

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM S-8**

**REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933**

**ZOGENIX, INC.**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or Other Jurisdiction  
of Incorporation or Organization)

**20-5300780**

(I.R.S. Employer  
Identification No.)

**5959 Horton Street, Suite 500  
Emeryville, California 94608  
(510) 550-8300**

(Address of Principal Executive Offices)

**ZOGENIX, INC. EMPLOYEE STOCK PURCHASE PLAN**

(Full Title of the Plan)

**Stephen J. Farr, Ph.D.  
President and Chief Executive Officer  
Zogenix, Inc.  
5959 Horton Street, Suite 500  
Emeryville, California 94608  
(510) 550-8300**

(Name, Address and Telephone Number, Including Area Code, of Agent for Service)

*Copies to:*

**Cheston J. Larson, Esq.  
Matthew T. Bush, Esq.  
Latham & Watkins LLP  
12670 High Bluff Drive  
San Diego, California 92130  
(858) 523-5400**

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

Large accelerated filer	<input checked="" type="checkbox"/>		Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	(Do not check if a smaller reporting company)	Smaller reporting company	<input type="checkbox"/>
			Emerging growth company	<input type="checkbox"/>

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

**CALCULATION OF REGISTRATION FEE**

Title of Each Class of Securities to be Registered	Amount to be Registered (1)	Proposed Maximum Offering Price Per Share (3)	Proposed Maximum Aggregate Offering Price (3)	Amount of Registration Fee
Common stock, \$0.001 par value	500,000 shares (2)	\$29.61	\$14,805,000	\$1,921.69

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), this registration statement also registers an indeterminate number of additional shares that may be issued pursuant to the above-named plans as the result of any future stock dividend, stock split, recapitalization or any other similar transaction effected without the receipt of consideration which results in an increase in the number of our outstanding shares of common stock.
- (2) Represents an additional 500,000 shares of common stock available for future issuance under the Zogenix, Inc. Employee Stock Purchase Plan (as amended and restated to date, the "Plan"), which shares became available for issuance pursuant to an amendment and restatement of the Plan approved by the Registrant's stockholders on May 29, 2020.
- (3) Estimated solely for purposes of determining the registration fee pursuant to Rule 457 under the Securities Act. The proposed maximum aggregate offering price per share and the proposed maximum offering price are based upon the average of the high and low sales prices of the Registrant's

common stock as reported on May 28, 2020 on the Nasdaq Global Market.

**Proposed sales to take place as soon after the effective date of the Registration Statement as awards granted under the above-named plan are granted, exercised and/or distributed.**

## EXPLANATORY NOTE

This Registration Statement registers the offer and sale of an additional 500,000 shares of common stock of Zogenix, Inc. (the “Company”) for issuance under the Zogenix, Inc. Employee Stock Purchase Plan (the “Plan”). In accordance with Instruction E to Form S-8, the contents of previously filed Form S-8 Registration Statements Nos. [333-224797](#) and [333-170875](#) relating to shares of common stock issuable pursuant to the Plan are hereby incorporated by reference.

### PART I

#### INFORMATION REQUIRED IN THE SECTION 10(a) PROSPECTUS

The documents containing the information specified in Part I of Form S-8 will be sent or given to participants as specified by Rule 428(b)(1) of the Securities Act. These documents and the documents incorporated by reference into this Registration Statement pursuant to Item 3 of Part II of this Registration Statement, taken together, constitute a prospectus that meets the requirements of Section 10(a) of the Securities Act.

### PART II

#### INFORMATION REQUIRED IN THE REGISTRATION STATEMENT

*In this Registration Statement, Zogenix, Inc. is sometimes referred to as “Registrant,” “we,” “us” or “our.”*

##### Item 3. Incorporation of Documents by Reference.

The Securities and Exchange Commission (“SEC”) allows us to “incorporate by reference” the information we file with them, which means that we can disclose important information to you by referring you to those documents. The information incorporated by reference is considered to be part of this Registration Statement, and later information filed with the SEC will update and supersede this information. We hereby incorporate by reference into this Registration Statement the following documents previously filed with the SEC:

- (a) The Registrant’s Annual Report on [Form 10-K](#) for the year ended December 31, 2019 filed with the SEC on March 2, 2020;
- (b) The Registrant’s Quarterly Report on [Form 10-Q](#) for the quarter ended March 31, 2020 filed with the SEC on May 6, 2020;
- (c) The Registrant’s Current Reports on Form 8-K filed with the SEC on [February 7, 2020](#), [February 27, 2020](#), [March 4, 2020](#) and [May 29, 2020](#); and
- (d) The description of the Registrant’s common stock set forth in the Registrant’s registration statement on [Form 8-A](#) filed with the SEC under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on November 12, 2010, including any amendments or reports filed for the purpose of updating such description.

In addition, all documents filed by the Registrant pursuant to Section 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) subsequent to the filing of this registration statement and prior to the filing of a post-effective amendment which indicates that all securities offered hereby have been sold or which de-registers all securities then remaining unsold shall be deemed to be incorporated by reference into this registration statement and to be a part hereof from the date of filing such documents, except as to specific sections of such statements as set forth therein. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any statement contained herein shall be deemed to be modified or superseded for purposes of this registration statement to the extent that a statement contained in any subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this registration statement.

Under no circumstances shall any information furnished under Items 2.02 or 7.01 of Form 8-K be deemed incorporated herein by reference unless such Form 8-K expressly provides to the contrary.

##### Item 4. Description of Securities.

Not applicable.

**Item 5. Interests of Named Experts and Counsel.**

Not applicable.

**Item 6. Indemnification of Directors and Officers.**

Our amended and restated certificate of incorporation and our amended and restated bylaws provide that we will indemnify our directors and officers to the fullest extent permitted by the Delaware General Corporation Law, which prohibits our amended and restated certificate of incorporation from limiting the liability of our directors for the following:

- any breach of the director's duty of loyalty to us or our stockholders;
- acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- unlawful payment of dividends or unlawful stock repurchases or redemptions; or
- any transaction from which the director derived an improper personal benefit.

Our amended and restated certificate of incorporation and our amended and restated bylaws also provide that if Delaware law is amended to authorize corporate action further eliminating or limiting the personal liability of a director, then the liability of our directors will be eliminated or limited to the fullest extent permitted by Delaware law, as so amended. This limitation of liability does not apply to liabilities arising under the federal securities laws and does not affect the availability of equitable remedies such as injunctive relief or rescission.

Our amended and restated certificate of incorporation and our amended and restated bylaws also provide that we shall have the power to indemnify our employees and agents to the fullest extent permitted by law. Our amended and restated bylaws also permit us to secure insurance on behalf of any officer, director, employee or other agent for any liability arising out of his or her actions in this capacity, regardless of whether our amended and restated bylaws would permit indemnification. We have obtained directors' and officers' liability insurance.

We have entered into separate indemnification agreements with our directors and executive officers, in addition to indemnification provided for in our amended and restated certificate of incorporation and amended and restated bylaws. These agreements, among other things, provide for indemnification of our directors and executive officers for expenses, judgments, fines and settlement amounts incurred by this person in any action or proceeding arising out of this person's services as a director or executive officer or at our request. We believe that these provisions in our amended and restated certificate of incorporation and amended and restated bylaws and indemnification agreements are necessary to attract and retain qualified persons as directors and executive officers.

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against directors and officers, even though an action, if successful, might benefit us and our stockholders. A stockholder's investment may be harmed to the extent we pay the costs of settlement and damage awards against directors and officers pursuant to these indemnification provisions. Insofar as indemnification for liabilities under the Securities Act may be permitted to directors, officers or persons controlling us, we have been informed that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable. There is no pending litigation or proceeding naming any of our directors or officers as to which indemnification is being sought, nor are we aware of any pending or threatened litigation that may result in claims for indemnification by any director or officer.

**Item 7. Exemption from Registration Claimed.**

Not applicable.

**Item 8. Exhibits.**

<b>Exhibit Number</b>	<b>Exhibit Description</b>
3.1 <sup>(1)</sup>	<a href="#">Fifth Amended and Restated Certificate of Incorporation of the Registrant</a>
3.2 <sup>(2)</sup>	<a href="#">Certificate of Amendment of Fifth Amended and Restated Certificate of Incorporation of the Registrant</a>
3.3 <sup>(3)</sup>	<a href="#">Certificate of Amendment of Fifth Amended and Restated Certificate of Incorporation of the Registrant</a>
3.4 <sup>(4)</sup>	<a href="#">Certificate of Amendment of Fifth Amended and Restated Certificate of Incorporation of the Registrant</a>
3.5 <sup>(1)</sup>	<a href="#">Amended and Restated Bylaws of the Registrant</a>
4.1 <sup>(5)</sup>	<a href="#">Form of the Registrant's Common Stock Certificate</a>
5.1*	<a href="#">Opinion of Latham &amp; Watkins LLP</a>
10.1*†	<a href="#">Zogenix, Inc. Employee Stock Purchase Plan</a>
23.1*	<a href="#">Consent of Independent Registered Public Accounting Firm</a>
23.2*	<a href="#">Consent of Latham &amp; Watkins LLP (included in Exhibit 5.1)</a>
24.1*	<a href="#">Power of Attorney (see signature page)</a>

\* Filed herewith.

† Indicates a management contract or compensatory plan or agreement.

(1) Incorporated by reference to Amendment No. 2 to the Registrant's Registration Statement on Form S-1 filed on October 27, 2010.

(2) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed on November 8, 2012.

(3) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed on August 10, 2015.

(4) Incorporated by reference to the Registrant's Quarterly Report on Form 10-Q filed on August 6, 2019.

(5) Incorporated by reference to Amendment No. 3 to the Registrant's Registration Statement on Form S-1 filed on November 4, 2010.

## Item 9. Undertakings.

(a) The undersigned Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement,

(i) to include any prospectus required by Section 10(a)(3) of the Securities Act;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the SEC pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement; provided, however, that paragraphs (a)(1)(i) and (a)(1)(ii) do not apply if this registration statement is on Form S-8 and the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the SEC by the Registrant pursuant to Section 13 or Section 15(d) of the Exchange Act that are incorporated by reference in this Registration Statement.

(2) That, for the purpose of determining any liability under the Securities Act, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) To remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(b) The undersigned Registrant hereby undertakes that, for purposes of determining any liability under the Securities Act, each filing of the Registrant's annual report pursuant to Section 13(a) or Section 15(d) of the Exchange Act (and, where applicable, each filing of an employee benefit plan's annual report pursuant to Section 15(d) of the Exchange Act) that is incorporated by reference in this registration statement shall be deemed to be a new registration statement, relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers and controlling persons of the Registrant pursuant to the foregoing provisions, or otherwise, the Registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the Registrant of expenses incurred or paid by a director, officer or controlling person of the Registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the Registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Emeryville, State of California on May 29, 2020.

### ZOGENIX, INC.

Date: May 29, 2020

By: /s/ Stephen J. Farr

Name: Stephen J. Farr, Ph.D.

