Body which directly or indirectly prohibits, or makes illegal, the acceptance for payment of or payment for Shares or the consummation of the Offer or the Merger;

(i) there shall not be pending any Legal Proceeding by a Governmental Body having authority over Parent, Purchaser or any Acquired Corporation (1) challenging or seeking to restrain or prohibit the consummation of the Offer or the Merger, (2) seeking to restrain or prohibit Parent's or its Affiliates ownership or operation of the business of the Acquired Corporations, or of Parent or Affiliates, or to compel Parent or any of its Affiliates to dispose of or hold separate all or any portion of the business or assets of the Acquired Corporations or of Parent or its Affiliates or (3) seeking to impose or confirm material limitations on the ability of Parent or any of its Affiliates effectively to exercise full rights of ownership of the Shares; and

(j) the Agreement shall not have been validly terminated in accordance with its terms.

The foregoing conditions are for the sole benefit of Parent and Purchaser and may be waived by Parent and Purchaser, in whole or in part at any time and from time to time, in the sole discretion of Parent and Purchaser; provided that the Minimum Condition may be waived by Parent and Purchaser only with the prior written consent of the Company, which may be granted or withheld in the Company's sole discretion. The failure by Parent or Purchaser at any time to exercise any of the foregoing rights shall not be deemed a waiver of any such right and each such right shall be deemed an ongoing right which may be asserted at any time and from time to time.

Exhibit 10.1

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
BANK OF AMERICA, N.A.
One Bryant Park
New York, New York 10036

JPMORGAN CHASE BANK, N.A.
J.P. MORGAN SECURITIES LLC
383 Madison Avenue
New York, New York 10179

BARCLAYS BANK PLC
745 Seventh Avenue
5th Floor
New York, New York 10019

August 24, 2013

Amgen Inc.
One Amgen Center Drive
Thousand Oaks, CA 91320-1799

Attention: Chief Financial Officer

Project Nike
Commitment Letter

Ladies and Gentlemen:

You have advised Bank of America, N.A. ("***Bank of America***"), Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMorgan Chase Bank, N.A. ("***JPMCB***"), J.P. Morgan Securities LLC ("***JPMorgan***") and Barclays Bank PLC ("***Barclays***", together with Bank of America, Merrill Lynch, Pierce, Fenner & Smith Incorporated, JPMCB and JPMorgan, the "***Commitment Parties***", "***we***" or "***us***") that you (the "***Borrower***"), intend to acquire (the "***Acquisition***") a company previously identified to us and referred to as "Nike" (the "***Acquired Business***"). The Acquisition will be effected by the purchase by a subsidiary of the Borrower of all of the outstanding equity of the Acquired Business, and the merger of the Acquired Business into such subsidiary after which the Acquired Business will be a wholly-owned subsidiary of the Borrower. The Borrower, the Acquired Business and their respective subsidiaries are sometimes collectively referred to herein as the "***Companies***".

You have also advised us that you intend to finance the Acquisition and the costs and expenses related to the Transaction from the following sources (and that no financing other than the financing described herein and drawings under the Credit Agreement among the Borrower, the lenders party thereto and Citibank, N.A., as administrative agent, dated as of December 2, 2011 (as amended from time to time, the "***Existing Credit Agreement***") will be required in connection with the Transaction): (a) at least $1.5 billion of cash on hand of the Borrower, (b) at least $500.0 million of cash on hand of the Acquired Business (subject to confirmatory diligence), (c) up to $4.0 billion in proceeds from a structured term financing arrangement involving the preferred stock owned by the Borrower in ATL Holdings Limited (the "***Term Financing***"), (d) up to $500 million in senior unsecured loans (the "***Bridge A Facility***"), and (e) an up to $5.0 billion senior unsecured term loan facility of the Borrower (the "***Term Loan Facility***") (which may, at the Borrower's election be replaced in whole or part by gross proceeds from the issuance and sale by the Borrower of senior unsecured notes (the "***Notes***") or, to the extent that the Term Loan Facility is not syndicated or the Notes are not issued and sold on or prior to the date of consummation of the Acquisition, up to $5.0 billion in senior unsecured loans (the "***Bridge B Facility***", together with the Bridge A Facility, the "***Bridge Facilities***"; the Bridge Facilities together with the Term Loan

Facility, the "***Facilities***") made available to the Borrower as interim financing to the Term Loan Facility or other permanent financing. The Acquisition, the entering into and funding of the Term Loan Facility and/or the issuance and sale of the Notes or the entering into and funding of the Bridge Facilities and all related transactions are hereinafter collectively referred to as the "***Transaction***." The date of consummation of the Acquisition is referred to herein as the "***Closing Date***." The date that this Commitment Letter is accepted by the Borrower is referred to herein as the "***Commitment Date***."

1. **Commitments.** In connection with the foregoing, (a)(i) Bank of America is pleased to advise you of its commitment to provide $550.0 million of the Term Loan Facility, (ii) JPMCB is pleased to advise you of its commitment to provide $550.0 million of the Term Loan Facility, (iii) Barclays is pleased to advise you of its commitment to provide $550.0 million of the Term Loan Facility (together with Bank of America and JPMCB, the "***Initial Term Lenders***") and (iv) Bank of America is pleased to advise you of its willingness to act as the sole and exclusive administrative agent (in such capacity, the "***Term Administrative Agent***") for the Term Loan Facility, all upon and subject to the terms and conditions set forth in this letter and in Annexes II and III hereto (collectively, the "***Term Financing Summary of Terms***"), (b) Merrill Lynch, Pierce, Fenner & Smith Incorporated (or any of its affiliates designated to act in such capacity, "***MLPFS***"), JPMorgan and Barclays are pleased to advise you of their willingness, and you hereby engage MLPFS, JPMorgan and Barclays, to act as the joint lead arrangers and joint bookrunning managers (in such capacity, the "***Term Lead Arrangers***") for the Term Loan Facility, and in connection therewith to form a syndicate of lenders for the Term Loan Facility (collectively, the "***Term Lenders***") in consultation with you, including Bank of America, (c)(i) Bank of America is pleased to advise you of its commitment to provide 60% of each of the Bridge Facilities, (ii) JPMCB is pleased to advise you of its commitment to provide 25% of each of the Bridge Facilities, (iii) Barclays is pleased to advise you of its commitment to provide 15% of each of the Bridge Facilities (together with Bank of America and JPMCB, the "***Initial Bridge Lenders***" and, together with the Initial Term Lenders, the "***Initial Lenders***") and (iv) Bank of America is pleased to inform you of its willingness to act as the sole and exclusive administrative agent (in such capacity, the "***Bridge Administrative Agent***" and, together with the Term Administrative Agent, each, an "***Administrative Agent***" and together, the "***Administrative Agents***") for the Bridge Facilities, all upon and subject to the terms and conditions set forth in this letter and in Annexes I and III hereto (collectively, the "***Bridge Summary of Terms***" and, together with the Term Financing Summary of Terms, the "***Summaries of Terms***" and, together with this letter agreement, the "***Commitment Letter***") and (d) MLPFS, JPMorgan and Barclays are also pleased to advise you of their willingness, and you hereby engage MLPFS, JPMorgan and Barclays, to act as the joint lead arrangers and joint bookrunning managers (in such capacity, the "***Bridge Lead Arrangers***"; MLPFS, JPMorgan and Barclays acting in their capacity as Term Lead Arrangers and as Bridge Lead Arrangers are sometimes referred to herein as the "***Lead Arrangers***") for the Bridge Facilities, and in connection therewith to form a syndicate of lenders for the Bridge Facilities (collectively, the "***Bridge Lenders***" and, together with the Term Lenders, the "***Lenders***") in consultation with you, including Bank of America. You shall have the right, at any time until 15 days after the date of this Commitment Letter and the Fee Letter referred to below are executed and delivered by you, to appoint up to three additional Lenders reasonably acceptable to the Lead Arrangers as lead arrangers in respect of the Term Loan Facility (the "***Additional Initial Term Lenders***"). The Initial Term Lenders' commitments (and any commitment held by any and all lenders to which the Initial Term Lenders assign a portion of their commitments in accordance with the terms hereof prior to the execution of such documentation) with respect to the Term Loan Facility shall not be reduced in connection with the establishment of commitments by the Additional Initial Term Lenders upon the execution by such Additional Initial Term Lenders of such documentation, except as set forth in Section 2(b) below. It is understood and agreed that Bank of America and MLPFS will have "lead left" placement on all marketing materials relating to the Facilities and will perform the duties and exercise the authority customarily performed and exercised by them in such role. All capitalized terms used and not otherwise defined herein shall have the same meanings as specified therefor in the Summaries of Terms.

2. **Syndication.** The Lead Arrangers intend to commence syndication of the Facilities promptly after your acceptance of the terms of this Commitment Letter and the Fee Letter (as hereinafter defined), and the several commitments of the Commitment Parties hereunder shall be reduced (a) in respect of the Bridge B Facility, the aggregate commitments of the Lead Arrangers shall be reduced on a dollar for dollar basis when corresponding commitments are received from Bridge Lenders, such reduction to be allocated as follows: 92.8571% of each dollar to Bank of America and 7.1429% of each dollar to JPMorgan until a Successful Syndication (as defined in the Fee Letter) is achieved and on a pro-rata basis to all Initial Lenders thereafter, and (b) in respect of the Term Loan Facility, as determined by the Lead Arrangers after full subscription of $5.0 billion of commitments in respect of the Term Loan Facility, upon allocation of the commitments thereunder, in each case pursuant to an amendment or amendment and restatement of, or customary joinder to, this Commitment Letter (any such amendment, amendment and restatement or joinder, a "***Joinder***") or pursuant to the Credit Documentation, whichever is earlier. The parties agree to cooperate in good faith to execute and deliver Joinders promptly upon prospective lenders' being identified, and, except in the case of prospective lenders specifically identified in Schedule A to the Fee Letter, as to which such acceptance is hereby acknowledged and granted, accepted by the Borrower, such acceptance not to be unreasonably withheld or delayed. With respect to any syndication, assignment or participation other than through a Joinder or pursuant to the Credit Documentation, the Initial Lenders and the Additional Initial Term Lenders shall not be relieved, released or novated from their respective obligations hereunder until the funding on the Closing Date has occurred (but without limiting the Borrower's acceptance of and obligation to execute and deliver Joinders as set forth in the preceding sentence). Until the earlier of (x) the date that a Successful Syndication is achieved and (y) in the event that no portion of the Bridge B Facility is funded on the Closing Date, the Closing Date, or, if otherwise, the date that is 60 days after the Closing Date (such earlier date, the "***Syndication Date***"), you agree to assist, and to use your commercially reasonable efforts to cause the Acquired Business and its subsidiaries to assist, but in all instances subject to, and not in contravention of, the terms of the Acquisition Agreement, the Lead Arrangers in achieving a syndication of each such Facility that is satisfactory to the Lead Arrangers. Such assistance shall include (a) your providing and causing your advisors to provide, and using your commercially reasonable efforts to cause the Acquired Business, its subsidiaries and its advisors (consistent with the terms of the Acquisition Agreement) to provide, the Lead Arrangers and the Lenders upon request with all information reasonably deemed necessary by the Lead Arrangers to complete such syndication, including, but not limited to, information and evaluations prepared by you, the Acquired Business and your and its advisors, or on your or its behalf, relating to the Transaction (including the Projections (as hereinafter defined)), (b) your using commercially reasonable efforts to assist the Lead Arrangers in the preparation, within 30 days of the date hereof, of an information memorandum with respect to the applicable Facilities in form and substance customary for transactions of this type (each, an "***Information Memorandum***") and other materials to be used in connection with the syndication of each such Facility (collectively with the Summaries of Terms and any additional summary of terms prepared for distribution to Public Lenders (as hereinafter defined), the "***Information Materials***"), (c) your using your commercially reasonable efforts to ensure that the syndication efforts of the Lead Arrangers benefit materially from your existing lending relationships and the existing banking relationships of the Acquired Business, (d) your otherwise assisting the Lead Arrangers in their syndication efforts, including by making your officers and advisors, and using your commercially reasonable efforts to make the officers and advisors of the Acquired Business (consistent with the terms of the Acquisition Agreement), reasonably available from time to time to attend and make presentations regarding the business and prospects of the Companies and the Transaction at one or more meetings of prospective Lenders at times and locations mutually agreed upon and (e) using your commercially reasonable efforts to ensure that prior to the Closing Date there will be no competing issues of debt securities or bank credit financing (other than the Term Loan Facility, the Bridge Facilities, the Notes, the Term Financing and additional loans and commitments under the Existing Credit Agreement as may be amended prior to the Closing Date) by or on behalf of you, the Acquired Business or any of your or its subsidiaries being offered, placed or arranged that could reasonably be expected to materially impair the syndication of the Facilities (it being understood that any

commercial paper issuances and any indebtedness permitted under the Acquisition Agreement as in effect on the date hereof shall not be subject to this clause (e)). Notwithstanding anything to the contrary contained in this Commitment Letter, the Fee Letters or any other letter agreement or other undertaking concerning the financing of the Transaction contemplated hereby, but without limiting your obligations to assist with syndication efforts as set forth herein, it is understood that in no event shall the successful completion of syndication of the Facilities or the receipt of any ratings constitute a condition to the availability or initial funding of the Facilities on the Closing Date.

It is understood and agreed that the Lead Arrangers will manage and control all aspects of the syndication of the Facilities in consultation with you, including decisions as to the selection of prospective Lenders and any titles offered to proposed Lenders, when commitments will be accepted and the final allocations of the commitments among the Lenders and, with your consent (not to be unreasonably withheld), any titles or roles offered to prospective Lenders. It is understood that no Lender participating in the Facilities will receive compensation from you in order to obtain its commitment, except on the terms contained herein, in the Summaries of Terms, and in the Fee Letter. It is also understood and agreed that the amount and distribution of the fees among the Lenders will be at the reasonable discretion of the Lead Arrangers in consultation with you.

3. **Information Requirements.** You hereby represent, warrant and covenant that (a) all written information, other than Projections (as defined below) and information of a general economic or general industry nature, that has been or is hereafter made available to the Lead Arrangers, the Initial Lenders or any of the Additional Initial Term Lenders by or on behalf of you or any of your representatives, taken as a whole, or by or on behalf of the Acquired Business or any of its representatives, taken as a whole, in connection with any aspect of the Transaction (the "***Information***") is and will be, when furnished and taken as a whole, complete and correct in all material respects and does not and will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not misleading (in each case after giving effect to all supplements and updates provided thereto) and (b) all financial projections concerning the Companies that have been or are hereafter made available to the Lead Arrangers, the Initial Lenders or any of the Additional Initial Term Lenders by or on behalf of you or any of your representatives or by or on behalf of the Acquired Business or its representatives (the "***Projections***") have been or will be prepared in good faith based upon reasonable assumptions that are believed by the preparer thereof to be reasonable at the time made and at the time such projections are delivered to the Lead Arrangers; it being understood and agreed that such Projections are not to be viewed as facts and that actual results during the period or periods covered by any such Projections may differ significantly from the projected results, and no assurance can be given that the projected results will be realized. You agree that, if at any time prior to the later of the Closing Date and the Syndication Date, you become aware that any of the representations and warranties in the preceding sentence would be incorrect in any respect if the Information and Projections were being furnished, and such representations were being made, at such time, then you will promptly supplement the Information and the Projections so that such representations and warranties will be correct at such time. Solely as they relate to matters with respect to the Acquired Business and its subsidiaries, the foregoing representations, warranties and covenants are made to your actual knowledge. In issuing this commitment and in arranging and syndicating each of the Facilities, the Commitment Parties are and will be using and relying on the Information and the Projections without independent verification thereof.

You acknowledge that the Commitment Parties on your behalf will make available Information Materials (as hereinafter defined) to the proposed syndicate of Lenders by posting the Information, the Projections, the Summaries of Terms and any additional summary of terms prepared for distribution to Public Lenders (as hereinafter defined) (collectively, the "***Information Materials***") on SyndTrak or another similar electronic system. In connection with the syndication of the Facilities, unless the parties hereto otherwise agree in writing, you shall be under no obligation to provide Information Materials

suitable for distribution to any prospective Lender (each, a "***Public Lender***") that has personnel who do not wish to receive material non-public information (within the meaning of the United States federal securities laws, "***MNPI***") with respect to the Companies, their respective affiliates or any other entity, or the respective securities of any of the foregoing. You agree, however, that the Credit Documentation will contain provisions concerning Information Materials to be provided to Public Lenders and the absence of MNPI therefrom that are customary for credit facilities of this size and type. Prior to distribution of Information Materials to prospective Lenders, you shall provide us with a customary letter authorizing the dissemination thereof.

4. **Fees and Indemnities.**

(a) You agree to pay the fees set forth in the separate fee letter addressed to you dated the date hereof from the Commitment Parties (the "***Fee Letter***") and the separate fee letter addressed to you dated the date hereof from Bank of America (the "***Administrative Fee Letter***" and together with the Fee Letter, the "***Fee Letters***"). You also agree to reimburse the Commitment Parties for all reasonable and documented out-of-pocket fees and expenses (including, but not limited to, the reasonable fees, disbursements and other charges of Shearman & Sterling LLP, as counsel to the Lead Arrangers, the Term Administrative Agent, the Bridge Administrative Agent and the Initial Lenders (and one additional counsel to each group of affected Indemnified Parties (as hereinafter defined) that are similarly situated, taken as a whole, for any conflict of interest and, if reasonably necessary, one local counsel in each relevant jurisdiction)) incurred in connection with the Facilities (not to include, for the avoidance of doubt, the reasonable and documented fees, charges and other disbursements of counsel for the administrative agent under the Existing Credit Agreement, that are required to be reimbursed pursuant thereto), the syndication thereof, the preparation of the Credit Documentation therefor and the other transactions contemplated hereby (collectively, the "***Expenses***"); provided, that you shall not be obligated to reimburse us for Expenses (other than fees, charges and other disbursement of counsel) in excess of $50,000 (to be reviewed if a physical bank meeting is required); and provided further, that in the event the Closing Date does not occur, you shall not be required to reimburse any fees, disbursements and other charges of Shearman & Sterling LLP unless we promptly notify you when such fees, disbursements and other charges exceed $150,000 in the aggregate and provide you weekly invoiced updates thereafter. You acknowledge that we may receive a benefit from any of such counsel in connection with unrelated matters, including without limitation, a discount, credit or other accommodation, based on the fees such counsel may receive on account of their relationship with us including, without limitation, fees paid pursuant hereto.

(b) You also agree to indemnify and hold harmless each of the Commitment Parties and each of their affiliates, successors and assigns, and their respective officers, directors, employees, agents, advisors and other representatives (each, an "***Indemnified Party***") from and against, and hold each Indemnified Party harmless from, any and all claims, damages, losses, liabilities and expenses (including, without limitation, the reasonable fees, disbursements and other charges of one legal counsel for the Administrative Agents, the Lead Arrangers and the Initial Lenders (and one additional counsel to each group of affected Indemnified Parties that are similarly situated, taken as a whole, for any conflict of interest and, if reasonably necessary, one local counsel in each relevant jurisdiction)) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (a) any aspect of the Transaction and any of the other transactions contemplated thereby, (b) the Facilities and any other financings in connection with the Transaction, or any use made or proposed to be made with the proceeds thereof (in all cases, whether or not caused or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnified Party) or (c) this Commitment Letter or the Fee Letters; *provided* that the foregoing indemnity will not, as to any Indemnified Party, apply to (i) (A) losses, claims, damages, liabilities or related expenses to the extent they are found by a final, non-appealable judgment of a court of competent jurisdiction to arise

from the gross negligence, willful misconduct or bad faith of the applicable Indemnified Party or any Related Indemnified Party (as defined below), or (B) result from a claim brought by the Borrower against an Indemnified Party for a material breach of such Indemnified Party's obligations under this Commitment Letter, the Fee Letters or other Credit Documentation if the Borrower has obtained a final and non-appealable judgment in its favor on such claims as determined by a court of competent jurisdiction, (ii) any settlement entered into by such Indemnified Party without your written consent (such consent not to be unreasonably withheld, conditioned or delayed) and (iii) any disputes solely among the Indemnified Parties and not arising out of or in connection with any act or omission of any Company (other than a dispute involving a claim against any Commitment Party solely in its capacity as an arranger, agent or similar role in connection with the Facilities). In the case of any claim, litigation, investigation or proceeding (any of the foregoing, a "***Proceeding***") to which the indemnity in this paragraph applies, such indemnity shall be effective whether or not such Proceeding is brought by you, your equity holders or creditors or an Indemnified Party, whether or not an Indemnified Party is otherwise a party thereto and whether or not any aspect of the Transaction is consummated. You also agree that no Indemnified Party shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you, the Seller, the Acquired Business or your or their subsidiaries or affiliates or to your or their respective equity holders or creditors or any other person arising out of, related to or in connection with any aspect of the Transaction, except to the extent of direct (as opposed to special, indirect, consequential or punitive) damages determined in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from (i) such Indemnified Party's gross negligence, bad faith or willful misconduct or (ii) a material breach of such Indemnified Party's obligations under this Commitment Letter, the Fee Letters or other Credit Documentation, as found in a proceeding to which you are a party. It is further agreed that the Commitment Parties shall only have liability to you (as opposed to any other person), and that the Commitment Parties shall be severally liable solely in respect of their respective commitments to the Facilities, on a several, and not joint, basis with any other Lender. Notwithstanding any other provision of this Commitment Letter, no Indemnified Party shall be liable for any damages arising from the use by others of information or other materials obtained through electronic telecommunications or other information transmission systems, other than for direct, actual damages resulting from the gross negligence, bad faith or willful misconduct of such Indemnified Party or any of its affiliates, or any of their respective officers, directors, employees, advisors, affiliates, agents or controlling persons as determined by a final, non-appealable judgment of a court of competent jurisdiction. Notwithstanding any other provisions of this Commitment Letter to the contrary, neither you nor any Indemnified Party shall be liable for any indirect, special, punitive or consequential damages arising out of, in connection with, or as a direct result of the Transaction or the other transactions contemplated by this Commitment Letter; provided however, that this sentence shall not relieve the Borrower of its indemnification obligations under this clause (b) to the extent any Indemnified Party is found liable for any such damages. You shall not, without the prior written consent of an Indemnified Party (which consent shall not be unreasonably withheld), effect any settlement of any pending or threatened Proceeding against an Indemnified Party in respect of which indemnity could have been sought hereunder by such Indemnified Party unless (i) such settlement includes an unconditional release of such Indemnified Party from all liability or claims that are the subject matter of such Proceeding and (ii) does not include any statement as to any admission.

(c) For purposes hereof, a "***Related Indemnified Party***" of an Indemnified Party means (1) any controlling person or controlled affiliate of such Indemnified Party, (2) the respective directors, officers, or employees of such Indemnified Party or any of its controlling persons or controlled affiliates and (3) the respective agents of such Indemnified Party or any of its controlling persons or controlled affiliates, in the case of this clause (3), acting at the instructions of such Indemnified Party, controlling person or such controlled affiliate, *provided*, that each reference to a controlled affiliate or controlling person in this sentence pertains to a controlled affiliate or controlling person involved in the negotiation of this Commitment Letter.

5. **Conditions to Financing.** The commitments of the Initial Term Lenders in respect of the Term Loan Facility, the commitments of the Initial Bridge Lenders in respect of the Bridge Facilities and the undertaking of the Lead Arrangers to provide the services described herein are subject solely to the satisfaction of each of the conditions set forth in Annex III hereto and each of the following conditions precedent: (a)(i) solely with respect to the Term Loan Facility, the negotiation, execution and delivery of definitive documentation with respect to the Term Loan Facility consistent with this Commitment Letter, including the Documentation Principles (as defined in the Term Financing Summary of Terms) and the Fee Letters and (ii) solely with respect to the Bridge Facilities, the negotiation, execution and delivery of the definitive documentation with respect to the Bridge Facilities consistent with this Commitment Letter, including the Documentation Principles and the Fee Letters (the definitive documentation referred to in clauses (i) and (ii) as applicable, collectively, the "***Credit Documentation***") and (b) solely with respect to the Term Loan Facility, the other conditions set forth in the Term Financing Summary of Terms under the heading "Conditions Precedent" and, solely with respect to the Bridge Facilities, the other conditions set forth in the Bridge Summary of Terms under the heading "Conditions Precedent". Notwithstanding anything in this Commitment Letter, the Fee Letters, the Credit Documentation or any other letter agreement or other undertaking concerning the financing of the Transaction to the contrary, (a) the representations and warranties the accuracy of which shall be a condition to the availability of the Facilities on the Closing Date shall be only (i) such representations and warranties made by or with respect to the Acquired Business and its subsidiaries in the definitive agreement relating to the Acquisition (including all schedules and exhibits thereto) (the "***Acquisition Agreement***") as are material to the interests of the Lenders, but only to the extent that you have or any of your affiliates has the right to terminate your obligations under the Acquisition Agreement, or to decline to consummate the Acquisition pursuant to the Acquisition Agreement, as a result of a breach of such representations in the Acquisition Agreement (the "***Acquisition Agreement Representations***") and (ii) the Specified Representations (as hereinafter defined) and (b) the terms of the Credit Documentation shall be in a form such that they do not impair the availability of (i) the Term Loan Facility on the Closing Date if the conditions set forth in the section entitled "Conditions Precedent" in the Term Financing Summary of Terms are satisfied and (ii) the Bridge Facilities on the Closing Date if the conditions set forth in the section entitled "Conditions Precedent" in the Bridge Summary of Terms are satisfied. For purposes hereof, "***Specified Representations***" means the representations and warranties of the Borrower (x) in the case of the Term Loan Facility, contemplated by the Term Financing Summary of Terms, relating to the absence of a court order (by a court of competent jurisdiction) in effect on the Closing Date enjoining the Term Lenders from funding the Term Loan Facility, (y) in the case of the Bridge Facilities, contemplated by the Bridge Summary of Terms, relating to the absence of a court order (by a court of competent jurisdiction) in effect on the Closing Date enjoining the Bridge Lenders from funding the Bridge Facilities, and (z) in each case, relating to corporate status, corporate power and authority to enter into the applicable Credit Documentation, due authorization, execution, delivery and enforceability of the applicable Credit Documentation, no conflicts in any material respect with laws or charter documents, solvency of the Borrower and its subsidiaries on the Closing Date on a consolidated basis after giving effect to the Transaction (in substantially the form attached hereto as Exhibit A), Federal Reserve margin regulations, OFAC, and the Investment Company Act. There shall be no conditions to closing and funding not expressly set forth in this Section 5 or Annex III hereto and (i) solely with respect to the Term Loan Facility, the other conditions referenced in the Term Financing Summary of Terms under the heading "Conditions Precedent" and (ii) solely with respect to the Bridge Facilities, the other conditions referenced in the Bridge Summary of Terms under the heading "Conditions Precedent".

6. **Confidentiality and Other Obligations.** This Commitment Letter and the Fee Letters and the contents hereof and thereof are confidential and, may not be disclosed by you in whole or in part to any person or entity without our prior written consent except (i) on a confidential basis to your affiliates, and your or your affiliates' officers, directors, employees, agents, attorneys, accountants and other professional advisors in connection with the Transaction, (ii) pursuant to the order of any court or

administrative agency in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process based on the reasonable advice of your legal counsel (in which case you agree, to the extent practicable and not prohibited by applicable law, to inform us promptly thereof), and (iii) this Commitment Letter and the Fee Letters (redacted in a manner reasonably satisfactory to us) may be disclosed on a confidential basis to the affiliates, board of directors, officers, directors, employees, agents, attorneys, accountants and other advisors of the Acquired Business in connection with the Transaction. Notwithstanding the foregoing, (i) following your acceptance hereof, you may disclose the Commitment Letter, including the existence and contents of this Commitment Letter (but not the contents of the Fee Letters, other than the existence thereof) in any offering memoranda relating to the Notes, in any syndication or other marketing materials in connection with the Facilities or in any proxy statement or similar public filing related to the Acquisition or in connection with any public filing requirement, (ii) following your acceptance of the provisions hereof and return of an executed counterpart of this Commitment Letter to the Lead Arrangers as provided below, you may file a copy of any portion of this Commitment Letter (but not the Fee Letters) in any public record in which you are required by law or regulation on the advice of your counsel to file it, (iii) you may disclose the Summaries of Terms to any rating agency in connection with the Transaction to the extent necessary to satisfy your obligations or the conditions hereunder and (iv) you may disclose the aggregate fee amounts contained in the Fee Letters as part of Projections, pro forma information or a generic disclosure of aggregate sources and uses related to fee amounts related to the Transaction to the extent customary or required in offering and marketing materials for the Term Loan Facility, the Bridge Facilities and/or the Notes or in any public filing relating to the Transaction.

The Commitment Parties shall use all confidential information provided to them by or on behalf of you hereunder solely for the purpose of providing the services which are the subject of this letter agreement and otherwise in connection with the Transaction and shall treat confidentially all such information; *provided*, *however*, that nothing herein shall prevent the Commitment Parties from disclosing any such information (i) pursuant to the order of any court or administrative agency or in any pending legal or administrative proceeding, or otherwise as required by applicable law or compulsory legal process (in which case the Commitment Parties agree to inform you promptly thereof prior to such disclosure to the extent not prohibited by law, rule or regulation), (ii) upon the request or demand of any regulatory authority having jurisdiction over the Commitment Parties or any of their respective affiliates (including without limitation in the course of inspections, examinations or inquiries by federal or state government agencies, regulatory agencies, self-regulatory agencies and rating agencies), (iii) to the extent that such information becomes publicly available other than by reason of disclosure in violation of this agreement by the Commitment Parties, (iv) to the Commitment Parties' affiliates, and the Commitment Parties' and their affiliates' employees, officers, directors, legal counsel, independent auditors and other experts or agents who need to know such information in connection with the Transaction and are informed of the confidential nature of such information and instructed to keep such confidential information confidential, (v) for purposes of establishing any defense available under state and federal securities laws including without limitation a "due diligence" defense, (vi) to the extent that such information is or was received by the Commitment Parties from a third party that is not to the Commitment Parties' knowledge subject to confidentiality obligations to you, (vii) to the extent that such information is independently developed by the Commitment Parties or (viii) to potential Lenders, participants or assignees who agree to be bound by the terms of this paragraph (or language substantially similar to this paragraph or as otherwise reasonably acceptable to you and each Commitment Party, including as may be agreed in any confidential information memorandum or other marketing material). This paragraph shall terminate on the date that is 18 months after the date hereof.

You acknowledge that the Commitment Parties or their affiliates may be providing financing or other services to parties whose interests may conflict with yours. None of the Commitment Parties or the Lead Arrangers will use confidential information obtained from you by virtue of the

transactions contemplated by this letter or their other relationships with you in connection with the performance by the Commitment Parties and the Lead Arrangers of services for other companies. The Commitment Parties agree that they will not furnish confidential information obtained from you to any of their other customers and will treat confidential information relating to the Companies and their respective affiliates with the same degree of care as they treat their own confidential information. The Commitment Parties further advise you that they will not make available to you confidential information that they have obtained or may obtain from any other customer. In connection with the services and transactions contemplated hereby, you agree that the Commitment Parties are permitted to access, use and share with any of their bank or non-bank affiliates, agents, advisors (legal or otherwise) or representatives any information concerning the Companies or any of their respective affiliates that is or may come into the possession of the Commitment Parties or any of such affiliates.

In connection with all aspects of each transaction contemplated by this Commitment Letter, you acknowledge and agree, and acknowledge your affiliates' understanding, that: (i) each of the Facilities and any related arranging or other services described in this Commitment Letter is an arm's-length commercial transaction between you and your affiliates, on the one hand, and the Commitment Parties, on the other hand, (ii) the Commitment Parties have not provided any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby and you have consulted your own legal, accounting, regulatory and tax advisors to the extent you have deemed appropriate, (iii) you are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby, (iv) in connection with each transaction contemplated hereby and the process leading to such transaction, each of the Commitment Parties has been, is, and will be acting solely as a principal and has not been, is not, and will not be acting as an advisor, agent or fiduciary, for you or any of your affiliates, stockholders, creditors or employees or any other party, (v) the Commitment Parties have not assumed and will not assume an advisory, agency or fiduciary responsibility in your or your affiliates' favor with respect to any of the transactions contemplated hereby or the process leading thereto (irrespective of whether any of the Commitment Parties has advised or is currently advising you or your affiliates on other matters) and the Commitment Parties have no obligation to you or your affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth in this Commitment Letter and (vi) the Commitment Parties and their respective affiliates may be engaged in a broad range of transactions that involve interests that differ from yours and those of your affiliates, and the Commitment Parties have no obligation to disclose any of such interests to you or your affiliates. To the fullest extent permitted by law, you hereby waive and release any claims that you may have against the Commitment Parties with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated by this Commitment Letter.

The Commitment Parties hereby notify you that pursuant to the requirements of the USA PATRIOT Act, Title III of Pub. L. 107-56 (signed into law October 26, 2001) (the "***U.S.A. Patriot Act***"), each of them is required to obtain, verify and record information that identifies you, which information includes your name and address and other information that will allow the Commitment Parties, as applicable, to identify you in accordance with the U.S.A. Patriot Act.

7. **Survival of Obligations.** The provisions of this Section 7 and Sections 2, 3, 4, 6 and 8 shall remain in full force and effect regardless of whether any Credit Documentation shall be executed and delivered and notwithstanding the termination of this Commitment Letter or any commitment or undertaking of the Commitment Parties hereunder, except that the provisions of Sections 2 and 3 shall not survive if the commitments and undertakings of the Commitment Parties are terminated prior to the effectiveness of the Term Loan Facility and funding of the Bridge Facilities (or, upon the closing of the Acquisition without the use of any proceeds under the Bridge Facilities) and the provisions of Sections 4 and 6 (other than with respect to the confidentiality of the Fee Letters and the contents thereof) shall, except with respect to events or circumstances occurring prior to the execution of the Credit Documentation, be superseded by the reimbursement, confidentiality and indemnification provisions of the Credit Documentation upon the effectiveness thereof.

8. **Miscellaneous.** This Commitment Letter and the Fee Letters may be executed in multiple counterparts and by different parties hereto in separate counterparts, all of which, taken together, shall constitute an original. Delivery of an executed counterpart of a signature page to this Commitment Letter or the Fee Letters by telecopier, facsimile or other electronic transmission (e.g., a "pdf" or "tiff") shall be effective as delivery of a manually executed counterpart thereof. Headings are for convenience of reference only and shall not affect the construction of, or be taken into consideration when interpreting, this Commitment Letter or the Fee Letters.

This Commitment Letter and the Fee Letters shall be governed by, and construed in accordance with, the laws of the State of New York; provided, however, that (i) the interpretation of the definition of Material Adverse Effect (as defined in Annex III hereto) and whether or not a Material Adverse Effect has occurred, (ii) the determination of the accuracy of any Acquisition Agreement Representations and whether as a result of any inaccuracy thereof you (or your affiliates) have the right to terminate your (or their) obligations under the Acquisition Agreement, or to decline to consummate the Acquisition pursuant to the Acquisition Agreement and (iii) the determination of whether the Acquisition has been consummated in accordance with the terms of the Acquisition Agreement, in each case, shall be governed by, and construed and interpreted solely in accordance with, the laws of the State of Delaware, without regard to any other principles of conflicts of law. Each party hereto hereby irrevocably waives any and all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Commitment Letter, the Fee Letters, the Transaction and the other transactions contemplated hereby and thereby or the actions of the Commitment Parties in the negotiation, performance or enforcement hereof. Each party hereto hereby irrevocably and unconditionally submits to the exclusive jurisdiction of any New York State court or Federal court of the United States of America sitting in the Borough of Manhattan in New York City in respect of any suit, action or proceeding arising out of or relating to the provisions of this Commitment Letter, the Fee Letters, the Transaction and the other transactions contemplated hereby and thereby and irrevocably agrees that all claims in respect of any such suit, action or proceeding may be heard and determined in any such court. The parties hereto agree that service of any process, summons, notice or document by registered mail addressed to you shall be effective service of process against you for any suit, action or proceeding relating to any such dispute. Each party hereto waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceedings brought in any such court, and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. A final judgment in any such suit, action or proceeding brought in any such court may be enforced in any other courts to whose jurisdiction you are or may be subject by suit upon judgment.

This Commitment Letter, together with the Fee Letters, embodies the entire agreement and understanding among the parties hereto and your affiliates with respect to the Facilities and supersedes all prior agreements and understandings relating to the subject matter hereof. No party has been authorized by the Commitment Parties to make any oral or written statements that are inconsistent with this Commitment Letter. Neither this Commitment Letter (including the attachments hereto) nor the Fee Letters may be amended or any term or provision hereof or thereof waived or modified except by an instrument in writing signed by each of the parties hereto.

This Commitment Letter may not be assigned by you without our prior written consent (and any purported assignment without such consent will be null and void), is intended to be solely for the benefit of the parties hereto and is not intended to confer any benefits upon, or create any rights in favor of, any person other than the parties hereto (and the Indemnified Parties). Each Commitment Party may

assign its commitment hereunder, in whole or in part, to any of its affiliates (provided that no such assignment to an affiliate shall reduce the amount of such Commitment Party's commitment hereunder) or, subject to the provisions of Section 2 of this Commitment Letter, to any Lender. No Lead Arranger shall assign its rights under this Commitment Letter or the Fee Letters as a Lead Arranger in its capacity as such (other than to one of its affiliates) without the prior written consent of each of the parties hereto (and any purported assignment without such consent will be null and void).

Please indicate your acceptance of the terms of the Facilities set forth in this Commitment Letter and the Fee Letters by returning to us executed counterparts of this Commitment Letter and each of the Fee Letters, and paying the fees specified in the Fee Letter to be payable upon acceptance of this Commitment Letter with respect to the Facilities by wire transfer of immediately available funds to the respective accounts specified by us, not later than 11:59 p.m. (New York City time) on August 26, 2013, whereupon the undertakings of the parties with respect to the Facilities shall become effective to the extent and in the manner provided hereby. This offer shall terminate with respect to the Facilities if not so accepted by you at or prior to that time. Thereafter, all commitments and undertakings of the Commitment Parties hereunder (i) with respect to the Bridge Facilities, will expire on the earliest of (a) February 24, 2014, unless the Closing Date occurs on or prior thereto, (b) the closing of the Acquisition without the use of the Bridge Facilities, (c) the funding in full of the Term Loan Facility, (d) the execution of the definitive documentation for the Term Loan Facility and (e) the termination of the Acquisition Agreement in accordance with its terms and (ii) with respect to the Term Loan Facility, will expire on the earliest of (a) February 24, 2014, unless the Closing Date occurs on or prior thereto, (b) the closing of the Acquisition without the use of the Term Loan Facility, and (c) the termination of the Acquisition Agreement in accordance with its terms.

[The remainder of this page intentionally left blank.]

We are pleased to have the opportunity to work with you in connection with this important financing.

Very truly yours,

BANK OF AMERICA, N.A.

By: /s/ Zubin R. Shroff
Name: Zubin R. Shroff
Title: Director

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

By: /s/ Peter C. Hall
Name: Peter C. Hall
Title: Managing Director

J.P. MORGAN SECURITIES LLC

By: /s/ Thomas Delaney
Name: Thomas Delaney
Title: Executive Director

JPMORGAN CHASE BANK, N.A.

By: /s/ Tony Yung
Name: Tony Yung
Title: Executive Director

BARCLAYS BANK PLC

By: /s/ Ritam Bhalla
Name: Ritam Bhalla
Title: Director

The provisions of this Commitment Letter are accepted and agreed to as of the date first written above:

AMGEN INC.

By: /s/ Jonathan M. Peacock

Name: Jonathan M. Peacock
Title: Executive Vice President and Chief Financial Officer

ANNEX I

SUMMARY OF TERMS AND CONDITIONS
BRIDGE LOANS

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex I is attached.

Borrower:	Amgen Inc. (the "***Borrower***").
Guarantors:	None.
Administrative Agent:	Bank of America, N.A. or an affiliate thereof ("***Bank of America***") will act as sole and exclusive administrative agent for the Bridge Lenders (the "***Administrative Agent***").
Syndication Agents:	JPMorgan Chase Bank, N.A. and Barclays Bank PLC will act as syndication agents for the Bridge Lenders.
Lead Arrangers and Bookrunning Managers:	Merrill Lynch, Pierce, Fenner & Smith Incorporated, J.P. Morgan Securities LLC ("***JPMorgan***") and Barclays Bank PLC ("***Barclays***") will act as joint Lead Arrangers and joint Bookrunning Managers for the Bridge Loans (in such capacity, the "***Bridge Lead Arrangers***").
Bridge Lenders:	Bank of America or affiliates thereof, JPMorgan Chase Bank, N.A. ("***JPMCB***") and Barclays (the "***Initial Bridge Lenders***") and, subject to Section 2 of the Commitment Letter, other financial institutions selected by the Bridge Lead Arrangers in consultation with the Borrower (the "***Bridge Lenders***").
Bridge Loans:	**Bridge A Facility**: An aggregate principal amount of up to $500 million of senior unsecured bridge loans (the "***Bridge A Loans***"). The Bridge A Loans will be available to the Borrower only after the Bridge B Facility has been fully drawn, has been reduced to $0 pursuant to the terms thereof, or has been terminated. **Bridge B Facility**: An aggregate principal amount of up to $5.0 billion of senior unsecured bridge loans (the "***Bridge B Loans***", together with the Bridge A Loans, the "***Bridge Loans***"), less (i) all reductions pursuant to the Mandatory Prepayments and Commitment Reduction section below, (ii) without duplication of clause (i) above, the aggregate gross proceeds of Notes, the Term Loan Facility or any other debt or equity securities of the Companies (other than the Term Financing and borrowings under the Existing Credit Agreement) (collectively, "***Permanent Securities***") issued on or prior to the Closing Date, to the extent that the gross proceeds thereof are made available to the Borrower on or prior to the Closing Date and (iii) upon the execution of definitive documentation for the Term Loan Facility, the amount of the Term Loan Facility. At the election of the Borrower, all or a portion of the Bridge B Loans will be available to the Borrower on the Closing Date,

with the remainder, if any, of the Bridge B Loans being available in one additional borrowing on or prior to the 90th day following the Closing Date (such additional borrowing, the "***Secondary Bridge Borrowing***").

Ranking: The Bridge Loans will be senior unsecured obligations of the Borrower and rank pari passu in right of payment with or senior to all other unsecured obligations of the Borrower.