Title: President and Chief Executive Officer

Each person whose signature appears below hereby constitutes and appoints Stephen J. Farr, Ph. D. and Michael P. Smith, jointly and severally, his or her attorneys-in-fact, each with the full power of substitution, for him or her in any and all capacities, to sign this registration statement, and any amendments thereto (including post-effective amendments), and to file the same, with all exhibits thereto and other documents in connection therewith, with the SEC, hereby ratifying and confirming all that each of said attorneys-in-fact, or his substitute or substitutes, may do or cause to be done by virtue hereof. Pursuant to the requirements of the Securities Act, this registration statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

<u>Signature</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Stephen J. Farr</u> <b>Stephen J. Farr, Ph.D.</b>	President, Chief Executive Officer and Director (Principal Executive Officer)	May 29, 2020
<u>/s/ Michael P. Smith</u> <b>Michael P. Smith</b>	Executive Vice President, Chief Financial Officer and Treasurer (Principal Financial Officer and Principal Accounting Officer)	May 29, 2020
<u>/s/ Cam L. Garner</u> <b>Cam L. Garner</b>	Chairman of the Board	May 29, 2020
<u>/s/ Louis C. Bock</u> <b>Louis C. Bock</b>	Director	May 29, 2020
<u>/s/ James B. Breitmeyer</u> <b>James B. Breitmeyer, M.D., Ph.D.</b>	Director	May 29, 2020
<u>/s/ Erle T. Mast</u> <b>Erle T. Mast</b>	Director	May 29, 2020
<u>/s/ Renee Tannenbaum</u> <b>Renee Tannenbaum, Pharm.D.</b>	Director	May 29, 2020
<u>/s/ Mark Wiggins</u> <b>Mark Wiggins</b>	Director	May 29, 2020

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# LATHAM & WATKINS LLP

## FIRM / AFFILIATE OFFICES

Beijing	Moscow
Boston	Munich
Brussels	New York
Century City	Orange County
Chicago	Paris
Dubai	Riyadh
Düsseldorf	San Diego
Frankfurt	San Francisco
Hamburg	Seoul
Hong Kong	Shanghai
Houston	Silicon Valley
London	Singapore
Los Angeles	Tokyo
Madrid	Washington, D.C.
Milan	

May 29, 2020

Zogenix, Inc.  
 5959 Horton Street, Suite 500  
 Emeryville, California 94608

Re: Registration Statement on Form S-8; 500,000 Shares of Common Stock, par value \$0.001 per share

Ladies and Gentlemen:

We have acted as special counsel to Zogenix, Inc., a Delaware corporation (the “Company”), in connection with the proposed issuance of an aggregate of 500,000 shares (the “Shares”) of common stock, par value \$0.001 per share, of the Company, pursuant to the Company’s Equity Stock Purchase Plan (as amended and restated, the “Plan”). The Shares are included in a Registration Statement on Form S-8 under the Securities Act of 1933, as amended (the “Act”), filed with the Securities and Exchange Commission (the “Commission”) on May 29, 2020 (the “Registration Statement”). This opinion is being furnished in connection with the requirements of Item 601(b)(5) of Regulation S-K under the Act, and no opinion is expressed herein as to any matter pertaining to the contents of the Registration Statement, other than as expressly stated herein with respect to the issue of the Shares.

As such counsel, we have examined such matters of fact and questions of law as we have considered appropriate for purposes of this letter. With your consent, we have relied upon certificates and other assurances of officers of the Company and others as to factual matters without having independently verified such factual matters. We are opining herein as to the General Corporation Law of the State of Delaware, and we express no opinion with respect to any other laws.

In our examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as copies.

Subject to the foregoing and the other matters set forth herein, it is our opinion that, as of the date hereof, when the Shares have been duly registered on the books of the transfer agent and registrar therefor in the name or on

behalf of the recipients, or certificates representing the Shares (in the form of the specimen certificate incorporated by reference as an exhibit to the Company’s most recent Annual Report on Form 10-K) have been manually signed by an authorized officer of the transfer agent and registrar therefor, and subject to the Company completing all actions and proceedings required on its part to be taken prior to the issuance of the Shares, and when the Shares have been issued by the Company against payment therefor (not less than par value) in the circumstances contemplated by the Plan, the issuance of the Shares will have been duly authorized by all necessary corporate action of the Company, and the Shares will be validly issued, fully paid and nonassessable. In rendering the foregoing opinion, we have assumed that the Company will comply with all applicable notice requirements regarding uncertificated shares provided in the General Corporation Law of the State of Delaware.

This opinion is for your benefit in connection with the Registration Statement and may be relied upon by you and by persons entitled to rely upon it pursuant to the applicable provisions of the Act. We consent to your filing this opinion as an exhibit to the Registration Statement. In giving such consent, we do not thereby admit that we are in the category of persons whose consent is required under Section 7 of the Act or the rules and regulations of the Commission thereunder.

Very truly yours,

/s/ Latham & Watkins LLP



**ZOGENIX, INC.**  
**Employee Stock Purchase Plan**

(As Amended and Restated Effective May 29, 2020)

**ARTICLE I**

**PURPOSE**

The purposes of this Zogenix, Inc. Employee Stock Purchase Plan (the “**Plan**”) are to assist Eligible Employees of Zogenix, Inc., a Delaware corporation (the “**Company**”) and its Designated Subsidiaries in acquiring a stock ownership interest in the Company, and to help Eligible Employees provide for their future security and to encourage them to remain in the employment of the Company and its Designated Subsidiaries. This Plan constitutes an amendment and restatement of the Zogenix, Inc. 2010 Employee Stock Purchase Plan (the “**Prior Plan**”), which was approved by the Board on October 25, 2010 and by the Company’s stockholders on November 2, 2010. In the event that the Company’s stockholders do not approve the Plan, the Prior Plan will continue in full force and effect on its terms and conditions as in effect immediately prior to the date the Plan is approved by the Board.

This Plan includes two components: the Section 423 Component and the Non-Section 423 Component (each as defined below). It is the intention of the Company to have the Section 423 Component qualify as an “employee stock purchase plan” under Section 423 of the Code. The provisions of the Section 423 Component, accordingly, shall be construed so as to extend and limit participation on a uniform and nondiscriminatory basis consistent with the requirements of Section 423 of the Code. In addition, this Plan authorizes the grant of purchase rights under the Non-Section 423 Component, which may not qualify as an “employee stock purchase plan” under Section 423 of the Code; such purchase rights granted under the Non-Section 423 Component shall be granted pursuant to separate Offerings containing such sub-plans, appendices, rules or procedures as may be adopted by the Administrator and designed to achieve tax, securities laws or other objectives for Eligible Employees and the Designated Subsidiaries in locations outside of the U.S. Except as otherwise provided by the Administrator or permitted herein, the Non-Section 423 Component will operate and be administered in the same manner as the Section 423 Component. Offerings intended to be made under the Non-Section 423 Component will be designated as such by the Administrator at or prior to the time of such Offering.

For purposes of this Plan, the Administrator may designate separate Offerings under the Plan in which Eligible Employees will participate. The terms of these Offerings need not be identical, even if the dates of the applicable Offering Period(s) in each such Offering are identical, provided that the terms of participation are the same within each separate Offering under the Section 423 Component (as determined under Section 423 of the Code). Solely by way of example and without limiting the foregoing, the Company could, but shall not be required to, provide for simultaneous Offerings under the Section 423 Component and the Non-Section 423 Component of the Plan.

**ARTICLE II**

**DEFINITIONS AND CONSTRUCTION**

Wherever the following terms are used in the Plan they shall have the meanings specified below, unless the context clearly indicates otherwise. The singular pronoun shall include the plural where the context so indicates.

2.1 “**Administrator**” shall mean the entity that conducts the general administration of the Plan as provided herein. The term “**Administrator**” shall refer to the Committee unless the Board has assumed the authority for administration of the Plan generally as provided in Article 3.

2.2 “**Board**” shall mean the Board of Directors of the Company.

2.3 “**Change in Control**” shall mean and include each of the following:

(a) A transaction or series of transactions (other than an offering of Stock to the general public through a registration statement filed with the Securities and Exchange Commission) whereby any “person” or related “group” of “persons” (as such terms are used in Sections 13(d) and 14(d)(2) of the Exchange Act) (other than the Company, any of its

Subsidiaries, an employee benefit plan maintained by the Company or any of its Subsidiaries or a “person” that, prior to such transaction, directly or indirectly controls, is controlled by, or is under common control with, the Company) directly or indirectly acquires beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of securities of the Company possessing more than 50% of the total combined voting power of the Company’s securities outstanding immediately after such acquisition; or

(b) During any period of two consecutive years, individuals who, at the beginning of such period, constitute the Board together with any new director(s) (other than a director designated by a person who shall have entered into an agreement with the Company to effect a transaction described in clause (a) above or clause (c) below) whose election by the Board or nomination for election by the Company’s stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the two year period or whose election or nomination for election was previously so approved, cease for any reason to constitute a majority thereof; or

(c) The consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of (x) a merger, consolidation, reorganization, or business combination or (y) a sale or other disposition of all or substantially all of the Company’s assets in any single transaction or series of related transactions or (z) the acquisition of assets or stock of another entity, in each case other than a transaction:

(i) Which results in the Company’s voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company’s assets or otherwise succeeds to the business of the Company (the Company or such person, the “**Successor Entity**”)) directly or indirectly, at least a majority of the combined voting power of the Successor Entity’s outstanding voting securities immediately after the transaction, and

(ii) After which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; *provided, however*, that no person or group shall be treated for purposes of this clause (ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction.

The Administrator shall have full and final authority, which shall be exercised in its discretion, to determine conclusively whether a Change in Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change in Control and any incidental matters relating thereto.

2.4 “**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time, and the regulations issued thereunder.

2.5 “**Committee**” shall mean the committee of the Board described in Article 3.

2.6 “**Company**” shall mean Zogenix, Inc., a Delaware corporation.

2.7 “**Compensation**” of an Eligible Employee shall mean the gross base compensation received by such Eligible Employee as compensation for services to the Company or any Designated Subsidiary, excluding overtime payments, sales commissions, incentive compensation, bonuses, expense reimbursements, fringe benefits and other special payments, or, for Participants in non-U.S. jurisdictions, equivalent amounts as determined by the Administrator. The Administrator, in its discretion, may establish a different definition of Compensation on a prospective basis, which definition must be implemented on a uniform and nondiscriminatory basis for each Offering in the Section 423 Component.

2.8 “**Designated Subsidiary**” shall mean any Subsidiary designated by the Administrator in accordance with Section 3.3(b), such designation to specify whether such participation is in the Section 423 Component or Non-Section 423 Component; *provided, however*, that at any given time, a Subsidiary Corporation that is a Designated Subsidiary participating in the Section 423 Component will not be a Designated Subsidiary participating in the Non-Section 423 Component. The designation by the Administrator of Designated Subsidiaries and changes in such designations by the Administrator shall not require stockholder approval. Only Subsidiary Corporations may be designated as Designated Subsidiaries for purposes of the Section 423 Component, and if an entity does not so qualify, it shall automatically be deemed to be a Designated Subsidiary in the Non-Section 423 Component.

2.9 “**Eligible Employee**” shall mean an Employee of the Company or a Designated Subsidiary who does not, immediately after any rights under this Plan are granted, own (directly or through attribution) stock possessing 5% or more of the total combined voting power or value of all classes of Stock or other stock of the Company, a Parent or a Subsidiary Corporation (as determined under Section 423(b)(3) of the Code). For purposes of the foregoing sentence, the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and Stock that an Employee may purchase under outstanding options shall be treated as stock owned by the Employee. Notwithstanding the foregoing, the Administrator may provide in an Offering Document that an Employee shall not be eligible to participate in an Offering if: (a) such Employee’s customary employment is for twenty hours or less per week; (b) such Employee’s customary employment is for less than five months in any calendar year; (c) such Employee is a highly compensated employee within the meaning of Section 423(b)(4)(D) of the Code, (d) such Employee has not met a service requirement designated by the Administrator pursuant to Section 423(b)(4)(A) of the Code (which service requirement may not exceed two years); and/or (e) such Employee is a citizen or resident of a foreign jurisdiction if the grant of a right to purchase Stock under the Plan to such Employee would be prohibited under the laws of such foreign jurisdiction or the grant of an option to such Employee in compliance with the laws of such foreign jurisdiction would cause the Plan or any Offering to violate the requirements of Section 423 of the Code, as determined by the Administrator in its sole discretion; *provided, further*, that any exclusion in clauses (a), (b), (c), (d) or (e) shall be applied in an identical manner under each Offering to all Employees of the Designated Subsidiaries in such Offering, in accordance with Treasury Regulation Section 1.423-2(e). With respect to the Non-Section 423 Component, all of the foregoing rules shall apply in determining who is an “Eligible Employee,” except (A) the Administrator may limit eligibility further within the Company or a Designated Subsidiary so as to only designate some Employees of the Company or a Designated Subsidiary as Eligible Employees, and (B) to the extent the foregoing eligibility rules are not consistent with applicable local laws, the applicable local laws shall control.

2.10 “**Employee**” shall mean an individual who renders services to a Designated Subsidiary in the status of an employee, and, with respect to the Section 423 Component, a person who is an other employee (as defined in accordance with Section 3401(c) of the Code) of the Company or any Designated Subsidiary. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee and the effective date of such individual’s attainment or termination of such status. For purposes of an individual’s participation in, or other rights under the Plan, all such determinations by the Company shall be final, binding and conclusive, notwithstanding that any court of law or governmental agency subsequently makes a contrary determination. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or a Designated Subsidiary (which, for purposes of the Section 423 Component, must meet the requirements of Treasury Regulation Section 1.421-1(h)(2)). For purposes of the Section 423 Component, where the period of an approved leave of absence exceeds three months, or such other period specified in Treasury Regulation Section 1.421-1(h)(2), and the individual’s right to reemployment is not provided either by statute or contract, the employment relationship shall be deemed to have terminated for purposes of the Plan on the first day immediately following such three-month period, or such other period specified in Treasury Regulation Section 1.421-1(h)(2).

2.11 “**Enrollment Date**” shall mean the first day of each Offering Period.

2.12 “**Exchange Act**” shall mean the Securities Exchange Act of 1934, as amended from time to time.

2.13 “**Fair Market Value**” means, as of any given date, the fair market value of a share of Stock on the date determined as follows:

(a) If the Stock is listed on any (i) established securities exchange (such as the New York Stock Exchange, the Nasdaq Stock Market), (ii) national market system or (iii) automated quotation system on which the Stock is listed, quoted or traded, its Fair Market Value shall be the closing sales price for a share of Stock as quoted on such exchange or system for such date or, if there is no closing sales price for a share of Stock on the date in question, the closing sales price for a share of Stock on the last preceding date for which such quotation exists, as reported in The Wall Street Journal or such other source as the Administrator deems reliable;

(b) If the Stock is not listed on an established securities exchange, national market system or automated quotation system, but the Stock is regularly quoted by a recognized securities dealer, its Fair Market Value shall be the mean of the high bid and low asked prices for such date or, if there are no high bid and low asked prices for a share of Stock on such

date, the high bid and low asked prices for a share of Stock on the last preceding date for which such information exists, as reported in The Wall Street Journal or such other source as the Administrator deems reliable; or

(c) If the Stock is neither listed on an established securities exchange, national market system or automated quotation system nor regularly quoted by a recognized securities dealer, its Fair Market Value shall be established by the Administrator in good faith, as of any given date, the fair market value of a share of Stock on the date determined by such methods or procedures as may be established from time to time by the Administrator.

2.14 “**Non-Section 423 Component**” shall mean those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case pursuant to which purchase rights that do not satisfy the requirements for “employee stock purchase plans” that are set forth under Section 423 of the Code may be granted pursuant to Offerings to Eligible Employees.

2.15 “**Offering**” shall mean an offer under the Plan of a right to purchase Stock that may be exercised during an Offering Period. Unless otherwise specified by the Administrator, each Offering to the Eligible Employees of the Company or a Designated Subsidiary shall be deemed a separate Offering, even if the dates and other terms of the applicable Offering Periods of each such Offering are identical and the provisions of the Plan will separately apply to each Offering. To the extent permitted by U.S. Treasury Regulation Section 1.423-2(a)(1), the terms of each separate Offering under the Section 423 Component need not be identical, provided that the terms of the Section 423 Component and an Offering together satisfy U.S. Treasury Regulation Section 1.423-2(a)(2) and (a)(3)

2.16 “**Offering Document**” shall have the meaning given to such term in Section 5.1.

2.17 “**Offering Period**” shall mean each Offering Period designated by the Administrator in the applicable Offering Document pursuant to Section 5.1.

2.18 “**Parent**” shall mean any corporation, other than the Company, in an unbroken chain of corporations ending with the Company if, at the time of the determination, each of the corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

2.19 “**Participant**” shall mean any Eligible Employee who has executed a subscription agreement and been granted rights to purchase Stock pursuant to the Plan.

2.20 “**Plan**” shall mean this amended and restated Zogenix, Inc. Employee Stock Purchase Plan, as it may be further amended from time to time, including both the Section 423 Component and the Non-Section 423 Component and any other sub-plans or appendices hereto, as amended from time to time.

2.21 “**Purchase Date**” shall mean the last Trading Day of each Purchase Period.

2.22 “**Purchase Period**” shall mean each Purchase Period designated by the Administrator in the applicable Offering Document pursuant to Section 5.1.

2.23 “**Purchase Price**” shall mean the purchase price designated by the Administrator in the applicable Offering Document (which purchase price shall not be less than 85% of the Fair Market Value of a share of Stock on the Enrollment Date or on the Purchase Date, whichever is lower); *provided, however*, that, in the event no purchase price is designated by the Administrator in the applicable Offering Document, the purchase price for the Offering Periods covered by such Offering Document shall be 85% of the Fair Market Value of a share of Stock on the Enrollment Date or on the Purchase Date, whichever is lower; *provided, further*, that the Purchase Price may be adjusted by the Administrator pursuant to Article 9; *provided, further*, that the Purchase Price shall not be less than the par value of a share of Stock.

2.24 “**Restatement Effective Date**” shall have the meaning set forth in Article 11.

2.25 “**Section 423 Component**” means those Offerings under the Plan, together with the sub-plans, appendices, rules or procedures, if any, adopted by the Administrator as a part of this Plan, in each case, pursuant to which purchase rights may be granted to Eligible Employees that are intended to satisfy the requirements for rights to purchase shares of Stock granted pursuant to an “employee stock purchase plan” that are set forth under Section 423 of the Code.

2.26 “**Securities Act**” shall mean the Securities Act of 1933, as amended from time to time.

2.27 “**Stock**” shall mean the common stock of the Company and such other securities of the Company that may be substituted for Stock pursuant to Article 9.

2.28 “**Subsidiary**” shall mean (a) any Subsidiary Corporation, and (b) with respect to any Offering pursuant to the Non-Section 423 Component only, Subsidiary may also include any corporate or noncorporate entity in which the Company has a direct or indirect equity interest or significant business relationship.

2.29 “**Subsidiary Corporation**” shall mean any corporation, other than the Company, in an unbroken chain of corporations beginning with the Company if, at the time of the determination, each of the corporations other than the last corporation in an unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain, or any other entity that is a subsidiary corporation of the Company within the meaning of Section 424 of the Code.

2.30 “**Trading Day**” shall mean a day on which national stock exchanges in the United States are open for trading.

### ARTICLE III

#### ADMINISTRATION

3.1 Administrator. The Administrator of the Plan shall be the Compensation Committee of the Board (or another committee or a subcommittee of the Board to which the Board delegates administration of the Plan) (such committee, the “**Committee**”), which Committee shall consist solely of two or more members of the Board each of whom is a “non-employee director” within the meaning of Rule 16b-3 which has been adopted by the Securities and Exchange Commission under the Exchange Act and which Committee is otherwise constituted to comply with applicable law. The Board may abolish the Committee at any time and vest in the Board the administration of the Plan.

3.2 Action by the Administrator. A majority of the Administrator shall constitute a quorum. The acts of a majority of the members present at any meeting at which a quorum is present, and, subject to applicable law and the Bylaws of the Company, acts approved in writing by a majority of the Administrator in lieu of a meeting, shall be deemed the acts of the Administrator. Each member of the Administrator is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Designated Subsidiary, the Company’s independent certified public accountants, or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

3.3 Authority of Administrator. The Administrator shall have the power, subject to, and within the limitations of, the express provisions of the Plan:

(a) To determine when and how rights to purchase Stock shall be granted and the provisions of each offering of such rights (which need not be identical).

(b) To designate from time to time which Subsidiaries of the Company shall be Designated Subsidiaries, or terminate the designation of a Subsidiary, which designation may be made without the approval of the stockholders of the Company, and to determine whether such Designated Subsidiaries shall participate in the Non-Section 423 Component or the Section 423 Component.

(c) To construe and interpret the Plan and rights granted under it, and to establish, amend and revoke rules and regulations for its administration. The Administrator, in the exercise of this power, may correct any defect, omission or inconsistency in the Plan, in a manner and to the extent it shall deem necessary or expedient to make the Plan fully effective.

(d) To amend the Plan as provided in Article 10.

(e) Generally, to exercise such powers and to perform such acts as the Administrator deems necessary or expedient to promote the best interests of the Company and its Subsidiaries and to carry out the intent that the Section 423 Component of the Plan be treated as an “employee stock purchase plan” within the meaning of Section 423 of the Code.

3.4 Decisions Binding. The Administrator’s interpretation of the Plan, any rights granted pursuant to the Plan, any subscription agreement and all decisions and determinations by the Administrator with respect to the Plan are final, binding, and conclusive on all parties.

#### ARTICLE IV

##### SHARES SUBJECT TO THE PLAN

4.1 Number of Shares. Subject to Article 9, the aggregate number of shares of Stock which may be issued pursuant to rights granted under the Plan shall be 875,000 shares. All or any portion of such maximum number of shares may be issued under the Section 423 Component. If any right granted under the Plan shall for any reason terminate without having been exercised, the Stock not purchased under such right shall again become available for the Plan.

4.2 Stock Distributed. Any Stock distributed pursuant to the Plan may consist, in whole or in part, of authorized and unissued Stock, treasury stock or Stock purchased on the open market.

#### ARTICLE V

##### OFFERING PERIODS; OFFERING DOCUMENTS; PURCHASE DATES

5.1 Offering Periods. The Administrator may from time to time grant or provide for the grant of rights to purchase Stock of the Company under the Plan to Eligible Employees in an Offering during one or more periods (each, an “**Offering Period**”) selected by the Administrator commencing on such dates (each, an “**Enrollment Date**”) selected by the Administrator. The terms and conditions applicable to each Offering during an Offering Period shall be set forth in an “**Offering Document**” adopted by the Administrator, which Offering Document shall be in such form and shall contain such terms and conditions as the Administrator shall deem appropriate and shall be incorporated by reference into and made part of the Plan and shall be attached hereto as part of the Plan. The Administrator shall establish in each Offering Document one or more dates during an Offering Period (the “**Purchase Date(s)**”) on which rights granted under the Plan shall be exercised and purchases of Stock carried out during such Offering Period in accordance with such Offering Document and the Plan. The provisions of separate Offerings or Offering Periods under the Plan need not be identical.

5.2 Offering Documents. Each Offering Document with respect to an Offering Period shall specify (through incorporation of the provisions of this Plan by reference or otherwise):

- (a) the length of the Offering Period, which period shall not exceed twenty-seven months;
- (b) the Enrollment Date for such Offering Period;
- (c) the Purchase Date(s) during such Offering Period;

(d) the maximum number of shares that may be purchased by any Eligible Employee during such Offering Period, which, in the absence of a contrary designation by the Administrator, shall be 5,000 shares;

(e) in connection with each Offering Period that contains more than one Purchase Date, the maximum aggregate number of shares which may be purchased by any Eligible Employee on any given Purchase Date during the Offering Period, which, in the absence of a contrary designation by the Administrator, shall be 5,000 shares; and

- (f) such other provisions as the Administrator determines are appropriate, subject to the Plan.