Purpose: The proceeds of the Bridge Loans, together with other funds available to the Borrower, shall be used (i) to finance in part the Transaction and (ii) to pay fees and expenses incurred in connection with the Transaction.

Interest Rate: Interest shall be payable quarterly in arrears at a rate per annum equal to three-month LIBOR plus the Applicable Margin.

"***Applicable Margin***" shall initially be 112.5 basis points as of the Closing Date, and will increase by an additional 25 basis points at the end of each 90 day period thereafter for as long as the Bridge Loans are outstanding.

During the continuance of a payment default, interest will accrue on the principal of the Bridge Loans and on any other outstanding amount at a rate of 200 basis points in excess of the rate otherwise applicable to the Bridge Loans, and will be payable on demand.

All calculations of interest shall be made on the basis of actual number of days elapsed in a 360-day year.

Duration Fees: The Borrower shall pay to the Administrative Agent for the ratable benefit of the Bridge Lenders a duration fee on the dates and in the amounts indicated, calculated on the aggregate principal amount of, or outstanding commitments under, the Bridge Facilities outstanding on such dates:

Date	(bps)
90 days after the Closing Date	50.0
180 days after the Closing Date	75.0
270 days after the Closing Date	100.0

Cost and Yield Protection: Same as the Term Loan Facility.

Maturity: 364 days after the Closing Date.

Amortization: None.

Optional Prepayments and Commitment Reductions: The Bridge Loans may be prepaid, or the commitments in respect thereof may be reduced, without premium or penalty, in whole or in part, upon written notice, at the option of the Borrower, at any time, together with accrued interest to the prepayment date (if applicable); provided that the Bridge A Loans shall be paid in full before any optional prepayment of the Bridge B Loans.

Mandatory Prepayments and Commitment Reductions:	The Borrower shall prepay the Bridge Loans, and prior to the Closing Date, the commitments in respect thereof shall be automatically reduced, without premium or penalty together with accrued interest to the prepayment or purchase date (provided that prepayments shall be applied first to the Bridge B Loans, then to the Bridge A Loans), with (a) all net after-tax cash proceeds from non-ordinary course sales of property and assets of the Borrower or any of its subsidiaries after the Commitment Date (including sales or issuances of equity interests, in each case to third parties, by subsidiaries of the Borrower (but excluding sales of inventory, the sales of the Term Financing or factoring of accounts receivable in the ordinary course of business and net cash after-tax proceeds from other sales of property or assets of the Borrower in an amount not to exceed $150.0 million, and, after the execution and delivery of the Credit Documentation, other exceptions to be agreed in the Credit Documentation)), (b) all (1) net cash proceeds from the issuance or incurrence after the Commitment Date of additional debt of the Borrower (including, when funded, the Term Loan Facility) or any of its subsidiaries other than drawings under the Existing Credit Agreement, the Term Financing and, after the execution and delivery of the Credit Documentation, certain debt permitted under the Credit Documentation and (2) aggregate commitments, whether funded or unfunded, obtained in respect of any credit facility pursuant to a credit agreement (including, without limitation, the Term Loan Facility), and (c) all net cash proceeds from any issuance of equity interest by, or equity contribution to, the Borrower, after the Commitment Date, subject to exceptions to be agreed. On the tenth Business Day following the date on which the Borrower acquires 100% ownership of the Acquired Business, the Borrower shall prepay the Bridge A Loans in an amount equal to the unrestricted and immediately available cash that is held in the U.S. as of such date by the Acquired Business, up to the outstanding amount of the Bridge A Loans.
Conditions Precedent:	The borrowing under the Bridge Facilities on the Closing Date will be subject only to the applicable conditions precedent expressly set forth in Section 5 of the Commitment Letter and Annex III to the Commitment Letter. The Secondary Bridge Borrowing will be subject solely to the condition precedent that no payment or bankruptcy event of default shall have occurred and be continuing as of the date of such borrowing.
Credit Documentation:	Same as the Term Loan Facility.
Representations and Warranties:	Same as the Term Loan Facility.

Affirmative and Negative Covenants:	Same as the Term Loan Facility plus a covenant for the Borrower to pay all fees due and payable under the Fee Letter and a covenant to use its commercially reasonable efforts to refinance the Bridge B Facility.
Events of Default:	Same as the Term Loan Facility.
Assignments and Participations:	Prior to the Closing Date, assignments of commitments in respect of the Bridge Facilities shall be governed by the Commitment Letter. After funding under the Bridge Facilities on the Closing Date, but prior to the date that a Successful Syndication of the Bridge Facilities has been achieved, the Initial Bridge Lenders will be permitted to make assignments to other entities selected in consultation with the Borrower. Assignments after a Successful Syndication of the Bridge Facilities has been achieved or prior thereto by Lenders other than the Initial Bridge Lenders shall be permitted on the same terms as the Term Loan Facility.
Waivers and Amendments:	Same as the Term Loan Facility.
Defaulting Lenders:	Same as the Term Loan Facility.
Indemnification:	The Borrower will indemnify and hold harmless the Administrative Agent, the Bridge Lead Arrangers, each Bridge Lender and each of their affiliates and their officers, directors, employees, agents and advisors from and against, and hold each harmless from, all losses, liabilities, claims, damages or expenses arising out of or relating to the Transaction, the Bridge Facilities, the Borrower's use of loan proceeds or the commitments, including reasonable fees, disbursements and other charges of counsel, which shall be limited to one counsel, and if necessary, one local counsel in each appropriate jurisdiction and, solely in the case of a conflict of interest, one special conflicts counsel to all affected indemnified persons, taken as a whole, unless such losses, claims, damages, liabilities or expenses are found by a final, non-appealable judgment of a court of competent jurisdiction (i) to arise from the gross negligence, willful misconduct or bad faith of the applicable indemnified person (or any controlling person or controlled affiliate of such indemnified person, the respective directors, officers, or employees of such indemnified person or any of their controlling persons or controlled affiliates and the respective agents of such indemnified person or any of their controlling persons or controlled affiliates acting at the instructions of such indemnified person or a controlling person or such controlled affiliate of such indemnified person), or (ii) to result from a claim brought by the Borrower against an indemnified person for a material breach of such indemnified person's obligations under the Commitment Letter, the Fee Letters or other Credit Documentation.
Governing Law:	New York.
Expenses:	Same as the Term Loan Facility.
Counsel to Bridge Lead Arranger:	Shearman & Sterling LLP.

ANNEX II

SUMMARY OF TERMS AND CONDITIONS
TERM LOAN FACILITY

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex II is attached.

Borrower:	Amgen Inc. (the "***Borrower***").
Guarantors:	None.
Administrative Agent:	Bank of America, N.A. ("***Bank of America***") will act as sole and exclusive administrative agent for the Term Lenders (as hereinafter defined) (the "***Administrative Agent***").
Syndication Agents:	Barclays Bank PLC and JPMorgan Chase Bank, N.A. will act as syndication agents for the Term Lenders.
Lead Arrangers and Bookrunning Managers:	Subject in all cases to Section 1 of the Commitment Letter, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("***MLPFS***"), Barclays Bank PLC ("***Barclays***") and J.P. Morgan Securities LLC ("***JPMorgan***") will act as joint Lead Arrangers and joint Bookrunning Managers for the Term Loan Facility (in such capacities, the "***Term Lead Arrangers***").
Term Lenders:	Bank of America, Barclays, JPMCB, any Additional Initial Term Lenders and, subject to Section 2 of the Commitment Letter, other banks and financial institutions determined by the Term Lead Arrangers in consultation with the Borrower.
Term Loan Facility:	An aggregate principal amount of up to $5.0 billion will be available through a senior unsecured term loan facility. At the election of the Borrower, all or a portion of such term loan facility will be available to the Borrower on the Closing Date, with the remainder, if any, of such term loan facility being available in one additional borrowing on or prior to the 90th day following the Closing Date (such additional borrowing, the "***Secondary Term Borrowing***").
Purpose:	The proceeds of the borrowings under the Term Loan Facility, together with other funds available to the Borrower, shall be used (i) to finance in part the Transaction, and (ii) to pay fees and expenses incurred in connection with the Transaction.
Interest Rates:	The interest rates per annum applicable to the Term Loan Facility will be, at the option of the Borrower (i) LIBOR plus the Applicable Margin (as hereinafter defined) or (ii) the Base Rate plus the Applicable Margin. The Applicable Margin means a percentage per annum to be determined in accordance with the ratings-based pricing grid referred to below.

The Borrower may select interest periods of one, two, three or six months (or, if agreed to by all the Term Lenders, nine or twelve months or a period of shorter than 1 month) for LIBOR advances. Interest shall be payable at the end of the selected interest period, but no less frequently than quarterly.

"***LIBOR***" and "***Base Rate***" will be defined and calculated on a basis substantially identical to the Existing Credit Agreement, subject to the Documentation Principles.

During the continuance of a payment default, interest will accrue (i) on the principal of any loan at a rate of 200 basis points in excess of the rate otherwise applicable to the outstanding loans and (ii) on any other outstanding amount at a rate of 200 basis points in excess of the non-default interest rate then applicable to Base Rate loans under the Senior Credit Facility, and will be payable on demand.

Ratings Pricing Grid:

The Applicable Margin for advances shall be the percentage per annum set forth in the table below opposite the long term senior unsecured, non-credit enhanced debt rating of the Borrower by S&P and Moody's, in each case after giving effect to the Acquisition (the "***Ratings***"). In the event of a single-level split between the Ratings, the higher Rating shall apply, and in the event of a multi-level split between the Ratings, the Rating that is the midpoint between the two Ratings, or, if there is no such midpoint, the lower of the middle two Ratings between such Ratings, shall apply. In the event that no Ratings are maintained, the highest pricing in the grid shall apply. The Applicable Margin for Base Rate advances shall be 100 basis points less than the Applicable Margin for LIBOR advances.

	Daily Margin	
	TYPE OF ADVANCE	
	Base Rate Advance	EURO Rate Advance
[3] A+/A1	0.000%	0.750%
A/A2	0.000%	0.875%
A-/A3	0.000%	1.000%
BBB+/Baa1	0.125%	1.125%
BBB/Baa2	0.375%	1.375%
< BBB/Baa2	0.625%	1.625%

Calculation of Interest and Fees:

Other than calculations in respect of interest at the Base Rate (which shall be made on the basis of actual number of days elapsed in a 365/366 day year), all calculations of interest and fees shall be made on the basis of actual number of days elapsed in a 360-day year.

Cost and Yield Protection:	The Credit Documentation will contain cost and yield protection provisions that are substantially similar to those contained in the Existing Credit Agreement, subject to the Documentation Principles (including with respect to Dodd-Frank Act and the Basel III Accord).
Maturity:	Five years after the Closing Date.
Scheduled Amortization:	The Term Loan Facility will be subject to quarterly amortization of principal equal to 2.5% of the original aggregate principal amount of the Term Loan Facility, with the balance payable at final maturity.
Optional Prepayments and Commitment Reductions:	The Term Loan Facility may be prepaid at any time in whole or in part without premium or penalty, upon written notice, at the option of the Borrower, except that any prepayment of LIBOR advances other than at the end of the applicable interest periods therefor shall be made with reimbursement for any funding losses and redeployment costs of the Term Lenders resulting therefrom pursuant to provisions substantially the same as those contained in the Existing Credit Agreement. Each optional prepayment of the Term Loan Facility shall be applied as directed by the Borrower (or, in the absence of direction from the Borrower, in the direct order of maturity). The unutilized portion of any commitment under the Term Loan Facility may be reduced permanently or terminated by the Borrower at any time without penalty.
Conditions Precedent:	Limited to the conditions specified in paragraph 5 of the Commitment Letter and those specified in Annex III to the Commitment Letter. The Secondary Term Borrowing will be subject solely to the condition precedent that no payment or bankruptcy event of default shall have occurred and be continuing as of the date of such borrowing.
Credit Documentation:	The Credit Documentation shall be negotiated in good faith, shall contain terms consistent with the terms set forth in this Term Financing Summary of Terms and, to the extent not provided in this Term Financing Summary of Terms, shall be substantially the same as the Existing Credit Agreement, with such changes to the terms in the Existing Credit Agreement as (i) may be mutually agreed or (ii) as may be required by Bank of America's policies and practices solely as it relates to its role as Administrative Agent for similarly situated companies. It is understood and agreed that the Credit Documentation shall contain only those payments, conditions to borrowing, representations, warranties, covenants and events of default expressly set forth or referred to in this Term Financing Summary of Terms. The foregoing sentences are referenced herein as the "***Documentation Principles***".
Representations and Warranties:	The Credit Documentation will contain representations and warranties that are substantially the same as those set forth in the Existing Credit Agreement, and consistent with the Documentation Principles plus OFAC.

Affirmative Covenants:	The Credit Documentation will contain affirmative covenants that are substantially the same as those set forth in the Existing Credit Agreement (including defined terms used therein), and consistent with the Documentation Principles.
Negative Covenants:	The Credit Documentation will contain negative covenants that are substantially the same as those set forth in the Existing Credit Agreement (including defined terms used therein), and consistent with the Documentation Principles.
Financial Covenant:	Limited to a maximum ratio of Consolidated Total Debt (to be defined, along with all other related defined terms, in a manner substantially the same as the Existing Credit Agreement, consistent with the Documentation Principles, and in any event to exclude for clarity the Term Financing) to Consolidated Capitalization (to be defined along with all other related defined terms, in a manner substantially the same as the Existing Credit Agreement, consistent with the Documentation Principles) of 0.65:1.00.
Events of Default:	The Credit Documentation will contain events of default that are substantially the same as those set forth in the Existing Credit Agreement (including defined terms used therein), and consistent with the Documentation Principles.
Assignments and Participations:	The Credit Documentation will contain assignment and participation provisions that are substantially the same as those contained in the Existing Credit Agreement and consistent with the Documentation Principles.
Waivers and Amendments:	The Credit Documentation will contain amendment and waiver provisions that are substantially the same as those contained in the Existing Credit Agreement and consistent with the Documentation Principles.
Defaulting Lenders:	The Credit Documentation shall include customary "defaulting lender" provisions that are substantially the same as those contained in the Existing Credit Agreement and consistent with the Documentation Principles.
Indemnification:	The Borrower will indemnify and hold harmless the Administrative Agent, the Term Lead Arrangers, each Term Lender and each of their affiliates and their officers, directors, employees, agents and advisors from and against, and hold each harmless from, all losses, liabilities, claims, damages or expenses arising out of or relating to the Transaction, the Term Loan Facility, the Borrower's use of loan proceeds or the commitments, including reasonable fees, disbursements and other charges of counsel, which shall be limited to one counsel, and if necessary, one local counsel in each appropriate jurisdiction and, solely in the case of a conflict of interest, one special conflicts counsel to all affected indemnified persons, taken as a whole, unless such losses, claims, damages, liabilities or expenses are found by a final,

	non-appealable judgment of a court of competent jurisdiction (i) to arise from the gross negligence, willful misconduct or bad faith of the applicable indemnified person or any of such indemnified person's officers, directors, employees, agents and advisors, or (ii) to result from a claim brought by the Borrower against an indemnified person for a material breach in bad faith of such indemnified person's obligations under the Commitment Letter, the Fee Letters or other Credit Documentation.
Governing Law:	New York.
Expenses:	The Borrower shall pay (a) all reasonable and documented out-of-pocket expenses of the Administrative Agent associated with the preparation, execution, delivery and administration of the Term Loan Facility and any amendment or waiver with respect thereto (including the reasonable fees, disbursements and other charges of counsel, which shall be limited to the counsel identified in clause (b) of this paragraph) and (b) all reasonable and documented out-of-pocket expenses of the Term Lenders (including the reasonable fees, disbursements and other charges of counsel, which shall be limited to one counsel, and if necessary, one local counsel in each appropriate jurisdiction and, solely in the case of a conflict of interest, one special conflicts counsel to all affected indemnified persons, taken as a whole) in connection with the enforcement of the Term Loan Facility.
Counsel to the Administrative Agent:	Shearman & Sterling, LLP.
Miscellaneous:	Each of the parties shall (i) waive its right to a trial by jury and (ii) submit to exclusive New York jurisdiction.

ANNEX III

CONDITIONS PRECEDENT TO CLOSING

Capitalized terms not otherwise defined herein have the same meanings as specified therefor in the Commitment Letter to which this Annex III is attached.

1. The initial extensions of credit under the Term Loan Facility and the funding of the Bridge Loans under the Bridge Facilities will be subject to satisfaction of the following:

(i) The Acquisition shall have been or shall be, substantially simultaneously with the initial borrowing, consummated in accordance with the terms of the Acquisition Agreement without giving effect to any amendments, modifications, supplements, waivers or consents by the Borrower or any of its affiliates thereto that are materially adverse to the interests of the Lenders and not approved by the Lead Arrangers (which approval shall not be unreasonably withheld, conditioned or delayed). It is understood and agreed that (A) any change to the definition of Material Adverse Effect and (B) any reduction in price shall, in each case, be deemed to be materially adverse to the interest of the Lenders; *provided* that a reduction in the purchase price of ten percent (10%) or less, shall not in and of itself be deemed material as long as the amount of the reduction is applied to reduce the Bridge Facilities and, to the extent that no commitments remain under the Bridge Facilities, the Term Loan Facility. The Lead Arrangers acknowledge and agree that the copy of the Acquisition Agreement delivered to the Lead Arrangers on August 24, 2013 at 12:54 p.m. (including the versions of the exhibits and schedules thereto most recently delivered prior thereto) has been reviewed by and is satisfactory to the Lead Arrangers.

(ii) Since the date of the Acquisition Agreement there shall not have occurred a "Material Adverse Effect" (as defined in the Acquisition Agreement) or any change, event, circumstance or development that is, individually or in the aggregate, reasonably likely to result in a "Material Adverse Effect".

(iii) The Borrower shall have delivered to the applicable Administrative Agent a certificate as to the financial condition and solvency of the Borrower (on a consolidated basis, after giving effect to the Transaction and the incurrence of indebtedness related thereto), in the form attached as Exhibit A hereto.

(iv) The Borrower shall have delivered to the Administrative Agents customary (A) legal opinions in substantially the form of the legal opinions delivered in connection with the closing under the Existing Credit Agreement, modified to reflect the Term Loan Facility or the Bridge Facilities (as applicable) and the Acquisition, (B) evidence of authority (including the incumbency of officers executing the Credit Documentation), (C) corporate resolutions, (D) good standing certificates, and (E) closing certificates regarding satisfaction of the conditions precedent to funding of the applicable Facility.

(v) The Borrower shall have delivered to the Lead Arrangers: (A) for each of the fiscal years 2010, 2011, and 2012, the audited consolidated balance sheet of each of the Borrower and the Acquired Business as of the end of such fiscal year and related audited consolidated statements of operations, cash flows and shareholders' equity, (B) as soon as available and in any event within 45 days after the end of each fiscal quarter of the 2013 fiscal year, an unaudited balance sheet and related statements of operations and cash flows of each of the Borrower and the Acquired Business for such fiscal quarter and for the elapsed period of the 2013 fiscal year and

for the comparable periods of the prior fiscal year; and (C) any additional audited and unaudited financial statements for all recent, probable or pending acquisitions by the Borrower or the Acquired Business that would be required to be filed in a Form 8-K if the Borrower or the Acquired Business were a reporting company under the Securities Exchange Act of 1934; *provided* that the information in this clause (C) shall only be required with respect to the Acquired Business to the extent such information would be necessary for inclusion in a registration statement under the Securities Act relating to the Notes.

(vi) (A) The Lead Arrangers and the Lenders shall have received forecasts in customary form prepared by management of the Companies of balance sheets, income statements and cash flow statements for each year commencing with the first fiscal year following the Closing Date and ending on the third anniversary of the Closing Date and (B) the ratio of (x) consolidated debt for borrowed money of the Borrower and its subsidiaries at the Closing Date after giving effect (excluding for clarity the Term Financing) to the Transaction to (y) total capitalization as set forth in the Pro Forma Financial Statements is not greater than 0.65 :1.0 and, in the case of each of (B) above, the chief financial officer of the Borrower shall have provided the Lenders a written certification to that effect.

(vii) All fees due to the Administrative Agents, the Lead Arrangers and the Lenders pursuant to the Fee Letters and, to the extent invoiced at least two business days prior to the Closing Date, all reasonable and documented expenses to be paid or reimbursed to the Administrative Agents and the Lead Arrangers pursuant to the Commitment Letter shall have been paid, in each case, from the proceeds of the initial funding under the applicable Facility.

(viii) To the extent requested at least ten days prior to the Closing Date, the Borrower shall have provided the documentation and other information to the Administrative Agents that are required by regulatory authorities under applicable "know-your-customer" rules and regulations, including the Patriot Act.

2. The initial extensions of credit under the Term Loan Facility will also be subject to satisfaction of the following:

Commitments shall have been received from the Term Lenders (including Commitments of any Additional Initial Term Lenders) for the $3.35 billion of the Term Loan Facility not committed to by the Initial Term Lenders (or, if applicable, such lesser amount equal to $3.35 billion minus the total aggregate amount of Notes).

3. Solely to the extent the Borrower has elected to pursue a Notes offering, the initial extensions of credit under the Bridge B Facility will also be subject to satisfaction of the following:

At least 15 days prior to the Closing Date, the Borrower shall have (A) provided to the Commitment Parties one or more preliminary prospectuses, offering memoranda or private placement memoranda (including all financial statements and other information that would be required in a registration statement on Form S-1 for an offering registered under the Securities Act, and at no time during such 15-day period shall the financial information in such Offering Document have become stale) relating to the Notes (the "***Offering Document***"), (B) used commercially reasonable efforts to cause the independent registered public accountants of the Borrower and, consistent with its obligations under the Acquisition Agreement, the Acquired Business to render customary "comfort letters" with respect to the financial information in the Offering Document,

and (C) caused the senior management and other representatives of the Borrower and, in a manner consistent with the Acquisition Agreement, the Acquired Business, to provide access in connection with due diligence investigations and to prepare and participate in a customary "internet road show".

4. Solely to the extent the Borrower has not elected to pursue a Notes offering, the initial extensions of credit under the Term Loan Facility will also be subject to satisfaction of the following:

At least 15 days prior to the Closing Date, the Borrower shall have provided to the Commitment Parties a customary confidential information memorandum relating to the Term Loan Facility.

FORM OF SOLVENCY CERTIFICATE

[ ], [ ]

The undersigned, [ ], the [ ] of Amgen Inc. (the "***Borrower***"), is familiar with the properties, businesses, assets and liabilities of the Borrower and is duly authorized to execute this certificate (this "***Solvency Certificate***") on behalf of the Borrower.

This Solvency Certificate is delivered pursuant to Section [ ] of the Credit Agreement dated as of [ ], [ ] (the "***Credit Agreement***"; terms defined therein unless otherwise defined herein being used herein as therein defined) among the Borrower, each lender from time to time party thereto (collectively, the "***Lenders***") and [Bank of America, N.A.], as administrative agent thereunder (in such capacity, the "***Administrative Agent***").

As used herein, "***Company***" means the Borrower.

1. I, [ ], hereby certify that I am the [ ] of the Company and that I am knowledgeable of the financial and accounting matters of the Company, the Credit Agreement and the covenants and representations (financial or otherwise) contained therein and that, as such, I am authorized to execute and deliver this Solvency Certificate on behalf of the Company.

2. The undersigned certifies, on behalf of the Borrower and not in his individual capacity, that he has made such investigation and inquiries as to the financial condition of the Borrower as the undersigned deems necessary and prudent for the purposes of providing this Solvency Certificate. The undersigned acknowledges that the Administrative Agent and the Lenders are relying on the truth and accuracy of this Solvency Certificate in connection with the making of Loans under the Credit Agreement.

3. The undersigned certifies, on behalf of the Borrower and not in his individual capacity, that (a) the financial information, projections and assumptions which underlie and form the basis for the representations made in this Solvency Certificate were made in good faith and were based on assumptions reasonably believed by the Borrower to be fair in light of the circumstances existing at the time made; and (b) for purposes of providing this Solvency Certificate, the amount of contingent liabilities has been computed as the amount that, in the light of all the facts and circumstances existing as of the date hereof, represents the amount that can reasonably be expected to become an actual or matured liability.

BASED ON THE FOREGOING, the undersigned certifies, on behalf of the Borrower and not in his individual capacity, that, on the date hereof, before and after giving effect to the Transactions (and the Loans made or to be made and other obligations incurred or to be incurred on the Closing Date):

(i) the fair value of the property of the Company (including, for the avoidance of doubt, property consisting of the residual equity value of the Company's subsidiaries) is greater than the total amount of liabilities, including contingent liabilities, of the Company;

(ii) the present fair salable value of the assets of the Company (including, for the avoidance of doubt, property consisting of the residual equity value of the Company's subsidiaries) is greater than the amount that will be required to pay the probable liability of the Company on the sum of its debts and other liabilities, including contingent liabilities;

(iii) the Company has not, does not intend to, and does not believe (nor should it reasonably believe) that it will, incur debts or liabilities beyond the Company's ability to pay such debts and liabilities as they become due (whether at maturity or otherwise);

(iv) the Company does not have unreasonably small capital with which to conduct the businesses in which it is engaged as such businesses are now conducted (and reflected in the Projections) and are proposed to be conducted following the Closing Date;

(v) the Company is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business; and

(vi) the Company is "solvent" within the meaning given to that term and similar terms under the Bankruptcy Code and applicable laws relating to fraudulent transfers and conveyances.

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate as of the first date written above, solely in his capacity as [ ] of the Borrower and not in his individual capacity.

Name: _____
Title: _____

Master Repurchase Agreement

September 1996 Version

Dated as of: **August 24, 2013**

Between: **Amgen Inc., as "Seller"**

and: **Bank of America, N.A., as "Buyer"**

1. Applicability

From time to time the parties hereto may enter into transactions in which one party ("Seller") agrees to transfer to the other ("Buyer") securities or other assets ("Securities") against the transfer of funds by Buyer, with a simultaneous agreement by Buyer to transfer to Seller such Securities at a date certain or on demand, against the transfer of funds by Seller. Each such transaction shall be referred to herein as a "Transaction" and, unless otherwise agreed in writing, shall be governed by this Agreement, including any supplemental terms or conditions contained in Annex I hereto and in any other annexes identified herein or therein as applicable hereunder.

2. Definitions

(a) "Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, as amended, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 15 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

(b) "Additional Purchased Securities", Securities provided by Seller to Buyer pursuant to Paragraph 4(a) hereof;

(c) “Buyer’s Margin Amount”, with respect to any Transaction as of any date, the amount obtained by application of the Buyer’s Margin Percentage to the Repurchase Price for such Transaction as of such date;

(d) “Buyer’s Margin Percentage”, with respect to any Transaction as of any date, a percentage (which may be equal to the Seller’s Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction;

(e) “Confirmation”, the meaning specified in Paragraph 3(b) hereof;

(f) “Income”, with respect to any Security at any time, any principal thereof and all interest, dividends or other distributions thereon;

(g) “Margin Deficit”, the meaning specified in Paragraph 4(a) hereof;

(h) “Margin Excess”, the meaning specified in Paragraph 4(b) hereof;

(i) “Margin Notice Deadline”, the time agreed to by the parties in the relevant Confirmation, Annex I hereto or otherwise as the deadline for giving notice requiring same-day satisfaction of margin maintenance obligations as provided in Paragraph 4 hereof (or, in the absence of any such agreement, the deadline for such purposes established in accordance with market practice);

(j) “Market Value”, with respect to any Securities as of any date, the price for such Securities on such date obtained from a generally recognized source agreed to by the parties or the most recent closing bid quotation from such a source, plus accrued Income to the extent not included therein (other than any Income credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) as of such date (unless contrary to market practice for such Securities);

(k) “Price Differential”, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction on a 360 day per year basis for the actual number of days during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of determination (reduced by any amount of such Price Differential previously paid by Seller to Buyer with respect to such Transaction);

(l) “Pricing Rate”, the per annum percentage rate for determination of the Price Differential;

(m) “Prime Rate”, the prime rate of U.S. commercial banks as published in The Wall Street Journal (or, if more than one such rate is published, the average of such rates);

(n) "Purchase Date", the date on which Purchased Securities are to be transferred by Seller to Buyer;

(o) "Purchase Price", (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, except where Buyer and Seller agree otherwise, such price increased by the amount of any cash transferred by Buyer to Seller pursuant to Paragraph 4 (b) hereof and decreased by the amount of any cash transferred by Seller to Buyer pursuant to Paragraph 4(a) hereof or applied to reduce Seller's obligations under clause (ii) of Paragraph 5 hereof;

(p) "Purchased Securities", the Securities transferred by Seller to Buyer in a Transaction hereunder, and any Securities substituted therefor in accordance with Paragraph 9 hereof. The term "Purchased Securities" with respect to any Transaction at any time also shall include Additional Purchased Securities delivered pursuant to Paragraph 4(a) hereof and shall exclude Securities returned pursuant to Paragraph 4(b) hereof;

(q) "Repurchase Date", the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 3(c) or 11 hereof;

(r) "Repurchase Price", the price at which Purchased Securities are to be transferred from Buyer to Seller upon termination of a Transaction, which will be determined in each case (including Transactions terminable upon demand) as the sum of the Purchase Price and the Price Differential as of the date of such determination;

(s) "Seller's Margin Amount", with respect to any Transaction as of any date, the amount obtained by application of the Seller's Margin Percentage to the Repurchase Price for such Transaction as of such date; and

(t) "Seller's Margin Percentage", with respect to any Transaction as of any date, a percentage (which may be equal to the Buyer's Margin Percentage) agreed to by Buyer and Seller or, in the absence of any such agreement, the percentage obtained by dividing the Market Value of the Purchased Securities on the Purchase Date by the Purchase Price on the Purchase Date for such Transaction.

3. Initiation; Confirmation; Termination

(a) An agreement to enter into a Transaction may be made orally or in writing at the initiation of either Buyer or Seller. On the Purchase Date for the Transaction, the Purchased Securities shall be transferred to Buyer or its agent against the transfer of the Purchase Price to an account of Seller.

(b) Upon agreeing to enter into a Transaction hereunder, Buyer or Seller (or both), as shall be agreed, shall promptly deliver to the other party a written confirmation of each Transaction (a "Confirmation"). The Confirmation shall describe the Purchased Securities (including CUSIP number, if any), identify Buyer and Seller and set forth (i) the Purchase Date, (ii) the Purchase Price, (iii) the Repurchase Date, unless the Transaction is to be terminable on demand, (iv) the Pricing Rate or Repurchase Price applicable to the Transaction, and (v) any additional terms or conditions of the Transaction not inconsistent with this Agreement. The Confirmation, together with this Agreement, shall constitute conclusive evidence of the terms agreed between Buyer and Seller with respect to the Transaction to which the Confirmation relates, unless with respect to the Confirmation specific objection is made promptly after receipt thereof. In the event of any conflict between the terms of such Confirmation and this Agreement, this Agreement shall prevail.

(c) In the case of Transactions terminable upon demand, such demand shall be made by Buyer or Seller, no later than such time as is customary in accordance with market practice, by telephone or otherwise on or prior to the business day on which such termination will be effective. On the date specified in such demand, or on the date fixed for termination in the case of Transactions having a fixed term, termination of the Transaction will be effected by transfer to Seller or its agent of the Purchased Securities and any Income in respect thereof received by Buyer (and not previously credited or transferred to, or applied to the obligations of, Seller pursuant to Paragraph 5 hereof) against the transfer of the Repurchase Price to an account of Buyer.

4. Margin Maintenance

(a) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Buyer is less than the aggregate Buyer's Margin Amount for all such Transactions (a "Margin Deficit"), then Buyer may by notice to Seller require Seller in such Transactions, at Seller's option, to transfer to Buyer cash or additional Securities reasonably acceptable to Buyer ("Additional Purchased Securities"), so that the cash and aggregate Market Value of the Purchased Securities, including any such Additional Purchased Securities, will thereupon equal or exceed such aggregate Buyer's Margin Amount (decreased by the amount of any Margin Deficit as of such date arising from any Transactions in which such Buyer is acting as Seller).

(b) If at any time the aggregate Market Value of all Purchased Securities subject to all Transactions in which a particular party hereto is acting as Seller exceeds the aggregate Seller's Margin Amount for all such Transactions at such time (a "Margin Excess"), then Seller may by notice to Buyer require Buyer in such Transactions, at Buyer's option, to transfer cash or Purchased Securities to Seller, so that the aggregate Market Value of the Purchased Securities, after deduction of any such

cash or any Purchased Securities so transferred, will thereupon not exceed such aggregate Seller's Margin Amount (increased by the amount of any Margin Excess as of such date arising from any Transactions in which such Seller is acting as Buyer).

(c) If any notice is given by Buyer or Seller under subparagraph (a) or (b) of this Paragraph at or before the Margin Notice Deadline on any business day, the party receiving such notice shall transfer cash or Additional Purchased Securities as provided in such subparagraph no later than the close of business in the relevant market on such day. If any such notice is given after the Margin Notice Deadline, the party receiving such notice shall transfer such cash or Securities no later than the close of business in the relevant market on the next business day following such notice.

(d) Any cash transferred pursuant to this Paragraph shall be attributed to such Transactions as shall be agreed upon by Buyer and Seller.

(e) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer or Seller (or both) under subparagraphs (a) and (b) of this Paragraph may be exercised only where a Margin Deficit or Margin Excess, as the case may be, exceeds a specified dollar amount or a specified percentage of the Repurchase Prices for such Transactions (which amount or percentage shall be agreed to by Buyer and Seller prior to entering into any such Transactions).

(f) Seller and Buyer may agree, with respect to any or all Transactions hereunder, that the respective rights of Buyer and Seller under subparagraphs (a) and (b) of this Paragraph to require the elimination of a Margin Deficit or a Margin Excess, as the case may be, may be exercised whenever such a Margin Deficit or Margin Excess exists with respect to any single Transaction hereunder (calculated without regard to any other Transaction outstanding under this Agreement).

5. Income Payments

Seller shall be entitled to receive an amount equal to all Income paid or distributed on or in respect of the Securities that is not otherwise received by Seller, to the full extent it would be so entitled if the Securities had not been sold to Buyer. Buyer shall, as the parties may agree with respect to any Transaction (or, in the absence of any such agreement, as Buyer shall reasonably determine in its discretion), on the date such Income is paid or distributed either (i) transfer to or credit to the account of Seller such Income with respect to any Purchased Securities subject to such Transaction or (ii) with respect to Income paid in cash, apply the Income payment or payments to reduce the amount, if any, to be transferred to Buyer by Seller upon termination of such Transaction. Buyer shall not be obligated to take any action pursuant to the preceding sentence (A) to the extent that such action would result in the creation of a Margin Deficit, unless prior thereto or simultaneously therewith Seller transfers to Buyer cash or Additional

Purchased Securities sufficient to eliminate such Margin Deficit, or (B) if an Event of Default with respect to Seller has occurred and is then continuing at the time such Income is paid or distributed.

6. Security Interest

Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of the Purchased Securities with respect to all Transactions hereunder and all Income thereon and other proceeds thereof.

7. Payment and Transfer

Unless otherwise mutually agreed, all transfers of funds hereunder shall be in immediately available funds. All Securities transferred by one party hereto to the other party (i) shall be in suitable form for transfer or shall be accompanied by duly executed instruments of transfer or assignment in blank and such other documentation as the party receiving possession may reasonably request, (ii) shall be transferred on the book-entry system of a Federal Reserve Bank, or (iii) shall be transferred by any other method mutually acceptable to Seller and Buyer.

8. Segregation of Purchased Securities

To the extent required by applicable law, all Purchased Securities in the possession of Seller shall be segregated from other securities in its possession and shall be identified as subject to this Agreement. Segregation may be accomplished by appropriate identification on the books and records of the holder, including a financial or securities intermediary or a clearing corporation. All of Seller's interest in the Purchased Securities shall pass to Buyer on the Purchase Date and, unless otherwise agreed by Buyer and Seller, nothing in this Agreement shall preclude Buyer from engaging in repurchase transactions with the Purchased Securities or otherwise selling, transferring, pledging or hypothecating the Purchased Securities, but no such transaction shall relieve Buyer of its obligations to transfer Purchased Securities to Seller pursuant to Paragraph 3, 4 or 11 hereof, or of Buyer's obligation to credit or pay Income to, or apply Income to the obligations of, Seller pursuant to Paragraph 5 hereof.

Required Disclosure for Transactions in Which the Seller Retains Custody of the Purchased Securities

Seller is not permitted to substitute other securities for those subject to this Agreement and therefore must keep Buyer's securities segregated at all times, unless in this Agreement Buyer grants Seller the right to substitute other securities. If Buyer grants the right to substitute, this means that Buyer's securities will likely be commingled with Seller's own securities during the trading day. Buyer is advised that, during any trading day that Buyer's securities are commingled with Seller's securities, they [will]* [may]** be subject to liens granted by Seller to [its clearing bank]* [third parties]** and may be used by Seller for deliveries on other securities transactions. Whenever the securities are commingled, Seller's ability to resegregate substitute securities for Buyer will be subject to Seller's ability to satisfy [the clearing]* [any]** lien or to obtain substitute securities.

* Language to be used under 17 C.F.R. B403.4(e) if Seller is a government securities broker or dealer other than a financial institution.

** Language to be used under 17 C.F.R. B403.5(d) if Seller is a financial institution.

9. Substitution

(a) Seller may, subject to agreement with and acceptance by Buyer, substitute other Securities for any Purchased Securities. Such substitution shall be made by transfer to Buyer of such other Securities and transfer to Seller of such Purchased Securities. After substitution, the substituted Securities shall be deemed to be Purchased Securities.

(b) In Transactions in which Seller retains custody of Purchased Securities, the parties expressly agree that Buyer shall be deemed, for purposes of subparagraph (a) of this Paragraph, to have agreed to and accepted in this Agreement substitution by Seller of other Securities for Purchased Securities; *provided*, *however*, that such other Securities shall have a Market Value at least equal to the Market Value of the Purchased Securities for which they are substituted.

10. Representations

Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of an annex hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person signing this Agreement on its behalf is duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected. On the Purchase Date for any Transaction Buyer and Seller shall each be deemed to repeat all the foregoing representations made by it.

11. Events of Default

In the event that (i) Seller fails to transfer or Buyer fails to purchase Purchased Securities upon the applicable Purchase Date, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date, (iii) Seller or Buyer fails to comply with Paragraph 4 hereof, (iv) Buyer fails, after one business day's notice, to comply with Paragraph 5 hereof, (v) an Act of Insolvency occurs with respect to Seller or Buyer, (vi) any representation made by Seller or Buyer shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, or (vii) Seller or Buyer shall admit to the other its inability to, or its intention not to, perform any of its obligations hereunder (each an "Event of Default"):

(a) The nondefaulting party may, at its option (which option shall be deemed to have been exercised immediately upon the occurrence of an Act of Insolvency), declare an Event of Default to have occurred hereunder and, upon the exercise or deemed exercise of such option, the Repurchase Date for each Transaction hereunder shall, if it has not already occurred, be deemed immediately to occur (except that, in the event that the Purchase Date for any Transaction has not yet occurred as of the date of such exercise or deemed exercise, such Transaction shall be deemed immediately canceled). The nondefaulting party shall (except upon the occurrence of an Act of Insolvency) give notice to the defaulting party of the exercise of such option as promptly as practicable.

(b) In all Transactions in which the defaulting party is acting as Seller, if the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, (i) the defaulting party's obligations in such Transactions to repurchase all Purchased Securities, at the Repurchase Price therefor on the Repurchase Date determined in accordance with subparagraph (a) of this Paragraph, shall thereupon become immediately due and payable, (ii) all Income paid after such exercise or deemed exercise shall be retained by the nondefaulting party and applied to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder, and (iii) the defaulting party shall immediately deliver to the nondefaulting party any Purchased Securities subject to such Transactions then in the defaulting party's possession or control.

(c) In all Transactions in which the defaulting party is acting as Buyer, upon tender by the nondefaulting party of payment of the aggregate Repurchase Prices for all such Transactions, all right, title and interest in and entitlement to all Purchased Securities subject to such Transactions shall be deemed transferred to the nondefaulting party, and the defaulting party shall deliver all such Purchased Securities to the nondefaulting party.

(d) If the nondefaulting party exercises or is deemed to have exercised the option referred to in subparagraph (a) of this Paragraph, the nondefaulting party, without prior notice to the defaulting party, may:

(i) as to Transactions in which the defaulting party is acting as Seller, (A) immediately sell, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, any or all Purchased Securities subject to such Transactions and apply the proceeds thereof to the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder or (B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to give the defaulting party credit for such Purchased Securities in an amount equal to the price therefor on such date, obtained from a generally recognized source or the most recent closing bid quotation from such a source, against the aggregate unpaid Repurchase Prices and any other amounts owing by the defaulting party hereunder; and

(ii) as to Transactions in which the defaulting party is acting as Buyer, (A) immediately purchase, in a recognized market (or otherwise in a commercially reasonable manner) at such price or prices as the nondefaulting party may reasonably deem satisfactory, securities ("Replacement Securities") of the same class and amount as any Purchased Securities that are not delivered by the defaulting party to the nondefaulting party as required hereunder or (B) in its sole discretion elect, in lieu of purchasing Replacement Securities, to be deemed to have purchased Replacement Securities at the price therefor on such date, obtained from a generally recognized source or the most recent closing offer quotation from such a source.

Unless otherwise provided in Annex I, the parties acknowledge and agree that (1) the Securities subject to any Transaction hereunder are instruments traded in a recognized market, (2) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party may establish the source therefor in its sole discretion and (3) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities).

(e) As to Transactions in which the defaulting party is acting as Buyer, the defaulting party shall be liable to the nondefaulting party for any excess of the price paid (or deemed paid) by the nondefaulting party for Replacement Securities over the Repurchase Price for the Purchased Securities replaced thereby and for any amounts payable by the defaulting party under Paragraph 5 hereof or otherwise hereunder.

(f) For purposes of this Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting

as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the nondefaulting party of the option referred to in subparagraph (a) of this Paragraph.

(g) The defaulting party shall be liable to the nondefaulting party for (i) the amount of all reasonable legal or other expenses incurred by the nondefaulting party in connection with or as a result of an Event of Default, (ii) damages in an amount equal to the cost (including all fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions in connection with or as a result of an Event of Default, and (iii) any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction.