#### ARTICLE VI

##### PARTICIPATION

6.1 Eligibility. Any Eligible Employee who shall be employed by the Company or a Designated Subsidiary on the day immediately preceding a given Enrollment Date for an Offering Period shall be eligible to participate in the Plan during such Offering Period, subject to the requirements of this Article 6 and, for the Section 423 Component, the limitations imposed by Section 423(b) of the Code.

6.2 Enrollment in Plan. Except as otherwise set forth in an Offering Document, an Eligible Employee may become a Participant in the Plan for an Offering Period by delivering a subscription agreement to the Company prior to the Enrollment Date for such Offering Period (or such other date specified in the Offering Document), in such form as the Administrator provides. Except as provided in Section 6.7, each such agreement shall designate a whole percentage of such Eligible Employee's Compensation to be withheld by the Company or the Designated Subsidiary employing such Eligible Employee on each payday during the Offering Period as payroll deductions under the Plan. Except as provided in Section 6.7, an Eligible Employee may designate any whole percentage of Compensation which is not less than 1% and not more than the maximum percentage specified by the Administrator in the applicable Offering Document (which percentage shall be 20% in the absence of any such designation) as payroll deductions. A Participant may reduce or increase the percentage of Compensation designated in his or her subscription agreement, or may suspend his or her payroll deductions, subject to the limits of this Section 6.2 at any time during an Offering Period; *provided, however*, that the Administrator may limit the number of changes a Participant may make to his or her payroll deduction elections during each Offering Period and/or Purchase Period in the applicable Offering Document (and in the absence of any specific designation by the Administrator, a Participant shall be allowed two changes to his or her payroll deduction elections during each Offering Period); *provided, further*, that in no event may an Eligible Employee increase the percentage of Compensation designated in his or her subscription agreement more than once during an Offering Period and any such increase shall be permitted only at such times as specified by the Administrator in the applicable Offering Document. Any such change to payroll deductions shall be effective with the first full payroll period following five business days after the Company's receipt of the new subscription agreement (or such shorter or longer period as may be specified by the Administrator in the applicable Offering Document). Except as otherwise set forth in an Offering Document, a Participant may participate in the Plan only by means of payroll deduction and may not make contributions by lump sum payment for any Offering Period (and if contributions are permitted, the foregoing provisions shall apply to such contributions). In the event a Participant suspends his or her payroll deductions, such Participant's cumulative payroll deductions prior to the suspension shall remain in his or her account and shall be applied to the purchase of shares of Stock on the next occurring Purchase Date and shall not be paid to such Participant unless he or she withdraws from participation in the Plan pursuant to Article 8.

6.3 Payroll Deductions. Except as otherwise provided in the applicable Offering Document, payroll deductions for a Participant shall commence on the first payroll following the Enrollment Date and shall end on the last payroll in the Offering Period to which his or her authorization is applicable, unless sooner terminated by the Participant as provided in Article 9 or suspended by the Participant as provided in Section 6.2 or the Administrator as provided in Section 6.6. The payroll deductions made for each Participant shall be credited to an account for such Participant under the Plan and shall be deposited with the general funds of the Company.

6.4 Effect of Enrollment. A Participant's completion of a subscription agreement will enroll such Participant in the Plan for each successive Purchase Period and each subsequent Offering Period on the terms contained therein until the Participant either submits a new subscription agreement, withdraws from participation under the Plan as provided in Article 8 or otherwise becomes ineligible to participate in the Plan.

6.5 Limitation on Purchase of Stock. An Eligible Employee may be granted rights under the Plan only if such rights, together with any other rights granted to such Eligible Employee under "employee stock purchase plans" of the Company, any Parent or any Subsidiary Corporation, as specified by Section 423(b)(8) of the Code, do not permit such employee's rights to purchase stock of the Company or any Parent or Subsidiary Corporation to accrue at a rate which exceeds \$25,000 of fair market value of such stock (determined as of the first day of the Offering Period during which such rights are granted) for each calendar year in which such rights are outstanding at any time. This limitation shall be applied in accordance with Section 423(b)(8) of the Code.

6.6 Decrease or Suspension of Payroll Deductions. Notwithstanding the foregoing, to the extent necessary to comply with Section 423(b)(8) of the Code and Section 6.5 or the other limitations set forth in this Plan, a Participant's payroll deductions may be suspended by the Administrator at any time during an Offering Period. The balance of the amount credited to the account of each Participant which has not been applied to the purchase of shares of Stock by reason of Section 423(b)(8)

of the Code, Section 6.5 or the other limitations set forth in this Plan shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

#### 6.7 Foreign Employees.

(a) In order to facilitate participation in the Plan, the Administrator may provide for such special terms applicable to Participants who are citizens or residents of a foreign jurisdiction, or who are employed by a Designated Subsidiary outside of the United States, as the Administrator may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Except as permitted by Section 423 of the Code, with respect to Offerings under the Section 423 Component, such special terms may not be more favorable than the terms of rights granted under the Section 423 Component to Eligible Employees who are residents of the United States. Such special terms may be set forth in an addendum to the Plan in the form of a sub-plan, addendum or appendix to this Plan, which sub-plan, addendum or appendix may be designed to govern Offerings under the Section 423 Component or the Non-Section 423 Component, as determined by the Administrator. Such sub-plans, addendums or appendices may take precedence over other provisions of this Plan, with the exception of Sections 4.1 and 10.1 and Article 11, but unless otherwise expressly superseded thereby, the provisions of this Plan shall govern the operation of such sub-plans, addendums or appendices; *provided, however*, that no action under this Section 6.7 shall be effective if it would cause the Section 423 Component to fail to continue to constitute an “employee stock purchase plan” within the meaning of Section 423(b) of the Code. Without limiting the generality of the foregoing, the Administrator is specifically authorized to adopt rules and procedures, with respect to Participants who are foreign nationals or employed in non-U.S. jurisdictions, regarding the exclusion of particular Subsidiaries from participation in the Plan, eligibility to participate, the definition of Compensation, handling of payroll deductions or other contributions by Participants, payment of interest, conversion of local currency, data privacy security, payroll tax, withholding procedures, establishment of bank or trust accounts to hold payroll deductions or contributions, determination of beneficiary designation requirements, and handling of stock certificates. The Administrator also is authorized to determine that, to the extent permitted by U.S. Treasury Regulation Section 1.423-2(f), the terms of a purchase right granted under the Plan or an Offering to citizens or residents of a non-U.S. jurisdiction will be less favorable than the terms of purchase rights granted under the Plan or the same Offering to Employees resident solely in the U.S. To the extent any sub-plan, addendum or appendix or other changes approved by the Administrator are inconsistent with the requirements of Section 423 of the Code or would jeopardize the tax-qualified status of the Section 423 Component, the change shall cause the Designated Subsidiaries affected thereby to be considered Designated Subsidiaries in a separate Offering under the Non-Section 423 Component instead of the Section 423 Component. To the extent any Employee of a Designated Subsidiary in the Section 423 Component is a citizen or resident of a foreign jurisdiction (without regard to whether they are also a U.S. citizen or a resident alien (within the meaning of Section 7701(b)(1)(A) of the Code)) and compliance with the laws of the foreign jurisdiction would cause the Section 423 Component or any Offering to violate the requirements of Section 423 of the Code, such Employee shall be considered a Participant in a separate Offering under the Non-Section 423 Component. Unless specifically required under Article 11, the Administrator shall not be required to obtain the approval of the stockholders of the Company prior to the adoption, amendment or termination of any such sub-plan, appendix, rules or procedures.

(b) Notwithstanding any other provisions of the Plan to the contrary, in non-U.S. jurisdictions where participation in the Plan through payroll deductions is prohibited, the Administrator may provide that an Eligible Employee may elect to participate through contributions to his or her account under the Plan in a form acceptable to the Administrator in lieu of or in addition to payroll deductions; *provided, however*, that, for any Offering under the Section 423 Component, the Administrator shall ensure that any alternative method of contribution is applied on an equal and uniform basis to all Eligible Employees in the Offering in compliance with Section 423 of the Code.

## ARTICLE VII

### GRANT AND EXERCISE OF RIGHTS

7.1 Grant of Rights. On the Enrollment Date of each Offering Period, each Eligible Employee participating in such Offering Period shall be granted a right to purchase the maximum number of shares of Stock specified under Section 5.2(d), subject to the limits in Section 6.5, and shall have the right to buy, on each Purchase Date during such Offering Period (at the applicable Purchase Price), such number of shares of the Company’s Stock as is determined by dividing (a) such Participant’s payroll deductions accumulated prior to such Purchase Date and retained in the Participant’s account as of the Purchase Date, by (b) the applicable Purchase Price. The right shall expire on the last day of the Offering Period.

7.2 Exercise of Rights. On each Purchase Date, each Participant's accumulated payroll deductions and any other additional payments specifically provided for in the applicable Offering Document will be applied to the purchase of whole shares of Stock of the Company, up to the maximum number of shares permitted pursuant to the terms of the Plan and the applicable Offering Document, at the Purchase Price. No fractional shares shall be issued upon the exercise of rights granted under the Plan, unless the Offering Document specifically provides otherwise. Any cash in lieu of fractional shares of Stock remaining after the purchase of whole shares of Stock upon exercise of a purchase right will be credited to a Participant's account and carried forward and applied toward the purchase of whole shares of Stock for the next following Offering Period. Shares of Stock issued pursuant to the Plan may be evidenced in such manner as the Administrator may determine and may be issued in certificated form or issued pursuant to book-entry procedures.

7.3 Pro Rata Allocation of Shares. If the Administrator determines that, on a given Purchase Date, the number of shares of Stock with respect to which rights are to be exercised may exceed (a) the number of shares of Stock that were available for issuance under the Plan on the Enrollment Date of the applicable Offering Period, or (b) the number of shares of Stock available for issuance under the Plan on such Purchase Date, the Administrator may in its sole discretion provide that the Company shall make a pro rata allocation of the shares of Stock available for purchase on such Enrollment Date or Purchase Date, as applicable, in as uniform a manner as shall be practicable and as it shall determine in its sole discretion to be equitable among all Participants for whom rights to purchase Stock are to be exercised pursuant to this Article 7 on such Purchase Date, and shall either (a) continue all Offering Periods then in effect, or (b) terminate any or all Offering Periods then in effect pursuant to Article 10. The Company may make pro rata allocation of the shares available on the Enrollment Date of any applicable Offering Period pursuant to the preceding sentence, notwithstanding any authorization of additional shares for issuance under the Plan by the Company's stockholders subsequent to such Enrollment Date. The balance of the amount credited to the account of each Participant which has not been applied to the purchase of shares of Stock shall be paid to such Participant in one lump sum in cash as soon as reasonably practicable after the Purchase Date.

7.4 Withholding. At the time a Participant's rights under the Plan are exercised, in whole or in part, or at the time some or all of the Stock issued under the Plan is disposed of, the Participant must make adequate provision for the Company's (or any Parent's or Subsidiary's) federal, state, foreign or other tax withholding obligations, if any, which arise upon the exercise of the right or the disposition of the Stock. At any time, the Company may, but shall not be obligated to, withhold from the Participant's compensation the amount necessary for the Company (or any Parent or Subsidiary) to meet applicable withholding and/or social insurance obligations, including any withholding required to make available to the Company (or any Parent or Subsidiary) any tax deductions or benefits attributable to sale or early disposition of Stock by the Participant.

7.5 Conditions to Issuance of Stock. The Company shall not be required to issue or deliver any certificate or certificates for, or make any book entries evidencing, shares of Stock purchased upon the exercise of rights under the Plan prior to fulfillment of all of the following conditions:

- (a) The admission of such shares to listing on all stock exchanges, if any, on which the Stock is then listed; and
- (b) The completion of any registration or other qualification of such shares under any state or federal law or under the rulings or regulations of the Securities and Exchange Commission or any other governmental regulatory body, which the Administrator shall, in its absolute discretion, deem necessary or advisable; and
- (c) The obtaining of any approval or other clearance from any state or federal governmental agency which the Administrator shall, in its absolute discretion, determine to be necessary or advisable; and
- (d) The payment to the Company of all amounts which it is required to withhold under federal, state, foreign or local law upon exercise of the rights, if any; and
- (e) The lapse of such reasonable period of time following the exercise of the rights as the Administrator may from time to time establish for reasons of administrative convenience.

## **ARTICLE VIII**

### **WITHDRAWAL; TERMINATION OF EMPLOYMENT OR ELIGIBILITY**

8.1 Withdrawal. A Participant may withdraw all but not less than all of the payroll deductions credited to his or her account and not yet used to exercise his or her rights under the Plan at any time by giving written notice to the Company in a form acceptable to the Administrator no later than one (1) week prior to the end of the Offering Period (or such shorter or longer period as the Administrator may provide). All of the Participant's payroll deductions credited to his or her account during an Offering Period shall be paid to such Participant as soon as reasonably practicable after receipt of notice of withdrawal and such Participant's rights for the Offering Period shall be automatically terminated, and no further payroll deductions for the purchase of shares shall be made for such Offering Period. If a Participant withdraws from an Offering Period, payroll deductions shall not resume at the beginning of the next Offering Period unless the Participant delivers to the Company a new subscription agreement.

8.2 Future Participation. A Participant's withdrawal from an Offering Period shall not have any effect upon his or her eligibility to participate in any similar plan which may hereafter be adopted by the Company or a Designated Subsidiary or in subsequent Offering Periods which commence after the termination of the Offering Period from which the Participant withdraws.

8.3 Cessation of Eligibility. Upon a Participant's ceasing to be an Eligible Employee for any reason, he or she shall be deemed to have elected to withdraw from the Plan pursuant to this Article 8 and the payroll deductions credited to such Participant's account during the Offering Period shall be paid to such Participant or, in the case of his or her death, to the person or persons entitled thereto under Section 12.4, as soon as reasonably practicable, and such Participant's rights for the Offering Period shall be automatically terminated.

8.4 Transfer of Employment. A transfer of employment from one Designated Subsidiary to another shall not be treated as a termination of employment. If a Participant transfers employment from the Company or any Designated Subsidiary participating in the Section 423 Component to a Designated Subsidiary participating in the Non-Section 423 Component, he or she shall immediately cease to participate in the Section 423 Component; however, any payroll deductions made for the Offering Period in which such transfer occurs shall be transferred to the Non-Section 423 Component, and such Participant shall immediately join the then-current Offering under the Non-Section 423 Component upon the same terms and conditions in effect for his or her participation in the Section 423 Component, except for such modifications otherwise applicable for Participants in such Offering. A Participant who transfers employment from a Designated Subsidiary participating in the Non-Section 423 Component to the Company or any Designated Subsidiary participating in the Section 423 Component shall remain a Participant in the Non-Section 423 Component until the earlier of (i) the end of the current Offering Period under the Non-Section 423 Component, or (ii) the Enrollment Date of the first Offering Period in which he or she is eligible to participate following such transfer. Notwithstanding the foregoing, the Administrator may establish different rules to govern transfers of employment between companies participating in the Section 423 Component and the Non-Section 423 Component, consistent with the applicable requirements of Section 423 of the Code.

## ARTICLE IX

### ADJUSTMENTS UPON CHANGES IN STOCK

9.1 Changes in Capitalization. Subject to Section 9.3, in the event that the Administrator determines that any dividend or other distribution (whether in the form of cash, Stock, other securities, or other property), Change in Control, reorganization, merger, amalgamation, consolidation, combination, repurchase, recapitalization, liquidation, dissolution, or sale, transfer, exchange or other disposition of all or substantially all of the assets of the Company, or sale or exchange of Stock or other securities of the Company, issuance of warrants or other rights to purchase Stock or other securities of the Company, or other similar corporate transaction or event, as determined by the Administrator, affects the Stock such that an adjustment is determined by the Administrator to be appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended by the Company to be made available under the Plan or with respect to any outstanding purchase rights under the Plan, the Administrator shall make equitable adjustments, if any, to reflect such change with respect to (a) the aggregate number and type of shares of Stock (or other securities or property) that may be issued under the Plan (including, but not limited to, adjustments of the limitations in Section 4.1 and the limitations established in each Offering Document pursuant to Section 5.2 on the maximum number of shares of Stock that may be purchased); (b) the class(es) and number of shares and price per share of Stock subject to outstanding rights; and (c) the Purchase Price with respect to any outstanding rights.

9.2 Other Adjustments. Subject to Section 9.3, in the event of any transaction or event described in Section 9.1 or any unusual or nonrecurring transactions or events affecting the Company, any affiliate of the Company, or the financial statements of the Company or any affiliate (including without limitation any Change in Control), or of changes in applicable laws, regulations or accounting principles, and whenever the Administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan or with respect to any right under the Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, the Administrator, in its sole discretion and on such terms and conditions as it deems appropriate, is hereby authorized to take any one or more of the following actions:

(a) To provide for either (i) termination of any outstanding right in exchange for an amount of cash, if any, equal to the amount that would have been obtained upon the exercise of such right had such right been currently exercisable or (ii) the replacement of such outstanding right with other rights or property selected by the Administrator in its sole discretion;

(b) To provide that the outstanding rights under the Plan shall be assumed by the successor or survivor corporation, or a parent or subsidiary thereof, or shall be substituted for by similar rights covering the stock of the successor or survivor corporation, or a parent or subsidiary thereof, with appropriate adjustments as to the number and kind of shares and prices; and

(c) To make adjustments in the number and type of shares of Stock (or other securities or property) subject to outstanding rights under the Plan and/or in the terms and conditions of outstanding rights and rights which may be granted in the future;

(d) To provide that Participants' accumulated payroll deductions may be used to purchase Stock prior to the next occurring Purchase Date on such date as the Administrator determines in its sole discretion and the Participants' rights under the ongoing Offering Period(s) terminated; and

(e) To provide that all outstanding rights shall terminate without being exercised.

9.3 No Adjustment Under Certain Circumstances. No adjustment or action described in this Article 9 or in any other provision of the Plan shall be authorized to the extent that such adjustment or action would cause the Section 423 Component of the Plan to fail to satisfy the requirements of Section 423 of the Code.

9.4 No Other Rights. Except as expressly provided in the Plan, no Participant shall have any rights by reason of any subdivision or consolidation of shares of stock of any class, the payment of any dividend, any increase or decrease in the number of shares of stock of any class or any dissolution, liquidation, merger, or consolidation of the Company or any other corporation. Except as expressly provided in the Plan or pursuant to action of the Administrator under the Plan, no issuance by the Company of shares of stock of any class, or securities convertible into shares of stock of any class, shall affect, and no adjustment by reason thereof shall be made with respect to, the number of shares of Stock subject to a Participant's right to purchase or the grant or exercise price of any such right to purchase shares of Stock.

## ARTICLE X

### AMENDMENT, MODIFICATION AND TERMINATION

10.1 Amendment, Modification and Termination. The Administrator may amend, suspend or terminate the Plan at any time and from time to time; *provided, however*, that approval by a vote of the holders of the outstanding shares of the Company's capital stock entitled to vote shall be required to amend the Plan to: (a) increase the aggregate number, or change the type, of shares that may be sold pursuant to rights under the Plan under Section 4.1 (other than any adjustment as provided by Article 9); (b) change the corporations or classes of corporations whose employees may be granted rights under the Plan; (c) change the Plan in any manner that would cause the Section 423 Component of the Plan to no longer be an "employee stock purchase plan" within the meaning of Section 423(b) of the Code; or (d) amend the Plan in any manner that would require the approval of the Company's stockholders under applicable law or the rules of the stock exchange on which the shares of Stock are listed.

10.2 Rights Previously Granted. Except as provided in Article 9 or this Article 10, no termination, amendment or modification may make any change in any right theretofore granted which adversely affects the rights of any Participant

without the consent of such Participant, *provided* that an Offering Period may be terminated, amended or modified by the Administrator if the Administrator determines that the termination of the Offering Period or the Plan is in the best interests of the Company and its stockholders.

10.3 Certain Changes to Plan. Without stockholder consent and without regard to whether any Participant rights may be considered to have been adversely affected (and, with respect to the Section 423 Component, to the extent permitted by Section 423 of the Code), the Administrator shall be entitled to change the Offering Periods, limit the frequency and/or number of changes in the amount withheld during an Offering Period, establish the exchange ratio applicable to amounts withheld in a currency other than U.S. dollars, permit payroll withholding in excess of the amount designated by a Participant in order to adjust for delays or mistakes in the Company's processing of properly completed withholding elections, establish reasonable waiting and adjustment periods and/or accounting and crediting procedures to ensure that amounts applied toward the purchase of Stock for each Participant properly correspond with amounts withheld from the Participant's Compensation, and establish such other limitations or procedures as the Administrator determines in its sole discretion advisable which are consistent with the Plan.

## ARTICLE XI

### TERM OF PLAN

This amended and restated Plan shall be effective on the date it is approved by the stockholders of the Company (the "*Restatement Effective Date*"). The Plan shall be in effect until terminated under Article 10. No rights may be granted under the Plan during any period of suspension of the Plan or after termination of the Plan. This amended and restated Plan will be submitted for the approval of the Company's stockholders within twelve (12) months after the date of the Board's initial adoption of the Plan. If this amended and restated Plan is not approved by the Company's stockholders, it will not become effective and the Prior Plan will continue in full force and effect in accordance with its terms.

## ARTICLE XII

### MISCELLANEOUS

12.1 Restriction upon Assignment. A right granted under the Plan shall not be transferable other than by will or the laws of descent and distribution, and is exercisable during the Participant's lifetime only by the Participant. Except as provided in Section 12.4 hereof, a right under the Plan may not be exercised to any extent except by the Participant. The Company shall not recognize and shall be under no duty to recognize any assignment or alienation of the Participant's interest in the Plan, the Participant's rights under the Plan or any rights thereunder.

12.2 Rights as a Stockholder. With respect to shares of Stock subject to a right granted under the Plan, a Participant shall not be deemed to be a stockholder of the Company, and the Participant shall not have any of the rights or privileges of a stockholder, until such shares have been issued to the Participant or his or her nominee following exercise of the Participant's rights under the Plan. No adjustments shall be made for dividends (ordinary or extraordinary, whether in cash securities, or other property) or distribution or other rights for which the record date occurs prior to the date of such issuance, except as otherwise expressly provided herein.

12.3 Use of Funds; Interest. All funds received or held by the Company under the Plan shall be included in the general funds of the Company free of any trust or other restriction and may be used for any corporate purpose, except for funds contributed under Offerings in which the local law of a non-U.S. jurisdiction requires that contributions to the Plan by Participants be segregated from the Company's general corporate funds and/or deposited with an independent third party for Participants in non-U.S. jurisdictions. No interest shall accrue on the payroll deductions or lump sum contributions of a Participant under the Plan, except as may be required by local law in a non-U.S. jurisdiction. If the segregation of funds and/or payment of interest on any Participant's account is so required, such provisions shall apply to all Participants in the relevant Offering except to the extent otherwise permitted by U.S. Treasury Regulation Section 1.423-2(f). With respect to any Offering under the Non-Section 423 Component, the payment of interest shall apply as determined by the Administrator (but absent any such determination, no interest shall apply).