(h) To the extent permitted by applicable law, the defaulting party shall be liable to the nondefaulting party for interest on any amounts owing by the defaulting party hereunder, from the date the defaulting party becomes liable for such amounts hereunder until such amounts are (i) paid in full by the defaulting party or (ii) satisfied in full by the exercise of the nondefaulting party's rights hereunder. Interest on any sum payable by the defaulting party to the nondefaulting party under this Paragraph 11(h) shall be at a rate equal to the greater of the Pricing Rate for the relevant Transaction or the Prime Rate.

(i) The nondefaulting party shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law.

12. Single Agreement

Buyer and Seller acknowledge that, and have entered hereinto and will enter into each Transaction hereunder in consideration of and in reliance upon the fact that, all Transactions hereunder constitute a single business and contractual relationship and have been made in consideration of each other. Accordingly, each of Buyer and Seller agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Transactions hereunder, (ii) that each of them shall be entitled to set off claims and apply property held by them in respect of any Transaction against obligations owing to them in respect of any other Transactions hereunder and (iii) that payments, deliveries and other transfers made by either of them in respect of any Transaction shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Transactions hereunder, and the obligations to make any such payments, deliveries and other transfers may be applied against each other and netted.

13. Notices and Other Communications

Any and all notices, statements, demands or other communications hereunder may be given by a party to the other by mail, facsimile, telegraph, messenger

or otherwise to the address specified in Annex II hereto, or so sent to such party at any other place specified in a notice of change of address hereafter received by the other. All notices, demands and requests hereunder may be made orally, to be confirmed promptly in writing, or by other communication as specified in the preceding sentence.

14. Entire Agreement; Severability

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for repurchase transactions. Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

15. Non-assignability; Termination

(a) The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party, and any such assignment without the prior written consent of the other party shall be null and void. Subject to the foregoing, this Agreement and any Transactions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns. This Agreement may be terminated by either party upon giving written notice to the other, except that this Agreement shall, notwithstanding such notice, remain applicable to any Transactions then outstanding.

(b) Subparagraph (a) of this Paragraph 15 shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Paragraph 11 hereof.

16. Governing Law

This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

17. No Waivers, Etc.

No express or implied waiver of any Event of Default by either party shall constitute a waiver of any other Event of Default and no exercise of any remedy hereunder by any party shall constitute a waiver of its right to exercise any other remedy hereunder. No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by both of the parties hereto. Without limitation on any of the foregoing, the failure to give a notice pursuant to Paragraph 4 (a) or 4(b) hereof will not constitute a waiver of any right to do so at a later date.

18. Use of Employee Plan Assets

(a) If assets of an employee benefit plan subject to any provision of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") are intended to be used by either party hereto (the "Plan Party") in a Transaction, the Plan Party shall so notify the other party prior to the Transaction. The Plan Party shall represent in writing to the other party that the Transaction does not constitute a prohibited transaction under ERISA or is otherwise exempt therefrom, and the other party may proceed in reliance thereon but shall not be required so to proceed.

(b) Subject to the last sentence of subparagraph (a) of this Paragraph, any such Transaction shall proceed only if Seller furnishes or has furnished to Buyer its most recent available audited statement of its financial condition and its most recent subsequent unaudited statement of its financial condition.

(c) By entering into a Transaction pursuant to this Paragraph, Seller shall be deemed (i) to represent to Buyer that since the date of Seller's latest such financial statements, there has been no material adverse change in Seller's financial condition which Seller has not disclosed to Buyer, and (ii) to agree to provide Buyer with future audited and unaudited statements of its financial condition as they are issued, so long as it is a Seller in any outstanding Transaction involving a Plan Party.

19. Intent

(a) The parties recognize that each Transaction is a "repurchase agreement" as that term is defined in Section 101 of Title 11 of the United States Code, as amended (except insofar as the type of Securities subject to such Transaction or the term of such Transaction would render such definition inapplicable), and a "securities contract" as that term is defined in Section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

(b) It is understood that either party's right to liquidate Securities delivered to it in connection with Transactions hereunder or to exercise any other remedies pursuant to Paragraph 11 hereof is a contractual right to liquidate such Transaction as described in Sections 555, 559 and 561 of Title 11 of the United States Code, as amended, and that this Agreement constitutes a "master netting agreement" as defined in Section 101(38A) of Title 11 of the United States Code, as amended.

(c) The parties agree and acknowledge that if a party hereto is an "insured depository institution," as such term is defined in the Federal Deposit Insurance Act, as amended ("FDIA"), then each Transaction hereunder is a "qualified financial contract," as that term is defined in FDIA and any rules, orders or policy statements thereunder (except insofar as the type of assets subject to such Transaction would render such definition inapplicable).

(d) It is understood that this Agreement constitutes a "netting contract" as defined in and subject to Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991, as amended ("FDICIA") and each payment entitlement and payment obligation under any Transaction hereunder shall constitute a "covered contractual payment entitlement" or "covered contractual payment obligation", respectively, as defined in and subject to FDICIA (except insofar as one or both of the parties is not a "financial institution" as that term is defined in FDICIA).

20. Disclosure Relating to Certain Federal Protections

The parties acknowledge that they have been advised that:

(a) in the case of Transactions in which one of the parties is a broker or dealer registered with the Securities and Exchange Commission ("SEC") under Section 15 of the Securities Exchange Act of 1934, as amended ("1934 Act"), the Securities Investor Protection Corporation has taken the position that the provisions of the Securities Investor Protection Act of 1970, as amended ("SIPA") do not protect the other party with respect to any Transaction hereunder;

(b) in the case of Transactions in which one of the parties is a government securities broker or a government securities dealer registered with the SEC under Section 15C of the 1934 Act, SIPA will not provide protection to the other party with respect to any Transaction hereunder; and

(c) in the case of Transactions in which one of the parties is a financial institution, funds held by the financial institution pursuant to a Transaction hereunder are not a deposit and therefore are not insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund, as applicable.

[*Signatures follow on separate page*]

AMGEN INC.

By: /s/ Jonathan M. Peacock
Name: Jonathan M. Peacock
Title: Executive Vice President and Chief Financial Officer
Date: August 24, 2013

Bank of America, N.A.

By: /s/ Jonathan Plowe
Name: Jonathan Plowe
Title: Managing Director
Date: August 24, 2013

ANNEX I

Supplemental Terms and Conditions

This Annex I forms a part of the Master Repurchase Agreement, dated as of August 24, 2013, between Amgen Inc. (the "Seller") and Bank of America, N.A. (the "Buyer") (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Agreement"). Capitalized terms used but not defined in this Annex I shall have the meanings ascribed to them in the Agreement. References in this Annex I and in the Agreement to provisions of the Agreement shall refer to such provisions as amended by this Annex I.

1. **Other Applicable Annexes**. In addition to this Annex I and Annex II, the following Annexes and any Schedules thereto shall form a part of the Agreement and shall be applicable thereunder:

None.

2. **Definitions**.

(a) For purposes of the Agreement and this Annex I, the following terms shall have the following meanings:

"Act of Insolvency", with respect to any party, (i) the commencement by such party as debtor of any case or proceeding under any bankruptcy, insolvency, reorganization, liquidation, moratorium, dissolution, delinquency or similar law, or such party seeking the appointment or election of a receiver, conservator, trustee, custodian or similar official for such party or any substantial part of its property, or the convening of any meeting of creditors for purposes of commencing any such case or proceeding or seeking such an appointment or election, (ii) the commencement of any such case or proceeding against such party, or another seeking such an appointment or election, or the filing against a party of an application for a protective decree under the provisions of the Securities Investor Protection Act of 1970, as amended, which (A) is consented to or not timely contested by such party, (B) results in the entry of an order for relief, such an appointment or election, the issuance of such a protective decree or the entry of an order having a similar effect, or (C) is not dismissed within 60 days, (iii) the making by such party of a general assignment for the benefit of creditors, or (iv) the admission in writing by such party of such party's inability to pay such party's debts as they become due;

"Action" means any claim, action, suit, arbitration, inquiry, proceeding or investigation by or before any Governmental Authority;

"Actual Knowledge" means the actual knowledge of any Senior Officer of Seller;

"Affiliate" of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For purposes of this definition, "control," as used with respect

to any person, will mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting securities, by agreement or otherwise;

“Ancillary Agreement” means the Ancillary Agreement between Seller and Buyer entered into on or prior to the date of the initial Transaction hereunder and substantially in the form attached as Exhibit III hereto, as amended, amended and restated, supplemented or otherwise modified from time to time;

“Availability Period” means the period from August 24, 2013 to February 24, 2014;

“Business Day” means a day other than (i) a Saturday or Sunday or (ii) a day on which banks in New York, London or Bermuda are authorized or required by law or executive order to, or customarily, remain closed;

“Certificate” means the Certificate of Designations of Preferences, Limitations and Relative Rights of Class A Preferred Shares of ATL Holdings Limited, adopted on or prior to the date of the initial Transaction hereunder and substantially in the form attached as Exhibit IV hereto;

“Common Shares” means share capital that has no preference in the matter of dividends or assets and represents the residual ownership of a corporate business;

“Confirmation” has the meaning specified in Paragraph 3(d) (as amended pursuant to the terms hereof);

“Default” means an event or circumstances that, with the giving of notice or lapse of time or both, would constitute an Event of Default;

“Governmental Authority” means any government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial body;

“Incipient Material Affiliate Event” has the same meaning as set forth in the Certificate;

“Income Payment Date” means, with respect to any Securities, the date on which Income is paid in respect of such Securities;

“Indemnified Taxes” means Taxes imposed on or with respect to any payment made by or on account of any obligation of Seller under this Agreement or the Ancillary Agreement, excluding, in the case of Buyer or its permitted assigns, (A) any taxes imposed on or measured by its overall net income, franchise taxes imposed on it (in lieu of net income taxes) and branch profits taxes, in each case, imposed by the jurisdiction (or any political subdivision thereof) under the Laws of which Buyer or its permitted assigns are organized or maintains a fixed place of business, (B) any taxes attributable to Buyer’s or its permitted assigns’ failure

or inability to provide the forms set forth in paragraph 26(b) of Annex I as applicable, including any taxes required to be deducted or withheld on the basis of the information, certificates or statements of exemption Buyer or its permitted assigns transmit with an IRS Form W-8IMY pursuant to paragraph 26(b) of Annex I, (C) if the forms provided by Buyer or its permitted assigns pursuant to paragraph 26(b) of Annex I at the time Buyer or its permitted assigns first become a party to this Agreement indicate a United States interest withholding tax rate in excess of zero, withholding tax at such rate unless and until Buyer or its permitted assigns provide new forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such forms; and (D) United States withholding taxes imposed under FATCA;

"Law" means any publicly promulgated applicable statute, law, ordinance, regulation, rule, code, order, other requirement or rule of law;

"Material Adverse Effect" has the same meaning as set forth in the Certificate;

"Material Affiliate Event" has the same meaning as set forth in the Certificate;

"Net Value" means:

(i) if Buyer is the defaulting party, the amount which, in the reasonable opinion of Seller, represents the fair market value of the Purchased Securities, having regard to such pricing sources and methods (which may include, without limitation, available quotations for the Purchased Securities) as Seller considers appropriate.

(ii) if Seller is the defaulting party:

(A) if any of the Purchased Securities are sold through the Valuation Process on or prior to the Valuation Process Cut-Off Date, then the Net Value in respect of such Purchased Securities shall be the net proceeds received by Buyer in respect of such Purchased Securities at the conclusion of the Valuation Process, net of all reasonable costs, commissions, fees and expenses incurred by Buyer in connection with the Valuation Process;

(B) if any of the Purchased Securities have not been sold through the Valuation Process on or prior to the Valuation Process Cut-Off Date, then the Net Value in respect of such Purchased Securities shall be the amount which, in the reasonable opinion of Buyer, represents their fair market value, having regard to such pricing sources and methods (which may include, without limitation, available quotations for the Purchased Securities) as Buyer considers appropriate;

"Price Differential" has the meaning specified in the Confirmation;

"Price Differential Payment Date" means each of the dates specified in the Confirmation as being a Price Differential Payment Date;

"Purchase Price" means (i) on the Purchase Date, the price at which Purchased Securities are transferred by Seller to Buyer, and (ii) thereafter, such price decreased by the amount of any cash applied to reduce Seller's obligations under clause (ii) of Paragraph 5 of this Agreement (as amended herein);

"Purchased Securities" means as of any date of determination, the aggregate number of shares of the Purchased Security that have been purchased by Buyer pursuant to Transactions hereunder, plus any Securities substituted for Purchased Securities in accordance with Paragraph 9 of this Agreement (as amended herein), less the number, if any, of shares of the Purchased Security for which the Repurchase Price has been tendered to Buyer in satisfaction of Seller's obligation to repurchase such number of shares of the Purchased Security on or prior thereto less any Purchased Securities for which securities have been substituted pursuant to Paragraph 9 of this Agreement (as amended herein);

"Purchased Security" has the meaning specified in the Confirmation;

"Repurchase Date" means (i) the date on which Seller is to repurchase the Purchased Securities from Buyer, including any date determined by application of the provisions of Paragraph 11 of this Agreement (as amended herein) or (ii) the date specified in a notice delivered by the Buyer to the Seller following the introduction of or any change in or in the interpretation of any law or regulation which shall make it unlawful, or the assertion by any central bank or other governmental authority that it is unlawful, for the Buyer to perform its obligations or to hold the Purchased Securities hereunder; *provided, however*, that any payments due from Seller shall be due not less than 90 days following delivery of such notice and such notice shall only be effective if Buyer has previously used its reasonable best efforts to assign its rights under this Agreement to an Affiliate of Buyer on the terms and conditions provided herein and such Affiliate may lawfully comply with the Buyer's obligations and hold the Purchased Securities hereunder and such assignment will neither give rise to unindemnified costs to the Buyer or its Affiliates nor require burdensome actions on the part of Buyer or its Affiliates in order to comply with applicable law;

"Repurchase Price" has the meaning specified in the Confirmation;

"Senior Officer" means (a) the chief executive officer, (b) the chief financial officer, (c) the general counsel or (d) the corporate treasurer;

"Taxes" mean any tax, duty, levy, impost, duty, charge, assessment or fee of any nature (including any interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment;

"Trade Limitation Period" means the earlier to occur of (i) the thirtieth day after the initial Purchase Date and (ii) the expiration of the Availability Period;

"Transaction Documents" means (a) this Agreement, (b) the Ancillary Agreement and (c) any Indemnity Documents (as defined in the Ancillary Agreement);

"Undrawn Fee Calculation Period" means, with respect to each Undrawn Fee Payment Date, the period from and including the immediately preceding Undrawn Fee Payment Date to but excluding such Undrawn Fee Payment Date, except that (a) the initial Undrawn Fee Calculation Period will commence on and include August 24, 2013 and end on but exclude the first Undrawn Fee Payment Date;

"Undrawn Fee Payment Date" means each of December 14, 2013, and the last day of the Availability Period;

"Valuation Process" means the following sequence of events:

(i) Buyer shall deliver written notice to Seller that Buyer has elected to determine the Net Value of the Purchased Securities, which notice shall include the Net Value determined by Buyer as if clause (ii)(B) of the definition of Net Value were applicable;

(ii) following such notification, Seller may elect, by notice to Buyer (which notice shall state that Buyer will avail itself of the Valuation Process but need not identify a financial institution or provide the price or other terms of any offer for the Purchased Securities) on or prior to the third Business Day following Buyer's notice pursuant to clause (i), to designate a nationally or internationally recognized financial institution to propose a firm price at which it will offer to purchase the Purchased Securities from Buyer pursuant to customary documentation reasonably satisfactory to Buyer, the terms of which (a) will provide that such financial institution will be liable for and pay any share transfer payments due upon transfer of the Purchased Security to it, (b) will include customary representations of Buyer regarding the conveyance of good title to the Purchased Securities, free and clear of liens, but not any provisions whereby Buyer indemnifies such financial institution for matters relating to the actions, status or financial condition of Seller or any of Seller's affiliates, including ATL Holdings Limited;

(iii) if the financial institution designated by Seller has a combined capital and surplus of $500 million and a Thomson BankWatch Rating at the relevant time of "B" or better, then Buyer shall negotiate in good faith with such financial institution and use its commercially reasonable efforts to consummate the sale of the Purchased Securities to such financial institution on or prior to the Valuation Process Cut-Off Date; and

"Valuation Process Cut-Off Date" means the earliest to occur of (i) Seller's failure to notify Buyer of its election to avail itself of the Valuation Process within the time period specified in clause (ii) of the definition thereof; (ii) the date on which the sale of the Purchased Securities pursuant to the Valuation Process is consummated; and (iii) the thirtieth calendar day following the date of Buyer's notice to Seller pursuant to clause (i) of the definition of Valuation Process.

(b) Paragraphs 2(a), 2(c), 2(d), 2(e), 2(g), 2(h), 2(i), 2(k), 2(o), 2(p), 2(q), 2(r), 2(s) and 2(t) of the Agreement are hereby deleted.

3. Commitment to Enter into Transactions.

Subject to and in accordance with the terms and conditions of this Annex and the Agreement, Buyer agrees to enter into Transactions from time to time on any Business Day during the Availability Period; *provided*, *however*, that Buyer shall have no obligation to enter into any proposed Transaction to the extent that the proposed number of Purchased Securities thereunder, when aggregated with the number of Purchased Securities under all prior Transactions hereunder (whether or not such other Transactions are then outstanding) would exceed 34,097 or would cause the aggregate Purchase Price to exceed $3,100,000,000.

4. Initiation; Effectiveness; Conditions; Confirmation; Termination.

Paragraph 3 of the Agreement is hereby deleted and replaced with the following:

"3. Initiation; Effectiveness; Conditions; Confirmation; Termination

(a) Seller shall initiate each proposed Transaction by submitting a written request duly executed by an authorized officer of Seller in the form attached hereto as Exhibit II for Buyer's review, which shall set forth (i) the proposed number of Purchased Securities, which shall be an integral number not less than 5,500 and (ii) a date not earlier than three Business Days following, and not later than 15 Business Days following, the effective date of such request as the Purchase Date for the proposed Transaction and (iii) the Purchase Price per Purchased Security specified in the form of Confirmation appended hereto. Any such request shall be effective (x) on the Business Day made, if delivered to Seller at or before 1:00 p.m. (New York City time) on such Business Day, or (y) otherwise, on the Business Day immediately following the date of its delivery to Buyer.

(b) The effectiveness of this Agreement is subject to the satisfaction of each of the following conditions precedent:

(i) Buyer shall have received all of the following documents, each of which shall have been duly completed and executed by each of the parties thereto:

(A) this Agreement;

(B) opinions of Sullivan & Cromwell LLP addressed to Buyer, in substantially the forms agreed between Buyer and Seller as at the date hereof;

(C) good standing certificates and certified copies of the charters and by-laws (or equivalent documents) of Seller and ATL Holdings Limited; and

(D) certified copies of the resolutions of the shareholders and of the board of directors of ATL Holdings Limited, approving the reduction of share premium to nil;

(ii) Buyer shall have received from Seller copies of appropriate resolutions of the Seller authorizing the transactions contemplated hereby to be performed by Seller;

(iii) Buyer shall have received from Seller certified copies of resolutions of the board of directors of ATL Holdings Limited (x) approving the form of stock transfer instrument (the "Stock Transfer Form") in respect of the Purchased Security to be executed by the Seller for purposes of the Transaction, and (y) authorizing the registration of the Buyer as the holder of the Purchased Security in the register of members of the Company, upon receipt by ATL Holdings Limited of the Stock Transfer Form executed by Seller; and

(iv) Buyer shall have received all such other and further customary closing documentation, including without limitation legal opinions, financial information, third-party consents, evidence of capacity, authority, incumbency and specimen signatures as Buyer in good faith shall reasonably require.

(c) Buyer's commitment to enter into each Transaction (including the initial Transaction) is subject to the satisfaction of the following further conditions precedent as of the Purchase Date designated in accordance with Paragraph 3(a), both immediately prior to entering into such Transaction and also after giving effect to the consummation thereof and the intended use of the proceeds of the sale of the Purchased Securities:

(i) Buyer shall have received all of the following documents, each of which shall have been duly completed and executed by each of the parties thereto:

(A) a certificate of the corporate secretary or director of ATL Holdings Limited certifying that (1) ATL Holdings Limited's Memorandum of Association, Bye Laws and the Certificate, as in effect on such date, are in substantially the form agreed between Buyer and Seller as at the date hereof, and (2) Mr. Richard Price and Ms. Pamela Gibson have been duly appointed as directors of ATL Holdings Limited;

(B) opinions of Appleby (Bermuda) Limited addressed to Buyer, in substantially the forms agreed between Buyer and Seller as at the date hereof;

(C) the Ancillary Agreement;

(D) a certified copy of the Memorandum of Reduction of Share Capital as filed with the Registrar of Companies of Bermuda with the effective date of such reduction having occurred prior to funding; and

(E) certification that no objections to such reduction have been delivered to ATL Holdings Limited or to any relevant governmental authorities and that the share premium is nil;

(ii) each representation or warranty of Seller and ATL Holdings Limited contained herein or in the Ancillary Agreement is true and correct in all material respects (or, in the case of a representation or warranty that is already qualified by materiality, in all respects), as of the Purchase Date with the same force and effect as though made on and as of such date (except to the extent that such representation or warranty expressly relates solely to an earlier date, in which case as of such earlier date);

(iii) as of the Purchase Date for such proposed Transaction, no Act of Insolvency shall have occurred with respect to any of Seller or ATL Holdings Limited;

(iv) Buyer shall have received documentary evidence that the shares of the Purchased Security that are to be purchased by Buyer under the proposed Transaction have been registered in the name of Buyer and conveyed to Buyer free and clear of any lien, charge, claim or other encumbrances, to include, (I) evidence that no charges have been filed in Bermuda against the Seller under s. 61 of the Companies Act 1981 of Bermuda in respect of any of its securities, (II) the original Stock Transfer Form executed by the Seller and dated as of the Purchase Date, and (III) immediately following registration of the Purchased Security in the name of the Buyer, a certified extract of the register of members of ATL Holdings Limited showing the Buyer as the registered holder of the Purchased Security and the Seller shall procure that such extract is delivered to the Buyer no later than one Business Day following the Purchase Date;

(v) a form UCC-1 naming Seller as debtor, naming Buyer as secured party, and describing the Purchased Securities shall have been duly filed with the Recorder of Deeds of the District of Columbia; Seller shall have delivered one or more duly issued and authenticated share certificates evidencing the Purchased Security described in the relevant Confirmation to Buyer; Seller shall have delivered two duly certified copies of the original executed

Agreement to Conyers Dill & Pearman Limited for purposes of filing the same on the Register of Charges maintained by the Registrar of Companies in Bermuda;

(vi) as of the Purchase Date, there shall not have occurred and be continuing any Incipient Material Affiliate Event or Material Affiliate Event (including a Default or Event of Default with respect to Seller under this Agreement);

(vii) no Action shall be pending or, to Seller's Actual Knowledge, threatened by or before any Governmental Authority; no Law shall have been enacted after the date of this Agreement; and no judicial or administrative decision shall have been rendered; in each case, which enjoins, prohibits or materially restricts, or seeks to enjoin, prohibit or materially restrict, the consummation of any Transaction contemplated by this Agreement;

(viii) Buyer shall have received a certificate from an officer of Seller certifying that the conditions precedent specified in clauses (ii), (iii), (vi) and, solely with respect to actions of Seller and its Affiliates, (vii) of this Paragraph 3(c) are satisfied as of the Purchase Date;

(ix) Buyer shall have received either (A) a certificate from an officer of Seller certifying that the assumptions of fact (which shall not include conclusions of law) set forth in the non-consolidation opinion of Sullivan & Cromwell LLP delivered pursuant to Paragraph 3(b)(i)(B) hereof pertaining to substantive consolidation remain true and correct with respect to the applicable Transaction, or (B) a further opinion of Sullivan & Cromwell LLP setting forth assumptions revised to reflect then current circumstances and reaching the same conclusions of law as those expressed in the non-consolidation opinion of Sullivan & Cromwell LLP delivered pursuant to Paragraph 3(b)(i)(B) hereof; and

(x) Buyer shall have received the opinions of Sullivan & Cromwell LLP in substantially the forms as agreed between Buyer and Seller as at the date hereof.

(d) Upon conditions precedent to a proposed Transaction being satisfied (or waived by Buyer), Buyer shall promptly, and, in any event, no later than one Business Day after satisfaction or waiver of the conditions precedent, deliver to Seller a written confirmation of the Transaction (a "Confirmation") in the form of Exhibit I hereto. Each Confirmation, together with this Agreement, shall be conclusive evidence of the terms of the Transaction(s) covered thereby (absent manifest error) unless specific objection is made in writing by Seller no more than the third Business Day after such Confirmation is received by Seller."

5. **Purchase Price Maintenance**. Provided that no Event of Default with respect to Seller has occurred and is continuing, the parties agree that in any Transaction hereunder whose

term extends over an Income Payment Date for the Securities subject to such Transaction, Buyer shall (including by causing its custodian, if any, to take such actions on its behalf), on the first Business Day following the Income Payment Date, transfer to or credit to the account of Seller an amount equal to such Income payment or payments pursuant to Paragraph 5(i) of the Agreement and Buyer shall not apply the Income payment or payments to reduce the amount to be transferred to Buyer by Seller upon termination of the Transaction pursuant to Paragraph 5(ii) of the Agreement; *provided*, *however*, that any Income paid as consideration for a redemption of the Purchased Securities, regardless whether the Repurchase Date shall have been accelerated, shall be applied first to reduce the Repurchase Price and shall only be transferred to or credited for the account of Seller to the extent that such further application would reduce the Repurchase Price, as of the Income Payment Date, below zero.

6. **Margin Maintenance**. Paragraph 4 of the Agreement is hereby deleted in its entirety.

7. **No Recognized Market**. Notwithstanding anything to the contrary in the Agreement but subject to the Valuation Process to the extent it is applicable, Seller and Buyer acknowledge and agree that the Purchased Securities subject to the Transaction hereunder are not instruments traded in a recognized market and therefore the nondefaulting party may establish the Net Value acting in a commercially reasonable manner.

8. **Income Payments**. Paragraph 5 of the Agreement is hereby amended (a) by replacing the words "on the date such Income is paid or distributed" in the second sentence thereof with the following words: "on the date that is the first Business Day after the applicable Income Payment Date"; (b) by deleting Clause (A) thereof; (c) by replacing the second occurrence of the word "Buyer" in the second sentence thereof with the word "Seller"; and (d) by replacing the words "such Income" in clause (i) of the second sentence thereof with the words "all such Income received by it".

9. **Security Interest**. Paragraph 6 of the Agreement is hereby deleted and replaced with the following:

"6. **Security Interest**. Although the parties intend that all Transactions hereunder be sales and purchases and not loans, in the event any such Transactions are deemed to be loans, Seller shall be deemed to have pledged or charged to Buyer as security for the performance by Seller of its obligations under each such Transaction, and shall be deemed to have granted to Buyer a security interest in, all of Seller's right, title and interest in and to the Purchased Securities with respect to all Transactions hereunder, all securities accounts to which the Purchased Securities are credited and all security entitlements with respect thereto and all Income on and other proceeds of the foregoing."

10. **Segregation of Purchased Securities**. Paragraph 8 of the Agreement is hereby amended by deleting the words "3, 4, or" in the twelfth line thereof.

11. **Substitution**. Clause (b) of Paragraph 9 of the Agreement is hereby deleted in its entirety.

12. **Representations**. Paragraph 10 of the Agreement is hereby deleted and replaced with the following:

"10. Representations.

(a) Each of Buyer and Seller represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement, to enter into Transactions contemplated hereunder and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) it will engage in such Transactions as principal (or, if agreed in writing, in the form of an annex hereto or otherwise, in advance of any Transaction by the other party hereto, as agent for a disclosed principal), (iii) the person executing and delivering this Agreement on its behalf was at the time of execution and delivery duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iv) it has obtained all authorizations of any governmental body required in connection with this Agreement and the Transactions hereunder and such authorizations are in full force and effect and (v) the execution, delivery and performance of this Agreement and the Transactions hereunder will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected, except, in the case of clauses (iv) and (v), as would not reasonably be expected to have a material adverse effect on the Unaffiliated Holders or the Buyer or any of their officers, directors and agents.

(b) Buyer warrants and represents that it is a national banking association organized under the laws of the United States of America."

13. **Events of Default**

(a) The first paragraph in Paragraph 11 of the Agreement is hereby deleted and replaced with the following:

"In the event that (i) Seller fails to transfer Purchased Securities or Buyer fails to transfer the Purchase Price in accordance with the Agreement, (ii) Seller fails to repurchase or Buyer fails to transfer Purchased Securities upon the applicable Repurchase Date (except that a failure to repurchase Purchased Securities upon the applicable Repurchase Date shall not constitute an Event of Default for the Seller in the event that Buyer is a defaulting party on such Repurchase Date), (iii) Buyer fails to comply with Paragraph 5 of this Agreement as amended or paragraph 5 of Annex I, and such failure is not remedied on or before the second Business Day after such failure, (iv) Seller fails to pay Buyer the Price Differential on the related Price Differential Payment Date and such failure is not remedied on or before the fifth Business Day following the related Price Differential Payment Date, (v) Seller fails to pay to Buyer any amounts, other than Price Differential, owing under this Agreement when due and such failure is not remedied on or before the thirtieth day following the date on which such amounts are due, (vi) an Act of Insolvency occurs with respect to Seller or Buyer,

(vii) any representation made by Seller or Buyer hereunder shall have been incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, (viii) Seller or Buyer shall admit in writing to the other its inability to, or its intention not to, perform any of its obligations hereunder, or (ix) Buyer or Seller breaches Paragraph 15(a) of this Agreement as amended herein (each, an "Event of Default");

(b) Paragraph 11(a) of the Agreement is hereby amended by inserting the words " of the Seller" after the first occurrence of the words "Act of Insolvency" and by inserting the words " as to the defaulting party" after the first occurrence of the words "Event of Default";

(c) Paragraph 11(b) of the Agreement is hereby amended by inserting after the words "at the Repurchase Price therefor" the following words: ", together with all unpaid Price Differential,";

(d) Paragraph 11(c) of the Agreement is hereby amended by inserting after the words "aggregate Repurchase Prices" the following words: ", together with all accrued unpaid Price Differential,";

(e) Paragraph 11(d)(i) is hereby amended by deleting subparagraph (B) in its entirety and substituting the following words therefor: "(B) in its sole discretion elect, in lieu of selling all or a portion of such Purchased Securities, to commence the Valuation Process and, upon determination of the Net Value following the Valuation Process Cut-Off Date, give the defaulting party credit for such Purchased Securities in an amount equal to the Net Value therefor on such date of determination against the aggregate unpaid Repurchase Price and any other amounts owing by the defaulting party hereunder"; and

(f) Paragraph 11(d)(ii) is hereby replaced with the following:

"(ii) as to Transactions in which the defaulting party is acting as Buyer, determine in a commercially reasonable manner an amount equal to the Net Value of the Purchased Securities that are not delivered by the defaulting party to the nondefaulting party as required hereunder."

(g) The last sentence of Paragraph 11(d) is hereby replaced with the following: "The parties acknowledge and agree that (1) in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party may establish the source therefor in a commercially reasonable manner and (2) all prices, bids and offers shall be determined together with accrued Income (except to the extent contrary to market practice with respect to the relevant Securities)."

(h) Paragraph 11(e) is hereby replaced with the following:

"Upon application of the proceeds or determination of the Net Value, in each case as described in Paragraph 11(d), (i) Seller shall be liable to Buyer for the excess,

if any, of (1) (I) the Repurchase Price of all the outstanding Purchased Securities *plus* (II) any unpaid Price Differential over (2) (I), as applicable, (A) if the defaulting party is acting as Buyer, the amount equal to the Net Value of the Purchased Securities as determined by Seller or (B) if the defaulting party is acting as Seller, the proceeds realized from the liquidation of the Purchased Securities or the Net Value of the Purchased Securities as determined by Buyer *plus* (II) any amounts actually received by Buyer and payable by Buyer under Paragraph 5 hereof (as amended herein) and under paragraph 5 of Annex I, or otherwise hereunder and not paid to Seller, and (ii) Buyer shall be liable to Seller for the excess, if any, of (1) (I), as applicable, (A) if the defaulting party is acting as Buyer, the amount equal to the Net Value of the Purchased Securities as determined by Seller or (B) if the defaulting party is acting as Seller, the proceeds realized from the liquidation of the Purchased Securities or the Net Value of the Purchased Securities as determined by Buyer *plus* (II) any amounts actually received by Buyer and payable by Buyer under Paragraph 5 hereof (as amended herein) and under paragraph 5 of Annex I, or otherwise hereunder and not paid over (2) (I) the Repurchase Price *plus* (II) any unpaid Price Differential."

(i) Paragraph 11(g) is hereby deleted in its entirety.

(j) For purposes of Paragraph 11, the Repurchase Price for each Transaction hereunder in respect of which the defaulting party is acting as Buyer shall not increase above the amount of such Repurchase Price for such Transaction determined as of the date of the exercise or deemed exercise by the nondefaulting party of the option referred to in Paragraph 11(a) (as amended herein).

14. <u>Payments by Seller to Buyer</u>.

(a) Seller shall pay to Buyer on each Price Differential Payment Date an amount equal to the accrued unpaid Price Differential.

(b) Seller agrees to pay to Buyer on each Undrawn Fee Payment Date after the date hereof a nonrefundable fee equal to the sum, over each calendar day during the related Undrawn Fee Calculation Period, of (x) USD 3,100,000,000 minus the aggregate Purchase Price as of such day, multiplied by (y) 0.10% divided by 360.

(c) Any and all payments by Seller to or for the account of Buyer or its permitted assigns under the Agreement or the Ancillary Agreement shall be made free and clear of and without deduction for any and all Taxes, except as required by applicable Law. If Seller shall be required by any Law to deduct any Taxes from or in respect of any sum payable under this Agreement or the Ancillary Agreement to Buyer or its permitted assigns, (i) the sum payable shall be increased as necessary so that after making all required deductions for Indemnified Taxes (including deductions applicable to additional sums payable under this paragraph 14(c) of Annex I), Buyer or its permitted assigns receive an amount equal to the sum it would have received had no such deductions been made, (ii) Seller shall make such deductions, (iii) Seller shall pay the full amount

deducted to the relevant taxation authority or other authority in accordance with applicable Law, and (iv) within 30 days after the date of such payment, Seller shall furnish to Buyer or its permitted assigns the original or a certified copy of a receipt evidencing payment thereof (to the extent available).

15. **Overdue Payments**. If a party does not pay any amount on the date due (without regard to any applicable grace periods), including without limitation any Price Differential or any amount payable by Buyer under Paragraph 5 of the Agreement (as amended herein) or under paragraph 5 of Annex I, such party will, to the extent permitted by applicable law, pay interest on that amount to the other party in the same currency as that amount, for the period from (and including) the date the amount becomes due to (but excluding) the date the amount is actually paid, by daily application of the greater of the Pricing Rate and the Prime Rate to such amount. Notwithstanding the above, upon the declaration of an Event of Default, Paragraph 11(h) shall apply in lieu of this paragraph.

16. **Dividends, Distributions, etc.**

(a) In accordance with Paragraph 5 of the Agreement (as amended herein) and paragraph 5 of Annex I, but subject to subparagraph (d) of this paragraph 16 of Annex I, Seller shall be entitled to receive an amount equal to all Income (including any return of capital in respect of the liquidation of the issuer thereof and any proceeds received upon the redemption of such Security by the issuer thereof) paid or distributed on or in respect of Purchased Securities that is not otherwise received by Seller, to the full extent it would be so entitled if Purchased Securities had not been sold to Buyer, except as provided in Paragraph 5 of the Agreement (as amended herein) and paragraph 5 of Annex I, with respect to Income paid as consideration for a redemption of the Purchased Securities. The parties expressly acknowledge and agree, for the avoidance of doubt, that Income shall include, but is not limited to: (i) cash and all other property, (ii) stock dividends, (iii) Securities received as a result of split ups of Purchased Securities and distributions in respect thereof, and (iv) all rights to purchase additional Securities (except to the extent that any amounts included in the foregoing clauses (i) through (iv) would be deemed to be Purchased Securities).

(b) Income paid or distributed on or in respect of Purchased Securities, which Seller is entitled to receive pursuant to subparagraph (a) of this paragraph, shall be treated in accordance with Paragraph 5 of the Agreement (as amended herein) and paragraph 5 of Annex I, as supplemented and modified herein.

(c) Any and all payments by Buyer to or for the account of Seller hereunder shall be made subject to deduction for any and all applicable future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of the Buyer, (i) income or franchise taxes imposed on (or measured by) its net income or net profits by the United States of America or by the jurisdiction (or any political subdivision of any such jurisdiction) under the laws of which Buyer is organized, in which its principal office (or other fixed place of business) is located or in which it is otherwise engaged in a trade or

business as a result of transactions unrelated to the Transactions, (ii) any branch profits tax or any similar tax that is imposed on Buyer with respect to Buyer's income or profits by any jurisdiction described in clause (i) above (all such non excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder being hereinafter referred to as "Non-Excluded Taxes"). Buyer shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. In the event that Buyer shall make a payment to or for the account of Seller that is subsequently determined to be subject to Non-Excluded Taxes, Seller shall promptly reimburse Buyer for the amount of such Non-Excluded Taxes together with all costs and expenses associated therewith.

(d) Notwithstanding anything to the contrary in Paragraph 5 of the Agreement (as amended herein), paragraph 5 of Annex I or subparagraphs (a) (b) and (c) above, in the event that Seller fails to pay Buyer the Price Differential or the amount specified in paragraph 14(b) of this Annex I on the related Price Differential Payment Date or Undrawn Fee Payment Date and such failure is not remedied on or before the third Business Day following such Price Differential Payment Date or Undrawn Fee Payment Date, then Buyer may, without exercising its option to declare an Event of Default to have occurred under the Agreement and only for as long as such failure is continuing, retain Income paid or distributed after such Price Differential Payment Date or Undrawn Fee Payment Date and apply it to the amount of any accrued but unpaid Price Differential or amount specified in paragraph 14(b) of this Annex I and, in each case, any interest thereon.

17. **Rights in Purchased Securities**. For the avoidance of doubt, Seller waives any right to vote, or to provide any consent or to take any similar action with respect to, Purchased Securities in the event that the record date or deadline for such vote, consent or other action falls during the term of the Transaction.

18. **Covered Transaction**. Each party acknowledges and agrees that the transactions evidenced by Confirmations contemplated under Paragraph 3(d) of the Agreement (as amended herein) shall be the only Transactions governed by the Agreement. The Seller and the Buyer shall not enter into any other Confirmations or Transactions hereunder. The parties hereby expressly agree that any TBMA Master Agreement entered into between them after the date hereof shall not supersede the Agreement or the Transaction hereunder.

19. **Limited Recourse**. Except as expressly set forth herein, the obligations of each party under the Agreement and the Transaction are solely the corporate obligations of such party. Except as expressly set forth herein, no recourse shall be had for the payment of any amount owing by a party under the Agreement or for the payment by such party of any fee or any other obligation or claim of or against such party arising out of or based upon the Agreement, against any trustee, adviser, employee, officer, director, incorporator, manager or affiliate of such party. The provisions of this paragraph shall survive the termination of the Agreement.

20. **No Recourse against ATL Holdings Limited**. Notwithstanding any condition relating to ATL Holdings Limited or any other provision of this Agreement, nothing herein shall be construed as creating any obligation of ATL Holdings Limited to Buyer under this Agreement.

21. **Other Documents**. Each party shall deliver to the other, upon request, such financial information, evidence of capacity, authority, incumbency and specimen signatures and other documentation as are required by law or are reasonably requested in order to enable a party to comply with legal or regulatory requirements, except to the extent that such party is prohibited from disclosing such information as a result of applicable law, rule or regulation.

22. **Submission to Jurisdiction and Waivers**.

(a) Each party irrevocably and unconditionally (i) submits to the exclusive jurisdiction of any United States Federal or New York State court sitting in the Borough of Manhattan and any appellate court from any such court solely for the purpose of any suit, action or proceeding brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction under the Agreement, and (ii) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile. Notwithstanding anything in this paragraph 22(a) of Annex I, each party may commence and maintain legal proceedings in Bermuda in connection with the Purchased Securities, ATL Holdings Limited, the organizational documents of ATL Holdings Limited, and matters related thereto.

(b) Each party hereby irrevocably agrees that the summons and complaint or any other process in any action in any jurisdiction may be served by mailing (using certified or registered mail, postage prepaid) to the notice address for it set forth herein or by hand delivery to a person of suitable age and discretion at such address. Each party may also be served in any other manner permitted by law, in which event its time to respond shall be the time provided by law.

(c) To the extent that either party has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding from jurisdiction of any court or from set off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction hereunder.

23. **WAIVER OF RIGHT TO TRIAL BY JURY**. EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING ARISING OUT OF OR RELATING TO THE AGREEMENT OR ANY TRANSACTION HEREUNDER.

24. **Business Day**. If any payment shall be required by the terms of the Agreement to be made on a day that is not a Business Day, such payment shall be made on the immediately succeeding Business Day and no further Price Differential (with respect to a payment of Price Differential) or interest (with respect to any other payment due hereunder) shall accumulate or accrue after the day on which payment was required.

25. **Counterparts**. The Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts, each of which counterparts shall be deemed to be an original and such counterparts shall constitute but one and the same instrument.

26. **Tax Matters**.

(a) Seller and Buyer understand and intend that the Transaction provided for in the Agreement will be treated as a loan secured by the Purchased Securities for U.S. federal income tax and state and local income and franchise tax purposes and will file any tax returns, tax reports and other tax filings in each case required to be filed under applicable U.S. federal income tax or state or local income or franchise tax purposes, in a manner consistent with such understanding and intent and will not take any U.S. tax position inconsistent therewith. Nothing in Paragraphs 6 and 19(a) of the Agreement (as amended herein) shall be read to imply anything to the contrary, and the statements therein shall be understood to be construed as subject to this paragraph 26(a) of Annex I.