12.4 Designation of Beneficiary.

(a) A Participant may, in the manner determined by the Administrator, file a written designation of a beneficiary who is to receive any shares and cash, if any, from the Participant's account under the Plan in the event of such Participant's death subsequent to a Purchase Date on which the Participant's rights are exercised but prior to delivery to such Participant of such shares and cash. In addition, a Participant may file a written designation of a beneficiary who is to receive any cash from the Participant's account under the Plan in the event of such Participant's death prior to exercise of the Participant's rights under the Plan. If the Participant is married and resides in a community property state, a designation of a person other than the Participant's spouse as his or her beneficiary shall not be effective without the prior written consent of the Participant's spouse.

(b) Such designation of beneficiary may be changed by the Participant at any time by written notice to the Company. In the event of the death of a Participant and in the absence of a beneficiary validly designated under the Plan who is living at the time of such Participant's death, the Company shall deliver such shares and/or cash to the executor or administrator of the estate of the Participant, or if no such executor or administrator has been appointed (to the knowledge of the Company), the Company, in its discretion, may deliver such shares and/or cash to the spouse or to any one or more dependents or relatives of the Participant, or if no spouse, dependent or relative is known to the Company, then to such other person as the Company may designate.

12.5 Notices. All notices or other communications by a Participant to the Company under or in connection with the Plan shall be deemed to have been duly given when received in the form specified by the Company at the location, or by the person, designated by the Company for the receipt thereof.

12.6 Equal Rights and Privileges. All Eligible Employees of the Company or any Designated Subsidiary under the Section 423 Component will have equal rights and privileges under this Plan so that the Section 423 Component of the Plan qualifies as an "employee stock purchase plan" within the meaning of Section 423 of the Code. Any provision of the Section 423 Component of the Plan that is inconsistent with Section 423 of the Code will, without further act or amendment by the Company, the Board or the Administrator, be reformed to comply with the equal rights and privileges requirement of Section 423 of the Code. Participants participating in the Non-Section 423 Component need not have the same rights and privileges as Eligible Employees participating in the Section 423 Component or other Eligible Employees participating in the Non-Section 423 Component.

12.7 Reports. Statements of account shall be given to participating Employees at least annually, which statements shall set forth the amounts of payroll deductions, the Purchase Price, the number of shares purchased and the remaining cash balance, if any.

12.8 No Employment Rights. Nothing in the Plan shall be construed to give any person (including any Eligible Employee or Participant) the right to remain in the employ of the Company or any Parent or Subsidiary or to affect the right of the Company or any Parent or Subsidiary to terminate the employment of any person (including any Eligible Employee or Participant) at any time, with or without cause.

12.9 Notice of Disposition of Shares. Each Participant in the Section 423 Component shall give prompt notice to the Company of any disposition or other transfer of any shares of Stock purchased upon exercise of a right under the Plan if such disposition or transfer is made: (a) within two years from the Enrollment Date of the Offering Period in which the shares were purchased or (b) within one year after the Purchase Date on which such shares were purchased. Such notice shall specify the date of such disposition or other transfer and the amount realized, in cash, other property, assumption of indebtedness or other consideration, by the Participant in such disposition or other transfer.

12.10 Governing Law. The validity and enforceability of this Plan shall be governed by and construed in accordance with the laws of the State of California without regard to otherwise governing principles of conflicts of law.

12.11 Electronic Forms. To the extent permitted by applicable law and in the discretion of the Administrator, an Eligible Employee may submit any form or notice as set forth herein by means of an electronic form approved by the Administrator. Before the commencement of an Offering Period, the Administrator shall prescribe the time limits within which any such electronic form shall be submitted to the Administrator with respect to such Offering Period in order to be a valid election.

**ZOGENIX, INC.**  
**EMPLOYEE STOCK PURCHASE PLAN**  
**SUB-PLAN FOR**  
**INTERNATIONAL PARTICIPANTS**

**1. APPLICATION**

This Sub-Plan for Participants in non-U.S. jurisdictions in the Zogenix, Inc. Employee Stock Purchase Plan (this “**Sub-Plan**”) sets forth additional terms and conditions applicable to the rights granted to, and the shares of Stock purchased by, Eligible Employees in the countries set forth below.

The Plan and this Sub-Plan are complimentary to each other and shall be deemed as one. In any case of contradiction between the provisions of this Sub-Plan and the Plan, the provisions set out in the Sub-Plan shall prevail. Any capitalized terms used in this Sub-Plan but not defined shall have the meaning given to those terms in the Plan.

**2. GLOBAL PROVISIONS**

(a) Data Protection. It shall be a term and condition for participation in the Plan that a Participant explicitly and unambiguously consent to the collection, use and transfer, in electronic or other form, of a Participant’s personal “Data” (as defined below) by and among, as applicable, the Company, any Parent or Subsidiary and a Participant’s employing entity (the “**Employer**”), if different, and their affiliates (collectively, the “**Company Group**”) for the exclusive purpose of implementing, administering and managing the Participant’s participation in the Plan. The Company Group holds certain personal information about the Participant, including, but not limited to, the Participant’s name, home address and telephone number, e-mail address, date of birth, employee identification number, NRIC or passport number or equivalent, salary, nationality, job title, any shares of stock or directorships held in the Company, details of all options or any other entitlement to shares of stock awarded, canceled, exercised, vested, unvested or outstanding in the Participant’s favor, for the purpose of implementing, administering and managing the Plan (“**Data**”). Data will be transferred to such stock plan service providers, as may be prudently selected by the Company, which are assisting the Company with the implementation, administration and management of the Plan. The recipients of the Data may be located in the United States of America or elsewhere (and, if the Participant is a resident of a member state of the European Union, may be outside the European Economic Area) and that the recipient’s country (e.g., the United States of America) may have different data privacy laws and protections than the Participant’s country. The Participant may request a list with the names and addresses of all recipients of the Data by contacting his or her local human resources representative. Each Participant hereby authorizes the Company Group and any other possible recipients which may assist the Company (presently or in the future) with implementing, administering and managing the Plan to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing the Participant’s participation in the Plan. Data will be held only as long as is necessary to implement, administer and manage the Participant’s participation in the Plan. The Company will also make the Data available to public authorities where required under locally applicable law. A Participant may, at any time, view Data, request additional information about the storage and processing of Data, require any necessary amendments to Data or refuse or withdraw the consents herein, in any case, without cost, by contacting in writing the Participant’s local human resources representative. A Participant’s refusal to provide consent or withdrawal of consent may affect the Participant’s ability to participate in the Plan. This section applies to information held, used or disclosed in any medium.

**If Participant resides in the UK or the European Union, the Company Group will hold, collect and otherwise process certain Data as set out in the applicable Company’s GDPR-compliant data privacy notice, which will be or has been provided to the Participant separately. All personal data will be treated in accordance with applicable data protection laws and regulations.**

(b) Acknowledgment of Nature of Plan and Rights. In participating in the Plan, each Participant acknowledges that:

(i) for employment and labor law purposes, the rights granted and the shares of Stock purchased under the Plan are an extraordinary item that do not constitute wages of any kind for services of any kind rendered to the Company, any Parent or Subsidiary or the Employer, and the award of rights is outside the scope of Participant’s service contract, if any;

(ii) for employment and labor law purposes, the rights granted and the Stock purchased under the Plan are not part of normal or expected wages or salary for any purposes, including, but not limited to, calculation of any severance, resignation, termination, redundancy, dismissal, end of service payments, bonuses, holiday pay, long-service awards, pension or retirement benefits or similar payments and in no event should be considered as compensation for, or relating in any way to, past services for the Company, the Employer, its Parent or any Subsidiary of the Company;

(iii) the rights and the shares of Stock purchased under the Plan are not intended to be an integral component of compensation or to replace any pension rights or compensation;

(iv) neither the rights nor any provision of Plan or the policies adopted pursuant to the Plan confer upon any Participant any right with respect to service or continuation of current service and shall not be interpreted to form a service contract or relationship with the Company or any Subsidiary;

(v) the future value of the underlying shares of Stock is unknown and cannot be predicted with certainty;

(vi) if the underlying shares of Stock do not increase in value, the right may have no value; and

(vii) if a Participant acquires shares of Stock, the value of the shares of Stock acquired upon purchase may increase or decrease in value, even below the original price paid.

**ZOGENIX, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
SUB-PLAN FOR  
INTERNATIONAL PARTICIPANTS**

**FRANCE**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the Shares purchased by, Eligible Employees who are (or are deemed to be) resident in France for the purpose of payment of taxes or who exercise all of their employment duties in France and forms an integral part of the Plan and Sub-Plan. **Eligible Employees in France are advised that part-time and temporary Employees may be excluded from participation in the Plan.**

**2. SECURITIES LAWS**

The Plan does not require a prospectus to be submitted for approval to the French Financial Market Authority (the “*Autorité des marchés financiers*”). Persons or entities referred to in Point 2°, Section II of Article L. 411-2 of the French Monetary and Financial Code may take part in the Plan solely for their own account, as provided in Articles D. 411-1, D. 411-2, D. 734-1, D. 744-1, D. 754-1 and D. 764-1 of the French Monetary and Financial Code. The financial instruments purchased under the Plan cannot be distributed directly or indirectly to the public otherwise than in accordance with Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the French Monetary and Financial Code.

**3. TAX CONSEQUENCES**

Any tax consequences arising from the vesting or distribution or otherwise pursuant to a right granted under the Plan shall be borne solely by the Eligible Employee (including, without limitation, the Eligible Employee’s individual income tax and the Eligible Employee’s social security contributions, if applicable). The Company Group shall be entitled to (a) withhold Eligible Employee’s social security contributions and individual income tax (if required) according to the requirements under Applicable Laws, rules and regulations, including withholding taxes at source and (b) report the income and requested details in respect of any right granted under the Plan to the competent tax and social security authorities. Furthermore, the Eligible Employee shall agree to indemnify the Company Group and hold them harmless against and from any and all liability for any such tax or other payment or interest or penalty thereon, including without limitation, liabilities relating to the necessity to withhold, or to have withheld, any such tax from any payment made to the Eligible Employee.

**4. LANGUAGE CONSENT**

By agreeing to participate in the Plan, each Eligible Employee Participant confirms having read and understood the documents relating to the Plan, this Sub-Plan and the subscription agreement, which were provided in English language. Participant accepts the terms of those documents accordingly.

*En acceptant l’attribution, vous confirmez ainsi avoir lu et compris les documents relatifs à cette attribution (le Plan, le contrat et cette Annexe) qui ont été communiqués en langue anglaise. Vous acceptez les termes en connaissance de cause.*

**ZOGENIX, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
SUB-PLAN FOR  
INTERNATIONAL PARTICIPANTS**

**GERMANY**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the shares of Stock purchased by, Eligible Employees who are (or are deemed to be) resident in Germany for the purpose of payment of taxes or who exercise all of their employment duties in Germany and forms an integral part of the Plan and Sub-Plan.

**2. DEFINITION OF EMPLOYEE**

The definition of Employee shall, for the avoidance of doubt, include the directors of any German Designated Subsidiary who perform paid work for such German Designated Subsidiary under a director's contract. **Eligible Employees in Germany are advised that part-time and temporary Employees may be excluded from participation in the Plan.**

**3. LEAVES OF ABSENCES**

The Company's discretion to grant rights to purchase Stock under the Plan and Sub-Plan shall be exercised in a manner complying with German law, in particular with the labor law principle of equal treatment (*arbeitsrechtlicher Gleichbehandlungsgrundsatz*) and with the prohibition of discrimination (*Diskriminierungsverbot*). For the avoidance of doubt, any sick leave or other leave of absence as used in the Plan shall be interpreted and applied as compliant with German law.