(b) As a condition of executing the Agreement, Buyer will deliver or cause to be delivered to Seller on or before the date it becomes a party to the Agreement a correct, complete and duly executed Internal Revenue Service Form W-9. Within 20 days of the earlier of the date on which Buyer has Actual Knowledge of, and the date on which Seller requests in writing such form after the occurrence of obsolescence or invalidity of any Internal Revenue Service Form W-9 previously delivered by Buyer, Buyer will deliver to Seller a correct, complete and duly executed Internal Revenue Service Form W-9 or any successor forms. In the event that any assignee of Buyer is not a U.S. person, as defined in Internal Revenue Code section 7701(a)(30), the assignee shall deliver to Seller an Internal Revenue Service Form W-8BEN or other applicable form, or any successor form, in lieu of Internal Revenue Service Form W9 or any successor form.

(c) Upon request, Seller shall deliver to Buyer a correct, complete and duly executed Internal Revenue Form W-9. Within 20 days of the earlier of the date on which Seller has knowledge of, and the date on which Buyer requests in writing such form after the occurrence of obsolescence or invalidity of any Internal Revenue Form W-9 previously delivered by Seller, Seller will deliver to Buyer a correct, complete and duly executed Form W-9 or any successor form.

27. **Accounts for Payment**. Payments shall be made to the following accounts, or to such other account as may hereafter be notified to Seller or Buyer in writing by Buyer or Seller respectively.

To Buyer:

Name of Bank:	Bank of America, N.A. New York, NY
ABA#:	#########
Account#:	############
Attention:	Corporate Credit Services
Reference:	Amgen Inc.

To Seller:

Name of Bank:	Citibank NA – New York
ABA#:	### – ### – ###
Account#:	########
Attention:	Karen Turner

28. **USA PATRIOT Act Required Notice**. Buyer hereby notifies Seller that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act"), it is required to obtain, verify and record information that identifies Seller, which information includes the name and address of Seller and information that will allow Buyer to identify Seller in accordance with the Act. Seller shall, promptly following a request by the Buyer, provide all documentation and other information that Buyer requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Act.

29. **Notices and Other Communications**.

Paragraph 13 of the Agreement is hereby amended by deleting the word "telegraph" therefrom.

30. **Non-assignability; Termination**.

Paragraph 15 of the Agreement is hereby replaced with the following:

"(a) The rights and obligations of the parties under the Agreement and under any Transaction shall not be assigned by either party without the prior written consent of the other party; *provided*, *however*, that the Buyer shall have the right to assign its rights and obligations hereunder in one or more of the circumstances described in paragraphs (i) and (ii) below:

(i) the Buyer may transfer all or any portion of its rights and obligations hereunder in one or more transactions with the prior written consent of the Seller, such consent not to be unreasonably withheld (it being understood that the Seller may withhold its consent if the proposed transferee would be required to withhold amounts on account of any Taxes from any payments that it is required to make to the Seller pursuant to paragraph 16(a) of Annex I of the Agreement); and

(ii) the Buyer may transfer all or any portion of its rights and obligations hereunder in one or more transactions; *provided*, that (1) each such transferee at the time of the assignment or transfer would not be required to withhold amounts on account of any withholding tax or other Taxes from any payments that it is required to make to Seller pursuant to paragraph 16(a) of Annex I of the Agreement, (2) any such assignment or transfer could not reasonably be expected to result in Seller having to comply with any additional legal or regulatory requirement if such compliance would have an adverse effect on the Seller, (3) each such assignment or transfer is completed at no cost or expense to the Seller (other than the Seller's incidental costs and expenses, not to exceed $5,000, relating to the review and execution of transfer documentation and the registration of the Purchased Securities in the name of the transferee) and does not otherwise increase the Seller's costs and expenses in respect of the Agreement and the Transactions thereunder, and (4) the Seller shall have received 45 calendar days' prior notice of any proposed assignment or transfer,

provided, each transfer shall occur within four days prior to the filing of Seller's Form 10-K or 10-Q under the 1934 Act and that such transferee delivers a representation letter (in form and substance reasonably acceptable to the Seller) (x) in the case of a transferee that is a bank or trust company organized under the laws of the United States or a state thereof, substantially in the form delivered by the Seller as of the Repurchase Date, *mutatis mutandis*; and (y) in the case of a transferee not described in clause (x) above, as to such facts (if any) as are material to a conclusion that the rights of the Seller in the Purchased Securities will be respected in the event of an insolvency proceeding pertaining to the transferee, and

provided, *further*, that in the circumstances described in paragraphs (i) and (ii) above, each transferee shall be (x) a financial institution identified in a list of institutions as agreed in writing between the Buyer and Seller, or shall be an affiliate thereof organized in the United States, or, (y) in the event that the Buyer shall not have found it practicable upon terms satisfactory to it to transfer to such a financial institution or affiliate the portion of such rights and obligations that the Buyer shall intend to transfer, shall be one or more other institutional investors selected by the Buyer in consultation with the Seller (*provided*, *however*, that no transfer to a transferee described in clause (y) above shall be made pursuant to clause (i) or clause (ii) of Paragraph 15(a) of the Agreement (as amended herein) prior to the first anniversary of the date of this Agreement).

(b) Buyer agrees that any transfer of its rights and obligations under the Agreement shall be effected by novation pursuant to and in accordance with the terms of a novation agreement substantially in the form of Exhibit V hereto (a "Novation

Agreement"), which contemplates the transfer of a portion of Buyer's rights and interest in this Agreement and the Purchased Securities and in accordance with Paragraph 15(a) of the Agreement (as amended herein), and a voting agreement substantially in the form of Exhibit VI hereto. Any transfer in violation of this subparagraph (b) shall be null and void.

(c) Subparagraph (a) of Paragraph 15 of the Agreement (as amended herein) shall not preclude a party from assigning, charging or otherwise dealing with all or any part of its interest in any sum payable to it under Paragraph 11 of the Agreement (as amended herein)."

31. **No Waivers, Etc.** The last sentence of Paragraph 17 shall be deleted in its entirety.

32. **Intent**.

Paragraph 19(a) is hereby replaced with the following:

"(a) The parties recognize that each Transaction is a "securities contract" as that term is defined in section 741 of Title 11 of the United States Code, as amended (except insofar as the type of assets subject to such Transaction would render such definition inapplicable)."

[*Signatures follow on separate page*]

AMGEN INC.

By: /s/ Jonathan M. Peacock
Name: Jonathan M. Peacock
Title: Executive Vice President and Chief Financial Officer
Date: August 24, 2013

BANK OF AMERICA, N.A.

By: /s/ Jonathan Plowe
Name: Jonathan Plowe
Title: Managing Director
Date: August 24, 2013

[*Signature Page to Annex I to the Master Repurchase Agreement*]

ANNEX II

Names and Addresses for Communication Between Parties

Address for notices, statements, demands or other communications to Buyer:

Bank of America, N.A.

Mail code: NC1-001-05-46

One Independence Center
101 N Tryon Street
Charlotte, NC 28255-001

Phone: +#.###.###.####
Fax: +#.###.###.####
Email: ##.##########@####.###
Attention: Francis M. (Marty) Miller

Address for notices, statements, demands or other communications to Seller:

Amgen Inc.
One Amgen Center Drive
MS-24-1-C
Thousand Oaks
CA 91320

Phone: +#.###.###.#### ext ####
Fax: +#.###.###.####
Email: ####################
Attention: Karen Turner, Director, Treasury

[LETTERHEAD OF BANK OF AMERICA, N.A.]

Date: [—], 2013

To: Amgen Inc.

From: Bank of America, N.A.

Re: Repurchase Transaction

Dear Sirs:

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the repurchase transaction (the "Transaction") between Amgen Inc. ("Amgen") and Bank of America, N.A. (the "Counterparty"). This Confirmation constitutes a "Confirmation" as referred to in the Agreement specified below.

Counterparty and Seller are parties to the TBMA Master Repurchase Agreement and Annex I ("Annex I") related thereto, in each case dated as of August 24, 2013 (as amended, supplemented, or otherwise modified from time to time, the "Agreement"), and this Confirmation shall supplement, form a part of, and be subject to, such Agreement upon the execution and delivery thereof by both parties, and all provisions contained or incorporated by reference in such Agreement shall govern this Transaction except as expressly modified herein. Terms used but not otherwise defined in this Confirmation shall have the same meaning as in the Agreement.

Trade Date:	[—]
Purchase Date:	[—], 2013
Repurchase Date:	[—], 2018 (subject to the "Acceleration of Repurchase Date" provisions below)
Seller:	Amgen
Buyer:	The Counterparty
Purchased Securities:	As of any date of determination, [—] of the Purchased Security, less any Purchased Security for which the Repurchase Price has been tendered to Buyer in satisfaction of Seller's obligation to repurchase such Purchased Security on or prior thereto.
Purchased Security:	One share of Class A Preferred Shares with a par value of USD 0.01613 issued by ATL Holdings Limited, an exempted company organized under the laws of Bermuda,

	with an issue price per share of USD 100,000; *provided* that if any new or different Security or other consideration shall be exchanged for any Purchased Security by recapitalization, merger, amalgamation, consolidation, conversion or other action, or received in connection with a redemption of any Purchased Security, such new or different Security, or other consideration shall, effective upon such exchange or redemption, be deemed to become a Purchased Security, in substitution for the former Purchased Security for which such exchange is made.
Purchase Price:	The product of the number of Purchased Securities multiplied by USD 100,000, divided by 109.990323 %.
Repurchase Price:	The product of the number of Purchased Securities, multiplied by USD 100,000, divided by 109.990323%.
Pricing Rate:	The rate per annum, reset monthly, equal to LIBOR plus the Spread; *provided*, *however*, that such Pricing Rate shall not be less than 0.00%.
Price Differential:	For each Price Differential Payment Date, the amount accrued on the related Purchase Price at the Pricing Rate during the Stated Price Differential Period immediately preceding such Price Differential Payment Date. The Price Differential for the Purchased Securities shall be calculated on the Purchase Price and shall accrue during the relevant Stated Price Differential Period. The daily amount of the Price Differential with respect to the Purchased Securities (the "Daily Price Differential Amount") shall be calculated by dividing the Pricing Rate in effect for such day by 360 and multiplying the result by the Purchase Price. The amount of Price Differential on the Purchased Securities for each Stated Price Differential Period shall be calculated by adding the Daily Price Differential Amounts for each day in the Stated Price Differential Period. All percentages resulting from any of the above calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point being rounded upwards (e.g., 9.876545% (or 0.09876545) being rounded to 9.87655% (or 0.0987655)) and all United States dollar amounts used in or resulting from such calculations shall be rounded to the nearest cent (with one-half cent being rounded upwards).
LIBOR:	With respect to a Stated Price Differential Period, the rate (expressed as a percentage per annum) for deposits in

United States dollars for a one-month period beginning on the second London Banking Day after the Reset Date that appears on Reuters Screen LIBO Page as of 11:00 a.m., London time, on the Reset Date, or (if the Reuters Screen LIBO Page does not include such a rate or is unavailable on a Reset Date) the rate (expressed as a percentage per annum) for deposits in United States dollars for a one-month period beginning on the second London Banking Day after the Reset Date that appears on Bloomberg Screen "BBAM 1 <GO>" as of 11:00 a.m., London time, on the Reset Date. If Bloomberg Screen "BBAM 1 <GO>" does not include such rate or is unavailable on the Reset Date, the rate (expressed as a percentage per annum) for deposits in United States dollars for a one-month period beginning on the second London Banking Day after the Reset Date as published by such other commercially available source as is mutually agreed upon by the parties as of 11:00 a.m., London time, on the Reset Date. If no such source that includes such rate is available on the Reset Date, a financial institution mutually agreed upon between the parties from time to time, shall request the principal London office of each of four major banks in the London interbank market, as selected by such financial institution, to provide such banks' offered quotation (expressed as a percentage per annum), as of approximately 11:00 a.m. London time on such Reset Date, to prime banks in the London interbank market for deposits in a Representative Amount in United States dollars for a one-month period beginning on the second London Banking Day after the Reset Date. If at least two such offered quotations are so provided, LIBOR for the Stated Price Differential Period shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, such financial institution shall request each of three major banks in New York City, as selected by such financial institution, to provide such banks' rate (expressed as a percentage per annum), as of approximately 11:00 a.m., New York City time, on such Reset Date, for loans in a Representative Amount in United States dollars to leading European banks for a one-month period beginning on the second London Banking Day after the Reset Date. If at least two such rates are so provided, LIBOR for the Stated Price Differential Period shall be the arithmetic mean of such rates. If fewer than two such rates are so provided, then LIBOR for the Stated Price Differential Period shall be LIBOR in effect with respect to the immediately preceding Stated Price Differential Period.

Spread:	110.0 basis points.
Price Differential Payment Date:	Subject to paragraph 24 of Annex I, the 14th of each calendar month, commencing on [month] [day] and ending on the Liquidation Period End Date.
Liquidation Period End Date:	The earliest date on which any of the following occurs: (i) payment in full by Amgen of all amounts due to Counterparty in respect of the Transaction, (ii) final receipt by Counterparty of proceeds in connection with a redemption of the Purchased Securities or (iii) transfer of all of Counterparty's rights and obligations under the Agreement pursuant to paragraph 30(b) of Annex I.
London Banking Day:	Any day in which dealings in United States dollars are transacted or, with respect to any future date, are expected to be transacted in the London interbank market.
Representative Amount:	A principal amount of not less than USD 1 million for a single transaction in the relevant market at the relevant time.
Bloomberg Screen "BBAM 1 <GO>":	The display designated as "Bloomberg Screen BBAM1<GO>" on the Bloomberg service (or such other page as may replace Bloomberg Screen "BBAM 1 <GO>" on that service).
Reuters Screen LIBO Page:	The display designated as page "LIBO" on the Reuters Monitor Money Rates Service (or such other page as may replace the LIBO page on such service) (the "Reuters Screen LIBO Page").
Stated Price Differential Period:	With respect to each Price Differential Payment Date, the period from and including the immediately preceding Price Differential Payment Date to but excluding such Price Differential Payment Date, except that (a) the initial Stated Price Differential Period will commence on and include the Purchase Date and end on but exclude the first Price Differential Payment Date and (b) the final Stated Price Differential Period will commence on and include the immediately preceding Price Differential Payment Date and end on and exclude the Liquidation Period End Date.
Reset Dates:	With respect to a Stated Price Differential Period, the second London Banking Day preceding the first day of such Stated Price Differential Period.
Acceleration of Repurchase Date:	(i) Seller may, upon notice to Buyer, designate a day (an "Accelerated Repurchase Date") as the Repurchase Date for

the Purchased Securities in whole or in part; *provided*, *however*, that such notice must be received by Buyer not later than 10:00 a.m. (New York City time) three Business Days prior to the Accelerated Repurchase Date; *provided*, *further*, that such notice to designate an Accelerated Repurchase Date may state that such notice is conditioned upon the effectiveness of credit facilities or other financing arrangements and, if such conditions are not met, such notice may be revoked by Seller upon further notice to Buyer prior to the Accelerated Repurchase Date *provided*, *further*, that, subject to section 4.5 of the Ancillary Agreement, Seller shall provide a notice specifying the same date as the Accelerated Repurchase Date providing for the repurchase of Class A Preferred Shares of all other holders on a pro rata basis with the Purchased Securities. On such Accelerated Repurchase Date, Seller's obligation to repurchase the Purchased Securities at the Repurchase Price therefor shall become immediately due and payable. In addition to the payment of the applicable Repurchase Price on such Accelerated Repurchase Date, Seller shall also pay any accrued but unpaid Price Differential on such Accelerated Repurchase Date. An Accelerated Repurchase Date shall not occur unless payment in cash of the relevant Repurchase Price and any such Price Differential is tendered to Buyer or the account designated by Buyer on or prior to the date specified as the Accelerated Repurchase Date, together with the equivalent amounts with respect to all other Class A Preferred Shares then outstanding.

(ii) Upon the designation of an Accelerated Repurchase Date on any date that is not a scheduled Price Differential Payment Date, an amount will be payable equal to the Breakage Amount (as defined below) in respect of this Agreement. If the Breakage Amount is a positive number, Seller will pay such amount to Buyer; if the Breakage Amount is a negative number, Buyer will pay the absolute value of that amount to Seller. For purposes of this Acceleration of Repurchase Date provision, "Breakage Amount" means an amount that Buyer reasonably determines in good faith to be its total losses (excluding any loss of margin) and costs (or gain, in which case expressed as a negative number) as a result of the occurrence of such Accelerated Repurchase Date prior to the next scheduled Price Differential Payment Date, including any such loss or expense sustained by Buyer in connection with the liquidation or reemployment of funds obtained by it to maintain the Transaction, as well as any customary administrative fees (in an amount not to exceed $1,000) charged by Buyer in connection with the foregoing.

(iii) For purposes of calculating the Breakage Amount, Buyer shall be deemed to have funded the Transaction at the LIBOR rate applicable with respect to the Stated Price Differential Period during which the Accelerated Repurchase Date occurred by a matching deposit or other borrowing in the London interbank market for a comparable amount and for a comparable period, whether or not the Transaction was in fact so funded.

Please confirm your agreement to be bound by the terms of the foregoing by executing a copy of this Confirmation and returning it to us to the attention of [ ] at facsimile .

Yours sincerely,

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

Confirmed as of the date first above written:

AMGEN INC.

By: _____
Name:
Title:

Date: ,

To: Bank of America, N.A.

Ladies and Gentlemen:

Reference is made to that certain Master Repurchase Agreement, dated as of August 24, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Agreement;" the terms defined therein being used herein as therein defined), between Amgen Inc. (the "Seller") and Bank of America, N.A. (the "Buyer").

The undersigned hereby requests that the Buyer purchase [—] on [—], a Business Day. The Seller hereby represents and warrants that (A) the conditions precedent specified in clauses (ii), (iii), (vi) and, solely with respect to actions of Seller and its affiliates, (vii) of Paragraph 3(c) of the Agreement are satisfied as of the date of this Transaction Request, and shall be satisfied on and as of the Purchase Date; and (B) the assumptions set forth in the non-consolidation opinion of Sullivan & Cromwell LLP [dated the date of the Agreement remain][dated as of the date hereof are] true and correct with respect to the applicable Transaction as of the date of this Transaction Request, and shall remain true and correct with respect to the applicable Transaction, on and as of the Purchase Date.

AMGEN INC.

By: _____

Name: _____

Title: _____

ANCILLARY AGREEMENT

DATED AS OF [—], 2013

TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

ANCILLARY AGREEMENT

ANCILLARY AGREEMENT, dated as of [—], 2013 (as amended, amended and restated or otherwise modified from time to time, this "**Agreement**"), is made by and between Amgen Inc., a Delaware corporation (the "**Company**"), and BANK OF AMERICA, N.A., a national banking association organized and existing under the laws of the United States of America.

Preliminary Statements

A. Each of Newco and Newco Sub is a direct or indirect wholly-owned subsidiary of the Company.

B. On June 25, 2013, Newco issued Class A Preferred Shares to the Company.

C. The Company has entered into the Repo Agreement with the Buyer, whereby the Company agrees to sell to the Buyer and the Buyer agrees to purchase from the Company the Class A Preferred Shares (subject to the Company's obligation to repurchase, and the Buyer's obligation to resell, the Class A Preferred Shares).

D. It is, or will be, a condition to the performance by the Buyer of its obligations under the Repo Agreement that the Company provides certain assurances set forth in this Agreement, and the Company will receive substantial direct and indirect benefits from the issuance and sale to Buyer of such Class A Preferred Shares.

In consideration of the premises, and intending to be legally bound by this Agreement, the Company agrees as follows:

SECTION 1

DEFINED TERMS; RULES OF CONSTRUCTION

1.1 Definitions. As used in this Agreement (including in the Preliminary Statements), capitalized terms defined in the preamble and other Sections of this Agreement and Exhibit A to this Agreement shall have the meanings set forth therein and capitalized terms used herein (including in the Preliminary Statements) but not otherwise defined herein shall have the meanings set forth in the Certificate of Designations.

1.2 Use of Certain Terms. In this Agreement, in the computation of periods of time from a specified date to a later specified date, the word "**from**" means "**from and including**" and the words "**to**" and "**until**" mean "**to but excluding**". Unless the context of this Agreement requires otherwise, the plural includes the singular, the singular includes the plural, and "**including**" has the meaning of "**including without limitation**". The words "**hereof**", "**herein**", "**hereby**", "**hereunder**", and other similar terms refer to this Agreement (including Exhibit A to this Agreement) as a whole and not exclusively to any particular provision of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, or singular or plural, forms thereof, as the identity of the Person or Persons may require.

1.3 Headings and References. Section and other headings are for reference only, and shall not affect the interpretation or meaning of any provision of this Agreement. Unless otherwise provided, references to Sections and Exhibits shall be deemed references to Sections of, and Exhibits to, this Agreement. Whether or not specified herein or therein, references to this Agreement and any other Operative Document include this Agreement and the other Operative Documents as the same may be amended, restated, modified or supplemented from time to time pursuant to the provisions hereof or thereof as permitted by the Operative Documents. References to any other agreement, contract, instrument, or document are to such agreement, contract, instrument, or document as amended, restated, modified or supplemented from time to time in accordance with the terms hereof (if applicable) and thereof. Whether or not specified herein, a reference to any law shall mean that law as it may be amended, modified or supplemented from time to time, and any successor law. A reference to a Person includes the successors and assigns of such Person, but such reference shall not increase, decrease or otherwise modify in any way the provisions in this Agreement governing the assignment of rights and obligations under or the binding effect of any provision of this Agreement, including Section 4.12.

SECTION 2

REPRESENTATIONS AND WARRANTIES

The Company hereby represents and warrants as of the date hereof, on any Closing Date, and, solely with respect to Section 2.15, as of August 24, 2013 as follows:

2.1 Due Formation. The Company is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. Each of Newco and Newco Sub (together with the Company, each a "**Relevant Party**" and, collectively, the "**Relevant Parties**") is duly incorporated or formed, validly existing and, to the extent applicable in the relevant jurisdiction, in good standing in the jurisdiction(s) of its incorporation or formation. Each of the Relevant Parties possesses all corporate, limited liability company or other applicable organizational powers necessary for the execution, delivery and performance of its obligations under the Operative Documents.

2.2 Authorization; No Contravention. The execution, delivery and performance by each Relevant Party of each Operative Document to which it is a party are within its organizational powers, have been duly authorized by all necessary corporate, limited liability company or other applicable organizational action, and do not and will not contravene (i) its Organizational Documents, (ii) any contract, mortgage, charge, Lien, lease, agreement, indenture, or other instrument to which such Relevant Party is a party or which is binding upon it or its property, except to the extent such contravention would not reasonably be expected to result in a Material Adverse Effect or (iii) any judgment, law, statute, rule or governmental regulation applicable to such Relevant Party or its property, except to the extent such contravention would not reasonably be expected to have a material adverse effect on the Unaffiliated Holders or the Buyer or any of their officers, directors and agents.

2.3 Governmental Approvals. No consent, approval, or authorization of, or declaration or filing with, any governmental authority, and no consent of any other Person, is

required for the due execution, delivery and performance by each Relevant Party of each Operative Document to which it is a party, except those already obtained or made and those required to perfect security interests.

2.4 Enforceability. Each Operative Document to which any of the Relevant Parties is a party constitutes the legal, valid and binding obligation of such Person, enforceable against such Person in accordance with its terms, except as may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally or by general principles of equity (including implied covenants of good faith and fair dealing).

2.5 Investment Company; Holding Company.

(a) No Relevant Party is, or upon consummation of the transactions contemplated by the Operative Documents will be, required to be registered as an "investment company" (as defined in the Investment Company Act of 1940, as amended), or a company that would be such an investment company but for the application of sections 3(c)(1) and 3(c)(7) of such Act.

(b) No Relevant Party is subject to regulation as a "holding company," an "affiliate" of a "holding company," or a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 1935. Similarly, no Relevant Party will be subject to regulation as a "holding company," an "affiliate" of a "holding company," or a "subsidiary company" of a "holding company," within the meaning of the Public Utility Holding Company Act of 2005.

2.6 No Material Affiliate Event. No Incipient Material Affiliate Event or Material Affiliate Event has occurred and is continuing.

2.7 Representations of Relevant Parties. All of the written representations and warranties made by any Relevant Party in any Operative Document or any certificate delivered pursuant to any Operative Document were or will be true and correct in all material respects (or, in the case of any representation or warranty already qualified by materiality, in all respects) on the date such representations or warranties were so made, other than any such representations or warranties that, by their terms, refer to a specific date other than any such date, in which case as of such specific date.

2.8 Compliance with Terms and Conditions. To the Relevant Parties' Actual Knowledge, the Relevant Parties have duly performed and complied in all material respects with all the terms and conditions set forth in the Operative Documents to which they are respectively party and (in the case of Newco) Certificate of Designations. Since their formation, each of Newco and Newco Sub have complied with the undertakings set forth in clauses (a) through (kk) of Section 3.1.

2.9 Certain U.S. Tax Matters Relating to Newco Sub. At no time has Newco Sub (i) held any interest that is treated as an equity interest for U.S. federal income tax purposes in any entity that is not treated as a corporation for U.S. federal income tax purposes, or (ii) engaged in any transaction or activity that would cause Newco Sub to be treated as engaged in the conduct of a trade or business in the United States for U.S. federal income tax purposes.

2.10 Absence of Liabilities. Newco does not have any Liabilities or commitments of any nature whatsoever, whether accrued, absolute, contingent or otherwise, other than Liabilities and commitments arising under applicable law or arising under the Operative Documents, the Certificate of Designations, the Bye Laws, the IM Custody Agreement, the Investment Management Agreement, the Free Cash Investment Management Agreement, the Free Cash Custody Agreement or trade payables incurred in the ordinary course of business and other than Liabilities and commitments that are unsecured, do not constitute Indebtedness and do not, in the aggregate, exceed $100,000 outstanding at any time.

2.11 Legal Proceedings. Since its formation, there have been no judgments outstanding against Newco or affecting any property of Newco, nor any actions, suits or proceedings pending or, to the Actual Knowledge of the Relevant Parties, threatened against Newco that have had, or could reasonably be expected to have either individually or in the aggregate, a Material Adverse Effect.

2.12 Investigations, Audits, Etc. Since its formation, Newco has not been the subject of (x) any review or audit by the IRS or (y) any investigation by any governmental entity concerning the violation or possible violation of any law that, in the case of clause (y) only, could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to have a materially adverse effect on the rights of the Buyer under any of the Operative Documents.

2.13 Amendments. The Operative Documents, the Bye Laws, the Certificate of Designations, the Free Cash Custody Agreement, the IM Custody Agreement, the Investment Management Agreement and the Free Cash Investment Management Agreement contain the full agreement of the parties hereto with respect to the transactions contemplated thereby and no other agreements exist with respect to such transactions and no amendments, modifications, consents or waivers have been made to, or given under, the foregoing organizational documents and agreements after the date of their execution, except those that are immaterial and those that are executed or approved in writing by the Buyer.

2.14 No Liens. The property of Newco is not subject to any Lien (other than Liens created pursuant to the Operative Documents, the IM Custody Agreement and the Free Cash Custody Agreement and any Liens for taxes, assessments and governmental charges or levies not yet delinquent or being contested in good faith and by appropriate proceeding and as to which adequate reserves are being maintained in accordance with Generally Accepted Accounting Principles).

2.15 Solvency Representation. (a) After giving effect to the transactions contemplated by the subscription agreement between the Company and Newco dated June 24, 2013 and the Repo Agreement, in each case as and to the extent in effect on the date as of which this representation is made (i) the then fair value of the assets of the Company was or is greater than the then total amount of liabilities, including contingent liabilities, of the Company, (ii) the then present fair salable value of the assets of the Company was or is not less than the amount that, as

applicable, was or will be required to pay the probable liabilities of the Company on its existing debts as they become absolute and matured, (iii) the Company did not and does not intend to, and did not and does not believe that it would or will, incur debts or liabilities beyond its ability to pay its own debts and liabilities as they mature and, (iv) the Company was or is not engaged in a business or a transaction, and was or is not about to engage in a business or a transaction, for which its property would constitute unreasonably small capital.

(b) After giving effect to the transactions contemplated by the subscription agreement between the Company and Newco dated June 24, 2013 and the Repo Agreement, in each case as and to the extent in effect on the date as of which this representation is made (i) the then fair value of the assets of Newco was or is greater than the then total amount of liabilities, including contingent liabilities, of Newco, (ii) the then present fair salable value of the assets of Newco was or is not less than the amount that, as applicable, was or will be required to pay the probable liabilities of Newco on its existing debts as they become absolute and matured, (iii) Newco did not and does not intend to, and did not and does not believe that it would or will, incur debts or liabilities beyond its ability to pay its own debts and liabilities as they mature and (iv) Newco was or is not engaged in a business or a transaction, and was or is not about to engage in a business or a transaction, for which its property would constitute unreasonably small capital.

2.16 Class A Preferred Shares. There are no Class A Preferred Shares outstanding other than the 34,097 shares of the Class A Preferred Shares that are authorized by the Certificate of Designations, and all such Class A Preferred Shares (other than Class A Preferred Shares that have become Purchased Securities are owned by the Company and no other Person has any right or interest therein (including any security interest or any right or power to direct the voting of such Class A Preferred Shares)).

2.17 Permitted Investments Account. Not later than, and including, the first date on which the Company shall have transferred any Class A Preferred Shares to the Buyer pursuant to the Repo Agreement, the Permitted Investments Account shall have been funded and invested in accordance with the Investment Management Agreement.

SECTION 3

COMPANY COVENANTS

3.1 Separateness Covenants. The Company hereby covenants and agrees that so long as any Class A Preferred Shares remain outstanding, the Company will, and will cause each of the other Relevant Parties and each of the other Relevant Subsidiaries to, comply with the following undertakings:

(a) each of the Company and the Relevant Subsidiaries will maintain its books, financial records and accounts, including inter-entity transaction accounts, checking and other bank accounts and custodian and other securities safekeeping accounts, (i) separate and distinct from those of each of Newco and Newco Sub and (ii) in a manner so that it will not be difficult or costly to segregate, ascertain or otherwise identify its assets and liabilities separate and distinct from the assets and liabilities of Newco and Newco Sub;

(b) each of Newco and Newco Sub will maintain their books, financial records and accounts, including inter-entity transaction accounts, checking and other bank accounts and custodian and other securities safekeeping accounts, (i) separate and distinct from those of any other Person and (ii) in a manner so that it will not be difficult or costly to segregate, ascertain or otherwise identify its assets and liabilities separate and distinct from the assets and liabilities of any other Person;

(c) each of the Company and the Relevant Subsidiaries will not commingle any of its assets, funds, liabilities or business functions with the assets, funds, liabilities or business functions of Newco and Newco Sub;

(d) each of Newco and Newco Sub will not commingle any of its assets, funds, liabilities or business functions with the assets, funds, liabilities or business functions of any other Person;

(e) each of Newco and Newco Sub will conduct its own business in its own name, and observe all requisite corporate or other organizational and internal procedures and formalities under applicable law;

(f) neither Newco nor Newco Sub will be consensually merged, amalgamated or consolidated with any other Person (other than with the other, the Company or a Relevant Subsidiary solely for accounting purposes and other than Newco Sub being disregarded as an entity separate from its owner for U.S. tax purposes);

(g) none of the Company and the Relevant Subsidiaries will conduct its business in the name of Newco or Newco Sub;

(h) the Company will include in its periodic reports filed with the SEC information that clearly discloses the separate existence and identity of Newco from the Company and the Relevant Subsidiaries and that Newco has separate assets and liabilities;

(i) conduct all transactions, contracts and dealings between the Company or any Relevant Subsidiary, on the one hand, and Newco or Newco Sub, on the other hand, including transactions, agreements and dealings pursuant to which the assets or property of one is used or to be used by the other, in a manner that reflects the separate identity and legal existence of each such Person;

(j) conduct all transactions, contracts and dealings between Newco or Newco Sub, on the one hand, and any other Person, on the other hand, including transactions, agreements and dealings pursuant to which the assets or property of one is used or to be used by the other, in a manner that reflects the separate identity and legal existence of each such Person;

(k) each of Newco and Newco Sub will hold all of its assets in its own name;

(l) conduct all transactions between Newco or Newco Sub, on the one hand, and any other Person, on the other hand, in the name of Newco or Newco Sub, as applicable, as an entity separate and distinct from any other Person;

(m) except as otherwise contemplated in this Agreement or the Indemnity Documents, each of Newco and Newco Sub will pay its liabilities and losses from its assets, and each of the Company and the Relevant Subsidiaries will pay their liabilities and losses from assets other than those of Newco and Newco Sub;

(n) cause its representatives and agents (whether or not they are "loaned" employees of the Company or any Relevant Subsidiary), when purporting to act on behalf of Newco or Newco Sub, to hold themselves out to third parties as being representatives or agents, as the case may be, of Newco or Newco Sub and, to the extent any such items are utilized, will utilize business cards, letterhead, purchase orders, invoices and the like of Newco or Newco Sub, as applicable, when so acting;

(o) except as otherwise contemplated in the Indemnity Documents or permitted by clause (p) below, each of Newco and Newco Sub will compensate all consultants, independent contractors and agents from its own funds for services provided to it by such consultants, independent contractors and agents;

(p) ensure that, to the extent that Newco or Newco Sub, on the one hand, and any other Person, on the other hand:

(i) jointly contract or do business with vendors or service providers or share overhead expenses, the costs and expenses incurred in so doing will be fairly and reasonably allocated between or among such Persons, with the result that each such Person bears its fair share of all such costs and expenses; and

(ii) contracts or does business with vendors or service providers where the goods or services are wholly or partially for the benefit of the other, then the costs incurred in so doing will be fairly and reasonably allocated to the Person for whose benefit the goods or services are provided, with the result that each such Person bears its fair share of all such costs;

(q) neither the Company nor any Relevant Subsidiary will make any inter-entity loans, advances, guarantees, extensions of credit or contributions of capital to, from or for the benefit of Newco or Newco Sub, as the case may be, without proper documentation and accounting in accordance with applicable Generally Accepted Accounting Principles and only in accordance with, or as contemplated by, the provisions of the Certificate of Designations and the Operative Documents;

(r) neither Newco nor Newco Sub will make any inter-entity loans, advances, extensions of credit or contributions of capital to, from or for the benefit of any other Person without proper documentation and accounting in accordance with applicable Generally Accepted Accounting Principles and only in accordance with, or as contemplated by, the provisions of Certificate of Designations and the Operative Documents;

(s) not to refer to itself in a manner inconsistent with its status as a legal entity separate and distinct from Newco and Newco Sub;

(t) each of Newco and Newco Sub will not refer to itself in a manner inconsistent with its status as a legal entity separate and distinct from any other Person;

(u) neither the Company nor any Relevant Subsidiary will hold out the credit of Newco or Newco Sub as being available to satisfy the obligations of the Company or any Relevant Subsidiary or any other Person;

(v) neither Newco nor Newco Sub will hold out the credit of any other Person as being available to satisfy the obligations of Newco or Newco Sub;

(w) neither Newco nor Newco Sub will hold out its credit as being available to satisfy the obligations of any other Person;

(x) each Relevant Party will maintain adequate capital in light of its contemplated business operations;

(y) neither the Company nor any Relevant Subsidiary will guarantee or become obligated for the Indebtedness or other obligations of Newco or Newco Sub;

(z) neither Newco nor Newco Sub will guarantee or become obligated for the debts of any other Person;

(aa) neither the Company nor any Relevant Subsidiary will acquire the obligations or securities of Newco or Newco Sub, except as contemplated by or permitted under the Operative Documents;

(bb) Newco will not acquire or hold the obligations, securities or any other Indebtedness of any other Person, except as contemplated by or permitted under the Operative Documents;

(cc) neither the Company nor any Relevant Subsidiary will pledge its assets for the benefit of Newco or Newco Sub;

(dd) neither Newco nor Newco Sub will pledge its assets in support of the obligations of any other Person;

(ee) each of the Company and the Relevant Subsidiaries will take all actions that it deems necessary and appropriate to correct any misunderstanding of which it has Actual Knowledge or of which it has received notice regarding its separate identity from Newco and Newco Sub;

(ff) each of Newco and Newco Sub will take all actions that it deems necessary and appropriate to correct any misunderstanding of which it has Actual Knowledge or of which it receives notice regarding its separate identity from any other Person;

(gg) each of Newco and Newco Sub will not use its separate existence and not permit that its separate existence be used by any of its Affiliates, in each case, to abuse its creditors or to perpetrate a fraud, injury, or injustice on its creditors;

(hh) each of Newco and Newco Sub will ensure that (i) all transactions between it or any of its Affiliates, on the one hand, and Newco or Newco Sub, on the other hand, are, and will be, duly authorized and documented, and recorded accurately in the appropriate books and records of such Persons, and (ii) all such transactions are, and will be, on arm's-length terms fair to each party, constitute exchanges for fair consideration and for reasonably equivalent value, and are, and will be, made in good faith and without any intent to hinder, delay, or defraud its creditors;

(ii) neither Newco nor Newco Sub will take any action, or engage in transactions with any of its Affiliates, unless the boards of directors or managers, managing members, or officers, as appropriate, of such Affiliate and Newco or Newco Sub, as the case may be, determine in a reasonable fashion that such actions or transactions are in their respective entities' best interests, it being agreed by the parties hereto that this Agreement and the other Operative Documents (and the transactions contemplated hereby and thereby and permitted hereunder and thereunder, including those pertaining to the payment of dividends by Newco) satisfy the foregoing standard and satisfy the requirements of this clause (ii);

(jj) no Relevant Party will enter into the transactions contemplated by this Agreement or any other Operative Document to which it is a party in contemplation of insolvency or with a design to prefer one or more of its creditors to the exclusion in whole or in part of another of its creditors or with an intent to hinder, delay or defraud any of its creditors; and

(kk) the Company will not permit Newco Sub to make a dividend or distribution to Newco, or permit any Relevant Subsidiary to make a dividend or distribution to Newco Sub or Newco or to another Relevant Subsidiary that will result in the making of a dividend or distribution to Newco Sub or Newco, unless such dividend or distribution shall be lawfully declared and paid and shall not, at the time of the payment of any such dividend or distribution, be subject to rescission or repayment under applicable law.

Notwithstanding the foregoing restrictions on its activities, the Company will cause each of Newco and Newco Sub to be authorized and permitted to take the actions required by the Certificate of Designations and the Operative Documents to which they are party. Nothing herein shall require or be deemed to require the Company or any Relevant Subsidiary, directly or indirectly, (a) to pay or guarantee the payment of or to take any action intended to pay or guarantee the payment of any expenses or liabilities of Newco or Newco Sub or (b) to make any capital contribution to or otherwise advance or supply funds or assets to Newco or Newco Sub for the purchase or payment of any expenses or liabilities of Newco or Newco Sub or to maintain working capital or equity capital of Newco or Newco Sub or otherwise to maintain the net worth or solvency of Newco or Newco Sub.

3.2 General Covenants. The Company hereby covenants and agrees that, so long as any Class A Preferred Shares remain outstanding, except as otherwise permitted by this Agreement or any other Operative Documents, the Company will not at any time:

(a) Indebtedness, Etc. Permit Newco to (i) incur or become liable for any Indebtedness, (ii) guarantee the liabilities of any other Person, (iii) have any employees, or (iv) create, incur or suffer to exist any Liens of any kind on the Permitted Investments (other than Liens created pursuant to the Operative Documents, the IM Custody Agreement and the Free Cash Custody Agreement and any Liens for taxes, assessments and governmental charges or levies not yet delinquent or being contested in good faith and by appropriate proceedings and as to which adequate reserves are being maintained in accordance with Generally Accepted Accounting Principles).

(b) Sale, Etc., of Assets; Equity. Permit Newco to (i) sell, transfer or otherwise dispose of, in any case, whether in one transaction or in a series of transactions, any of its assets or (ii) issue any equity securities, in each case, other than as expressly permitted under the Certificate of Designations or any Operative Document.

(c) Merger, Etc. Except as permitted by the Certificate of Designations, permit any of Newco and Newco Sub to merge, amalgamate or consolidate with any Person (other than a consolidation with the Company or a Relevant Subsidiary solely for accounting purposes and other than Newco Sub being disregarded as an entity separate from its owner for U.S. tax purposes but not for any corporate purposes under the laws of Bermuda), or permit any capital stock of Newco Sub to be held by any person other than Newco.

(d) Investments. Direct Newco, the Custodian or the Investment Manager, or authorize or permit Newco, the Custodian or the Investment Manager, to hold or invest in any assets other than as permitted under the Certificate of Designations.

(e) Bankruptcy, Etc. Consent to, vote for, or otherwise cause or permit Newco or Newco Sub voluntarily to take any action of the type referred to in the definition of Bankruptcy Action.

(f) Structure of Newco. Direct, authorize or permit Newco to amend the Bye-laws or the Certificate of Designations, including, without limitation, to effect any modification to the governing structure of Newco, except as permitted under the Certificate of Designations.

(g) Class A Preferred Payments. Direct, authorize or permit Newco to give any instruction with respect to payments in respect of the Class A Preferred Shares other than an instruction in accordance with the Certificate of Designation.

(h) Class A Vote. Direct, authorize or permit Newco to take any action requiring a class vote of the Class A Preferred Shares in contravention of the outcome of such a vote or without having conducted such a vote.

3.3 Reporting Requirements. The Company hereby covenants and agrees that, so long as the Class A Preferred Shares remain outstanding, it will furnish to (i) in the case of clause (b) below, the Person specified therein, and (ii) in all other cases, each Applicable Person, the following:

(a) Public Reports. A copy of all of the information and reports referred to in this sentence: (i) within 90 days after the end of each fiscal year (or, if earlier, the date on which each of the Company and the Relevant Subsidiaries file the same with the SEC), deliver to Buyer, by mail or electronic communications, a copy of its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, all in reasonable detail, accompanied by a report of Ernst & Young or other independent public accountants of recognized national standing selected by the Company which report and opinion shall be prepared in accordance with Generally Accepted Accounting Principles at such date, and (ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Company (or, if earlier, the date on which the Company files the same with the SEC), deliver by mail or electronic communications to Buyer, a copy of its consolidated balance sheet and related statements of operations as of the end of and for such fiscal quarter and the then elapsed portion of the fiscal year and its related statement of cash flows for the then elapsed portion of the fiscal year, all in reasonable detail, all certified by one of its financial officers as presenting fairly in all material respects the financial position and results of operations and cash flows of the Company and the consolidated Relevant Subsidiaries on a consolidated basis in accordance with Generally Accepted Accounting Principles consistently applied, subject to normal year-end audit adjustments (which certification requirements shall be deemed satisfied by the execution by a financial officer of the certification required to be filed with the SEC pursuant to Item 601 of Regulation S-K). Notwithstanding the foregoing, the Company will be deemed to have furnished such reports referred to in the preceding paragraph if the Company has filed such reports with the SEC via the SEC's Electronic Data Gathering, Analysis and Retrieval System (or any successor system) and such reports are publicly available.