**4. ACCOUNTS AND PARTICIPATION**

Each Participant's accumulated payroll deductions under the Plan will be held in an account owned and managed by the Participant. The Committee may establish procedures under the Plan and this Sub-Plan to ensure participation and administration of the Plan and Sub-Plan are in compliance with applicable German laws, rules and regulations.

**5. USE OF FUNDS**

For the purposes of this Sub-Plan, Section 12.3 of the Plan does not apply.

**6. NO LEGAL CLAIM**

Each Participant acknowledges and agrees that any right to purchase Stock under the Plan and Sub-Plan is a voluntary one-time benefit, and that the Participant in the Plan and Sub-Plan does not have a legal claim for further rights to purchase shares of Stock under the Plan.

**7. BOARD, ADMINISTRATOR AND COMMITTEE DISCRETION AND DECISIONS**

The discretion of the Board, Committee and any committee under the Plan and the Sub-Plan, including their interpretation and any decisions taken thereunder, shall be exercised reasonably (*nach billigem Ermessen*) in accordance with German law.

**8. CONSENT TO PERSONAL DATA PROCESSING AND TRANSFER**

The following provisions shall apply in lieu of Section 2(a) of the global provisions of the Sub-Plan:

It shall be a term and condition of each award under the Plan that an Eligible Employee acknowledges and consents to the collection, use, processing and transfer of personal data as described below. The Company any Parent or Subsidiary and a Participant's employing entity (the "**Employer**"), if different, and their affiliates (collectively, the "**Company Entities**"), hold certain personal information, including the Eligible Employee's name, home address and telephone number, date of birth, social security number or other employee tax identification number, employment history and status, salary, nationality, job

title, and any equity compensation grants awarded, cancelled, purchased, vested, unvested or outstanding in the Eligible Employee's favor, for the only purpose of managing and administering the Plan ("**Data**"). The Company Entities will transfer Data to any third parties assisting the Company in the implementation, administration and management of the Plan. The Company Entities may also make the Data available to public authorities where required under locally applicable law. These recipients may be located in the United States, the European Economic Area, or elsewhere, which the Eligible Employee separately and expressly consents to, accepting that outside the European Economic Area, data protection laws may not be as protective as within. The third parties currently assisting the Company in the implementation, administration and management of the Plan are the following: E\*TRADE Financial Services, the Company Entities, My Equity Comp, LLC. However, from time to time, the Company Entities may retain additional or different third parties for any of the purposes mentioned on which the Company will inform the Eligible Employee and seek additional consent of the Eligible Employee. The Eligible Employee hereby authorizes the Company Entities to receive, possess, use, retain and transfer the Data, in electronic or other form, for the purposes of implementing, administering and managing participation in the Plan, including any requisite transfer of such Data as may be required for the administration of the Plan on behalf of the Eligible Employee to a third party with whom the Eligible Employee may have elected to have payment made pursuant to the Plan. A Participant may, at any time, review Data, require any necessary amendments to it or withdraw the consent herein in writing by contacting the Company through its local Human Resources Director; however, withdrawing the consent may affect the Participant's ability to participate in the Plan and receive the benefits under the Election Form. Data will only be held as long as necessary to implement, administer and manage the Participant's participation in the Plan and any subsequent claims or rights.

## **9. TAXES AND OTHER WITHHOLDING**

For the avoidance of doubt, any withholding and payment obligations under the Plan and the Sub-Plan shall be made by the relevant Designated Subsidiary employing the Eligible Employee when due and any taxes should always include German social security contributions (including the Eligible Employee's portion) as well as any other mandatory withholding and pay obligations in accordance with German law.

## **10. TAX CONSEQUENCES**

Any tax consequences arising from the vesting or distribution or otherwise pursuant to a right to purchase shares of Stock under the Plan or the Plan shall be borne solely by the Eligible Employee (including, without limitation, the Eligible Employee's individual income tax and the Eligible Employee's social security contributions, if applicable). The Company Group shall be entitled to (i) withhold an Eligible Employee's social security contributions and individual income tax (if required) according to the requirements under applicable laws, rules and regulations, including withholding taxes at source and (ii) report the income and requested details in respect of any right to purchase shares of Stock under the Plan or the Plan to the competent tax and social security authorities. Furthermore, the Eligible Employee shall agree to indemnify the Company Group and hold them harmless against and from any and all liability for any such tax or other payment or interest or penalty thereon, including without limitation, liabilities relating to the necessity to withhold, or to have withheld, any such tax from any payment made to the Eligible Employee.

## **11. EXCHANGE CONTROL INFORMATION**

Cross-border payments in excess of €12,500 must be reported monthly to the German Federal Bank (*Bundesbank*). In the event Participant makes or receives a payment in excess of this amount, he or she must report the payment to Bundesbank electronically using the "General Statistics Reporting Portal" ("*Allgemeines Meldeportal Statistik*") available via Bundesbank's website ([www.bundesbank.de](http://www.bundesbank.de)).

## **12. FOREIGN ASSET/ACCOUNT REPORTING INFORMATION**

If Participant's acquisition of shares acquired under the Plan leads to a so-called qualified participation at any point during the calendar year, Participant may need to report the acquisition when Participant files his or her tax return for the relevant year. A qualified participation is attained if (a) the value of the shares acquired exceeds €150,000 or (b) in the unlikely event Participant holds Stock exceeding 10% of the Company's total Stock. However, if the Stock is listed on a recognized U.S. stock exchange and Participant owns less than 1% of the Company, this requirement will not apply to Participant.

**ZOGENIX, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
SUB-PLAN FOR  
INTERNATIONAL PARTICIPANTS**

**IRELAND**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the shares of Stock purchased by, Eligible Employees who are (or are deemed to be) resident in Ireland for the purpose of payment of taxes or who exercise all of their employment duties in Ireland and forms an integral part of the Plan and Sub-Plan.

**2. DEFINITION OF ELIGIBLE EMPLOYEE**

For purposes of this Sub-Plan, “Eligible Employee” shall mean an Employee of a Designated Subsidiary: (a) in continuous employment with the Designated Subsidiary for not less than three months immediately preceding their participation in the Plan; (b) who does not, immediately after the purchase right is granted, own stock possessing five percent (5%) or more of the total combined voting power or value of all classes of stock of the Company, a Parent or a Subsidiary (as determined under Section 423(b)(3) of the Code); and (c) who is employed and resides in a country other than the United States of America. For purposes of clause (b), the rules of Section 424(d) of the Code with regard to the attribution of stock ownership shall apply in determining the stock ownership of an individual, and stock which an employee may purchase under outstanding rights shall be treated as stock owned by the employee. For purposes of this definition of “Eligible Employee,” the employment relationship shall, in respect of an Employee of a Designated Subsidiary incorporated in Ireland, be treated as continuing intact and will not be deemed as an interruption to continuous service, where the absence from service is protected by statute. For purposes of the Plan, the employment relationship shall be treated as continuing intact while the individual is on sick leave or other leave of absence approved by the Company or Designated Subsidiary and meeting the requirements of Treasury Regulation Section 1.421-7(h)(2). Where a period of leave, which is not protected by statute or approved by the Company or Designated Subsidiary, exceeds three (3) months and the individual’s right to reemployment is not guaranteed either by statute or by contract, the employment relationship shall be deemed to have terminated on the first day following such three (3)-month period.

**3. TAX CONSEQUENCES**

Any tax consequences arising from the vesting or distribution or otherwise pursuant to an award shall be borne solely by the Eligible Employee (including, without limitation, the Eligible Employee’s social insurance contributions and/or Universal Social Charge, if applicable). The Company Group shall be entitled to (a) withhold taxes (if required) according to the requirements under applicable laws, rules and regulations, including withholding taxes at source and (b) provide details in respect of any award to the Revenue Commissioners of Ireland. Furthermore, the Eligible Employee shall agree to indemnify the Company Group and hold them harmless against and from any and all liability for any such tax or other payment or interest or penalty thereon, including without limitation, liabilities relating to the necessity to withhold, or to have withheld, any such tax from any payment made to the Eligible Employee.

**4. DESIGNATION OF BENEFICIARY**

Notwithstanding anything to the contrary in Section 12.4 of the Plan, Eligible Employees who are (or are deemed to be) resident, ordinarily resident or domiciled in Ireland for the purpose of payment of taxes or who exercise all of their employment duties in Ireland may only designate their estate as their beneficiary.

**ZOGENIX, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
SUB-PLAN FOR  
INTERNATIONAL PARTICIPANTS**

**ITALY**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the shares of Stock purchased by, Eligible Employees who are (or are deemed to be) resident in Italy for the purpose of payment of taxes or who exercise all of their employment duties in Italy and forms an integral part of the Plan and Sub-Plan.

**2. ACKNOWLEDGEMENT**

By participating in the Plan, the Eligible Employee acknowledges that he or she has received a copy of the Plan (including the Sub-Plan) and a subscription agreement and has reviewed the Plan (including the Sub-Plan) and the subscription agreement in their entirety and fully accepts all provisions thereof. By participating in the Plan, the Eligible Employee acknowledges that he or she is proficient in the English language, or has consulted with an advisor who is sufficiently proficient in English, so as to allow him or her to understand the terms and conditions of the Plan, the Sub-Plan and the subscription agreement. If the Eligible Employee has received the Plan, the Sub-Plan or the subscription agreement or any other document related to the Plan translated into a language other than English and if the meaning of the translated version is different than the English version, the English version will control. The Eligible Employee further acknowledges that he or she has read and specifically and expressly approves the following provisions of the Plan, the Sub-Plan and the subscription agreement: (i) payroll deductions; (ii) withholding; (iii) acknowledgment of nature of plan and rights; (iv) data protection; (v) governing law; and (vi) amendment, modification and termination.

**3. FOREIGN ASSET AND ACCOUNT REPORTING INFORMATION**

Italian residents who, at any time during the fiscal year, hold foreign financial assets (e.g., shares of Stock) which may generate income taxable in Italy are required to report such assets on their annual tax returns or on a special form if no tax return is due. The same reporting duties apply to Italian residents who are beneficial owners of the foreign financial assets pursuant to Italian money laundering provisions, even if they do not directly hold the foreign asset abroad. The Eligible Employee should consult his or her personal legal advisor to ensure compliance with applicable reporting requirements.

**4. FOREIGN ASSET TAX INFORMATION**

The value of financial assets held outside Italy (including shares of Stock acquired under the Plan) by Italian residents is subject to a foreign asset tax. The taxable amount will be the fair market value of the financial assets assessed at the end of the calendar year.

**5. DATA PRIVACY**

This provision supplements Section 1 of the Sub-Plan to the extent it is more restrictive:

All personal data will be treated in accordance with applicable data protection laws and regulations. **Participant understands that Data will be held only as long as is required by law or as necessary to implement, administer and manage Participant's participation in the Plan or for compliance or financial reporting purposes. Participant understands that pursuant to art.7 of D.lgs 196/2003, Participant has rights, including but not limited to, the right to access, delete, update, request the rectification of Participant's Data and cease the Data processing and to object, in whole or in part, on legitimate grounds, to the processing of Participant's Data, even though they are relevant to the purpose of collection. Furthermore, Participant is aware that Participant's Data will not be used for direct marketing purposes. In addition, the Data provided can be reviewed and questions or complaints can be addressed by contacting a local HR representative. If Participant requests that the Company cease processing Participant's Data, Participant must do so by writing to the Company's Stock Administration Department, 5959 Horton St., Suite 500, Emeryville, California, U.S.A., or sending an email to stockadmin@zogenix.com. If Participant requests that the Company cease processing Participant's Data, the Company will not be able to administer this award. Accordingly, if Participant**

**requests that the Company cease processing Participant's Data, this Award will be cancelled when Participant's withdrawal is received.**

Furthermore, having read and understood the information given on the processing of the Data and being acquainted of the rights set forth in art. 7 of D.lgs. 196/2003, each Participant expressly and specifically consent according to art. 23 of D.lgs. 196/2003, to the processing of any Data as reported in the Plan and the Agreement, and further expressly and specifically consent, according to art. 43 and art. 44 of D.lgs. 196/2003 to the transfer of the Data, even sensitive data, in foreign countries outside the European Union.

**ZOGENIX, INC.**  
**EMPLOYEE STOCK PURCHASE PLAN**  
**SUB-PLAN FOR**  
**INTERNATIONAL PARTICIPANTS**

**JAPAN**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the Shares purchased by, Eligible Employees who are (or are deemed to be) residents of Japan for the purpose of payment of taxes and forms an integral part of the Plan and Sub-Plan.

**2. TAX CONSEQUENCES**

(a) The Eligible Employee agrees, to the fullest extent permitted by law, to indemnify and keep indemnified the Company, its Parents and any Subsidiaries from and against any liability for or obligation to pay any tax liability that is attributable to: (i) the grant or exercise of an award under this section; (ii) the acquisition by the Eligible Employee of shares of Stock pursuant to the exercise of an award under this section; or (iii) the disposal of any shares of Stock (a "**Tax Liability**").

(b) Without prejudice to the terms of the Plan, an award under this section cannot be exercised, and no shares of Stock may be purchased with respect thereto, until the Eligible Employee has made such arrangements as the Company may require for the satisfaction of any Tax Liability that may arise in connection with the exercise of the award and/or the acquisition of the shares of Stock by the Eligible Employee. Where any Tax Liability is likely to arise, the Company, the Company Group may recover from the Eligible Employee an amount of money sufficient to meet the Tax Liability by any of the following arrangements:

(i) deduction from salary or other payments due to the Eligible Employee;

(ii) withholding the issue, allotment or transfer to the Eligible Employee of that number of shares of Stock (otherwise to be acquired by the Eligible Employee on the exercise of the right) whose aggregate market value on date of exercise is, so far as possible, equal to, but not less than, the amount of Tax Liability (together with the fees and expenses incurred in the sale of the shares of Stock, where the Company intends to sell the shares to meet the Tax Liability);

(iii) withholding the issue, allotment or transfer to the Eligible Employee of the shares of Stock otherwise to be acquired by the Eligible Employee pursuant to the right until the Eligible Employee has demonstrated to the satisfaction of the Company Group that he has given irrevocable instructions to a third party (for example, a broker) satisfactory to the Company Group to sell a sufficient number of those shares to ensure the net proceeds are so far as possible, equal to but not less than, the amount of the Tax Liability; or

(iv) where the Tax Liability arises as a result of a release or assignment by the Eligible Employee of the right, a deduction from the payment made to him as consideration for such release or assignment.

(c) Paragraph (b) will not apply where the Eligible Employee has, before the allotment, issuance or transfer of the shares of Stock to be issued or transferred to the Eligible Employee as a result of the exercise of the right, paid to the Company Group, in cleared funds a sum equal to the Tax Liability arising on the exercise of the right.

**3. NO REGISTRATION**

A right to purchase shares under the Plan will be offered in Japan by a private placement to small number of subscribers (*shoninzu muke kanyu*), as provided under Article 23-13, Paragraph 4 of the Financial Instruments and Exchange Law of Japan ("**FIEL**"), and accordingly, the filing of a securities registration statement pursuant to Article 4, Paragraph 1 of the FIEL has not been made, and such purchase right may not be assigned or transferred by the participant.

**ZOGENIX, INC.**  
**EMPLOYEE STOCK PURCHASE PLAN**  
**SUB-PLAN FOR**  
**INTERNATIONAL PARTICIPANTS**

**SPAIN**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the Shares purchased by, Eligible Employees who are (or are deemed to be) resident in Spain for the purpose of payment of taxes or who exercise all of their employment duties in Spain and forms an integral part of the Plan and Sub-Plan.

**2. ACKNOWLEDGMENTS**

By enrolling in the Plan, the Eligible Employee consents to participate in the Plan and acknowledges that the Eligible Employee has received a copy of the Plan.

(a) The Eligible Employee understands that the Company has unilaterally, gratuitously and discretionally decided to offer rights to purchase shares under the Plan to individuals who may be employees of the Company or its Subsidiaries and affiliates throughout the world. The decision is a limited decision that is entered into upon the express assumption and condition that any grant will not economically or otherwise bind the Company or its Subsidiaries and affiliates. Consequently, the Eligible Employee understands that the rights under the Plan are offered on the assumption and condition that the rights to purchase shares under the Plan and any shares purchased under the Plan are not part of any employment contract (either with the Company or its Subsidiaries or affiliates) and shall not be considered a mandatory benefit, salary for any purposes (including severance compensation) or any other right whatsoever. In addition, the Eligible Employee understands that the rights under the Plan would not be offered to the Eligible Employee but for the assumptions and conditions referred to herein; thus, the Eligible Employee acknowledges and freely accepts that should any or all of the assumptions be mistaken or should any of the conditions not be met for any reason, then the offer of rights to purchase shares under the Plan shall be null and void.

(b) The rights under the Plan are a conditional right to shares of Stock and can be forfeited in the case of, or affected by, the Eligible Employee's termination. This will be the case, for example, even if (i) the Eligible Employee is considered to be unfairly dismissed without good cause; (ii) the Eligible Employee is dismissed for disciplinary or objective reasons or due to a collective dismissal; (iii) the Eligible Employee terminates employment due to a change of work location, duties or any other employment or contractual condition; (iv) the Eligible Employee terminates employment due to unilateral breach of contract of the Company or its Subsidiaries and affiliates; or (v) the Eligible Employee's employment terminates for any other reason whatsoever, except for reasons specified in the subscription agreement. Consequently, upon the Eligible Employee's termination for any of the reasons set forth above, the Eligible Employee may automatically lose any rights to purchase shares under the Plan.

**3. SECURITIES LAW NOTIFICATION**

No "offer of securities to the public," as defined under Spanish law, has taken place or will take place in the Spanish territory in connection with the offer of rights under the Plan. The subscription agreement has not been nor will it be registered with the Comisión Nacional del Mercado de Valores, and does not constitute a public offering prospectus.

**4. EXCHANGE CONTROL NOTIFICATION**

The Eligible Employee must declare the acquisition and sale of shares to the Dirección General de Comercio y Inversiones (the "DGCI") for statistical purposes. Because the Eligible Employee will not sell the shares through the use of a Spanish financial institution, the Eligible Employee must make the declaration him or herself by filing a D-6 form with the DGCI. Generally, the D-6 form must be filed each January while the shares are owned; however, if the value of the shares of Stock acquired or disposed of or the amount of the sale proceeds exceeds €1,502,530 (or if the Eligible Employee holds 10% or more of the share capital of the Company), the declaration must be filed within one month of the acquisition or disposition, as applicable. Further, the Eligible Employee is required to declare electronically to the Bank of Spain any securities accounts

(including brokerage accounts held abroad), as well as the shares held in such accounts if the value of the transactions during the prior tax year or the balances in such accounts as of December 31 of the prior tax year exceed €1,000,000.

#### **5. FOREIGN ASSET/ACCOUNT REPORTING NOTIFICATION**

To the extent that the Eligible Employee holds shares and/or has bank accounts outside Spain with a value in excess of €50,000 (for each type of asset) as of December 31, the Eligible Employee will be required to report information on such assets on the Eligible Employee's tax return (tax form 720) for such year. After such shares and/or accounts are initially reported, the reporting obligation will apply for subsequent years only if the value of any previously-reported shares or accounts increases by more than €20,000.

**ZOGENIX, INC.  
EMPLOYEE STOCK PURCHASE PLAN  
SUB-PLAN FOR  
INTERNATIONAL PARTICIPANTS**

**UNITED KINGDOM**

**1. APPLICATION**

This section sets forth additional terms and conditions applicable to the rights granted to, and the shares of Stock purchased by, Eligible Employees who are (or are deemed to be) resident in the United Kingdom for the purpose of payment of taxes or who exercise all of their employment duties in the United Kingdom and forms an integral part of the Plan and Sub-Plan.

**2. TAX CONSEQUENCES**

(a) The Eligible Employee agrees to indemnify and keep indemnified the Company Group from and against any liability for or obligation to pay any tax liability that is attributable to: (i) the grant or exercise of a right under the Plan; (ii) the acquisition by the Eligible Employee of shares of Stock on exercise of the right; or (iii) the disposal of any shares of Stock (each, a “**Tax Liability**”). If Participant is a resident of the United Kingdom, then Participant’s “**Tax Liability**” shall also include Participant’s primary national insurance contributions and, at the Company’s discretion, any secondary national insurance contributions of the Company Group.

(b) At the discretion of the Administrator, purchase rights granted under the Plan cannot be exercised until the Eligible Employee has entered into an election with the Company or the Employer as appropriate (in a form approved by the Employer and HMRC) (a “**joint election**”) under which any liability of the Company Group for Employer’s National Insurance Contributions arising in respect of the grant, exercise of or other dealing in the rights granted under the Plan, or the acquisition of shares of Stock on exercise of the right, is transferred to and met by the Eligible Employee.

(c) Without prejudice to the terms of the Plan, rights cannot be exercised until the Eligible Employee has made such arrangements as the Company Group may require for the satisfaction of any Tax Liability that may arise in connection with the exercise of the right and/or the acquisition of the shares of Stock by the Eligible Employee. Where any Tax Liability is likely to arise, the Company Group may recover from the Eligible Employee an amount of money sufficient to meet the Tax Liability by any of the following arrangements:

(i) deduction from salary or other payments due to the Eligible Employee;

(ii) withholding the issue, allotment or transfer to the Eligible Employee of that number of shares of Stock (otherwise to be acquired by the Eligible Employee on the exercise of the right) whose aggregate market value on date of exercise is, so far as possible, equal to, but not less than, the amount of Tax Liability (together with the fees and expenses incurred in the sale of the shares of Stock, where the Company intends to sell the shares to meet the Tax Liability);

(iii) withholding the issue, allotment or transfer to the Eligible Employee of the shares of Stock otherwise to be acquired by the Eligible Employee pursuant to the right until the Eligible Employee has demonstrated to the satisfaction of the Company Group that he has given irrevocable instructions to a third party (for example, a broker) satisfactory to the Company Group to sell a sufficient number of those shares to ensure the net proceeds are so far as possible, equal to but not less than, the amount of the Tax Liability; or

(iv) where the Tax Liability arises as a result of a release or assignment by the Eligible Employee of the right, a deduction from the payment made to him as consideration for such release or assignment.

(d) Paragraph (c) will not apply where the Eligible Employee has, before the allotment, issuance or transfer of the shares of Stock to be issued or transferred to the Eligible Employee as a result of the exercise of the right, paid to the Company Group, in cleared funds a sum equal to the Tax Liability arising on the exercise of the right.

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8) pertaining to the Zogenix, Inc. Employee Stock Purchase Plan of our reports dated March 2, 2020, with respect to the consolidated financial statements of Zogenix, Inc. and the effectiveness of internal control over financial reporting of Zogenix, Inc. included in its Annual Report (Form 10-K) for the year ended December 31, 2019, filed with the Securities and Exchange Commission.

/s/ Ernst & Young LLP

Redwood City, California  
May 29, 2020