(b) Compliance Certificate. Within 45 days after the close of each of the Company's fiscal quarters, an officer's certificate signed by a Senior Officer of the Company and stating that a review of the activities of the Relevant Parties during the preceding fiscal year has been made under his or her supervision with a view to determining whether the Company has performed its obligations under this Agreement, and further stating that to his or her Actual Knowledge no Incipient Material Affiliate Event or Material Affiliate Event has occurred during such period and remains in existence and further stating that the Company has not received notice of any such event that has occurred during such period and remains in existence or, if either (i) an Incipient Material Affiliate Event or (ii) a Material Affiliate Event shall have so occurred (whether or not cured), describing all such Incipient Material Affiliate Events or Material Affiliate Events of which he or she has Actual Knowledge and what action the Company is taking (or has taken) or proposes to take with respect thereto.

(c) Notice of Incipient Material Affiliate Event or Material Affiliate Event. Within five Business Days after the earlier of the date on which a Senior Officer of the Company has Actual Knowledge of such occurrence and the date on which the Company receives notice of such occurrence, written notice of the occurrence of an Incipient Material Affiliate Event or Material Affiliate Event and setting forth in reasonable detail the actions that the Company has taken or proposes to take with respect thereto and whether or not cured.

(d) Newco Financial Statements. Within thirty days of the end of each fiscal quarter, the Company shall deliver to the Buyer unaudited financial statements of Newco prepared in accordance with Generally Accepted Accounting Principles, except that such financial statements shall not apply ASC Topic 810 (Consolidations) (or any successor or replacement provision of Generally Accepted Accounting Principles covering a similar subject), and instead the interests in Newco Sub will be carried at historical cost. Such financial statements shall be certified by a Senior Officer of the Company.

3.4 Check-the-Box Elections. The Company has caused Newco Sub to file a valid election with the U.S. Internal Revenue Service (the "**IRS**") to be treated from its date of formation as a disregarded entity for U.S. federal income tax purposes in accordance with Treasury Regulation section 301.7701-3(c) and will cause Newco Sub to maintain its status as a disregarded entity for all relevant times in the future.

3.5 Company Tax Filing Obligations. In connection with the transfer of the shares of Newco Sub to Newco, the Company (i) will timely execute and file with the IRS a "gain recognition agreement" described in Treasury Regulation section 1.367(a)-8 and the waiver of the period of limitations described therein in the Company's consolidated U.S. federal income tax return by the due date (including extensions) of such return for the year of the transfer, in accordance with the procedures specified in Treasury Regulation section 1.367(a)-8(d) and (e) and (ii) will timely execute and file the annual certification described in Treasury Regulation section 1.367(a)-8(g) in the Company's consolidated U.S. federal income tax return by the due date (including extensions) of such return for each of the five full taxable years following the year of the transfer, in accordance with the procedures specified in Treasury Regulation section 1.367(a)-8.

3.6 Covenants Regarding Newco. The Company shall cause Newco not to:

(a) establish any physical presence or branch office or acquire or rent office space in the United States or any other jurisdiction (other than Bermuda);

(b) appoint a representative or agent in the United States or any other jurisdiction outside of Bermuda with unlimited authority to conduct the business of Newco or to sign contracts for and on behalf of Newco in any such jurisdiction;

(c) become a plaintiff, or counterclaim, in any suit, action or proceedings outside Bermuda, except in a special proceeding for purposes of disclaiming the jurisdiction of the relevant court or tribunal;

(d) voluntarily appear before a court in any suit, action or proceedings outside Bermuda, except in a special proceeding for purposes of disclaiming the jurisdiction of the relevant court or tribunal;

(e) expressly agree to submit to the jurisdiction of any court outside of Bermuda;

(f) hold board of director or shareholder meetings in or from within any jurisdiction other than Bermuda or such other jurisdiction (other than the United States) as should not, in the opinion of counsel, result in Newco being determined to have a place of business for any purposes in such other jurisdiction;

(g) maintain any property or assets of Newco in the United States or maintain any material amount of property or assets of Newco in any other jurisdiction (other than Bermuda), it being understood that the assignment of any rights or the delegation of any duties by the Custodian to any subcustodian pursuant to the IM Custody Agreement or the Free Cash Custody Agreement shall not violate this clause 3.6(g);

(h) elect or cause any election to be made to treat Newco as other than a corporation for U.S. tax purposes;

(i) have a registered office in any jurisdiction other than Bermuda; or

(j) become an "investment company" (as defined in the US Investment Company Act of 1940, as amended, or a company that would be such an investment company but for the application of sections 3(c)(1) and 3(c)(7) of such Act).

3.7 Investment Manager. The Company agrees to cause Newco to appoint an Investment Manager to oversee the Permitted Investments Account and the Company agrees to cause Newco to enter into, and maintain in full force and effect the Investment Management Agreement with such Investment Manager. Promptly upon the Company or Newco attaining Actual Knowledge, or receiving notice, of a breach by the Investment Manager of its obligations under the Investment Management Agreement, the Company shall cause Newco to enforce its rights under the Investment Management Agreement. In the event that the Investment Manager shall have (a) notified Newco of its intention to resign, (b) breached any of its obligations under the Investment Management Agreement or (c) failed to meet the criteria set forth in the definition of Investment Manager in the Certificate of Designations, the Company agrees to cause Newco to provide written notice to each Applicable Person reasonably promptly, and in any event, no later than three Business Days following the date of receipt of such notice from the Investment Manager or the date that the Company or Newco attains Actual Knowledge of such breach or failure. Further, the Company agrees to cause Newco (i) to appoint, (x) in the case of an event described in clause (a) above, by no later than 30 days following the date of receipt of such notice from the Investment Manager and (y) in the case of an event described in clause (b) or (c) above, by no later than 30 days following the later of (A) the date that the Company or Newco attains Actual Knowledge, or receives notice, of such breach or failure and (B) the expiration of any applicable grace or cure period in the Investment Management Agreement, if the relevant breach has not been cured, in each case, a new Investment Manager meeting the criteria set forth in the definition of Investment Manager in the Certificate of Designations to replace such resigning or defaulting Investment Manager and (ii) to enter into a new Investment Management Agreement with the replacement Investment Manager appointed in accordance with clause (i) above containing (A) identical investment guidelines, (B) substantially identical provisions relating to reporting and termination, and (C) other terms that are not materially less favorable to Newco, and to irrevocably instruct the replacement Investment Manager to provide to Buyer all reports and internet access referred to in section 6 of the Investment Management Agreement.

3.8 Custodian. The Company agrees to cause Newco to appoint a Custodian with respect to the Permitted Investments Account and the Company agrees to cause Newco to enter into, and maintain in full force and effect, the IM Custody Agreement with such Custodian. Promptly upon the Company or Newco attaining Actual Knowledge, or receiving notice, of a breach by the Custodian of its obligations under the IM Custody Agreement, the Company shall cause Newco enforce its rights under the IM Custody Agreement. In the event that the Custodian shall have (a) notified Newco of its intention to resign, (b) breached any of its obligations under the IM Custody Agreement or (c) failed to meet the criteria set forth in the definition of Custodian in the Certificate of Designations, the Company agrees to cause Newco to provide written notice to each Applicable Person reasonably promptly, and in any event, no later than three Business Days following the date of receipt of such notice from the Custodian or the date that the Company or Newco attains Actual Knowledge, or receives notice, of such breach or failure. Further, the Company agrees to cause Newco (i) to appoint, (x) in the case of an event described in clause (a) above, by no later than 30 days following the date of receipt of such notice from the Custodian and (y) in the case of an event described in clause (b) or (c) above, by no later than 30 days following the later of (A) the date that the Company or Newco attains Actual Knowledge of such breach or failure and (B) the expiration of any applicable grace or cure period in the IM Custody Agreement, if the relevant breach has not been cured, in each case, a new Custodian meeting the criteria set forth in the definition of Custodian in the Certificate of Designations to replace such resigning or defaulting Custodian and (ii) to enter into a new IM Custody Agreement with the replacement Custodian appointed in accordance with clause (i) above containing (A) identical provisions relating to instructions for transfers from the account maintained pursuant to the IM Custody Agreement, (B) substantially identical provisions on reporting, termination, and waiver of Liens and set-off, and (C) other terms that are not materially less favorable to Newco, and to irrevocably instruct the replacement Custodian to provide to Buyer all reports referred to in section 6 of the IM Custody Agreement.

3.9 Issued and Outstanding Class A Preferred Shares. The Company agrees that (a) there shall be no Class A Preferred Shares issued and outstanding at any time other than the 34,097 shares of Class A Preferred Shares that are authorized by the Certificate of Designations, and (b) until the Repo Transaction Termination Date, the Company shall not transfer, and, to the extent permitted by applicable law, shall cause Newco not to effect any issuance of, any Class A Preferred Shares or any right or interest therein (including any security interest or any right or power to direct the voting of such Class A Preferred Shares) except to Buyer pursuant to the Repo Agreement (including any of Buyer's successors and assignees as provided in the Repo Agreement) or to a buyer under a repurchase agreement that becomes a party to the voting agreement in respect of the Class A Preferred Shares.

3.10 Transfers from Permitted Investments Account. The Company agrees not to cause or permit Newco (a) to withdraw or otherwise remove from the Permitted Investments Account any instrument or security or (b) instruct or authorize any release or disbursement of funds from the Permitted Investments Account unless such release or disbursement is for the purpose of paying amounts due to holders of the Class A Preferred Shares in connection with a redemption of the Class A Preferred Shares pursuant to section 6.1 or 6.2 of the Certificate of Designations.

3.11 Director Services Agreement. The Company shall cause Newco to comply with the terms of that certain agreement between Newco and Appleby Services (Bermuda) Ltd., with a commencement date of June 14, 2013, relating to the provision of the services of the Independent Director.

3.12 Liquidation of Permitted Investments. At all times prior to the Repo Transaction Termination Date, the Company agrees not to permit or cause Newco to liquidate any Permitted Investments, except as contemplated by the Investment Management Guidelines and in connection with the redemption of Class A Preferred Shares in accordance with section 6 of the Certificate of Designations.

3.13 Certain U.S. Tax Matters Relating to Newco Sub. At all times prior to the Repo Transaction Termination Date, the Company (i) will cause Newco Sub not to hold any interest that is treated as an equity interest for U.S. federal income tax purposes in any entity that is not treated as a corporation for U.S. federal income tax purposes, and (ii) will cause Newco Sub not to engage in any transaction or activity that would cause Newco Sub to be treated as engaged in the conduct of a trade or business in the United States for U.S. federal income tax purposes.

3.14 Certificate of Authorized Persons relating to the IM Custody Agreement. The Company agrees not to permit or cause Newco, prior to the Repo Transaction Termination Date, to furnish any new Certificate of Authorized Persons to the Custodian under the IM Custody Agreement (or to revise any existing such certificate) unless such new (or revised) Certificate of Authorized Persons has been furnished by, or consented to by, the Investment Manager and does not contain any employees or agents (other than the Investment Manager) of any Relevant Party or any Affiliate thereof. As used in this Section 3.14, "Certificate of Authorized Persons" means the Certificate of Authorized Persons furnished to the Custodian pursuant to the IM Custody Agreement in the form of the exhibit thereto captioned "Certificate of Authorized Persons".

3.15 Recapture of Dividends. In the event that Newco shall be legally obligated to make restitution of any amount or property received by it as a dividend or distribution to the immediate or indirect payor thereof or the legal representative of such payor, if and to the extent that the proceeds of such dividend or distribution shall have been paid or transferred to the Company as a dividend or distribution by Newco, the Company shall promptly make a capital contribution to Newco in an amount equal to the cash or the fair value of any non-cash property distributed to it from such proceeds.

3.16 Certification in Connection with Newco Dividends. In connection with each meeting of the directors of Newco for the purpose of consideration of a declaration of a dividend or distribution, the Company shall cause an appropriate officer of Company to provide a certification to the directors of Newco substantially to the effect that such officer has determined, having conducted due diligence into the source of the funds or property out of which such dividend or distribution is to be paid or made, that the declaration of the proposed dividend or distribution will be permitted under the standards specified in the law of Bermuda and that such officer has no reason to believe that the funds or property out of which such dividend or distribution is proposed to be paid or made is subject to recovery by or restitution to the immediate or indirect source thereof.

SECTION 4

MISCELLANEOUS

4.1 Termination. This Agreement shall terminate one day after the Repo Transaction Termination Date; *provided, however,* that (i) the agreements in Section 4.2 shall survive the Repo Transaction Termination Date and the termination of this Agreement and (ii) if the Transactions under the Repo Agreement (or any portion thereof) are settled through a redemption of the Class A Preferred Shares, the agreements in Section 3.6 will survive the termination of this Agreement with respect to each applicable jurisdiction until after a period of time has lapsed following the Repo Transaction Termination Date which corresponds to the duration of the insolvency avoidance or preference period applicable, if any, under the insolvency laws of such jurisdiction.

4.2 Indemnification. The Company agrees to indemnify, save and hold harmless the Buyer and its Affiliates, directors, officers, agents, partners, attorneys, advisors and employees (collectively the "**Indemnitees**") from and against: (a) any and all claims, demands, actions or causes of action asserted by any third party or by the Company or Newco if the claim, demand, action or cause of action arises out of or relates to such Buyer's commitment under the Repo Agreement, the purchase and holding of the Class A Preferred Shares, any transaction contemplated by this Agreement, or any relationship or relationship alleged to exist by the Company, its Affiliates, Newco or any other third party of any Indemnitee to the Company, any Affiliate or the Company related to this Agreement or the Operative Documents; (b) any administrative or investigative proceeding by any governmental agency arising out of or related to a claim, demand, action or cause of action described in clause (a) above; and (c) any and all liabilities, losses, costs, or expenses (including reasonable attorneys' fees and disbursements and other professional services) that any Indemnitee suffers or incurs as a result of the assertion of any foregoing claim, demand, action or cause of action; provided that no Indemnitee shall be entitled to indemnification for any loss caused by its own gross negligence or willful misconduct, or with respect to any dispute between any Indemnitee that is a Buyer and any other person that is another Buyer unless such dispute shall have arisen from a breach by the Company or Newco of an Operative Document or a Material Affiliate Event. If any claim, demand, action or cause of action is asserted against any Indemnitee, such Indemnitee shall promptly notify the Company, but the failure to so promptly notify the Company shall not affect the Company's obligations under this Section 4.2 unless such failure materially prejudices the Company's right to participate in the contest of such claim, demand, action or cause of action. If requested by the Company in writing, such Indemnitee shall in good faith contest the validity, applicability and amount of such claim, demand, action or cause of action and shall permit the Company to participate in such contest. Any Indemnitee that proposes to settle or compromise any claim or proceeding for which the Company may be liable for payment of indemnity hereunder shall give the Company written notice of the terms of such proposed settlement or compromise reasonably in advance of settling or compromising such claim or proceeding and shall obtain the Company's prior written consent. In connection with any claim, demand, action or cause of action covered by this Section 4.2 against more than one Indemnitee, all such Indemnitees shall be represented by the same legal counsel selected by the Indemnitees and reasonably acceptable to the Company; provided that, if such legal counsel determines in good faith that representing all such

Indemnitees would or could result in a conflict of interest under laws or ethical principles applicable to such legal counsel or that a defense or counterclaim is available to an Indemnitee that is not available to all such Indemnitees, then to the extent reasonably necessary to avoid such a conflict of interest or to permit unqualified assertion of such a defense or counterclaim, each Indemnitee shall be entitled to separate representation by legal counsel selected by that Indemnitee and reasonably acceptable to the Company, with all such legal counsel using reasonable efforts to avoid unnecessary duplication of effort by counsel for all Indemnitees; provided further that the amount of the legal fees to be reimbursed by the Company shall be limited to an amount reasonably determined following consultation between the Company, such Buyer and their respective legal counsel, to be equal to the amount that would have been expended if the Indemnitees have been represented by one counsel. Any obligation or liability of the Company to any Indemnitee under this Section 4.2 shall survive the expiration or termination of this Agreement and the repurchase of the Class A Preferred Shares pursuant to the Repo Agreement and the payment and performance of all other obligations of the Company under the Operative Documents. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 4.2 applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by the Company, its directors, equity holders or creditors or an Indemnitee or any other Person, whether or not any Indemnitee is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company shall timely pay all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or under the Repo Agreement or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement or the Repo Agreement to the relevant governmental authority in accordance with applicable law. Except as otherwise provided in the preceding sentence, this Section 4.2 shall not apply to the extent that the losses, claims, demands, actions, causes of action, damages, liabilities or expenses relate to any taxes (including withholding taxes and other taxes) for which there may be an indemnification, reimbursement or other payment obligation imposed on the Company pursuant to any other provision of this Agreement. No party hereto or any Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Operative Documents or the transactions contemplated hereby or thereby.

The Company agrees to indemnify Buyer against any loss incurred by Buyer as a result of any judgment or order being given or made for any amount due hereunder and such judgment or order being expressed and paid in a currency (the "**Judgment Currency**") other than United States dollars and as a result of any variation as between (i) the rate of exchange at which the United States dollar amount is converted into the Judgment Currency for the purpose of such judgment or order, and (ii) the rate of exchange at which Buyer is able to purchase United States dollars with the amount of the Judgment Currency actually received by Buyer. The foregoing indemnity shall constitute a separate and independent obligation of the Company and shall continue in full force and effect notwithstanding any such judgment or order as aforesaid. The term "rate of exchange" shall include any customary premiums and costs of exchange payable in connection with the purchase of, or conversion into, the relevant currency.

4.3 Capital Adequacy. If the Buyer determines in good faith that compliance with any law or regulation or with any guideline or request (excluding any published as of the date hereof

or currently scheduled to take effect) from any central bank or other governmental agency (whether or not having the force of law), in each case adopted or effective after the date hereof has or would have the effect of reducing the rate of return on the capital of such Buyer or any corporation controlling such Buyer as a consequence of, or with reference to, such Buyer's commitment under the Repo Agreement or its purchase of the Class A Preferred Shares thereunder, below the rate which such Buyer or such other corporation could have achieved but for such compliance (taking into account the policies of such Buyer or corporation with regard to capital), then the Company shall from time to time, upon demand by such Buyer, immediately pay to such Buyer additional amounts sufficient to compensate such Buyer or other corporation for such reduction. A certificate as to such amounts, setting forth in reasonable detail the basis for such calculations, submitted to the Company by such Buyer, shall be conclusive and binding for all purposes, absent manifest error. The Buyer agrees promptly to notify the Company of any circumstances that would cause the Company to pay additional amounts pursuant to this Section 4.3. For the purposes of this Section 4.3, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been adopted or effective after the date hereof, regardless of the date enacted, adopted, effective or issued.

4.4 Increased Costs. (a) If, after the date hereof, by reason of (i) the adoption of any law by any governmental agency, central bank or comparable authority with respect to activities in the Eurocurrency market, or (ii) any change in the interpretation or administration of any existing law by any governmental agency, central bank or comparable authority charged with the interpretation or administration thereof, or (iii) compliance by the Buyer with any request or directive (whether or not having the force of law) of any such governmental agency, central bank or comparable authority, or (iv) the existence or occurrence of circumstances affecting the Eurocurrency market generally that are beyond the reasonable control of the Buyer:

(A) any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System), special deposit, compulsory loan, insurance charge or similar requirements shall be imposed, modified or deemed applicable against assets of, deposits with or for the account of, or credit extended by, such Buyer; or

(B) such Buyer shall have imposed on it by any regulatory body any other condition, cost or expense affecting its purchase of the Class A Preferred Shares or its commitment under the Repo Agreement, or any of the same shall otherwise be adversely affected;

and the result of any of the foregoing, as determined by such Buyer, increases the cost to such Buyer of its purchase and holding of the Class A Preferred Shares or its commitment under the Repo Agreement or reduces the amount of any sum received or receivable by such Buyer with respect of its purchase and holding of the Class A Preferred Shares or its commitment under the Repo Agreement, then, upon demand by such Buyer, the Company shall pay to such Buyer such additional amount or amounts as will compensate such Buyer for such increased cost or reduction; provided, however, that this Section 4.4 shall not apply to taxes indemnified pursuant to paragraph 14(c) of Annex I of the Repo Agreement and the imposition of, or any change in the

rate of, any income or franchise taxes imposed on (or measured by) Buyer's net income or net profits by the United States of America or by the jurisdiction (or any political subdivision of any such jurisdiction) under the laws of which Buyer is organized, in which Buyer's principal office (or other fixed place of business) is located or in which Buyer is otherwise engaged in a trade or business as a result of transactions unrelated to the Transactions (as defined in the Repo Agreement). A statement of any Buyer claiming compensation under this subsection and setting forth the additional amount or amounts to be paid to it hereunder shall be conclusive in the absence of manifest error. Such Buyer agree to endeavor promptly to notify the Company of any event of which it has actual knowledge (and, in any event, within 90 days from the date on which it obtained such knowledge), occurring after the date hereof, which will entitle such Buyer to compensation pursuant to this Section 4.4, and agrees to designate a different funding office if such designation will avoid the need for or reduce the amount of such compensation and will not, in the judgment of such Buyer, otherwise be disadvantageous to such Buyer. For the purposes of this Section 4.4, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to have been adopted or changed after the date hereof, regardless of the date adopted or changed.

(b) Anything in this Agreement to the contrary notwithstanding, to the extent any notice under Section 4.3 or this Section 4.4 is given by such Buyer more than 180 days after such Buyer has knowledge (or should have had knowledge) of the occurrence of the event or of the amount of such claim giving rise to the additional cost, reduction in amounts, loss, tax or other additional amounts described in such Section 4.3 or 4.4, such Buyer shall not be entitled to compensation under such Section for any such amounts incurred or accruing prior to the giving of such notice (except that, if such event giving rise to the cost, reduction in amounts, loss, tax or other amounts described in such Section is retroactive, then the 180 day period referred to above shall be extended to include the period of retroactive effective thereof).

4.5 Assignment or Repurchase Upon Claim For Indemnification Etc. In the event that the Buyer shall (i) request indemnification for any costs under Section 4.3 or 4.4 hereof or paragraph 14(c) of Annex I of the Repo Agreement, and such costs would continue to accrue while the Buyer retains its interest under the Repo Agreement; or (ii) an "Event of Default" (as defined in the Repo Agreement) pertaining to the Buyer described in paragraph 11 of the Repo Agreement shall have occurred and be continuing; or (iii) the Buyer's having withheld its agreement to a waiver or amendment of any Operative Document, the Certificate of Designations or the Bye Laws if such waiver or amendment shall have been consented to by the holder of a majority of the Class A Preferred Shares under their respective Operative Documents, the Certificate of Designations or the Bye Laws then, in each case (a) the Seller may designate an Accelerated Repurchase Date (as defined in the Repo Agreement) in respect of the Purchased Securities under the Repo Agreement without providing for the repurchase of any other Class A Preferred Shares or (b) the Buyer will, upon the request of the Seller, transfer all its right, title and interest in and to the Operative Documents, the Certificate of Designations, the Bye Laws and the Purchased Securities to such person as the Seller shall designate, at a price not less than the price that would be payable upon an acceleration of repurchase date pursuant to the

confirmation comprised in the Repo Agreement, provided that (x) such assignment will neither give rise to unindemnified costs to the Buyer nor require burdensome actions on the part of the Buyer or its Affiliates in order to comply with applicable law; and (y) such assignment shall be on the terms referred to in clauses (a) and (b) of clause (ii) of the definition of "Valuation Process" in Section 2 of Annex I of the Repo Agreement. In the event that the Seller shall have exercised its rights pursuant to clause (a) of the first sentence of the section corresponding to this Section 4.5 of the ancillary agreement of another holder of Class A Preferred Shares and shall propose to cause the purchase of such Class A Preferred Shares by another person, or shall exercise its rights pursuant to clause (b) of the first sentence of such section, the Seller shall first offer to cause the sale of such shares to all then-current holders of Class A Preferred Shares at a price equal to the price that would be payable upon an acceleration of repurchase date pursuant to the confirmation comprised in the Repo Agreement, subject to provisos (x) and (y) stated above. If the holders of Class A Preferred Shares elect not to purchase all such Purchased Securities, Seller may offer to cause the sale of any such shares not sold to a holder of Class A Preferred Shares to any financial institution on the list separately agreed. The Company shall not sell or cause to be sold to any person not described in the two next previous sentences any shares with respect to which it shall have exercised its rights pursuant to the section corresponding to this Section 4.5 of the ancillary agreement of another holder of Class A Preferred Shares. The Company shall not transfer any shares repurchased by it pursuant to the section corresponding to this Section 4.5 of the ancillary agreement of another holder of Class A Preferred Shares to any person who is or would become an Unaffiliated Holder unless the transferee shall have entered into a repurchase agreement and voting agreement in form and substance satisfactory to the Buyer; *provided*, that a repurchase agreement in the form of the Repo Agreement and a voting agreement in the form of the voting agreement attached as Exhibit VI to the Repo Agreement shall be deemed to be satisfactory to the Buyer.

4.6 Annual Audit. The Buyer agrees to: (i) vote in favor of the waiver of the annual audit of Newco's financial statements; and (ii) direct each director who was appointed by it or who acts on its behalf as a nominee of the Class A Preferred Shareholders to vote in favor of the waiver of the annual audit of Newco's financial statements.

4.7 Amendments; Restructuring. (a) No amendment or waiver of any provision of this Agreement, and no consent to any departure by the Company herefrom, shall in any event be effective unless the same shall be in writing and signed by each Applicable Person and the Company. No such waiver of a provision or consent to a departure in any one instance shall be construed as a further or continuing waiver of or consent to subsequent occurrences, or a waiver of any other provision or consent to any other departure.

(b) In the event that, as a result of a change in or in the interpretation of applicable law, regulation or accounting practice, the benefits or protections intended to be afforded to either the Company or Buyer or their respective Affiliates under the Operative Documents, the Certificate of Designations or the Bye Laws shall be materially impaired, the party that shall suffer such impairment may by notice to the other party request that such other party, at the expense of the requesting party, amend the Operative Documents, the Certificate of Designations or the Bye Laws in order to mitigate such impairment. The party to which such notice is given shall use reasonable commercial efforts to cooperate in effecting such amendment; provided, however, that such party shall have no obligation to enter into any such

amendment that would entail, in its sole determination, any increase in the costs or risks or reduction in the benefits accruing to it from the transactions governed by the Operative Documents, the Certificate of Designations or the Bye Laws unless it shall have been indemnified to its satisfaction with respect to such increase or reduction.

4.8 Addresses for Notices. Any notice or communication required or permitted to be given by any provision of this Agreement shall be in writing or by facsimile and shall be deemed to have been delivered, given, and received for all purposes (a) if delivered personally to the Person or to an officer of the Person to whom the same is directed, or (b) when the same is actually received (if during the recipient's normal business hours if during a Business Day, or, if not, on the next succeeding Business Day), if sent by facsimile (followed by a hard copy of the same communication sent by certified mail, postage and charges prepaid), or by courier or delivery service or by mail, addressed as follows, or to such other address as such Person may from time to time specify by notice, if to the Company, at its address at Amgen Inc. One Amgen Center Drive, MS-24-1-C, Thousand Oaks, CA 91320, Attention: Karen Turner, Director, Treasury, Facsimile No.: +#.###.###.####, and if to any Applicable Person, at its address specified in the Repo Agreement or to such other address (and with copies to such other Persons) as the Person entitled to receive notice hereunder shall specify by notice given in the manner provided herein to the other Persons entitled to receive notice hereunder.

4.9 No Waiver; Cumulative Remedies. No failure on the part of the Buyer to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

4.10 Consent to Jurisdiction; Waiver of Venue Objection; Service of Process. THE COMPANY HEREBY IRREVOCABLY SUBMITS TO AND ACCEPTS THE EXCLUSIVE JURISDICTION OF ANY FEDERAL COURT LOCATED IN THE CITY OF NEW YORK OR THE COURTS OF THE STATE OF NEW YORK, IN EACH CASE, LOCATED IN THE BOROUGH OF MANHATTAN OF THE CITY OF NEW YORK, AND THE COMPANY HEREBY IRREVOCABLY AGREES THAT ANY ACTION OR PROCEEDING AGAINST IT OR AGAINST ITS PROPERTY ARISING OUT OF OR RELATING TO THIS AGREEMENT (AN "**ACTION**") MAY BE HEARD AND DETERMINED IN SUCH FEDERAL OR STATE COURT. THE COMPANY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT THAT IT MAY EFFECTIVELY DO SO, ANY DEFENSE OR OBJECTION (INCLUDING, WITHOUT LIMITATION, ANY DEFENSE OR OBJECTION TO VENUE BASED ON THE GROUNDS OF FORUM NON CONVENIENS) WHICH IT MAY NOW OR HEREAFTER HAVE TO THE MAINTENANCE OF ANY ACTION IN ANY SUCH JURISDICTION. THE COMPANY HEREBY IRREVOCABLY AGREES THAT THE SUMMONS AND COMPLAINT OR ANY OTHER PROCESS IN ANY ACTION IN ANY JURISDICTION MAY BE SERVED BY MAILING (USING CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID) TO THE NOTICE ADDRESS FOR IT SET FORTH HEREIN OR BY HAND DELIVERY TO A PERSON OF SUITABLE AGE AND DISCRETION AT SUCH ADDRESS. THE COMPANY MAY ALSO BE SERVED IN ANY OTHER MANNER PERMITTED BY LAW, IN WHICH EVENT ITS TIME TO RESPOND SHALL BE THE TIME PROVIDED BY LAW.

4.11 Waiver of Jury Trial. THE COMPANY HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY.

4.12 Assignment. All covenants and other agreements and obligations in this Agreement shall (a) be binding upon the Company and their successors, but the Company may not assign its obligations hereunder without the consent of the Applicable Persons and (b) inure to the exclusive benefit of, and be enforceable by, each Applicable Person and its successors and assigns.

4.13 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

4.14 Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. This Agreement may be delivered by facsimile transmission of the relevant signature pages hereof.

4.15 Severability. Every provision of this Agreement that is prohibited by or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

4.16 No Third-Party Beneficiaries. This Agreement is intended for the exclusive benefit of the Buyer and its successors and assigns and no other Person shall have any rights hereunder, whether as a third-party beneficiary or otherwise.

4.17 Waiver of Immunities. To the extent that the Company, Newco or Newco Sub has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding from jurisdiction of any court or from set off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under this Agreement or relating in any way to this Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed and delivered by their respective officers or other duly authorized signatories thereunto duly authorized as of the date first above written.

AMGEN INC.

By: _____

Name: Jonathan M. Peacock
Title: Executive Vice President and Chief Financial Officer

Date:

BANK OF AMERICA, N.A.

By: _____

Name:
Title:

[*Signature Page to Ancillary Agreement*]

EXHIBIT A TO
ANCILLARY AGREEMENT

Definitions

"**Action**" has the meaning set forth in Section 4.10 of this Agreement.

"**Affiliate**" means, with respect to any Person, another Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person (other than as a result of, or by virtue of, the effect of Special Voting Rights or other weighted voting rights under or pursuant to the Certificate of Designations), whether through the ability to exercise voting power, by contract or otherwise. "controlling" and "controlled" have meanings correlative thereto. Without limiting the generality of the foregoing, a Person shall be deemed to be controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Applicable Person**" means at any time prior to the Repo Transaction Termination Date, the Buyer and any transferee of the Buyer's rights under the Repo Agreement or of the Class A Preferred Shares held by the Buyer or any interest of the Buyer therein.

"**Buyer**" has the meaning ascribed to such term in the Repo Agreement (including each Repo Agreement that may result from the partial assignment or novation of a predecessor Repo Agreement).

"**Bye Laws**" means the memorandum of association of Newco subscribed on June 14, 2013, as altered from time to time and the Bye-laws of Newco, adopted on [—], 2013, each as amended, amended and restated, supplemented or otherwise modified from time to time.

"**Certificate of Authorized Persons**" has the meaning set forth in Section 3.14 of this Agreement.

"**Certificate of Designations**" means that certain Certificate of Designations of Preferences, Limitations, and Relative Rights of Class A Preferred Shares of ATL Holdings Limited, dated [—].

"**Class A Preferred Shares**" means the Class A Preferred Shares with a par value of USD 0.01613 each in the capital of Newco having the rights and preferences set forth in the Certificate of Designations.

"**Closing Date**" means each "Purchase Date" (as defined in the Repo Agreement).

"**Company**" has the meaning set forth in the preamble to this Agreement.

"**Equity Interests**" means, with respect to any Person, shares of capital, shares of (or other ownership or profit interests in) such Person, warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"**Generally Accepted Accounting Principles**" means generally accepted accounting principles in the United States of America. The term "**Generally Accepted Accounting Principles**" shall be read in each instance as if the words "**consistently applied**" followed immediately thereafter, meaning that the accounting principles applied are consistent in all material respects (except for changes concurred in by the Company's independent public accountants) to those applied at prior dates or for prior periods.

"**Indemnitees**" has the meaning set forth in Section 4.2 of this Agreement.

"**Indemnity Documents**" means any agreement or other arrangement pursuant to which Company agrees to pay or pays legal fees, accounting fees and other out-of-pocket costs and expenses incurred in connection with the closing of the Repo Agreement (and all other agreements executed and delivered in connection therewith) and the consummation of the transactions contemplated thereunder.

"**IRS**" has the meaning set forth in Section 3.4 of this Agreement.

"**Judgment Currency**" has the meaning set forth in Section 4.2 of this Agreement.

"**Liabilities**" means any and all debts, liabilities and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured or determined or determinable, including those arising under any law, action or governmental order and those arising under any contract, agreement, arrangement, commitment or undertaking.

"**Newco**" means ATL Holdings Limited, a Bermuda exempted company limited by shares.

"**Newco Sub**" means ATL Holdings II Limited, a Bermuda exempted company limited by shares.

"**Operative Documents**" means (a) this Agreement, (b) the Repo Agreement and (c) any Indemnity Documents.

"**Organizational Documents**" means (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate, articles of formation or organization and operating agreement or memorandum of

association and bye-laws; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable governmental authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

"**Purchased Securities**" has the meaning given it in the Repo Agreement.

"**Relevant Party**" has the meaning set forth in Section 2.1 of this Agreement.

"**Relevant Subsidiaries**" means, collectively, each of the Company's Subsidiaries other than Newco and Newco Sub.

"**Repo Agreement**" means that certain Master Repurchase Agreement (including Annex I thereto), dated as of August 24, 2013, and each confirmation related thereto, in each case, between the Company and Bank of America, N.A., as any of the foregoing may be assigned, in whole or in part, amended or otherwise modified from time to time, in each case in accordance with their terms.

"**Repo Transaction Termination Date**" means the later of (i) the expiration of the Availability Period (as defined in the Repo Agreement) and (ii) the final Liquidation Period End Date (as defined in the Repo Agreement) with respect to all Transactions (as defined in the Repo Agreement) outstanding under the Repo Agreement.

"**SEC**" means the Securities and Exchange Commission, or any governmental authority succeeding to any of its principal functions.

"**Subsidiary**" of any Person means any corporation, company, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or persons performing similar functions) of such corporation (irrespective of whether at the time Equity Interests of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"**Transaction**" has the meaning assigned to such term in the Repo Agreement.

"**United States**" and "**U.S.**" mean the United States of America.

CERTIFICATE OF DESIGNATIONS OF PREFERENCES, LIMITATIONS AND RELATIVE RIGHTS OF CLASS A PREFERRED SHARES OF ATL HOLDINGS LIMITED

Pursuant to the Bye-laws of the Company and the Written Resolutions of the Board of Directors Dated [—], 2013

The Class A Preferred Shares shall have the powers, designations, preferences, and relative, participating, optional or other rights, and the qualifications, limitations and restrictions (in addition to the powers, designations, preferences, and relative, participating, optional or other rights, and the qualifications, limitations, and restrictions, set forth in the Bye-laws which are applicable to preferred shares) set forth in this Certificate. Capitalized terms used herein and not otherwise defined herein have the meanings ascribed thereto in the Bye-laws.

ARTICLE 1

DESIGNATION AND RANK

1.1. Designation. This Certificate relates to the creation of a single class of preferred shares designated as "Class A Preferred Shares." The par value of the Class A Preferred Shares shall be U.S.$ 0.01613 per share, the issue price shall be U.S. $100,000 per share and the number of authorized shares constituting the Class A Preferred Shares shall be 34,097. Subject to the requirements of Section 5.4, and pursuant to the Bye-laws, the Company may, from time to time, issue additional Class A Preferred Shares subsequent to the Designation Date (as defined below).

1.2. Rank. The Class A Preferred Shares with respect to the payment of dividends and other distributions in respect of shares in the capital of the Company, including the distribution of the assets of the Company upon liquidation, dissolution or winding up, if any, at any time the Class A Preferred Shares are issued and outstanding, shall be:

- senior to the Common Shares (other than with respect to the payment of Additional Participation Amount and Additional Liquidation Amount, as provided herein);
- senior to all other classes of preferred shares;
- on a parity with all of the Class A Preferred Shares issued by the Company whether on or after the Designation Date; and
- notwithstanding anything herein to the contrary, junior to the claims of creditors, if any, of the Company (including in respect of any contingent or unliquidated liabilities or obligations) in the order of priority provided by law.

1.3. Security. Each Class A Preferred Share shall be a medium for investment and shall be a "security" governed by Article 8 of the New York Uniform Commercial Code.

ARTICLE 2

DEFINITIONS

As used herein:

(a) "Act" means the Companies Act 1981 of Bermuda.

(b) "Actual Knowledge" means the actual knowledge of any Senior Officer of Parent.

(c) "Additional Liquidation Amount" means, in connection with any liquidation, dissolution or winding up of the affairs of the Company or any redemption of the Class A Preferred Shares and as of the date on which any such event shall be consummated or become effective (the "Relevant Date"), the amount per Class A Preferred Share calculated in accordance with the formula set forth in Exhibit A hereto; *provided*, that such Additional Liquidation Amount shall never be less than zero.

(d) "Additional Participation Amount" means, with respect to any declaration by the Company of dividends on the Common Shares (in accordance with the terms of this Certificate), the amount per Class A Preferred Share calculated in accordance with the formula set forth in Exhibit B hereto; *provided*, that such Additional Participation Amount shall never be less than zero.

(e) "Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, will mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person (other than as a result of, or by virtue of, the effect of Special Voting Rights (as defined in Section 5.3) or requirement for a class consent pursuant to Section 5.4), whether through the ownership of voting securities, by agreement or otherwise.

(f) "Aggregate Issue Proceeds" has the meaning specified in Section 7.1.

(g) "Aggregate Redemption Amount" has the meaning specified in Section 7.1.

(h) "Ancillary Agreement" means that certain Ancillary Agreement, dated as of [—], 2013, by Parent in favor of the Buyer, as such agreement may be assigned, in whole or in part, amended, supplemented, restated or otherwise modified from time to time in accordance with its terms.

(i) "Bankruptcy Action" means any of the following: (i) commencing any case, proceeding or other action on behalf of or against the Company, or otherwise seeking any relief for the Company, under any existing or future law of any jurisdiction relating to bankruptcy, insolvency, reorganization or relief from debts or the protection of debtors generally; (ii) consenting to or commencing the institution of bankruptcy, winding-up, liquidation or insolvency proceedings by, on behalf of or against the Company (whether voluntary or involuntary and whether solvent or insolvent); (iii) filing a petition or consenting to a petition seeking reorganization, arrangement, adjustment, winding-up, liquidation, composition, or other relief on behalf of or against the Company of its debts under any applicable law of any jurisdiction relating to bankruptcy, insolvency, liquidation, reorganization or relief from debts or the protection of debtors generally; (iv) seeking or consenting to the appointment of a receiver, liquidator, assignee, trustee, sequestrator, custodian or any similar official for the Company or a substantial portion of its assets; or (v) taking any corporate action (including, without limitation, the adoption of a Resolution to liquidate or wind up the Company voluntarily, whether solvent or insolvent) in furtherance of any of the foregoing.

(j) "Board" means the board of directors of the Company.

(k) "Business Day" means a day other than (i) a Saturday or Sunday or (ii) a day on which banks in New York, London or Bermuda are authorized or required by law or executive order to, or customarily, remain closed.

(l) "Buyer" has the meaning specified in the Repo Agreement.

(m) "Bye-laws" means the Bye-laws of the Company, as the same may be amended and restated from time to time.

(n) "Capital Lease" means, as to any Person, a lease of any property by that Person as lessee that is or should be recorded as a "capital lease" on the balance sheet of that Person prepared in accordance with generally accepted accounting principles.

(o) "Certificate" means this Certificate of Designations of Preferences, Limitations, and Relative Rights of Class A Preferred Shares of the Company.

(p) "Change of Control" means, with respect to Parent, (i) any Person or two or more Persons acting in concert shall acquire beneficial ownership (within the meaning of Rule 13d-3 of the Securities and Exchange

Commission under the Securities Exchange Act of 1934) directly or indirectly, of securities of the Parent (or other securities convertible into such securities) representing 30% or more of the combined voting power of all securities of Parent entitled to vote in the election of directors, other than securities having such power only by reason of the happening of a contingency; or (ii) during any period of up to 12 consecutive months, commencing before or after the date of this Certificate, individuals who at the beginning of such 12-month period were directors of Parent, or whose nomination for election to the Board of Directors of Parent was recommended or approved by a vote of at least a majority of the directors then still in office who were directors of Parent on the first day of such period, shall cease for any reason to constitute a majority of the Board of Directors of Parent; or (iii) any Person or two or more Persons acting in concert shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement which upon consummation will result in its or their acquisition of, control over securities of Parent (or other securities convertible into such securities) representing 30% or more of the combined voting power of all securities of Parent entitled to vote in the election of directors, other than securities having such power only by reason of the happening of a contingency; *provided*, however, that there shall not be an Change of Control pursuant to subsections (i) or (iii) above in respect of any Person or group of Persons acting in concert met the requirements set forth in said subsections (i) or (iii) on the date hereof.

(q) "Class A Amount" has the meaning specified in Section 4.1.

(r) "Class A/Common Conversion Rate" means the number of Common Shares into which each Class A Preferred Share shall be converted pursuant to Section 7.1, which number shall be calculated in accordance with the formula set forth in Exhibit C hereto.

(s) "Class A Conversion Percentage" means a fraction (expressed as a percentage) the numerator of which is the number of Class A Preferred Shares to be surrendered for conversion pursuant to Section 7.1 and the denominator of which is the total number of Class A Preferred Shares issued and outstanding immediately prior to such conversion.

(t) "Class A Percentage" means 7.2%, as such percentage may be appropriately adjusted, as reasonably determined by the Board (in the event of redemptions, repurchases, conversions or new issuances of shares of the Company, in each case, following the Repo Date) in order to preserve full participation of the Class A Preferred Shares in the equity of the Company (*provided* that (i) no such adjustment, if such adjustment reduces the participation percentage, shall be effective unless and until communicated to the holders of the Class A Preferred Shares by written notice setting forth in reasonable detail the calculations underlying such adjustment and (ii) no such adjustment, if such adjustment increases the

participation percentage, shall be effective unless and until communicated to the holders of the Common Shares by written notice setting forth in reasonable detail the calculations underlying such adjustment).

(u) "Code" means the U.S. Internal Revenue Code of 1986, as amended from time to time and the regulations promulgated thereunder.

(v) "Company" means ATL Holdings Limited, a Bermuda exempted company limited by shares incorporated under the laws of Bermuda on June 14, 2013.

(w) "Consolidated Interest Charges" means, for any period, for the Parent and its Subsidiaries on a consolidated basis, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses of the Parent and its Subsidiaries in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with generally accepted accounting principles, and (b) the portion of rent expense of the Parent and its Subsidiaries with respect to such period under Capital Leases that is treated as interest in accordance with generally accepted accounting principles.

(x) "Consolidated Net Income" means, for any period, for the Parent and its Subsidiaries on a consolidated basis and in accordance with generally accepted accounting principles, the net income of the Parent and its Subsidiaries (excluding extraordinary gains and extraordinary losses) for that period.

(y) "Credit Standard" means, with respect to any date of determination, that the ratio of (i) EBITDA for the four prior fiscal quarters ending on or prior to such date, to (ii) Consolidated Interest Charges for such period, shall be greater than 2.00.

(z) "Cumulative Dividend Rate" has the meaning specified in Section 3.2.

(aa) "Cure Date" has the meaning specified in Section 5.3.

(bb) "Cure Period" means (a) if the relevant breach is not capable of being cured or, notwithstanding any cure, would reasonably be expected to have a continuing adverse effect (other than an immaterial adverse effect) on the Unaffiliated Holders or the rights of the Repo Counterparty under the Repo Agreement, zero or (b) in all other cases, 30 calendar days following the earlier of (i) receipt by Parent of written notice thereof or (ii) Parent attaining Actual Knowledge of such breach.

(cc) "Custodian" means any commercial bank or other financial institution at all times (i) that functions in a custodial capacity for third parties; (ii) that maintains custody of assets on behalf of third parties in excess of U.S.

$500 billion; (iii) the long-term U.S. dollar denominated debt obligations of which are rated at least A- by Standard & Poor's and A3 by Moody's and the short-term U.S. dollar denominated debt obligations of which are rated at least A-1 by Standard & Poor's and P-1 by Moody's (*provided* that, if such Person's long-term and short-term U.S. dollar denominated debt obligations are not rated by Standard & Poor's and Moody's, such Person will nonetheless be deemed to meet the criteria set forth in this clause (iii) if the long-term and short-term U.S. dollar-denominated debt obligations of any parent of such Person have such respective ratings and such parent shall have issued an irrevocable and unconditional guarantee of the obligations of such Person under the IM Custody Agreement); (iv) the ultimate parent of which is a Person organized under the laws of the United States, any state thereof or the District of Columbia, the United Kingdom or France and (v) that is not an Affiliate of the Company or Parent, which Custodian shall initially be The Bank of New York Trust Company (Cayman) Limited or any of its successors and shall remain such Person or any of its successors, as the case may be, if and for so long as such Person or any of its successors, as the case may be, meets the criteria set forth in clauses (i) through (v) above or until replaced by another commercial bank or other financial institution meeting such criteria.

(dd) "Daily Stated Dividend Amount" has the meaning specified in Section 3.2.

(ee) "Debtor Relief Laws" means the Bankruptcy Code of the United States of America, as amended from time to time, and all other applicable liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws from time to time in effect affecting the rights of creditors generally.

(ff) "Designation Date" means the first date upon which the Buyer, or an Affiliate of the Buyer, becomes a registered holder of any Class A Preferred Shares.

(gg) "Determination Date" means, with respect to a Stated Dividend Period, the second London Banking Day preceding the first day of the five calendar day period preceding the first day of such Stated Dividend Period.

(hh) "Dividend Event" has the meaning specified in Section 5.3.

(ii) "Dividend Payment Date" has the meaning specified in Section 3.1.

(jj) "EBITDA" means, for any period, for the Parent and its Subsidiaries on a consolidated basis, an amount equal to (a) Consolidated Net Income for such period *plus* (b) the following to the extent deducted in calculating such Consolidated Net Income and without duplication: (i) Consolidated Interest Charges for such period; (ii) the provision for Federal, state, local

and foreign income taxes payable (current and deferred) by the Parent and its Subsidiaries for such period; (iii) depreciation and amortization expense for such period; (iv) non-cash share-based compensation expense for such period; (v) impairment charges, losses on sales of assets and acquired in-process research and development charges for such period, to the extent each is non-cash and non-recurring; (vi) non-recurring transaction costs incurred in connection with acquisitions and divestures; and (vii) other nonrecurring expenses of the Parent and its Subsidiaries reducing such Consolidated Net Income which do not represent a cash item in such period or any future period and *minus* (c) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax benefit (current and deferred) of the Parent and its Subsidiaries for such period; (ii) non-cash gains on sales of assets for such period; and (iii) all non-cash items increasing Consolidated Net Income for such period.

(kk) "Employee Benefit Plan" means any "employee benefit plan" as defined in section 3(3) of ERISA which is, or was at any time, maintained or contributed to by Parent or with respect to any such plan that is subject to section 302 of ERISA or Title IV of ERISA or section 412 of the Code, any of its ERISA Affiliates.

(ll) "ERISA" means the U.S. Employee Retirement Income Security Act of 1974, as amended.

(mm) "ERISA Affiliate" as applied to any Person, means (i) any corporation which is, or was at any time, a member of a controlled group of corporations within the meaning of section 414(b) of the Code of which that Person is, or was at any time, a member; (ii) any trade or business (whether or not incorporated) which is, or was at any time, a member of a group of trades or businesses under common control within the meaning of section 414(c) of the Code of which that Person is, or was at any time, a member; and (iii) any member of an affiliated service group within the meaning of section 414(m) or (o) of the Code of which that Person, any corporation described in clause (i) above or any trade or business described in clause (ii) above is, or was at any time, a member.

(nn) "ERISA Event" means (i) a "reportable event" within the meaning of section 4043 of ERISA and the regulations issued thereunder with respect to any Pension Plan (excluding those for which the provision for thirty day notice to the PBGC, or the penalty for failure to provide such notice, has been waived by regulation or by PBGC technical update); (ii) the failure to meet the minimum funding standard of sections 412 and 430 of the Code with respect to any Pension Plan (whether or not waived in accordance with section 412(c) of the Code) or the failure to make by its due date a required installment under section 430(j) of the Code with respect to any Pension Plan or the failure to make any required contribution to a

Multiemployer Plan; (iii) the provision by the administrator of any Pension Plan pursuant to section 4041(a)(2) of ERISA of a notice of intent to terminate such plan; (iv) the withdrawal by the Parent or any of its ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability therefor pursuant to sections 4063 or 4064 of ERISA; (v) the institution by the PBGC of proceedings to terminate under section 4042 of ERISA any Pension Plan, or the occurrence of any event or condition which might constitute grounds under section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (vi) the imposition of liability on the Parent or any of its ERISA Affiliates pursuant to section 4062(e) or 4069 of ERISA or by reason of the application of section 4212(c) of ERISA; (vii) the withdrawal by the Parent or any of its ERISA Affiliates in a complete or partial withdrawal (within the meaning of sections 4203 and 4205 of ERISA) from any Multiemployer Plan if there is any potential liability therefor, or the receipt by the Parent or any of its ERISA Affiliates of notice from any Multiemployer Plan that it is in reorganization or insolvency pursuant to section 4241 or 4245 of ERISA, or that it intends to terminate or has terminated under section 4041A or 4042 of ERISA; (viii) the imposition on the Parent or any of its ERISA Affiliates of fines, penalties, taxes or related charges under chapter 43 of the Code or under section 409 or 502(c), (i) or (l) or 4071 of ERISA in respect of any Pension Plan; (ix) the assertion of a material claim (other than routine claims for benefits) against any Pension Plan or the assets thereof, or against the Parent or any of its ERISA Affiliates in connection with any such Employee Benefit Plan; (x) receipt from the Internal Revenue Service of notice of the failure of any Pension Plan (or any other Employee Benefit Plan intended to be qualified under section 401(a) of the Code) to qualify under section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan to qualify for exemption from taxation under section 501(a) of the Code; (xi) the conditions for imposition of a Lien under section 303(k) of ERISA shall have been met with respect to any Pension Plan or (xii) a determination under section 303(k) of ERISA shall have been met with respect to any Pension Plan.

(oo) "Exchanged Common Shares" has the meaning specified in Section 7.1.

(pp) "Free Cash" means cash and cash equivalents (A) representing proceeds made available to the Company solely as a result of (i) the payment of dividends or other distributions on the Newco Sub Interests or (ii) the proceeds of any issuance of Common Shares or any contribution to the common equity capital of the Company, or (B) credited to, or held in, the Free Cash Account.

(qq) "Free Cash Account" means a custody account established in the name of the Company with the Custodian pursuant to the Free Cash Custody Agreement.

(rr) "Free Cash Custody Agreement" means that certain global custody agreement, dated as of July 5, 2013, between the Company and the Custodian in respect of the holding and management of Free Cash (as such agreement may be amended, supplemented, restated or otherwise modified or replaced from time to time in accordance with its terms, the Bye-laws or pursuant to the terms hereof).

(ss) "Free Cash Investment Management Agreement" means that certain investment management agreement, dated as of July 5, 2013, between the Company and the Investment Manager, in respect of the holding and management of Free Cash (as such agreement may be amended, modified or replaced in accordance with the terms hereof).

(tt) "IM Custody Agreement" means that certain global custody agreement, dated as of 5 July, 2013, between the Company and the Custodian in respect of the holding and management of Permitted Investment Property (as such agreement may be amended, supplemented, restated or otherwise modified or replaced from time to time in accordance with its terms, the Bye-laws or pursuant to the terms hereof).

(uu) "Incipient Material Affiliate Event" means any event, act or condition which with notice or lapse of time, or both, would constitute a Material Affiliate Event.

(vv) "Indebtedness" means, as to any Person, (a) all indebtedness of such Person for borrowed money, (b) that portion of the obligations of such Person under Capital Leases which is properly recorded as a liability on a balance sheet of that Person prepared in accordance with generally accepted accounting principles, (c) to the extent of the outstanding Indebtedness thereunder, any obligation of such Person that is evidenced by a promissory note or other similar instrument representing an extension of credit to such Person, whether or not for borrowed money, (d) any obligation of such Person for the deferred purchase price of property or services (other than trade or other accounts payable in the ordinary course of business), (e) any obligation of such Person of the nature described in clauses (a), (b), (c) or (d) above that is secured by a Lien on assets of such Person, whether or not that Person has assumed such obligation or whether or not such obligation is non-recourse to the credit of such Person, but only to the extent of the lesser of the face amount of the obligation or the fair market value of the assets so subject to the Lien, (f) obligations of such Person arising under acceptance facilities or under facilities for the discount of accounts receivable of such Person, (g) any obligation of such Person to reimburse the issuer of any letter of credit issued for the account

of such Person upon which and only to the extent a draw has been made, (h) any guaranty or similar obligation of such Person with respect to an obligations of the nature described in clause (a), (b), (c), (d), (e), (f) or (g) above, and (i) in the case of Parent, the net obligations of the Parent under Swap Contracts. As of any date of determination, the amount of Parent's Indebtedness with respect to (1) Swap Contracts shall be equal to the net marked-to-market value (if negative) for Parent for all such Swap Contracts taken as a whole and (2) obligations under clause (d) shall be the stated balance sheet amount of such obligations, determined on a consolidated basis in accordance with generally accepted accounting principles of Parent and its consolidated subsidiaries on that date.

(ww) "Independent Director" means a member of the Board appointed in the manner specified under Section 5.7 who, at the time of such appointment and at all times while serving as a member of the Board, shall be an employee of a professional services firm located in Bermuda that is recognized internationally as a provider of directorial and corporate secretarial services to special purpose entities organized to facilitate financing transactions and who shall not have been, at the time of such appointment or at any time in the preceding five years, and who shall not be at any time while serving as a member of the Board, (i) a direct or indirect legal or beneficial owner in the Company or any of its affiliates (excluding de minimis ownership interests), (ii) a creditor, supplier, employee, officer, director, family member, manager, or contractor of the Company or its affiliates, (iii) a person who controls (whether directly, indirectly, or otherwise) such entity or its affiliates or any creditor, supplier, employee, officer, director, manager, or contractor of the Company or its affiliates or (iv) a member of the immediate family of any person identified in (i) above; *provided* that the foregoing clauses (ii) and (iii) shall not exclude an Independent Director provided by a corporate services company solely by reason of that company, in its ordinary course of business, having entered into arrangements with the Company or any of its affiliates to provide independent directors and provided, further, that Appleby Directors I (Bermuda) Ltd., while incumbent as a director of the Board, shall be deemed an "Independent Director".

(xx) "Investment Management Agreement" means that certain investment management agreement, dated as of 5 July, 2013, between the Company and the Investment Manager, in respect of the holding and management of Permitted Investment Property (as such agreement has been and may be further amended, supplemented, restated or otherwise modified or replaced from time to time in accordance with its terms, the Bye-laws or pursuant to the terms hereof).

(yy) "Investment Manager" means any entity (i) that has assets under management in excess of U.S. $100 billion (*provided*, however, that Goldman Sachs Asset Management International shall be deemed to

satisfy the requirements of this clause (i) if it shall have assets under management in excess of U.S. $50 billion), (ii) that is authorized and regulated as an investment advisor by the Financial Conduct Authority in the United Kingdom and (iii) which is a Person organized under the laws of England, France or Germany, which Investment Manager as of the date hereof is Goldman Sachs Asset Management International and shall remain such Person or any of its successors, as the case may be, if and for so long as such Person or any of its successors, as the case may be, meets the criteria set forth in this paragraph or until replaced by another commercial bank or other financial institution meeting such criteria.

(zz) "LIBOR" means, with respect to a Stated Dividend Period, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period beginning on the second London Banking Day after the Determination Date that appears on Reuters Screen LIBO Page as of 11:00 a.m., London time, on the Determination Date, or (if such Reuters Screen LIBO Page does not include such a rate or is unavailable on a Determination Date) the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period beginning on the second London Banking Day after the Determination Date that appears on Bloomberg Screen "BBAM1 <GO>" as of 11:00 a.m., London time, on the Determination Date. If Reuters Screen LIBO Page does not include such rate or is unavailable on the Determination Date, the rate (expressed as a percentage per annum) for deposits in U.S. dollars for a one-month period beginning on the second London Banking Day after the Determination Date as published by such other commercially available source as is mutually agreed upon by the parties as of 11:00 a.m., London time, on the Determination Date. If no such source that includes such rate is available on the Determination Date, the Investment Manager, as calculation agent, shall request the principal London office of each of four major banks in the London interbank market, as selected by the Investment Manager, to provide such bank's offered quotation (expressed as a percentage per annum), as of approximately 11:00 a.m., London time, on such Determination Date, to prime banks in the London interbank market for deposits in a Representative Amount in U.S. dollars for a one-month period beginning on the second London Banking Day after the Determination Date. If at least two such offered quotations are so provided, LIBOR for the Stated Dividend Period shall be the arithmetic mean of such quotations. If fewer than two such quotations are so provided, the Investment Manager shall request each of three major banks in New York City, as selected by the Investment Manager, to provide such bank's rate (expressed as a percentage per annum), as of approximately 11:00 a.m., New York City time, on such Determination Date, for loans in a Representative Amount in U.S. dollars to leading European banks for a one-month period beginning on the second London Banking Day after the Determination Date. If at least two such rates are so provided, LIBOR for the Stated Dividend Period shall be the arithmetic mean of such rates. If

fewer than two such rates are so provided, then LIBOR for the Stated Dividend Period shall be LIBOR in effect with respect to the immediately preceding Stated Dividend Period.

(aaa) "Lien" means any mortgage, charge, deed of trust, pledge, hypothecation, assignment for security, security interest, encumbrance, lien or charge of any kind, whether voluntarily incurred or arising by operation of law or otherwise, affecting any property, including any agreement to grant any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature thereof, any option or other agreement to sell or give a security interest and/or the filing of or agreement to give any financing statement (other than a precautionary financing statement with respect to a lease that is not in the nature of a security interest) under the Uniform Commercial Code (or equivalent statutes) of any jurisdiction with respect to any property.

(bbb) "Liquidation Preference" means U.S. $100,000 per Class A Preferred Share.

(ccc) "London Banking Day" is any day in which dealings in U.S. dollars are transacted or, with respect to any future date, are expected to be transacted in the London interbank market.

(ddd) "Material Adverse Effect" means a material adverse effect on the business, financial condition (taking into account any liabilities (contingent or otherwise)) or assets (including any Permitted Investment Property) of (x) the Company or (y) Parent and its Subsidiaries (taken as a whole).

(eee) "Material Affiliate Event" means the occurrence of any of the following events:

(i) the failure of any representation or warranty of Parent contained in any Ancillary Agreement to be true and correct at the time given in any material respect or, in the case of any representation or warranty contained in section 2.5, 2.10, 2.12(x), 2.15 or 2.16 of any Ancillary Agreement or that is already qualified by materiality, in any respect;

(ii) Parent shall fail to comply with any covenant or agreement contained in section 3.2(a), (b) or (d) or section 3.10 of any Ancillary Agreement, which failure, together with any other such failure that shall then be unremedied, relates to a monetary amount not in the aggregate in excess of U.S.$3,000,000, and such failure shall remain unremedied for thirty calendar days following the earlier of (x) receipt by Parent of written notice thereof or (y) Parent attaining Actual Knowledge of such failure;

(iii) Parent shall fail to comply with any covenant or agreement contained in section 3 of any Ancillary Agreement (other than section 3.3 or section 3.5 or, if the failure, together with any other such failure that shall then be unremedied, relates to a monetary amount not in the aggregate in excess of U.S.$3,000,000, section 3.2(a), (b) or (d) or section 3.10 of such Ancillary Agreement) and following any such failure the Cure Period shall have expired, except where such failure or failures, considered in the aggregate together with any remedial actions taken during the Cure Period, would not reasonably be expected to have a material adverse effect on the Unaffiliated Holders as a class or on the rights of the Repo Counterparty under the Repo Agreement;

(iv) Parent shall fail to comply in any material respect with any covenant or agreement contained in any Ancillary Agreement (other than any failure described in clause (ii) or clause (iii) above) and such failure shall remain unremedied for thirty calendar days following the earlier of (x) receipt by Parent of written notice thereof or (y) Parent attaining Actual Knowledge of such failure;

(v) Parent institutes or consents to any proceeding under a Debtor Relief Law relating to it or to all or any substantial part of its property, or is unable or admits in writing its inability to pay its debts as they mature, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any substantial part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of Parent and the appointment continues undischarged or unstayed for sixty calendar days; or any proceeding under a Debtor Relief Law relating to Parent or to all or any part of its property is instituted without the consent of that Person and continues undismissed or unstayed for sixty calendar days; or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of Parent and is not released, vacated or fully bonded within sixty calendar days after its issue or levy; or any order for relief shall be entered in respect of Parent;

(vi) Parent (A) fails to make any payment when due and, after the expiration of any stated grace or notice period (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness (other than Indebtedness under Swap Contracts, but including any Material Revolving Credit Facility) having an aggregate principal amount (including amounts owing to all creditors under any combined or syndicated

credit arrangement other than net settlement amounts due and payable thereunder and not paid) of more than the Threshold Amount with respect to such Indebtedness, or (B) fails to observe or perform any other material agreement or condition relating to any Indebtedness referenced in clause (A) above, or contained in any instrument or agreement evidencing, securing or relating to any of the foregoing, or any other event occurs, the effect of which default or other event is to cause such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or cash collateral to be provided, or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity;

(vii) Parent fails to make any payment when due (and remaining unpaid after the expiration of a thirty day period beginning on such due date) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness under any Material Revolving Credit Facility;

(viii) there is entered against Parent a final judgment or order for the payment of money in excess of the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage) and, absent procurement of a stay of execution, such judgment remains unstayed, unbonded or unsatisfied for sixty calendar days after the date of entry of judgment;

(ix) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Parent or an ERISA Affiliate under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or there shall exist an "amount of unfunded benefit liabilities" (as defined in section 4001(a)(18) of ERISA), individually or in the aggregate for all Pension Plans with respect to which Parent has any financial liability, including potential joint and several liability in the event any such Pension Plan were to terminate (excluding for purposes of such computation any Pension Plans with respect to which assets exceed benefit liabilities), which exceeds the Threshold Amount, if in either case such event could reasonably be expected to have a Material Adverse Effect or could reasonably be expected to affect materially the rights and remedies of the holders of the Class A Preferred Shares or the rights and remedies of the Repo Counterparty under the Repo Agreement;

(x) (a) there occurs any Change of Control with respect to Parent or (b) Parent ceases to own directly 100% of the Common Shares;

(xi) an "Event of Default" (as to any Buyer as defined in the Repo Agreement to which that Buyer is a party) is declared or deemed to be declared with respect to Parent;

(xii) Parent fails to cause the Company to comply with Section 5.4, 5.9 or 8.5 of this Certificate or Bye-law 22.14 of the Bye-laws; and/or

(xiii) The Company terminates the Investment Management Agreement or IM Custody Agreement (other than (x) to the extent required under section 3.7 or 3.8 of any Ancillary Agreement or (y) in connection with the appointment of a different Investment Manager or Custodian and the entry into a new Investment Management Agreement or IM Custody Agreement that satisfies the criteria set out in such section 3.7 or 3.8, as the case may be, but only (in the case described in clause (y)) if such appointment has been approved by the Unaffiliated Holders, voting or consenting separately as a class) or appoints an investment manager or custodian that does not meet the criteria set out, respectively, in the definitions of "Investment Manager" or "Custodian".

(fff) "Material Revolving Credit Facility" means (i) that certain Credit Agreement, dated as of December 21, 2011, among the Parent, certain borrowing subsidiaries, certain banks, Citibank, N.A., as Administrative Agent, and others, as amended, restated, supplemented, modified, extended, refinanced, renewed, defeased, replaced or refunded from time to time, and (ii) if the Credit Agreement described in clause (i) above shall be no longer in effect, the principal revolving credit agreement to which the Parent is a party from time to time; provided, that in each such case, the Repo Counterparty is a lender or otherwise extends credit to the Parent or a successor or assign thereof under such facility.

(ggg) "Memorandum of Association" means the memorandum of association of the Company subscribed on 14 June, 2013, as amended.

(hhh) "Moody's" means Moody's Investors Service, Inc. and its successors.

(iii) "Multiemployer Plan" means any employee benefit plan which is a "multiemployer plan" (as defined in section 4001(a)(3) of ERISA) to which Parent or any of its ERISA Affiliates is contributing, or within the preceding six (6) years has contributed, or to which Parent or any of its ERISA Affiliates has, or within the preceding six (6) years has had, an obligation to contribute.

(jjj) "Newco Sub" means ATL Holdings II Limited, a Bermuda exempted company limited by shares incorporated under the laws of Bermuda on 14 June, 2013.

(kkk) "Newco Sub Interests" means any equity or other securities issued to the Company by Newco Sub.

(lll) "Parent" means Amgen Inc., a Delaware corporation, and its successors.

(mmm) "PBGC" means the Pension Benefit Guaranty Corporation.

(nnn) "Pension Plan" means any Employee Benefit Plan other than a Multiemployer Plan, that is subject to section 412 of the Code or section 302 of ERISA or Title IV of ERISA and is sponsored or maintained by Parent or any ERISA Affiliate or to which Parent or any ERISA Affiliate contributes or has an obligation to contribute.

(ooo) "Permitted Investments Account" means a custody account established in the name of the Company with the Custodian pursuant to the IM Custody Agreement or any successor account.

(ppp) "Permitted Investment Amount" means, as of any date, an amount equal to the sum of (i) with respect to cash credited to, or held in, the Permitted Investments Account on such date, the U.S. Dollar amount thereof and (ii) with respect to all other Permitted Investment Property credited to, or held in, the Permitted Investments Account on such date, the aggregate of the market value of all investments constituting such other Permitted Investment Property, as determined and notified to the Company by the Investment Manager.

(qqq) "Permitted Investment Property" means (i) cash in U.S. dollars and (ii) instruments or securities (including security entitlements in respect thereof) meeting the criteria set forth in Exhibit A to the Investment Management Agreement (and all proceeds thereof) (*provided*, however, that any instrument or security that shall have met such criteria on the date of purchase thereof but shall not on a future date meet such criteria shall nonetheless be deemed to be Permitted Investment Property, for all purposes under this Certificate, until the date on which such instrument or security is replaced, in accordance with the terms of such Exhibit A, with other Permitted Investment Property).

(rrr) "Permitted Investments" means (i) the Permitted Investments Account, (ii) all Permitted Investment Property (and all certificates and instruments from time to time representing or evidencing Permitted Investment Property) credited to, or held in, the Permitted Investments Account from time to time, and (iii) all rights, claims and causes of action, if any, that the Company may have against the Custodian or any other Person in respect of any of the foregoing.

(sss) "Person" means any individual, corporation, company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company or government or other entity.

(ttt) "Relevant Date" has the meaning specified in the definition of Additional Liquidation Amount.

(uuu) "Repo Agreement" means that certain Master Repurchase Agreement (including Annex I thereto), dated as of August 24, 2013, and each confirmation related thereto, in each case, between Parent and the Repo Counterparty, as any of the foregoing may be assigned, in whole or in part, amended or otherwise modified from time to time, in each case in accordance with their terms.

(vvv) "Repo Counterparty" means Bank of America, N.A. and its permitted successors and assigns under the Repo Agreement.

(www) "Repo Date" means [—], 2013.

(xxx) "Repo Date Total Asset Value" means an amount equal to the sum of (i) the Value, as of the Repo Date, of all Permitted Investment Property credited to, or held in, the Permitted Investments Account on such date and (ii) the fair market value as of such date of all other property and assets of the Company (including the Newco Sub Interests), taken as a whole, as reasonably determined, in the case of this clause (ii), by the Board in good faith.

(yyy) "Representative Amount" means a principal amount of not less than U.S. $1.0 million for a single transaction in the relevant market at the relevant time.

(zzz) "Resolution" means a resolution of the Company's shareholders passed in a general meeting or, where required, in a general meeting of a separate class or separate classes of shareholders of the Company or in either case adopted by resolution in writing, in accordance with the provisions of the Bye-laws and this Certificate.

(aaaa) "Senior Officer" means (a) the chief executive officer, (b) chief financial officer, (c) general counsel or (d) corporate treasurer.

(bbbb) "Special Voting Rights" has the meaning specified in Section 5.3.

(cccc) "Standard & Poor's" means Standard & Poor's, a Division of McGraw Hill Financial, Inc., and its successors.

(dddd) "Stated Dividend" has the meaning specified in Section 3.2.

(eeee) "Stated Dividend Period" means the period commencing on and including (a) [—], 2013 and thereafter (b) a Dividend Payment Date, and ending on and including the day immediately preceding the next succeeding Dividend Payment Date.

(ffff) "Stated Dividend Rate" has the meaning specified in Section 3.2.

(gggg) "Subsidiary" of any Person means any corporation, company, partnership, joint venture, limited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding shares or other interests having ordinary voting power to elect a majority of the board of directors (or persons performing similar functions) of such corporation or company (irrespective of whether at the time shares or other interests of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture or limited liability company or (c) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

(hhhh) "Swap Contract" means (i) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (ii) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement relating to swaps, hedges or other derivative instruments (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

(iiii) "Threshold Amount" means U.S. $200,000,000.

(jjjj) "Total Asset Value" means, as of any Relevant Date, an amount equal to (i) the sum of (A) the Value, as of a date occurring two Business Days prior to such Relevant Date, of all Permitted Investment Property credited to, or held in, the Permitted Investments Account on such Relevant Date

and (B) the fair market value, as of a date occurring two Business Days prior to such Relevant Date, of all other property and assets of the Company (including the Newco Sub Interests), taken as a whole, as reasonably determined, in the case of this clause (B), by the Board in good faith *minus* (ii) the sum of (A) the aggregate amount of all liabilities of the Company existing on the date occurring two Business Days prior to such Relevant Date (and any reserves in respect of contingent or unliquidated liabilities or obligations of the Company) and (B) the aggregate amount of the net cash proceeds and the fair market value (as of the date of such contribution, issuance or sale, as reasonably determined by the Board in good faith) of any non-cash property, in each case, received by the Company as a contribution to its common equity capital or from the issuance of Common Shares.

(kkkk) "Unaffiliated Holder" means a holder of Class A Preferred Shares that is neither an Affiliate of the Company nor acting in concert with an Affiliate of the Company for the purpose of voting any Class A Preferred Shares.

(llll) "Value" means, with respect to all Permitted Investment Property credited to, or held in, the Permitted Investments Account and as of any date, the sum of (i) with respect to cash, the U.S. Dollar amount thereof and (ii) with respect to all other Permitted Investment Property, the aggregate of the closing bid prices for all of the types of such property and assets (x) as quoted on such date by the respective principal market-makers for such types of property and assets as selected in good faith by the Board and/or (y) as most recently reported and made publicly available on or prior to such date by a quotation service or in a medium selected in good faith and in a commercially reasonable manner by the Board.

ARTICLE 3

DIVIDENDS

3.1. Dividend Amount. The Company shall pay, if declared, out of funds legally available therefor (including any available contributed surplus or, subject to the Act, share premium), and the holders of the Class A Preferred Shares as they appear on the register of members of the Company on the day immediately preceding the relevant Dividend Payment Date (as defined below) shall be entitled to receive, if declared, in priority to the transfer of any amounts to reserves or the payment of any dividends or other distributions to the holders of Common Shares or any other class of preferred shares of the Company, for each Class A Preferred Share, quarterly dividends in an amount equal to the Stated Dividend payable in cash in U.S. dollars on each March 19, June 19, September 19 and December 19, commencing on [—], 2013 (each, a "Dividend Payment Date"); *provided* that the payment and receipt of any such dividends shall be subject to the provisions of Bermuda law, in particular, section 54 of the Act. The amount of any Stated Dividends not paid on the applicable Dividend Payment Date (regardless of whether declared and regardless of the legal availability of funds to pay such dividends on the applicable Dividend Payment Date) shall accumulate and compound in accordance with the provisions of the last paragraph of Section 3.2.

3.2. Accumulation and Payment. For each Dividend Payment Date and in respect of each Class A Preferred Share, a stated dividend (the "Stated Dividend") shall be the amount accumulated on the Liquidation Preference during the Stated Dividend Period immediately preceding such Dividend Payment Date at the rate per annum, reset quarterly, of the greater of (a) LIBOR minus 0.25% and (b) 0.01% (the "Stated Dividend Rate"). The Stated Dividend for each Class A Preferred Share shall be calculated on the Liquidation Preference and will accumulate during the relevant Stated Dividend Period.

The daily amount of the Stated Dividend with respect to each Class A Preferred Share issued and outstanding (the "Daily Stated Dividend Amount") will be calculated by dividing the Stated Dividend Rate in effect for such day by 360 and multiplying the result by the Liquidation Preference. The amount of Stated Dividends on each Class A Preferred Share for each Stated Dividend Period will be calculated by adding the Daily Stated Dividend Amounts for each day in the Stated Dividend Period.

All percentages resulting from any of the above calculations shall be rounded, if necessary, to the nearest one hundred-thousandth of a percentage point, with five one-millionths of a percentage point being rounded upwards (e.g., 9.876545% (or 0.09876545) being rounded to 9.87655% (or 0.0987655)) and all U.S. Dollar amounts used in or resulting from such calculations shall be rounded to the nearest cent (with one-half cent being rounded upwards).

The Company shall instruct and use all reasonable efforts to cause the Investment Manager to send written notice to each of the holders of the Class A Preferred Shares of the Stated Dividend Rate in effect for any Stated Dividend Period by no later than the first day of such Stated Dividend Period. All determinations and calculations made by the Investment Manager in the absence of manifest error shall be conclusive for all purposes and binding on the Company and the holders of the Class A Preferred Shares.

The amount of any Stated Dividends not paid on the applicable Dividend Payment Date (regardless of whether declared and regardless of the legal availability of funds at such time) shall accumulate and compound on a quarterly basis, at an annual rate, reset quarterly, of LIBOR in effect for each Stated Dividend Period for each day (excluding the day on which any such unpaid and accumulated Stated Dividends are paid) during which such accumulated Stated Dividends shall remain unpaid, plus the greater of (a) LIBOR minus 0.25% and (b) 0.01% (the "Cumulative Dividend Rate") and any accumulated and unpaid dividends, if declared by the Board, shall be payable on a date determined by the Board, to the extent that they may be lawfully paid on such date.

3.3. Limitation on Payment of Other Dividends. The Company shall be prohibited from paying dividends (whether in cash, in shares or in kind) on the Common Shares or on any other shares in the capital of the Company (a) at any time Stated Dividends on the Class A Preferred Shares remain accumulated and unpaid and (b) unless, immediately after giving effect to such distribution (and any distribution in connection therewith required under Section 3.4) on a pro forma basis, the Company would not be an "investment company" (as defined in the U.S.

Investment Company Act of 1940, as amended, or a company that would be such an investment company but for the application of sections 3(c)(1) and 3(c)(7) of such act). For the avoidance of doubt, an amount comprising such Stated Dividends shall be at any time deemed "accumulated" if, and only if, it shall be an amount that is specified in Section 3.1 as eligible to be paid on a then-past Dividend Payment Date (without regard to whether such amount shall have been declared payable or whether the legal requirements for such payment shall have been satisfied).

3.4. Additional Participation Amount. Holders of the Class A Preferred Shares shall be entitled to receive an additional dividend in the amount of the Additional Participation Amount to the extent, and on the date, that the Company pays dividends on the Common Shares. The right of the holders of Class A Preferred Shares to receive any Additional Participation Amount shall be conditional upon and rank *pari passu* with the right of holders of Common Shares to receive dividends on the Common Shares.

ARTICLE 4

LIQUIDATION RIGHTS

4.1. Preferences on Liquidation of the Company. In the event of any voluntary or involuntary liquidation, dissolution, winding up of the affairs of the Company or other similar event, before any distribution in liquidation is made in respect of the Common Shares or any other class of preferred shares of the Company and before any redemption, purchase or other similar acquisition by the Company of the Common Shares or any other class of preferred shares of the Company, the holders of Class A Preferred Shares shall be entitled to receive a payment, out of the assets of the Company legally available for distribution to its shareholders, in an amount in U.S. dollars per Class A Preferred Share equal to the sum of (a) the Liquidation Preference, (b) any accumulated and unpaid Stated Dividends on each Class A Preferred Share for all completed Stated Dividend Periods compounded at the Cumulative Dividend Rate, (c) the amount of Stated Dividends on each Class A Preferred Share accumulated on the Class A Preferred Shares then issued and outstanding since the most recent Dividend Payment Date to but excluding the Relevant Date and (d) an amount of cash in U.S. Dollars equal to the amount of Stated Dividends that would have accrued over a five day period at the Stated Dividend Rate established, in accordance with the terms hereof, on the Determination Date most recently preceding the last Price Differential Payment Date (as defined in the Repo Agreement) on which Price Differential (as therein defined) then due thereunder shall not have been paid (the sum of such amounts in clauses (a) through (d) being the "Class A Amount").

For the purposes of this Section 4.1, neither the sale, conveyance, exchange or transfer (for cash, shares, securities or other consideration) of all or substantially all of the property or assets of the Company nor the consolidation, merger or amalgamation of the Company with or into one or more Persons shall of itself be deemed to be a liquidation, dissolution or winding up of the Company.

4.2. Priority. All of the preferential amounts to be paid to the holders of the Class A Preferred Shares shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any assets of the Company to, the holders of the Common Shares or any other class of preferred shares of the Company.

4.3. Assets Insufficient to Permit Payment in Full. If the assets legally available to be distributed to the holders of the Class A Preferred Shares are insufficient to permit the payment to such holders of their full preferential amount, the assets legally available to be distributed shall be distributed ratably among the holders of the Class A Preferred Shares in proportion to the full preferential amount each such holder is otherwise entitled to receive.

4.4. Additional Liquidation Amount. Upon any voluntary or involuntary liquidation, dissolution, winding up of the affairs of the Company or other similar event or the redemption of the Class A Preferred Shares pursuant to Article 6 hereof, the holders of the Class A Preferred Shares shall be entitled to receive, and the Company shall pay such holders, the Additional Liquidation Amount, if any, applicable to each Class A Preferred Share as of the Relevant Date. The right to receive the Additional Liquidation Amount in the case of a liquidation of the Company will arise only after payment in full of all creditors (including in respect of any contingent or unliquidated liabilities or obligations) and all costs and expenses of the liquidator, in each case, in the order of priority provided by law and shall be payable out of assets lawfully available for distribution to shareholders and shall rank *pari passu* with the right of the holders of the Common Shares to receive distributions on liquidation with respect to the Common Shares.

ARTICLE 5

VOTING RIGHTS; BOARD OF DIRECTORS

5.1. General. Subject to the Act, the holders of the Class A Preferred Shares shall not have any voting rights except as set forth in this Certificate or in relation to Bye-law 20 of the Bye-laws. Notwithstanding any provision of this Certificate to the contrary, with respect to any consent of the Class A Preferred Shares that is required under the Bye-laws, this Certificate, the Act, or otherwise to be held or made separately as a class at a time when any Class A Preferred Shares are held by one or more Unaffiliated Holders (including any consent pursuant to the Special Voting Rights), the voting rights of the holders of the Class A Preferred Shares shall be adjusted such that the Class A Preferred Shares held by the Unaffiliated Holders shall represent, in the aggregate, 100% of the voting power of all Class A Preferred Shares entitled to vote, such voting power to be allocated pro rata according to the number of Class A Preferred Shares held by such Unaffiliated Holders.

5.2. Class A Directors. The Unaffiliated Holders shall be entitled by notice to the Company signed by or on behalf of the holders of a majority of such Class A Preferred Shares, and, to the exclusion of the holders of Common Shares, to appoint or remove two Directors to the Board, in accordance with Bye-law 24.2.

5.3. Special Voting Rights.

(a) In the event that (i) there are accumulated and unpaid Stated Dividends for a period of more than four (4) consecutive Dividend Payment Dates (a "Dividend Event"), or (ii) a Material Affiliate Event described either (A) in clause (iii) of the definition of such term (insofar as such clause refers to section 3.10 of any Ancillary Agreement) or (B) in clause (v) of the definition of such term shall have occurred and be continuing, or (iii) a

Material Affiliate Event described in a clause other than clause (ii) above shall have occurred and be continuing, the Unaffiliated Holders, as a class, shall, immediately upon the occurrence of any of the events described in either clause (i) or clause (ii) or clause (iii), be entitled to receive notice of, attend, and vote together with the holders of Common Shares as a single class at any general meeting of the Company's shareholders ("Special Voting Rights") *provided*, however, that if the Material Affiliate Event that shall give rise to the availability of Special Voting Rights is described in clause (iii) above and such Material Affiliate Event shall not have resulted from any fraud on the part of the Parent, and if Parent then satisfies the Credit Standard, then the Special Voting Rights shall be exercisable only if Parent has not consummated in full the repurchase of all the Class A Preferred Shares in accordance with the Repo Agreement not later than the forty-fifth calendar day after the earlier of (x) the date on which a notice is provided either by Parent to any Repo Counterparty or by any Repo Counterparty to Parent stating that a Material Affiliate Event has occurred and stating the nature of such event and (y) the date on which the Company shall have obtained Actual Knowledge of the occurrence of such Material Affiliate Event.

(b) During any period, and for so long as, the holders of the Class A Preferred Shares are entitled to exercise Special Voting Rights pursuant to clause (a) above, as a class, the voting rights of the Company's shareholders shall be weighted such that the Class A Preferred Shares held by the Unaffiliated Holders shall represent, in the aggregate, 51% of the voting power of all shares of the Company entitled to receive notice of, attend, and vote at a general meeting of the Company's shareholders.

(c) In the event that the Unaffiliated Holders shall at any time be entitled to exercise Special Voting Rights pursuant to the provisions of the clause (a) above, such holders shall cease to be so entitled in the event that, and as of the first date (the "Cure Date") on which, (i) the Material Affiliate Event giving rise to such Special Voting Rights shall cease to be continuing (so long as no other Material Affiliate Event shall have occurred and be then continuing) and (ii) there shall not exist any accumulated and unpaid Stated Dividends (other than Stated Dividends accumulated from and after the most recent Dividend Payment Date preceding the Cure Date). In the case of a Material Affiliate Event described in clause (v) of the definition thereof (other than a proceeding instituted by the Company or any of its Affiliates or to which the Company or any of its Affiliates has given its consent) that has not resulted in the entry of an order for relief or the appointment of a receiver, liquidator or trustee, the Unaffiliated Holders shall cease to be entitled to Special Voting Rights upon a final, non-appealable dismissal with prejudice of such proceeding (so long as no other Material Affiliate Event shall have occurred and be then continuing). For the avoidance of doubt, the recurrence of a Material Affiliate Event of the same type or arising out of the same circumstances as a Material

Affiliate Event that has occurred but ceased to be continuing shall be considered to be a new Material Affiliate Event and shall give rise to Special Voting Rights to the extent set forth in this Certificate.

5.4. Class Consent. For so long as any Class A Preferred Shares remain issued and outstanding and are held by one or more Unaffiliated Holders, in addition to any other consent of shareholders required by law or under the Bye-laws or this Certificate, the prior consent of a simple majority in interest of the Unaffiliated Holders consenting, separately as a class, shall be necessary for effecting or validating:

(a) the adoption of amendments to this Certificate, the Company's Memorandum of Association or the Bye-laws or any alteration of the share capital of the Company;

(b) any sale or disposal of the assets of the Company (determined without regard to the Permitted Investments) if, as a result of such sale or disposal, the Company would become an "investment company" (as defined in the U.S. Investment Company Act of 1940, as amended, or a company that would be such an investment company but for the application of sections 3(c)(1) and 3(c)(7) of such act);

(c) any sale, transfer, liquidation or other disposition of any Permitted Investments or any withdrawal of any property or assets constituting Permitted Investment Property from the Permitted Investments Account (other than, in each case, in connection with, and solely to the extent necessary to fund, the payment of any amounts due to the holders of the Class A Preferred Shares under Article 3 (excluding section 3.4), 4 or 6 (excluding section 6.2 unless the Class A Preferred Shares being redeemed are held by an Unaffiliated Holder);

(d) (i) any amendment or modification to (a) provisions in the Investment Management Agreement relating to investment guidelines, reporting and termination or (b) provisions in the IM Custody Agreement relating to instructions for transfers from the account maintained pursuant to the IM Custody Agreement, reporting, termination, and waiver of liens and set-off rights by the Custodian and (ii) any material amendment or modifications to any other provisions in the Investment Management Agreement or the IM Custody Agreement;

(e) the issuance of any Class A Preferred Shares after the Designation Date;

(f) the issuance of any class of preferred shares other than the Class A Preferred Shares;

(g) any action or decision regarding any legal claims, actions, suits or proceedings of any kind or nature that are asserted, instituted or expressly threatened in writing against the Company and its directly owned assets; (but, for the avoidance of doubt, excluding any equity interest in Subsidiaries);

(h) the merger, amalgamation or consolidation of the Company with any other entity;

(i) the taking of any Bankruptcy Action relating to the Company;

(j) any redemption pursuant to Section 6.2 of the Class A Preferred Shares of any holder other than an Unaffiliated Holder other than on a pro-rata basis with all Unaffiliated Holders;

(k) the appointment of persons authorized to give instructions to the Custodian under the IM Custody Agreement; and

(l) any variation of class rights of the holders of Class A Preferred Shares.

A simple majority in interest of the Unaffiliated Holders of the then issued and outstanding Class A Preferred Shares consenting separately as a class, may waive in writing compliance with any provisions of this Certificate.

5.5. Notice to Holders of Special Voting Rights. No later than two Business Days following the Company taking any action, or receiving notice or obtaining Actual Knowledge of the occurrence of any event that in each case would give rise to Special Voting Rights pursuant to Section 5.3 or require the consent of the Unaffiliated Holders pursuant to Section 5.4, the Company shall send written notice to each holder of the Class A Preferred Shares stating that such event has occurred and that, in consequence, the holders of the Class A Preferred Shares are entitled to Special Voting Rights or that such consent pursuant to Section 5.4 is required, as the case may be; *provided*, however, that the failure to provide, or timely provide, such written notice shall not prejudice or otherwise affect any of the rights of the holders of the Class A Preferred Shares granted hereunder. Such notice shall make express reference to Section 5.3 or Section 5.4, as the case may be.

5.6. Right to Cause a Board Meeting to Be Convened. In the event that the holders of Class A Preferred Shares shall be entitled to Special Voting Rights pursuant to Section 5.3 or a consent shall be required pursuant to Section 5.4, any holder of the Class A Preferred Shares may, by written notice to the Board, request the Board to meet and specify those matters to be voted on by the Board at such meeting, and the Board shall, within no more than two Business Days following the date of such notice, convene a meeting for such purpose and vote on such matters.

5.7. Board Composition; Appointment. The maximum number of members of the Board shall, upon the incorporation of the Company and until the Unaffiliated Holders shall have appointed the two members of the Board to which they are entitled pursuant to Section 5.2, be three and, immediately following such appointment and until all of the Class A Preferred Shares shall have ceased to be issued and outstanding, five. One of such members of the Board (other than the members appointed by the Unaffiliated Holders) shall be an Independent Director. The Independent Director and two other members of the Board shall be appointed by the holders of

the Common Shares. The minimum number of members of the Board required to establish a quorum for purposes of any meeting of the Board shall be the number of members that shall represent a simple majority of the voting power of all of the members of the Board (taking into account the effect of the voting powers described in Section 5.8, where applicable); *provided* that if any Class A Preferred Shares are held by one or more Unaffiliated Holders at least one of the members of the Board appointed by the holders of a majority of the Unaffiliated Holders must be present at a meeting of the Board in order for a quorum to exist for such meeting. The majority of members of the Board shall, at all times, be resident outside the United States.

5.8. Voting Power of Directors. Except as required by law or as set forth in this Certificate (but without limitation of the quorum requirement set forth in Section 5.7), the members of the Board appointed by the Unaffiliated Holders and the Independent Director shall each be entitled to cast one vote and all other directors shall each be entitled to cast one hundred votes at meetings of the Board. Notwithstanding the preceding sentence, at any time during which, and for so long as, the Unaffiliated Holders are entitled to Special Voting Rights, the voting rights of the members of the Board shall be weighted such that the members of the Board appointed by the Unaffiliated Holders shall represent, in the aggregate, 51% of the voting power of all members of the Board, save where for any reason a single member of the Board appointed by the Unaffiliated Holders is present at a meeting of the Board, in which case such member of the Board shall represent, individually, 51% of the voting power of all members of the Board.

5.9. Board Approval for Mergers, Amalgamations, Bankruptcy Action; Independent Director. The following corporate actions of the Company shall require the affirmative vote or consent of the Independent Director and of 66 2/3 % of the voting power of all of the members of the Board (in addition to any other consent or approval required hereunder):

(a) the merger, amalgamation or consolidation of the Company with any other Person; and

(b) to the fullest extent permitted by applicable law, the taking of any Bankruptcy Action.

For purposes of the vote or consent required under this Section 5.9, the voting rights of the members of the Board shall be weighted such that the members of the Board appointed by the Unaffiliated Holders shall represent, in the aggregate, 40% (or, if Special Voting Rights are in effect, 51%) of the voting power of all members of the Board. Anything in the Bye-laws or this Certificate to the contrary notwithstanding, the Independent Director shall be entitled to cast one hundred votes in any matter described in clauses (a) and (b) of the immediately preceding paragraph and shall be entitled to cast one vote on all other matters.

5.10. Discretion of the Board. Whether or not Special Voting Rights are in effect pursuant to Section 5.3 (and whether or not any consent is required pursuant to Section 5.4), any vote by the Board (including any vote to redeem the Class A Preferred Shares pursuant to Section 6.2 hereof) shall be in its sole discretion and shall be consistent with each Director's fiduciary duties to the Company.

ARTICLE 6

REDEMPTION

6.1. Optional Redemption at the Option of the Company. At any time and from time to time, the Company may, at the Company's option, to the extent the Company may lawfully do so out of legally available funds in accordance with section 42 of the Act, redeem the then issued and outstanding Class A Preferred Shares, in whole or in part, for cash from the holders of such Class A Preferred Shares. Partial redemption may be either (a) of not less than 1,100 Class A Preferred Shares ratably among all holders of Class A Preferred Shares, or (b) of all but not less than all the Class A Preferred Shares held by a holder or holders thereof.

6.2. Special Voting Rights Redemption. If the holders of Class A Preferred Shares become entitled to Special Voting Rights pursuant to Section 5.3 hereof, then, upon the affirmative vote of shareholders representing a majority of the Common Shares voting as a class or the affirmative vote of a majority of the votes entitled to be cast at a meeting of the Board (taking into account the effect of Special Voting Rights) during the period when such Special Voting Rights are in effect, the Company shall, to the extent the Company may lawfully do so out of legally available funds in accordance with section 42 of the Act, redeem all of the then issued and outstanding Class A Preferred Shares for cash from the holders of Class A Preferred Shares.

6.3. Scheduled Redemption Date. To the extent the Company may lawfully do so out of legally available funds, and provided they have not otherwise been cancelled or redeemed, each Class A Preferred Share shall be redeemed on the fiftieth anniversary of the Designation Date.

6.4. Redemption Price. In the event of any redemption of any Class A Preferred Shares pursuant to Sections 6.1, 6.2 or 6.3, the holders of Class A Preferred Shares to be redeemed shall be entitled to receive, and the Company shall pay such holders, on the applicable redemption date and before any distribution may be made to the holders of the Common Shares or any other class of preferred shares of the Company, an amount per Class A Preferred Share equal to the Class A Amount.

6.5. Redemption Procedures. In the case of any redemption of any Class A Preferred Shares pursuant to Sections 6.1, 6.2 or 6.3 hereof, the Company shall deliver, not less than two nor more than four Business Days written notice to each holder of record of Class A Preferred Shares at the address of such holder last shown on the register of members of the Company, notifying such holder of such redemption and the relevant redemption date and calling upon such holder to surrender to the Company such holder's certificate or certificates representing the shares to be redeemed, such notice to be effective immediately upon delivery.

On the relevant redemption date, each holder of Class A Preferred Shares to be redeemed shall surrender such holder's certificate or certificates representing such shares to the Company, in the manner and at the place designated in a notice delivered to the holder by the Company, and thereupon the Class A Amount of such shares shall be payable to the order of the holder whose name appears in the register of members of the Company and each surrendered

certificate shall be cancelled. From and after the relevant redemption date, unless there shall have occurred a default in payment of the Class A Amount, all rights of the holders of the Class A Preferred Shares designated for redemption as holders of Class A Preferred Shares (except the right to receive the Class A Amount, without interest upon surrender of their certificate or certificates) shall cease with respect to such shares, and such shares shall not thereafter be transferred on the register of members of the Company or be deemed to be issued and outstanding for any purpose whatsoever.

6.6. Additional Liquidation Amount. Upon any redemption of any Class A Preferred Shares pursuant to Section 6.1, 6.2 or 6.3, the holders of Class A Preferred Shares to be redeemed shall be entitled to receive, and the Company shall pay such holders, the Additional Liquidation Amount, if any, applicable to each such Class A Preferred Share as of the Relevant Date.

6.7. Limitations. Except as otherwise provided in this Article 6, the Company shall have no right to redeem or repurchase the Class A Preferred Shares.

ARTICLE 7

CONVERSION

7.1. Optional Conversion Right. At any time and from time to time, subject to compliance with section 42 of the Act, each holder of the Class A Preferred Shares (other than any holder of Class A Preferred Shares that is not an Affiliate of the Company) shall be entitled to convert all or any portion of their Class A Preferred Shares into Common Shares at the Class A/Common Conversion Rate. Upon conversion of any of the Class A Preferred Shares, the Class A Preferred Shares so converted shall no longer be issued and outstanding and the Common Shares issued upon such conversion shall be issued and outstanding as of such date of conversion. Conversion of the Class A Preferred Shares shall take effect as a redemption of the Class A Preferred Shares and a simultaneous issuance of Common Shares. For the purposes of any such conversion, the redemption of the relevant Class A Preferred Shares shall be for an aggregate amount (the "Aggregate Redemption Amount") which is equal to the aggregate issue price (the "Aggregate Issue Proceeds") of the Common Shares to be exchanged therefor ("Exchanged Common Shares") and, for such purposes, the total premium at which such Exchanged Common Shares shall be taken to have been issued shall be the amount of the Aggregate Issue Proceeds less the product of (a) the number of Exchanged Common Shares and (b) the aggregate par value per share of the Exchanged Common Shares. In the case of any such conversion, the Company's obligation to pay the Aggregate Redemption Amount shall be set off against the Aggregate Issue Proceeds due to be paid by such holder of the relevant Class A Preferred Shares to the Company. For the avoidance of doubt, no Additional Liquidation Amount shall be payable in connection with any such conversion of the Class A Preferred Shares.

7.2. Mechanics of Conversion. Conversion of the Class A Preferred Shares may be effected by the surrender to the Company of any certificate or certificates issued in respect of such Class A Preferred Shares to be converted accompanied by a written notice stating that such holder of Class A Preferred Shares elects to convert all or a specified whole number of such

shares in accordance with the provisions hereof and specifying the name or names in which such holder of Class A Preferred Shares wishes the certificate or certificates for the Common Shares to be issued. If Class A Preferred Shares represented by more than one certificate shall be surrendered for conversion at one time by the same holder of Class A Preferred Shares, the number of full Common Shares issuable upon conversion thereof shall be computed on the basis of the aggregate number of shares elected to be so surrendered. In case such notice shall specify a name or names other than that of such holder of Class A Preferred Shares, such notice shall be accompanied by payment of all transfer taxes payable upon the issuance of Common Shares in such name or names. Other than such taxes, the Company will pay any and all issue and other taxes (other than taxes based on income) that may be payable in respect of any issue or delivery of the Common Shares on conversion of the Class A Preferred Shares. As promptly as practicable and, in any event, within no more than five Business Days after the surrender of such certificate or certificates and the receipt of such notice relating thereto and, if applicable, payment of all transfer taxes (or the demonstration to the satisfaction of the Company that any such taxes have been paid), the Company shall issue and allot the relevant Common Shares, update the Company's register of members to reflect such issuance and deliver or cause to be delivered to the converting holder(s) (i) certificates in respect of the number of validly issued, fully paid and non-assessable full Common Shares to which such holder of Class A Preferred Shares shall be entitled, (ii) any cash owing in lieu of a fractional Common Share and (iii) if fewer than the full number of Class A Preferred Shares evidenced by the surrendered certificate or certificates are being converted, a new certificate or certificates, of like tenor, for the number of shares evidenced by such surrendered certificate or certificates less the number of shares being converted.

Upon such conversion, the Class A Preferred Shares being converted shall no longer be issued and outstanding and the rights of such holder thereof (including the right of such holder to receive any accumulated and unpaid Stated Dividends on such Class A Preferred Shares and any accumulated Stated Dividends from the most recent Dividend Payment Date preceding the date of conversion) as to the Class A Preferred Shares being converted shall cease except for the right to receive Common Shares in accordance herewith, and the person entitled to receive the Common Shares shall be treated for all other purposes as having become the record holder of such Common Shares at such time.

7.3 Conversion on a repurchase by the Company. On a purchase of any or all of the Class A Preferred Shares from any Unaffiliated Holder by the Company effected in accordance with the provisions of the Act and, where applicable, this Certificate and the Bye-laws, each Class A Preferred Share so purchased shall automatically and without further action on the part of the Company or any Shareholder be: (i) sub-divided and converted into 1.613 Common Shares of par value US$0.01 each, having all the rights and restrictions attaching to Common Shares, and (ii) cancelled.

7.4 Conversion upon acquisition by Parent. On the acquisition of any or all of the Class A Preferred Shares from any Unaffiliated Holder by Parent in accordance with the Accelerated Repurchase Date terms of the Repo Agreement, except any such acquisition that is made in accordance with the provisions of Section 4.5 of the Ancillary Agreement, each Class A Preferred Share so acquired shall automatically and without further action on the part of the Company or the requirement for any Resolution be sub-divided and converted into 1.613 Common Shares of par value US$0.01 each, having all the rights and restrictions attaching to Common Shares pursuant to the Bye-laws.

ARTICLE 8

CERTAIN MATTERS

8.1. Limited Purpose. The Company may not, without a unanimous vote of the members of the Board and the Company's Shareholders (including holders of the Class A Preferred Shares), (a) except as permitted below, hold or invest in assets, (b) issue any equity securities, (c) issue or incur any Indebtedness, (d) have any employees, (e) create, incur or suffer to exist any Liens of any kind on the Permitted Investments (other than Liens under the IM Custody Agreement, and Liens for taxes, assessments and governmental charges or levies not yet delinquent or being contested in good faith and by appropriate proceedings and as to which adequate reserves are being maintained in accordance with generally accepted accounting principles), or (f) take any other action other than (i) investing in, purchasing, owning, holding or disposing of, in each case, pursuant to the terms hereof and the Investment Management Agreement, the Permitted Investments, (ii) issuing Common Shares or receiving equity or capital contributions, or paying dividends or distributions, in respect of the issued and outstanding Class A Preferred Shares or Common Shares, (iii) investing in, holding or disposing of Free Cash and owning and maintaining the Free Cash Account, (iv) subject to the right of the holders of Class A Preferred Shares to receive payments of Stated Dividends, Class A Amount, Additional Liquidation Amount and Additional Participation Amount pursuant to the terms hereof, investing in, purchasing, owning, holding or disposing of any Newco Sub Interests or making equity or capital contributions to, or receiving dividends or distributions from, Newco Sub (*provided* that any such investments, purchases or contributions may be made solely with Free Cash), (v) discharging its obligations under the Free Cash Custody Agreement, the Free Cash Investment Management Agreement, the IM Custody Agreement and the Investment Management Agreement and (vi) engaging in any other lawful acts or activities and exercising any power permitted to the Company under applicable law, the Company's Bye-laws and this Certificate, so long as the same are incidental to, or connected with, any of the actions permitted under subclause (i), (ii), (iii), (iv) or (v) and are necessary, suitable or convenient to accomplish any such actions under such subclauses.

8.2. Separate Existence. The Company shall maintain an existence separate and distinct from that of any other entity in the manner prescribed by Bye-law 27.5 of the Bye-laws.

8.3. Special Voting Rights for Sale or Disposal of Assets. Any sale or disposal of all or substantially all of the assets of the Company (excluding the Newco Sub Interests and the Free Cash) shall require either (1) (a) the affirmative vote or consent of the Unaffiliated Holders of the issued and outstanding Class A Preferred Shares, voting separately as a class, and (b) the affirmative vote or consent of the holders of the issued and outstanding Common Shares, voting separately as a class, or (2) the vote of the Board and the approval of a Resolution by the Unaffiliated Holders, voting or consenting separately as a class. Each of the voting thresholds described in the immediately preceding sentence shall take into account the effect of Special Voting Rights, if any, and the effect, if any, of Section 5.9 and shall in no event limit Section 5.4.

8.4. Transfer Restrictions. The Class A Preferred Shares may only be transferred in a transaction in compliance with the U.S. Securities Act of 1933, as amended, and otherwise in accordance with the laws of Bermuda and the Bye-laws.

8.5. Additional Limitations on the Company. The Company may not without a unanimous vote of the members of the Board and a unanimous vote of the Company's shareholders (including holders of the Class A Preferred Shares):

(a) establish any physical presence or branch office or acquire or rent office space in the United States or any other jurisdiction (other than Bermuda);

(b) appoint a representative or agent in the United States or any other jurisdiction outside of Bermuda with unlimited authority to conduct the business of the Company or to sign contracts for and on behalf of the Company in any such jurisdiction;

(c) become a plaintiff, or counterclaim, in any suit, action or proceedings outside Bermuda, except in a special proceeding for purposes of disclaiming the jurisdiction of the relevant court or tribunal;

(d) voluntarily appear before a court in any suit, action or proceedings outside Bermuda, except in a special proceeding for purposes of disclaiming the jurisdiction of the relevant court or tribunal;

(e) expressly agree to submit to the jurisdiction of any court outside of Bermuda;

(f) hold Board or shareholder meetings in or from within any jurisdiction other than Bermuda or such other jurisdiction (other than the United States) as should not, in the opinion of counsel, result in the Company being determined to have a place of business for any purposes in such other jurisdiction; or

(g) maintain any property or assets of the Company in the United States or maintain any material amount of property or assets of the Company in any other jurisdiction (other than Bermuda), it being understood that the assignment of any rights or the delegation of any duties by the Custodian to any subcustodian pursuant to the IM Custody Agreement or the Free Cash Custody Agreement shall not require the approval of the Board or the Company's Shareholders.

8.6. Payment Instruction. Except for any release or disbursement of funds in connection with a redemption under Section 6.2 hereof, any instruction by the Company to the Custodian directing the Custodian to release or disburse any funds or transfer any instruments or securities from the Permitted Investments Account shall be in writing (a) signed by each of the members of the Board elected by the holders of Common Shares (voting separately as a class) who shall not be a resident of the United States and the Secretary of the Company (if such release or disbursement is for purposes of enabling the payment of Stated Dividends on a

Dividend Payment Date) or (b) signed by each of such member of the Board described in clause (a), the Secretary of the Company and each member of the Board elected by the Unaffiliated Holders who shall not be a resident of the United States (voting separately as a class) (if such release or disbursement is for any other purpose).

ARTICLE 9

MISCELLANEOUS

9.1. Mutilated or Missing Class A Preferred Share Certificates. If any of the Class A Preferred Share certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated Class A Preferred Share certificate, or in lieu of and substitution for the Class A Preferred Share certificate lost, stolen or destroyed, a new Class A Preferred Share certificate of like tenor and representing Class A Preferred Shares in an aggregate Liquidation Preference equal to that of the Class A Preferred Shares represented by such mutilated, lost, stolen or destroyed certificate, but only upon receipt of evidence of such loss, theft or destruction of such Class A Preferred Share certificate and indemnity, if requested, satisfactory to the Company.

9.2. Business Day. If any payment, redemption or conversion shall be required by the terms hereof to be made on a day that is not a Business Day, such payment, redemption or exchange shall be made on the immediately succeeding Business Day and no further dividends shall accumulate after the day on which payment was required (unless, in the case of the payment of any Stated Dividends, such next succeeding Business Day occurs during the next succeeding calendar month, in which case such payment will be made on the next preceding Business Day and the amount of such Stated Dividend payment shall not be reduced).

9.3. Share Splits and Other Corporate Events. Any amount prescribed herein which is calculated or determined on a per share basis or by reference to shareholders' equity shall be adjusted so as to reflect the effect of any share subdivisions, bonus issues, share consolidations, reorganizations, recapitalizations or other corporate events of a similar nature.

9.4. Limitations. Except as may otherwise be required by law, the Class A Preferred Shares shall not have any powers, preferences or relative, participating, optional or other special rights other than those specifically set forth in this Certificate (as this Certificate may be amended from time to time) or otherwise in the Bye-laws (to the extent not contrary to or inconsistent with this Certificate).

9.5. Notices. Any notice or communication required or permitted to be given by any provision of this Certificate shall be in writing or by facsimile and shall be deemed to have been delivered, given, and received for all purposes (a) if delivered personally to the Person or to a Senior Officer of the Person to whom the same is directed, or (b) when the same is actually received (if during the recipient's normal business hours if during a Business Day, or, if not, on the next succeeding Business Day), if sent by facsimile (followed by a hard copy of the same communication sent by certified mail, postage and charges prepaid), or by courier or delivery service or by mail, addressed as follows, or to such other address as such Person may from time to time specify by notice, (i) if to the Company, at its address at Canon's Court, 22 Victoria

Street, Hamilton HM12, Bermuda, Attention: Company Secretary, Facsimile No.: (441) 292-8666; and (ii) if to any holders of Class A Preferred Shares, at such holder's address as appearing in the Register; or, in each case, to such other address (and with copies to such other Persons) as the Person entitled to receive notice hereunder shall specify by notice given in the manner provided herein to the other Persons entitled to receive notice hereunder.

9.6. Headings and Subdivisions. The headings of the various articles and subdivisions hereof are for convenience of reference only and shall not affect the interpretation of any of the provisions hereof.

9.7. Severability of Provisions. If any right, preference or limitation of the Class A Preferred Shares set forth herein is invalid, unlawful or incapable of being enforced by reason of any rule of law or public policy, all other rights, preferences and limitations set forth herein that can be given effect without the invalid, unlawful or unenforceable right, preference or limitation shall, nevertheless, remain in full force and effect, and no right, preference or limitation herein set forth shall be deemed dependent upon any other such right, preference or limitation unless so expressed herein.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, I hereby certify that this Certificate of Designations of Preferences, Limitations, and Relative Rights of Class A Preferred Shares was duly and properly approved and adopted by written resolutions of the Board of Directors of the Company duly adopted on the date first written above.

By: _____

Director

[*Signature Page to Certificate of Designations*]

Additional Liquidation Amount = $\frac{A \times (B - C)}{D}$

where:

A is the Class A Percentage as of the applicable Relevant Date,

B is the Total Asset Value as of the applicable Relevant Date,

C is the Repo Date Total Asset Value, and

D is the number of Class A Preferred Shares issued and outstanding.

Capitalized terms in this Exhibit A have the respective meanings specified in Article 2 of this Certificate.

Additional Participation Amount = $\dfrac{\dfrac{A}{(1-B)} - A}{C}$

where:

A is the aggregate amount of dividends on the Common Shares to be paid pursuant to the relevant declaration;

B is the Class A Percentage (expressed as a decimal); and

C is the number of Class A Preferred Shares issued and outstanding on the relevant date of determination.

Capitalized terms used in this Exhibit B have the respective meanings specified in Article 2 of this Certificate.

Exhibit C
to Certificate

Class A/Common Conversion Rate = $$A \times \left(\frac{\frac{B}{(1-C)} - B}{D} \right)$$

where:

A is the Class A Conversion Percentage;

B is the number of Common Shares issued and outstanding immediately prior to the conversion;

C is the Class A Percentage immediately prior to the conversion; and

D is the number of Class A Preferred Shares issued and outstanding immediately prior to the conversion.

Capitalized terms used in this Exhibit C have the respective meanings specified in Article 2 of this Certificate.

NOVATION AND JOINDER AGREEMENT

dated as of [ ] among:

Amgen Inc. (the "**Remaining Party**"), [Name of transferring Repo Buyer] (the "**Transferor**")

AND

[Name of transferee Repo Buyer] (the "**Transferee**").

The Transferor and the Remaining Party have entered into the Transaction identified in the attached Schedule A (the "**Old Transaction**"), evidenced by a Confirmation (the "**Old Confirmation**") attached as Schedule A-2 hereto, and subject to a SIFMA Master Repurchase Agreement dated as of August 24, 2013 (the "**Old Agreement**") and relevant Annexes thereto in the form attached as Schedule A-1 hereto. The Transferor and the Remaining Party have, in connection with the Old Transaction, entered into that certain Ancillary Agreement between them, dated as of [ ] in the form attached as Schedule A-3 hereto (the "**Old Ancillary Agreement**").

The Remaining Party and the Transferee are entering into a SIFMA Master Repurchase Agreement dated as of [the date hereof] (the "**New Agreement**"), substantially in the form of the Old Agreement except for Annex I to the New Agreement and any other Annexes to the New Agreement set forth in Schedule B-1 hereto, which shall be in the form set forth in such Schedule B-1. In addition, the Remaining Party and the Transferee are entering into an ancillary agreement between them, which shall be in the form set forth in Schedule B-3 hereto (the "**New Ancillary Agreement**").

With effect from and including [ ] (the "**Novation Date**") the Transferor wishes to transfer by novation to the Transferee, and the Transferee wishes to accept the transfer by novation of, all the rights, liabilities, duties and obligations of the Transferor under and in respect of such portion of each Old Transaction as evidenced by the [Novated Purchase Price, Novated Repurchase Price and][1] number of Novated Purchased Securities specified in Schedule A-3 hereto (the "**Novated Portion**"), with the effect that the Remaining Party and the Transferee enter into a new transaction (each a "**New Transaction**") between them having terms identical to those of the Old Transaction, except for a [Purchase Price equal to the Novated Purchase price, a Repurchase Price equal to the Novated Repurchase Price and] number of Purchased Securities equal to the number of Novated Purchased Securities and as otherwise set forth in the Confirmation set forth on Schedule B-2 (the "**New Confirmation**").

With effect from and including the Novation Date, the Transferor wishes to transfer to the Transferee the Novated Purchased Securities together with any Income received (whether prior to, on or after the Novation Date) that has not been transferred as of the Novation Date in accordance with Paragraph 5 of the Old Agreement (as amended and supplemented by Annex I thereto) or applied in accordance with Section 11(c) of Annex I to the Old Agreement, provided that the Transferee's obligations in respect of any such Income shall be determined by reference to the date of receipt thereof by the Transferor.

With effect from and including the Novation Date, the Transferee and the Remaining Party wish to enter into the New Ancillary Agreement.

[In addition, the Transferor has entered into the Voting Agreement dated as of [ ], included as Annex 1 to Schedule A-1 hereto originally between Bank of America, N.A. and each Joining Buyer as defined therein (the "**Voting Agreement**" and together with the New Confirmation, the New Ancillary Agreement and the other documentation relating to the New Transaction, the "**New Transaction Documents**"). With effect from and including the Novation Date, the Transferee wishes to become party to the Voting Agreement.][2]

[1] Not needed if the confirmation only specifies a per share purchase and repurchase price

[2] Include the parenthetical for all but the initial novation. (At the time of the initial novation, the Voting Agreement itself should be executed)

The Remaining Party wishes to accept the Transferee as the sole Buyer with respect to the New Transaction; provided that to the extent the Novated Portion is less than the entire Old Transaction, the Transferor shall continue to be the Buyer with respect to the portion of the Old Transaction that has not been transferred hereunder (the "**Remaining Portion**").

The Transferor and the Remaining Party wish to have released and discharged, as a result and to the extent of the transfer described above, their respective obligations under and in respect of the Old Transaction except for any Remaining Portion of the Old Transaction and as otherwise expressly set forth herein.

Accordingly, the parties agree as follows: —

1. Definitions.

Terms defined in the Old Agreement and the Old Confirmation are used herein as so defined, unless otherwise provided herein.

2. Transfer, Release, Discharge and Undertakings.

With effect from and including the Novation Date and in consideration of the mutual representations, warranties and covenants contained in this Novation Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties):

(a) the Remaining Party and the Transferor are each released and discharged from further obligations to each other with respect to the Old Transaction, other than any Remaining Portion, and their respective rights against each other thereunder are cancelled, provided that such release and discharge shall not affect any rights, liabilities or obligations of the Remaining Party or the Transferor with respect to payments or other obligations due and payable or due to be performed on or prior to the Novation Date, and all such payments and obligations shall be paid or performed by the Remaining Party or the Transferor in accordance with the terms of the Old Transaction;

(b) in respect of the New Transaction, the Remaining Party and the Transferee each undertake such liabilities and obligations towards the other and acquire rights against each other as set forth in the New Agreement, the Remaining Party and the Transferee shall each be deemed to have entered into such New Agreement and New Confirmation as of the Novation Date and the New Transaction shall be governed by and form part of the New Agreement and the New Confirmation;

(c) the relevant Old Confirmation shall be deemed modified to reflect any Remaining Portion consistent with this Novation Agreement, including by: (i) adjusting the Purchase Price such that it is equal to the Purchase Price set forth in the Old Confirmation less the Purchase Price set forth in the New Confirmation; (ii) adjusting the Repurchase Price such that it is equal to the Repurchase Price set forth in the Old Confirmation less the Repurchase Price set forth in the New Confirmation; (iii) adjusting the number of Purchased Securities such that it is equal to the number of Purchased Securities set forth in the Old Confirmation less the number of Novated Purchased Securities set forth in the New Confirmation, and (iv) adjusting such other terms mutatis mutandis as required to reflect this Novation Agreement;

(d) the Transferor undertakes to transfer to the Transferee the Novated Purchased Securities and any Income received with respect thereto (whether received prior to, on or after the Novation Date) that has not been transferred as of the Novation Date in accordance with Paragraph 5 of the Old Agreement, and the Transferor and the Remaining Party each agrees with respect to itself only that, other than as set out in the New Agreement, each such transfer shall be free and clear of any security interest, lien, encumbrance or other restriction created by or in respect of it;

(e) the Transferee and the Remaining Party each agrees to become a party to, to be bound by, and to comply with the provisions of, the New Ancillary Agreement; and

(f) [the Transferee agrees to become a party to, to be bound by, and to comply with the provisions of, the Voting Agreement in the same manner as if the undersigned were an original signatory to the Agreement. Transferee further agrees that it shall be a "Buyer" (as defined in the Voting Agreement) under the Voting Agreement.][3]

The address for notices of the undersigned under the Voting Agreement [shall be as set forth in the New Transaction] / [is as follows:

[Transferee]
[address]
[address]
Facsimile: [ ]
Attention: [ ]
E-mail: [ ][4]

3. Representations and Warranties.

(a) On the date of this Novation Agreement and on each Novation Date:

(i) Each of the parties makes to each of the other parties those representations and warranties set forth in the first sentence of Paragraph 10 of the Old Agreement as if such party was the "Buyer" or "Seller" under the Old Agreement with references in such Section to "this Agreement" being deemed references to this Novation Agreement alone.

(ii) The Remaining Party and the Transferor represents to the other that no Event of Default with respect to it has occurred and is continuing under the Old Agreement and would not occur under the Old Agreement as a result of its entering into or performing its obligations under this Novation Agreement, and the Remaining Party and the Transferee each represents to the other that no Event of Default with respect to it has occurred and is continuing under the New Agreement and would not occur under the New Agreement as a result of its entering into or performing its obligations under this Novation Agreement.

(iii) Each of the Transferor and the Remaining Party represents and warrants to each other and to the Transferee that:

(A) it has made no prior transfer (whether by way of security or otherwise) of the Old Agreement or any interest or obligation in or under the Old Agreement or in respect of the Old Transaction that is inconsistent with the transaction contemplated hereby; and

(B) as of the Novation Date, all obligations of the Transferor and the Remaining Party under the Old Transaction required to be performed on or before the Novation Date have been fulfilled.

(iv) The Transferor and Transferee each represents and warrants to the other that (i) it is duly authorized to execute and deliver this Novation Agreement and the Voting Agreement and

[3] Include for all but initial novation
[4] Include for all but initial novation

to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) the person executing and delivering this Novation Agreement and the Voting Agreement on its behalf was at the time of execution and delivery duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iii) it has obtained all authorizations of any governmental body required in connection with this this Novation Agreement and the Voting Agreement and such authorizations are in full force and effect and (iv) the execution, delivery and performance of this Novation Agreement and the Voting Agreement will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected, except in the case of clause (iv), as would not reasonably be expected to have a material adverse effect on the rights of the Transferor or Transferee or their respective affiliates, officers, directors and agents.

(b) The Transferor makes no representation or warranty and does not assume any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the New Transaction or the New Agreement or any documents relating thereto and assumes no responsibility for the condition, financial or otherwise, of the Remaining Party, the Transferee or any other person or for the performance and observance by the Remaining Party, the Transferee or any other person of any of its obligations under the New Transaction or the New Agreement or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

(c) The Transferee makes no representation or warranty and does not assume any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of the Old Transaction or the Old Agreement or any documents relating thereto and assumes no responsibility for the condition, financial or otherwise, of the Remaining Party, the Transferor or any other person or for the performance and observance by the Remaining Party, the Transferor or any other person of any of its obligations under the Old Transaction or the Old Agreement or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.

(d) The Transferee represents, warrants, acknowledges and agrees to the Transferor that:

(i) it (A) is knowledgeable, sophisticated and experienced in business and financial matters and capable of evaluating the merits and risks of a prospective investment in the New Transaction, the New Transaction Documents and the related securities, (B) has the ability to bear the economic risks of any investment it may make in the New Transaction, the New Transaction Documents and the related securities and can afford the complete loss of any such investment and (C) is a "qualified institutional buyer" as defined in Rule 144A under the Securities Act of 1933, as amended (the "**Securities Act**").

(ii) it may not and will not rely on any due diligence investigation that Transferor or its affiliates, or any person acting on behalf of any of them, may conduct or may have conducted with respect to the Old Transaction, the New Transaction, any related documentation (including the New Transaction Documents), the related securities, the issuer of such related securities (the "**Issuer**") or the Remaining Party or the Issuer's or Remaining Party's business. It understands that it will be afforded the opportunity to conduct its own due diligence investigation with respect to the New Transaction, the New Transaction Documents, the related securities, the Issuer and the Remaining Party and its and their business, including the opportunity to engage in discussions with the management of the Remaining Party concerning the Remaining Party, the Issuer and their business and any investment Transferee may make in the New Transaction, the New Transaction Documents and the related securities. The Transferee acknowledges that in receiving certain opinions of Shearman & Sterling LLP in connection with the New Transaction the Transferee shall be relying solely upon Shearman & Sterling LLP acting as counsel to the Transferee to the extent of the representation contemplated in the Transferee's engagement letter with Shearman & Sterling LLP, and shall not be

relying upon the Remaining Party with respect to the subject matter of such opinions. In the event that Transferee determines to proceed with a potential investment in the New Transaction, the New Transaction Documents and the related securities, it intends to request all information that it believes to be necessary or appropriate in connection with its consideration of such investment. It acknowledges that it is aware that there may be additional non-public information with respect to the New Transaction, the New Transaction Documents and the related securities, the Issuer, the Remaining Party and developments relating to the Issuer and the Remaining Party that the Company has agreed to make available or discuss with Transferee upon execution by Transferee of a confidentiality agreement, and that the Transferee has either executed such confidentiality agreement and made investigation satisfactory to it or has elected in its sole discretion not to request such information or discussion. It acknowledges that neither Transferor nor any of its affiliates, or any person acting on behalf of any of them, has made, or will make, any representation to Transferee, express or implied, with respect to the adequacy or completeness for Transferee's purposes of the information that Transferee may receive in connection with a potential investment in the New Transaction, the New Transaction Documents and the related securities.

4. Counterparts.

This Novation Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

5. Costs and Expenses.

The parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Novation Agreement and as a result of the negotiation, preparation and execution of this Novation Agreement.

6. Amendments.

No amendment, modification or waiver in respect of this Novation Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

7. (a) **Governing Law.**

This Novation Agreement will be governed by and construed in accordance with the laws of the State of New York without reference to the conflict of laws provisions thereof (other than Section 5-1401 of the New York General Obligations Law).

(b) **Jurisdiction.**

The terms of Section [ ] of Annex I to the Old Agreement shall apply to this Novation Agreement with references in such Section to "the Agreement" being deemed references to this Novation Agreement alone.

IN WITNESS WHEREOF the parties have executed this Novation Agreement on the respective dates specified below with effect from and including the Novation Date.

(Name of Remaining Party)

By: _____
Name:
Title:
Date:

(Name of Transferor)

By: _____
Name:
Title:
Date:

(Name of Transferee)

By: _____
Name:
Title:
Date:

SCHEDULE A

Identification of Old Transaction to be discharged in whole or in part

SCHEDULE A-1

Old Agreement

[Old Agreement including Annex 1 to be inserted]

SCHEDULE A-2

Old Confirmation

[Old Confirmation to be inserted]

SCHEDULE A-3

Novated Portion

[Novated Purchase Price:
Novated Repurchase Price:]
Novated Purchased Securities:

ANNEX A

[Form of] Voting Rights Agreement

SCHEDULE B

Identification of New Transaction

SCHEDULE B-1

New Agreement

[Annexes to New Agreement to be inserted]

SCHEDULE B-2

New Confirmation

[New Confirmation to be inserted]

ANNEX 1 TO NOVATION AGREEMENT

[FORM OF] VOTING AGREEMENT

This VOTING AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the "*Agreement*") is entered into as of [ ], 201 .

AMONG:

(1) Amgen Inc., hereinafter referred to as the "*Seller*",

AND:

(2) Bank of America, N.A., hereinafter referred to as the "*Original Buyer*"

AND:

(3) [ ], hereinafter referred to as the "*Assignee Buyer*".[1]

It is contemplated that other persons may become a party to this agreement by executing a Joinder Agreement substantially in the form of Annex A hereto, each hereinafter referred to as a "*Joining Buyer*", and, together with the Original Buyer and the Assignee Buyer, the "*Buyers*";

The Buyers and the Seller are hereinafter jointly referred to as the "*Parties*", and each individually as a "*Party*";

WHEREAS:

(A) The Original Buyer and the Seller have entered into a Master Repurchase Agreement, dated as of August 24, 2013 (the "*Original Repo Agreement*"), pursuant to which Purchased Securities have been transferred by the Seller to the Original Buyer against the transfer of funds by the Original Buyer, with a simultaneous agreement by the Original Buyer to transfer to the Seller such Purchased Securities at a date certain or on demand, against the transfer of funds by the Seller; and

(B) The Repo Agreement provides that a Buyer may transfer its rights and obligations under the Repo Agreement in whole or in part to certain persons through a Novation Agreement (as provided therein), *provided, however*, that, if after giving effect to such transfer there will be more than one such Buyer, the transferee Buyer shall also become a party to this Agreement; and

(C) [describe the transfers as a result of which this agreement is entered into];

[1] Conforming changes if Original Buyer is no longer party, or if there are more than two Buyers at any time.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties expressly acknowledge, the parties hereto hereby agree as follows:

1. Definitions. The following terms used in this Agreement have the meaning given them in the relevant Repo Agreement:

(a) Ancillary Agreement;

(b) Certificate;

(c) Default;

(d) Event of Default;

(e) Material Affiliate Event;

(f) Novation Agreement;

(g) Price Differential;

(h) Purchased Securities;

(i) Purchased Security;

(j) Repurchase Date;

(k) Repurchase Price; and

(l) Transaction.

2. Additional Definitions. The following terms have the meanings specified below.

(a) *Instructing Buyers* means, as of any time, one or more Buyers having an aggregate amount of the Purchased Security comprising not less than 10% of the interests of all Buyers.

(b) *Majority of Buyers* means a majority in interest of Buyers that are "Unaffiliated Holders", as such term is defined in the Certificate.

(c) *Non-General Default* or *Non-General Event of Default* means, with respect to a Buyer, a Default or Event of Default that is a Default or Event of Default in respect of the Seller under paragraph 11(ii), (iv), (v), (vi), (vii) (with respect to clauses (i) and (v) of paragraph 10 of the Repo Agreement) or (viii) of the Repo Agreement to which such Buyer is party.

(d) *Repo Agreement* means at any time the Original Repo Agreement (if at such time the repurchase by the Seller of the Purchased Securities subject thereto shall not have been consummated) and any other repurchase agreement entered into by novation of the Original Repo Agreement directly or indirectly (if at such time the repurchase by the Seller of the Purchased Securities subject thereto shall not have been consummated).

(e) *Transaction Documents* means the Transaction Documents as defined in the Repo Agreement together with the Certificate, in each case as amended, amended and restated, supplemented or otherwise modified from time to time.

3. Representations and Warranties.

The Seller and each Buyer represents and warrants to the other that (i) it is duly authorized to execute and deliver this Agreement (and the applicable Joinder Agreement, as applicable) and to perform its obligations hereunder and has taken all necessary action to authorize such execution, delivery and performance, (ii) the person executing and delivering this Agreement (and the applicable Joinder Agreement, as applicable) on its behalf was at the time of execution and delivery duly authorized to do so on its behalf (or on behalf of any such disclosed principal), (iii) it has obtained all authorizations of any governmental body required in connection with this Agreement (and the applicable Joinder Agreement, as applicable) and such authorizations are in full force and effect and (iv) the execution, delivery and performance of this Agreement (and the applicable Joinder Agreement, as applicable) will not violate any law, ordinance, charter, by-law or rule applicable to it or any agreement by which it is bound or by which any of its assets are affected, except in the case of clause (iv), as would not reasonably be expected to have a material adverse effect on the rights of the Buyers or the Seller or their respective affiliates, officers, directors and agents.

4. Voting Restrictions.

(a) Subject to Section 4(b), the Buyers will each consent to any amendment or waiver of their respective Transaction Documents if and only if a Majority of Buyers shall have agreed to identical amendments or waivers to their respective Transaction Documents; *provided*, *however*, that each Buyer shall have sole discretion to grant or withhold the waiver of any Non-General Default or Non-General Event of Default and to exercise remedies with respect thereto in accordance with the Repo Agreement to which it is party.

(b) Notwithstanding Section 4(a), no Buyer shall be required to enter into or consent to any amendment or waiver of any term of this Agreement. Notwithstanding Section 4(a), no Buyer shall be required to enter into any amendment or waiver of any Transaction Document that would have the effect of:

(i) reducing the Price Differential, the Repurchase Price of any Purchased Securities or the amount of any fees or indemnification under any Transaction Document payable in respect of any Transaction to which such Buyer is party or extending the time for payment of any such amounts;

(ii) making any payment under the Repo Agreement to which such Buyer is party payable in money other than that stated in such agreement; or

(iii) impairing the right of any Buyer to receive payment of Repurchase Price of and Price Differential on any Transaction to which such Buyer is party on or fees or indemnification thereunder on the due dates therefor or to institute a suit for the enforcement of any overdue payment on or with respect to the Transaction to which such Buyer is party.

(c) Each Buyer will each declare or refrain from declaring the acceleration of the Repurchase Date following an Event of Default of the Seller under the Repo Agreement to which such Buyer is party in accordance with the decision of a Majority of Buyers; *provided*, *however*, that if such an Event of Default is a Non-General Event of Default, it shall be within the sole discretion of such Buyer whether to declare or refrain from declaring such acceleration if and only if such Buyer is a Buyer or group of Buyers comprising Instructing Buyers.

(d) Each Buyer will give notice or refrain from the giving notice of a Material Affiliate Event under Section 5.3(a) of the Certificate, and will exercise or refrain from exercising, "Special Voting Rights" (as defined in the Certificate) following a Material Affiliate Event under the Certificate in accordance with the decision of a Majority of Buyers; *provided*, *however*, that, in the case of Special Voting Rights arising from, or existing during the continuance of, a Material Affiliate Event described in clause (i) (with respect to Sections 2.1, 2.2, 2.3, 2.4, 2.6, 2.8 (with respect to the second sentence thereof only), 2.9, 2.10, 2.11, 2.13, 2.14, 2.15(b) and 2.16 of the Ancillary Agreement), (ii), (iii), (iv) (other than with respect to Sections 3.3 and 3.5 of the Ancillary Agreement), (v), (vi), (x)(b), (xi) (with respect to any Non-General Event of Default in respect of such Buyer), (xii) or (xiii) of the definition of such term in the Certificate, if Instructing Buyers shall elect in their sole discretion to exercise Special Voting Rights, then the other Buyers shall exercise Special Voting Rights and their rights under Sections 5.6 and 5.7 of the Certificate as reasonably directed by such Instructing Buyers solely in order to bring about the prompt redemption of the Purchased Securities held by such Instructing Buyers.

(e) No Buyer shall consent to effectuate or validate any of the actions set forth in Section 5.4 of the Certificate unless each Instructing Buyer directs that such consent shall be given, with each such Instructing Buyer having sole discretion to give or withhold such direction *provided*, *however*, that each Buyer will consent to effecting or validating any action or decision specified in Section 5.4(g) or 5.4(k) of the Certificate if and only if the Majority of Buyers shall have agreed to give such consent.

5. Specific Performance. Each Buyer acknowledges that it may be impossible to determine the amount of damages that would result from any breach of any of its obligations under this Agreement and that the remedy at law for any breach, or threatened breach, would likely be inadequate and, accordingly, agrees that the Seller shall, in addition to any other rights or remedies which it may have at law or in equity, be entitled to seek such equitable and injunctive relief as may be available from any court of competent jurisdiction to restrain any Buyer from violating any of its obligations under this Agreement. In connection with any action or proceeding for such equitable or injunctive relief, each Buyer hereby waives any claim or defense that a remedy at law alone is adequate and agrees, to the maximum extent permitted by law, to have the obligations of such Buyer under this Agreement specifically enforced against it, without the necessity of posting bond or other security, and consents to the entry of equitable or injunctive relief against such Buyer enjoining or restraining any breach or threatened breach of this Agreement.

6. Miscellaneous.

(a) This Agreement shall be governed by the laws of the State of New York without giving effect to the conflict of law principles thereof.

(b) Each Party irrevocably and unconditionally (i) submits to the exclusive jurisdiction of any United States Federal or New York State court sitting in the Borough of Manhattan and any appellate court from any such court solely for the purpose of any suit, action or proceeding brought to enforce its obligations under this Agreement, and (ii) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile.

(c) Each Party hereby irrevocably agrees that the summons and complaint or any other process in any action in any jurisdiction may be served by mailing (using certified or registered mail, postage prepaid) in the manner of giving notices set forth herein or by hand delivery to a person of suitable age and discretion at the notice address provided pursuant to this Agreement. Each Party may also be served in any other manner permitted by law, in which event its time to respond shall be the time provided by law.

(d) To the extent that any Party has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding from jurisdiction of any court or from set off or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment, or otherwise) with respect to itself or any of its property, such Party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under this Agreement or relating in any way to this Agreement.

(e) EACH PARTY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(f) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts, each of which counterparts shall be deemed to be an original and such counterparts shall constitute but one and the same instrument.

(g) Any and all notices, statements, demands or other communications hereunder may be given by a Party in the manner set forth in the Repo Agreement to which it is party.

(h) Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

(i) The rights and obligations of the Seller under this Agreement shall not be assigned without the prior written consent of each Buyer. The rights and obligations of any Buyer under this Agreement shall not be assigned without the prior written consent of the Seller, except in connection with the transfer of its rights under the Repo Agreement in accordance with the terms thereof to a person that is or, concurrently with such transfer, becomes a party to this Agreement. No Party shall transfer any Purchased Security to any person while this Agreement remains in effect unless such person is or, concurrently with such transfer, becomes a party to this Agreement.

(j) No modification or waiver of any provision of this Agreement and no consent by any party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by all of the parties hereto.

(k) This Agreement shall terminate automatically (i) with respect to any Buyer upon the earlier of (A) the later of (x) termination of the Repo Agreement to which it is party and (y) the transfer by such Party of all such Party's Purchased Securities and (B) the transfer in accordance with the terms thereof of its interest therein (together with a transfer of such Purchased Securities); (ii) with respect to the Seller upon the termination of all the Repo Agreements; and (iii) with respect to all parties upon the termination of all the Repo Agreements and payment in full of all Buyers that are a Party hereto.

[*remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

BANK OF AMERICA, N.A.

By: _____
Name:
Title:

AMGEN INC.

By: _____
Name:
Title:

[ ]

By: _____
Name:
Title:

ANNEX A

Form of Joinder Agreement

The undersigned, [***Joining Buyer***], a [ ], hereby agrees, effective as of the date hereof, to become a party to, to be bound by, and to comply with the provisions of, that certain Voting Agreement (as amended, amended and restated, supplemented or otherwise modified prior to the date hereof, the "Agreement"), dated as of [ ], by and among [ ], [Bank of America, N.A.], [ ], and any other Joining Buyers (as defined therein) from time to time, in the same manner as if the undersigned were an original signatory to the Agreement. A copy of the Agreement is attached hereto in Schedule I. The undersigned further agrees that it shall be a "Buyer" (as defined in the Agreement) under the Agreement.

The undersigned represents and warrants to the Seller and each other Buyer as set forth in Section 2 of the Agreement.

The address for notices of the undersigned under the Agreement is as follows:

[***Joining Buyer***]
[address]
[address]
Facsimile: [ ]
Attention: [ ]
E-mail: [ ]

Defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

Accordingly, the undersigned has executed and delivered this Joinder Agreement as of the day of , .

[***Joining Buyer***]

By: _____
Name:
Title:

Voting Agreement
(See attached).

News Release

AMGEN TO ACQUIRE ONYX PHARMACEUTICALS
FOR $125 PER SHARE IN CASH

Attractive Addition to Amgen's Leading Oncology Portfolio and Pipeline

Kyprolis® (carfilzomib) for Injection is at Early Stages of Launch in Multiple Myeloma;
Showing Strong Physician Support

Acquisition Expected to Contribute to Growth and Value for Amgen Shareholders

Amgen to Host Analyst/Investor Call Monday at 8:30 a.m. EDT
(5:30 a.m. PDT)

THOUSAND OAKS, Calif. and SOUTH SAN FRANCISCO, Calif. – Aug. 25, 2013 /PRNewswire/ – Amgen (NASDAQ:AMGN) and Onyx Pharmaceuticals, Inc. (NASDAQ:ONXX) today announced that their Boards of Directors have unanimously approved a transaction under which Amgen will acquire all of the outstanding shares of Onyx for $125 per share in cash. The purchase price is $10.4 billion, or $9.7 billion net of estimated Onyx cash.

Onyx Pharmaceuticals, Inc. is a global biopharmaceutical company engaged in the development and commercialization of innovative therapies for improving the lives of people with cancer. Onyx has an important and growing multiple myeloma franchise, with Kyprolis® (carfilzomib) for Injection already approved in the United States (U.S.). In addition, Onyx has three partnered oncology assets: Nexavar® (sorafenib) tablets (an Onyx and Bayer HealthCare Pharmaceuticals, Inc. compound), Stivarga® (regorafenib) tablets (a Bayer compound), and palbociclib (a Pfizer, Inc. compound). Onyx also has multiple oncology compounds in various stages of clinical development.

Amgen intends to effect the transaction through a tender offer and expects to close at the beginning of the fourth quarter, subject to the satisfaction of customary closing conditions, including the receipt of regulatory clearance.

“We believe that Amgen is ideally suited to realize the full potential of Onyx’s portfolio and pipeline for the benefit of physicians and patients,” said Robert A. Bradway, chairman and chief executive officer at Amgen. “Our acquisition of Onyx follows a thorough due diligence process and is fully consistent with our strategy of advancing innovative medicines that address serious unmet medical needs. We expect this acquisition will accelerate growth and enhance value for Amgen shareholders.

“Amgen has a unique opportunity to add value to Kyprolis, a product which is at an early and promising stage of its launch,” Bradway continued.

Onyx holds global rights to Kyprolis, excluding Japan. Kyprolis has an orphan drug designation in the U.S. with exclusivity until July 2019, and patents in the U.S. which extend until at least 2025.

Amgen will benefit from the global rights to Onyx’s innovative oncology portfolio and pipeline. Amgen intends to leverage its oncology capabilities and experience to support Onyx’s clinical development programs and maximize Kyprolis’ potential in the U.S. and the rest of the world.

The acquisition of Onyx also adds to Amgen’s robust late-stage pipeline. This pipeline includes nine innovative products for which registration-enabling data are anticipated by 2016. Four of these are innovative, first-in-class oncology products. Onyx’s pipeline complements Amgen’s growing oncology portfolio.

In addition to accelerating Amgen’s revenue growth, the acquisition of Onyx is expected to be accretive to Amgen’s adjusted net income in 2015.

“After a careful and thorough evaluation process, our Board of Directors has determined that the all-cash transaction with Amgen maximizes value for our stockholders and expands the potential of our commercial medicines and clinical pipeline to reach more patients globally,” said Dr. Tony Coles, chairman and chief executive officer of Onyx.

Coles continued, “We are pleased to have reached this agreement with Amgen, a company that shares Onyx’s vision for innovation on behalf of patients. This transaction is an important affirmation of the meaningful value our employees have created, and we look forward to rewarding our stockholders with an immediate and attractive premium.”

Bradway concluded, “Our two companies share a strong culture of innovation and a focus on patient needs. I look forward to bringing the talented people of Onyx and Amgen together as we continue to fulfill our commitment to unlocking the potential of biology for patients suffering from serious illnesses.”

Benefits of the Transaction

Excellent Strategic Fit: Amgen’s strategy is to advance innovative medicines that address serious unmet medical needs.

- Amgen is a global leader in oncology. As a focused oncology company, Onyx's products and pipeline strengthen Amgen's leading position in this field.
- Onyx's oncology pipeline adds to Amgen's existing pipeline that addresses areas of serious unmet medical need. Amgen's current pipeline includes nine products for which registration-enabling data are anticipated by 2016.
- The acquisition of Onyx enables Amgen to continue building its position in international markets, capitalizing on its worldwide commercial, development and manufacturing capabilities. Onyx has global rights to Kyprolis (excluding Japan) and has clinical trials underway supporting an expected European Union (EU) filing in 2014.
- Amgen's track record in quality and reliability of supply and efficiency in manufacturing will bring an added source of value to the Onyx portfolio.
- The transaction is expected to deliver meaningful revenue growth and return on capital and to be accretive to adjusted net income in 2015. This will support Amgen's commitment to continue to meaningfully increase its dividend over time.

Positions Amgen to Address Growing Patient Needs in Multiple Myeloma

- **Kyprolis** is at an early stage of its launch, with global rights, excluding Japan, held by Onyx. It has an orphan drug designation in the U.S. with exclusivity until July 2019, and patents in the U.S. which extend until at least 2025. Amgen believes there is a significant opportunity to grow Kyprolis, including potential expansion into earlier lines of multiple myeloma treatment and into international markets.

  Ongoing studies to support and extend Kyprolis' position in multiple myeloma include:

  - The ASPIRE trial, which is investigating the addition of Kyprolis to Revlimid® (lenalidomide)[1] and dexamethasone in patients with relapsed multiple myeloma who have received one to three prior therapies. An interim analysis is expected to read out in 2014. ASPIRE is the confirmatory trial for full U.S. approval as well as a registration-enabling study for relapsed multiple myeloma in the U.S. and EU.
  - The FOCUS trial, which could support the EU filing for the indication of relapsed/refractory multiple myeloma, is also expected to read out in 2014.
  - The ENDEAVOR trial, underway to compare Kyprolis to Velcade® (bortezomib)[2] in patients with relapsed multiple myeloma who have received one to three prior therapies.
  - The CLARION trial, underway to compare Kyprolis to Velcade in patients with newly diagnosed multiple myeloma.

[1] Revlimid® is a registered trademark of Celgene Corporation.
[2] Velcade® is a registered trademark of Millennium Pharmaceuticals, Inc.

- **Oprozomib**, an investigational oral proteasome inhibitor, is in Phase 1b/2 trials and has the potential to play an important future role in the management of multiple myeloma.
- Across the multiple myeloma platform, Amgen's experience in oncology can help guide Onyx's pipeline to successful approval and reimbursement.

Provides Additional Sources of Revenue Growth and Profitability

- **Nexavar® (sorafenib) tablets** is Onyx and Bayer's oral kinase inhibitor, currently approved in the U.S. for unresectable hepatocellular carcinoma (HCC) and advanced renal cell carcinoma (RCC). It is being studied in locally advanced or metastatic HER2 negative breast cancer. Nexavar has also been submitted for U.S. Food and Drug Administration (FDA) and European Medicines Agency (EMA) approval for the treatment of radioactive iodine-refractory differentiated thyroid cancer. Nexavar is co-developed by Onyx and Bayer except in Japan where Bayer manages all development. The companies co-promote Nexavar in the U.S. Outside of the U.S., Bayer has exclusive marketing rights, and Bayer and Onyx share profits globally, excluding Japan.
- **Stivarga® (regorafenib) tablets** is Bayer's oral multiple kinase inhibitor, currently approved in the U.S. for the treatment of patients with metastatic colorectal cancer (mCRC) who have been previously treated with fluoropyrimidine-, oxaliplatin- and irinotecan-based chemotherapy, an anti-VEGF therapy, and, if *KRAS* wild type, an anti-EGFR therapy. It is also indicated for the treatment of patients with locally advanced, unresectable or metastatic gastrointestinal stromal tumor (GIST) who have been previously treated with imatinib mesylate and sunitinib malate. Stivarga is a Bayer compound developed by Bayer and jointly promoted by Bayer and Onyx in the U.S. In 2011, Bayer entered into an agreement with Onyx, under which Onyx receives a 20 percent royalty on all global net sales of Stivarga in oncology.
- **Palbociclib** is Pfizer's investigational oral, small molecule cyclin-dependent kinase 4/6 inhibitor being developed by Pfizer in a Phase 3 trial for ER+, HER2-negative advanced breast cancer. Palbociclib has received Breakthrough Therapy designation by the U.S. FDA based on preliminary Phase 2 data showing improvement in median progression-free survival in combination therapy. Onyx will receive an 8 percent royalty on future worldwide sales of palbociclib.

Financing and Approvals

Amgen will finance the acquisition with $8.1 billion in committed bank loans and the balance with cash available in the U.S. The loans have five year terms and carry an

average interest charge of LIBOR plus 104 basis points. Amgen expects to retain its investment grade credit rating following this transaction and remains committed to meaningfully increasing the dividend over time. The transaction is subject to the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act and other customary closing conditions.

Lazard is acting as lead advisor to Amgen; BofA Merrill Lynch is acting as co-advisor and is also lead arranger for the financing; and Sullivan & Cromwell LLP is serving as legal counsel. Centerview Partners, LLC is acting as financial advisor to Onyx and Goodwin Procter, LLP is serving as legal counsel.

Investor Conference Call / Webcast Information

Amgen will host a conference call and webcast at 8:30 a.m. EDT (5:30 a.m. PDT) on Monday, Aug. 26 to provide more information on this announcement. The webcast and accompanying slides can be accessed at www.amgen.com. A real-time and post-call webcast will be available for 7 days following the call under the Investor section of www.amgen.com.

Conference Call Dial-in:	Domestic:	877-456-7504
	International:	706-643-3140
	Passcode:	40362332
Replay Dial-in:	Domestic:	855-859-2056
	International:	404-537-3406
	Passcode:	40362332

About Kyprolis® (carfilzomib) for Injection

Kyprolis® (carfilzomib) for Injection, a proteasome inhibitor, is approved for the treatment of patients with multiple myeloma who have received at least two prior therapies, including bortezomib and an immunomodulatory agent, and have demonstrated disease progression on or within 60 days of completion of the last therapy. Approval is based on response rate. Currently, no data are available for Kyprolis that demonstrate an improvement in progression-free survival or overall survival.

Important Safety Information Regarding Kyprolis® (carfilzomib) for Injection

On July 20, 2012, the U.S. Food and Drug Administration (FDA) granted accelerated approval of Kyprolis® (carfilzomib) for Injection for the treatment of patients with multiple myeloma who have received at least two prior therapies including bortezomib and an immunomodulatory agent (IMiD), and have demonstrated disease progression on or within 60 days of completion of the last therapy. Approval was based on response rate. Clinical benefit, such as improvement in survival or symptoms, has not been verified.

Safety data have been evaluated in 526 patients with relapsed and/or refractory multiple myeloma who received single-agent Kyprolis. There were 37 deaths in the phase 2

studies, or 7% of patients. The most common causes of death, other than disease progression, were cardiac (5 patients), end-organ failure (4 patients), and infection (4 patients). Important warnings and precautions include cardiac arrest, congestive heart failure, myocardial ischemia; pulmonary hypertension, pulmonary complications, infusion reactions, tumor lysis syndrome, thrombocytopenia, hepatic toxicity and embryo-fetal toxicity.

Death due to cardiac arrest has occurred within a day of Kyprolis administration. Patients with New York Heart Association Class III and IV heart failure, myocardial infarction in the preceding 6 months, and conduction abnormalities uncontrolled by medications were not eligible for the clinical trials. These patients may be at greater risk for cardiac complications.

Pulmonary arterial hypertension (PAH) was reported in 2% of patients treated with Kyprolis and was Grade 3 or greater in less than 1% of patients. Dyspnea was reported in 35% of patients enrolled in clinical trials. Grade 3 dyspnea occurred in 5%; no Grade 4 events, and 1 death (Grade 5) was reported.

Infusion reactions, characterized by a spectrum of systemic symptoms including fever, chills, arthralgia, myalgia, facial flushing, facial edema, vomiting, weakness, shortness of breath, hypotension, syncope, chest tightness, or angina can occur immediately following or up to 24 hours after administration of Kyprolis. Administration of dexamethasone prior to Kyprolis reduces the incidence and severity of reactions. Tumor lysis syndrome (TLS) occurred following Kyprolis administration in < 1% of patients.

Patients with multiple myeloma and a high tumor burden should be considered to be at greater risk for TLS.

Thrombocytopenia following Kyprolis administration resulted in a dose reduction in 1% of patients and discontinuation of treatment with Kyprolis in < 1% of patients.

Cases of hepatic failure, including fatal cases, have been reported (< 1%). Kyprolis can cause elevations of serum transaminases and bilirubin.

There are no adequate and well-controlled studies in pregnant women using Kyprolis. Females of reproductive potential should be advised to avoid becoming pregnant while being treated with Kyprolis.

The most common serious adverse reactions were pneumonia, acute renal failure, pyrexia, and congestive heart failure. The most common adverse reactions (incidence of 30% or greater) observed in clinical trials of patients with multiple myeloma were fatigue, anemia, nausea, thrombocytopenia, dyspnea, diarrhea, and pyrexia. Serious adverse reactions were reported in 45% of patients.

Full prescribing information is available at http://www.onyx.com.

About Nexavar® (sorafenib) Tablets

Nexavar is approved in the U.S. for the treatment of patients with unresectable hepatocellular carcinoma and for the treatment of patients with advanced renal cell carcinoma. Nexavar is thought to inhibit both the tumor cell and tumor vasculature. In in vitro studies, Nexavar has been shown to inhibit multiple kinases thought to be involved in both cell proliferation (growth) and angiogenesis (blood supply) – two important processes that enable cancer growth. These kinases include Raf kinase, VEGFR-1, VEGFR-2, VEGFR-3, PDGFR-B, KIT, FLT-3 and RET.

Nexavar is currently approved in more than 100 countries. Nexavar is also being evaluated by Bayer and Onyx, international study groups, government agencies and individual investigators in a range of cancers.

Important Safety Considerations For Nexavar® (sorafenib) Tablets

Nexavar in combination with carboplatin and paclitaxel is contraindicated in patients with squamous cell lung cancer.

Cardiac ischemia and/or myocardial infarction may occur. Temporary or permanent discontinuation of Nexavar should be considered in patients who develop cardiac ischemia and/or myocardial infarction.

An increased risk of bleeding may occur following Nexavar administration. If bleeding necessitates medical intervention, consider permanent discontinuation of Nexavar.

Hypertension may occur early in the course of treatment. Monitor blood pressure weekly during the first 6 weeks and periodically thereafter and treat, if required.

Hand-foot skin reaction and rash are common and management may include topical therapies for symptomatic relief. In cases of any severe or persistent adverse reactions, temporary treatment interruption, dose modification, or permanent discontinuation of Nexavar should be considered. Nexavar should be discontinued if Stevens-Johnson Syndrome or toxic epidermal necrolysis are suspected as these may be life threatening.

Gastrointestinal perforation was an uncommon adverse reaction and has been reported in less than 1% of patients taking Nexavar. Discontinue Nexavar in the event of a gastrointestinal perforation.

Patients taking concomitant warfarin should be monitored regularly for changes in prothrombin time (PT), International Normalized Ratio (INR) or clinical bleeding episodes.

Temporary interruption of Nexavar therapy is recommended in patients undergoing major surgical procedures.

Nexavar in combination with gemcitabine/cisplatin is not recommended in patients with squamous cell lung cancer. The safety and effectiveness of Nexavar has not been established in patients with non-small cell lung cancer.

Nexavar can prolong the QT/QTc interval and increase the risk for ventricular arrhythmias. Avoid use in patients with congenital long QT syndrome and monitor patients with congestive heart failure, bradyarrhythmias, drugs known to prolong the QT interval, and electrolyte abnormalities.

Drug-induced hepatitis with Nexavar may result in hepatic failure and death. Liver function tests should be monitored regularly and in cases of increased transaminases without alternative explanation Nexavar should be discontinued.

Nexavar may cause fetal harm when administered to a pregnant woman. Women of childbearing potential should be advised to avoid becoming pregnant while on Nexavar and female patients should also be advised against breastfeeding while receiving Nexavar.

Elevations in serum lipase and reductions in serum phosphate of unknown etiology have been associated with Nexavar.

Avoid concomitant use of strong CYP3A4 inducers, when possible, because inducers can decrease the systemic exposure of Nexavar. Nexavar exposure decreases when coadministered with oral neomycin. Effects of other antibiotics on Nexavar pharmacokinetics have not been studied.

Most common adverse reactions reported for Nexavar-treated patients vs. placebo-treated patients in unresectable HCC, respectively, were: diarrhea (55% vs. 25%), fatigue (46% vs. 45%), abdominal pain (31% vs. 26%), weight loss (30% vs. 10%), anorexia (29% vs. 18%), nausea (24% vs. 20%), and hand-foot skin reaction (21% vs. 3%). Grade 3/4 adverse reactions were 45% vs. 32%.

Most common adverse reactions reported for Nexavar-treated patients vs. placebo-treated patients in advanced RCC, respectively, were: diarrhea (43% vs. 13%), rash/desquamation (40% vs. 16%), fatigue (37% vs. 28%), hand-foot skin reaction (30% vs. 7%), alopecia (27% vs. 3%), and nausea (23% vs. 19%). Grade 3/4 adverse reactions were 38% vs. 28%.

For information about Nexavar including U.S. Nexavar prescribing information, visit www.nexavar-us.com or call 1.866.NEXAVAR (1.866.639.2827).

Nexavar® is a registered trademark of Bayer HealthCare Pharmaceuticals, Inc.

About Stivarga (regorafenib)

In the United States, Stivarga is indicated for the treatment of patients with mCRC who have been previously treated with fluoropyrimidine-, oxaliplatin- and irinotecan-based chemotherapy, an anti-VEGF therapy, and, if KRAS wild type, an anti-EGFR therapy. It is also indicated for the treatment of patients with locally advanced, unresectable or metastatic gastrointestinal stromal tumor (GIST) who have been previously treated with imatinib mesylate and sunitinib malate.

Stivarga is an inhibitor of multiple kinases involved in normal cellular functions and in pathologic processes such as oncogenesis, tumor angiogenesis, and maintenance of the tumor microenvironment.

For full U.S. prescribing information, including BOXED WARNING, visit www.stivarga-us.com.

Important U.S. Safety Information for Stivarga® (regorafenib) Tablets

WARNING: HEPATOTOXICITY

Severe and sometimes fatal hepatotoxicity has been observed in clinical trials.

Monitor hepatic function prior to and during treatment.

Interrupt and then reduce or discontinue STIVARGA for hepatotoxicity as manifested by elevated liver function tests or hepatocellular necrosis, depending upon severity and persistence.

Severe drug-induced liver injury with fatal outcome occurred in 0.3% of 1200 STIVARGA-treated patients across all clinical trials. In metastatic colorectal cancer (mCRC), fatal hepatic failure occurred in 1.6% of patients in the STIVARGA arm and in 0.4% of patients in the placebo arm; all the patients with hepatic failure had metastatic disease in the liver. In gastrointestinal stromal tumor (GIST), fatal hepatic failure occurred in 0.8% of patients in the STIVARGA arm.

Obtain liver function tests (ALT, AST, and bilirubin) before initiation of STIVARGA and monitor at least every 2 weeks during the first 2 months of treatment. Thereafter, monitor monthly or more frequently as clinically indicated. Monitor liver function tests weekly in patients experiencing elevated liver function tests until improvement to less than 3 times the upper limit of normal (ULN) or baseline values. Temporarily hold and then reduce or permanently discontinue STIVARGA, depending on the severity and persistence of hepatotoxicity as manifested by elevated liver function tests or hepatocellular necrosis.

STIVARGA caused an increased incidence of hemorrhage. The overall incidence (Grades 1-5) was 21% and 11% with STIVARGA vs 8% and 3% with placebo in mCRC and GIST patients, respectively. Fatal hemorrhage occurred in 4 of 632 (0.6%) STIVARGA-treated patients and involved the respiratory, gastrointestinal, or genitourinary tracts. Permanently discontinue STIVARGA in patients with severe or life-threatening hemorrhage and monitor INR levels more frequently in patients receiving warfarin.

STIVARGA caused an increased incidence of hand-foot skin reaction (HFSR) (also known as palmar-plantar erythrodysesthesia [PPE]) and severe rash, frequently

requiring dose modification. The overall incidence was 45% and 67% with STIVARGA vs 7% and 12% with placebo in mCRC and GIST patients, respectively. Incidence of Grade 3 HFSR (17% vs 0% in mCRC and 22% vs 0% in GIST), Grade 3 rash (6% vs <1% in mCRC and 7% vs 0% in GIST), serious adverse reactions of erythema multiforme (0.2% vs 0% in mCRC), and Stevens-Johnson syndrome (0.2% vs 0% in mCRC) was higher in STIVARGA-treated patients. Toxic epidermal necrolysis occurred in 0.17% of 1200 STIVARGA-treated patients across all clinical trials. Withhold STIVARGA, reduce the dose, or permanently discontinue depending on the severity and persistence of dermatologic toxicity.

STIVARGA caused an increased incidence of hypertension (30% vs 8% in mCRC and 59% vs 27% in GIST with STIVARGA vs placebo, respectively). Hypertensive crisis occurred in 0.25% of 1200 STIVARGA-treated patients across all clinical trials. Do not initiate STIVARGA until blood pressure is adequately controlled. Monitor blood pressure weekly for the first 6 weeks of treatment and then every cycle, or more frequently, as clinically indicated. Temporarily or permanently withhold STIVARGA for severe or uncontrolled hypertension.

STIVARGA increased the incidence of myocardial ischemia and infarction (1.2% with STIVARGA vs 0.4% with placebo). Withhold STIVARGA in patients who develop new or acute cardiac ischemia or infarction, and resume only after resolution of acute cardiac ischemic events if the potential benefits outweigh the risks of further cardiac ischemia.

Reversible Posterior Leukoencephalopathy Syndrome (RPLS) occurred in 1 of 1200 STIVARGA-treated patients across all clinical trials. Confirm the diagnosis of RPLS with MRI and discontinue STIVARGA in patients who develop RPLS.

Gastrointestinal perforation or fistula occurred in 0.6% of 1200 patients treated with STIVARGA across clinical trials. In GIST, 2.1% (4/188) of STIVARGA-treated patients developed gastrointestinal fistula or perforation: of these, 2 cases of gastrointestinal perforation were fatal. Permanently discontinue STIVARGA in patients who develop gastrointestinal perforation or fistula.

Treatment with STIVARGA should be stopped at least 2 weeks prior to scheduled surgery. Resuming treatment after surgery should be based on clinical judgment of adequate wound healing. STIVARGA should be discontinued in patients with wound dehiscence.

STIVARGA can cause fetal harm when administered to a pregnant woman. Use effective contraception during treatment and up to 2 months after completion of therapy. If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to the fetus.

Because many drugs are excreted in human milk and because of the potential for serious adverse reactions in nursing infants from STIVARGA, a decision should be made whether to discontinue nursing or discontinue the drug, taking into account the importance of the drug to the mother.

The most frequently observed adverse drug reactions (³30%) in STIVARGA-treated patients vs placebo-treated patients in mCRC, respectively, were: asthenia/fatigue (64% vs 46%), decreased appetite and food intake (47% vs 28%), HFSR/PPE (45% vs 7%), diarrhea (43% vs 17%), mucositis (33% vs 5%), weight loss (32% vs 10%), infection (31% vs 17%), hypertension (30% vs 8%), and dysphonia (30% vs 6%).

The most frequently observed adverse drug reactions (³30%) in STIVARGA-treated patients vs placebo-treated patients in GIST, respectively, were: HFSR/PPE (67% vs 15%), hypertension (59% vs 27%), asthenia/fatigue (52% vs 39%), diarrhea (47% vs 9%), mucositis (40% vs 8%), dysphonia (39% vs 9%), infection (32% vs 5%), decreased appetite and food intake (31% vs 21%), and rash (30% vs 3%).

STIVARGA® is a trademark of Bayer®. Bayer® and the Bayer Cross® are registered trademarks of Bayer.

About Amgen

Amgen is committed to unlocking the potential of biology for patients suffering from serious illnesses by discovering, developing, manufacturing and delivering innovative human therapeutics. This approach begins by using tools like advanced human genetics to unravel the complexities of disease and understand the fundamentals of human biology.

Amgen focuses on areas of high unmet medical need and leverages its biologics manufacturing expertise to strive for solutions that improve health outcomes and dramatically improve people's lives. A biotechnology pioneer since 1980, Amgen has grown to be the world's largest independent biotechnology company, has reached millions of patients around the world and is developing a pipeline of medicines with breakaway potential.

For more information, visit www.amgen.com and follow us on www.twitter.com/amgen.

About Onyx

Based in South San Francisco, California, Onyx Pharmaceuticals, Inc. is a global biopharmaceutical company engaged in the development and commercialization of innovative therapies for improving the lives of people with cancer. The company is focused on developing novel medicines that target key molecular pathways. For more information about Onyx, visit the company's website at www.onyx.com. Onyx Pharmaceuticals is on Twitter. Sign up to follow our Twitter feed @OnyxPharm at http://twitter.com/OnyxPharm.

Amgen Forward-Looking Statements

This news release contains forward-looking statements that are based on Amgen's current expectations and beliefs and are subject to a number of risks, uncertainties and

assumptions that could cause actual results to differ materially from those described. All statements, other than statements of historical fact, are statements that could be deemed forward-looking statements, including statements about the planned completion of the tender offer and the merger, estimates of revenues, operating margins, capital expenditures, cash, other financial metrics, expected legal, arbitration, political, regulatory or clinical results or practices, customer and prescriber patterns or practices, reimbursement activities and outcomes and other such estimates and results. Forward-looking statements involve significant risks and uncertainties, including those discussed below and more fully described in the Securities and Exchange Commission (SEC) reports filed by Amgen, including Amgen's most recent annual report on Form 10-K and any subsequent periodic reports on Form 10-Q and Form 8-K. Please refer to Amgen's most recent Forms 10-K, 10-Q and 8-K for additional information on the uncertainties and risk factors related to Amgen's business. Unless otherwise noted, Amgen is providing this information as of August 25, 2013, and expressly disclaims any duty to update information contained in this news release.

No forward-looking statement can be guaranteed and actual results may differ materially from those Amgen projects. Risks and uncertainties include whether the proposed transaction described in this press release can be completed in a timely manner, and whether the anticipated benefits of the proposed transaction can be achieved. Discovery or identification of new product candidates or development of new indications for existing products cannot be guaranteed and movement from concept to product is uncertain; consequently, there can be no guarantee that any particular product candidate or development of a new indication for an existing product will be successful and become a commercial product. Further, preclinical results do not guarantee safe and effective performance of product candidates in humans. The complexity of the human body cannot be perfectly, or sometimes, even adequately modeled by computer or cell culture systems or animal models. The length of time that it takes for Amgen to complete clinical trials and obtain regulatory approval for product marketing has in the past varied and Amgen expects similar variability in the future. Amgen develops product candidates internally and through licensing collaborations, partnerships, joint ventures and acquisitions. Product candidates that are derived from relationships or acquisitions may be subject to disputes between the parties or may prove to be not as effective or as safe as Amgen may have believed at the time of entering into such relationship. Also, Amgen or others could identify safety, side effects or manufacturing problems with Amgen's products after they are on the market. Amgen's business may be impacted by government investigations, litigation and product liability claims. If Amgen fails to meet the compliance obligations in the corporate integrity agreement between Amgen and the U.S. government, it could become subject to significant sanctions. Amgen depends on third parties for a significant portion of its manufacturing capacity for the supply of certain of its current and future products and limits on supply may constrain sales of certain of its current products and product candidate development.

In addition, sales of Amgen's products are affected by the reimbursement policies imposed by third-party payers, including governments, private insurance plans and

managed care providers and may be affected by regulatory, clinical and guideline developments and domestic and international trends toward managed care and healthcare cost containment as well as U.S. legislation affecting pharmaceutical pricing and reimbursement. Government and others' regulations and reimbursement policies may affect the development, usage and pricing of Amgen's products. In addition, Amgen competes with other companies with respect to some of its marketed products as well as for the discovery and development of new products. Amgen believes that some of its newer products, product candidates or new indications for existing products, may face competition when and as they are approved and marketed. Amgen's products may compete against products that have lower prices, established reimbursement, superior performance, are easier to administer, or that are otherwise competitive with its products. In addition, while Amgen routinely obtains patents for its products and technology, the protection offered by its patents and patent applications may be challenged, invalidated or circumvented by its competitors and there can be no guarantee of Amgen's ability to obtain or maintain patent protection for its products or product candidates. Amgen cannot guarantee that it will be able to produce commercially successful products or maintain the commercial success of its existing products. Amgen's stock price may be affected by actual or perceived market opportunity, competitive position, and success or failure of its products or product candidates. Further, the discovery of significant problems with a product similar to one of Amgen's products that implicate an entire class of products could have a material adverse effect on sales of the affected products and on Amgen's business and results of operations.

The scientific information discussed in this news release related to product candidates is preliminary and investigative. Such product candidates are not approved by the U.S. Food and Drug Administration (FDA), and no conclusions can or should be drawn regarding the safety or effectiveness of the product candidates. Only the FDA can determine whether the product candidates are safe and effective for the use(s) being investigated. Further, the scientific information discussed in this news release relating to new indications for products is preliminary and investigative and is not part of the labeling approved by the U.S. Food and Drug Administration (FDA) for the products. The products are not approved for the investigational use(s) discussed in this news release, and no conclusions can or should be drawn regarding the safety or effectiveness of the products for these uses. Only the FDA can determine whether the products are safe and effective for these uses. Healthcare professionals should refer to and rely upon the FDA-approved labeling for the products, and not the information discussed in this news release.

Onyx Forward-Looking Statements

This news release contains "forward-looking statements" of Onyx within the meaning of the federal securities laws. These forward-looking statements include, without limitation, statements regarding the expected timing of the completion of the transaction, Amgen's operation of the Onyx business following completion of the transaction, and statements regarding the future operation, the anticipated growth of our business, global expansion and increases to our international capabilities, our launch of Kyprolis in the United

States, our investments in Phase 3 clinical trials, contributions from our kinase inhibitor business and future cost of goods sold with respect to Kyprolis. These statements are subject to risks and uncertainties that could cause actual results and events to differ materially from those anticipated, including, but not limited to, risks and uncertainties related to: uncertainties as to the timing of the transaction; uncertainties as to the percentage of Onyx stockholders tendering their shares in the offer; the possibility that competing offers will be made; the possibility that various closing conditions for the transaction may not be satisfied or waived, including that a governmental entity may prohibit, delay or refuse to grant approval for the consummation of the transaction; the effects of disruption caused by the transaction making it more difficult to maintain relationships with employees, collaborators, vendors and other business partners; the risk that stockholder litigation in connection with the transaction may result in significant costs of defense, indemnification and liability; Nexavar® (sorafenib) tablets, Kyprolis® (carfilzomib) for Injection and Stivarga® (regorafenib) tablets being the only approved products from which we may obtain revenue; competition; failures or delays in our clinical trials or the regulatory process; dependence on our collaborative relationship with Bayer; supply of Nexavar, Stivarga or Kyprolis; market acceptance and the rate of adoption of Nexavar, Stivarga and Kyprolis; pharmaceutical pricing and reimbursement pressures; serious adverse side effects, if they are associated with Nexavar, Stivarga or Kyprolis; government regulation; possible failure to realize the anticipated benefits of business acquisitions or strategic investments; protection of our intellectual property; and product liability risks; and other risks and uncertainties discussed in Onyx's filings with the Securities and Exchange Commission (the "Commission"), including the "Risk Factors" sections of Onyx's most recent annual report on Form 10-K and subsequent quarterly reports on Form 10-Q, as well as the tender offer documents to be filed by Arena Acquisition Corporation, a wholly owned subsidiary of Amgen, and the Solicitation/Recommendation Statement to be filed by Onyx. Onyx undertakes no obligation to update any forward-looking statements as a result of new information, future developments or otherwise, except as expressly required by law.

Additional Information

The tender offer described in this communication (the "Offer") has not yet commenced, and this communication is neither an offer to purchase nor a solicitation of an offer to sell any shares of the common stock of Onyx Pharmaceuticals, Inc. or any other securities. On the commencement date of the Offer, a tender offer statement on Schedule TO, including an offer to purchase, a letter of transmittal and related documents, will be filed with the United States Securities and Exchange Commission (the "SEC") by Amgen and a Solicitation/Recommendation Statement on Schedule 14D-9 will be filed with the SEC by Onyx. The offer to purchase shares of Onyx common stock will only be made pursuant to the offer to purchase, the letter of transmittal and related documents filed as a part of the Schedule TO. INVESTORS AND SECURITY HOLDERS ARE URGED TO READ BOTH THE TENDER OFFER STATEMENT AND THE SOLICITATION/RECOMMENDATION STATEMENT REGARDING THE OFFER, AS THEY MAY BE AMENDED FROM TIME TO TIME, WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION. The tender offer statement will be filed with the SEC by Amgen and Arena Acquisition

Company, a wholly owned subsidiary of Amgen, and the solicitation/recommendation statement will be filed with the SEC by Onyx. Investors and security holders may obtain a free copy of these statements (when available) and other documents filed with the SEC at the website maintained by the SEC at www.sec.gov or by directing such requests to the Information Agent for the tender offer which will be named in the tender offer statement.

Contact:

Amgen

Christine Regan, 805-447-5476 (media)
Arvind Sood, 805-447-1060 (investors)

Onyx

Lori Melancon, 650-266-2394 (media)
Amy Figueroa, 650-266-2398 (investors)

###