UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2023

or

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

For the transition period from _____ to _____

Commission File Number: 001-38381

EVOLUS, INC.

(Exact name of registrant as specified in its charter)

Delaware	**46-1385614**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification Number)**
520 Newport Center Drive Suite 1200 Newport Beach, California	**92660**
(Address of Principal Executive Offices)	**(Zip Code)**

(949) 284-4555
(Registrant's Telephone Number, Including Area Code)

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

Title of Class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.00001 per share	**EOLS**	**The Nasdaq Stock Market LLC (Nasdaq Global Market)**

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

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.

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
		Emerging growth company	☒

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

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

As of July 28, 2023, 56,971,563 shares of the registrant's common stock, par value $0.00001, were outstanding.

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Special Note Regarding Forward-Looking Statements

This Quarterly Report on Form 10-Q contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that involve risks and uncertainties, including statements regarding future events, our business, financial condition, results of operations and prospects, our industry and the regulatory environment in which we operate. Any statements contained herein that are not statements of historical or current facts are forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "should," "will," "would" or the negative of those terms, or other comparable terms intended to identify statements about the future. The forward-looking statements included herein are based on our current expectations, assumptions, estimates and projections, which we believe to be reasonable, and are subject to risks and uncertainties that could cause actual results to differ materially from those expressed in the forward-looking statements. These risks and uncertainties, all of which are difficult or impossible to predict accurately and many of which are beyond our control, include, but are not limited to those made below under "Summary of Risk Factors" and in Item 1A. Risk Factors in this Quarterly Report.

You should carefully consider these risks, as well as the additional risks described in other documents we file with the U.S. Securities and Exchange Commission ("SEC") in the future, including subsequent Annual Reports on Form 10-K and Quarterly Reports on Form 10-Q, which may from time to time amend, supplement or supersede the risks and uncertainties we disclose. We also operate in a very competitive and rapidly changing environment. New risks emerge from time to time and it is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in, or implied by, any forward-looking statements.

In light of the significant risks and uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by us or any other person that such results will be achieved, and readers are cautioned not to place undue reliance on such forward-looking statements, which speak only as of the date hereof. Except as required by law, we undertake no obligation to revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. You should read this Quarterly Report on Form 10-Q and the other documents we file with the SEC, with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by the cautionary statements referenced above.

Summary of Risk Factors

An investment in our securities involves various risks and you are urged to carefully consider the risks discussed under Item 1A "Risk Factors," in this Quarterly Report on Form 10-Q prior to making an investment in our securities. If any of the risks below or in Item 1A "Risk Factors" occurs, our business could be materially and adversely affected. As more fully described in Item 1A "Risk Factors", the principal risks and uncertainties that may affect our business, financial condition and results of operations include, but are not limited to, the following:

- We currently depend entirely on the successful commercialization of our only commercial product, Jeuveau®. If we are unable to successfully market and sell Jeuveau®, we may not generate sufficient revenue to continue our business.
- We have a limited operating history and have incurred significant losses since our inception and anticipate that we will continue to incur losses for the foreseeable future. We have only one approved product, which, together with our limited operating history, makes it difficult to assess our future viability.
- We are dependent on Symatese to achieve regulatory approval for the Evolysse™ dermal filler product line in the United States. Failure to obtain approval or obtain approval on our estimated time frame for the Evolysse™ product line would negatively affect our ability to sell these products.
- We may require additional financing to fund our future operation or execute corporate development activities, and a failure to obtain additional capital when so needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our operations.

- If we or our counterparties do not comply with the terms of our settlement agreements with Medytox, Inc., or Medytox, we may face litigation or lose our ability to market and sell Jeuveau®, which would materially and adversely affect our ability to carry out our business and our financial condition and ability to continue as a going concern.
- The terms of the Settlement Agreement with Medytox will continue to reduce our profitability.
- Our business, financial condition and operations have been, and may in the future be, adversely affected by a COVID-19 resurgence or other similar infectious disease outbreaks.
- We rely on the license and supply agreement, as amended, with Daewoong, which we refer to as the Daewoong Agreement, to provide us with exclusive rights to distribute Jeuveau® in certain territories. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect our development and commercialization of Jeuveau®.
- Our failure to successfully in-license, acquire, develop and market additional product candidates or approved products would impair our ability to grow our business.
- Jeuveau® faces, and any of our future product candidates will face, significant competition and our failure to effectively compete may prevent us from achieving significant market penetration and expansion.
- Jeuveau® may fail to achieve the broad degree of physician adoption and use or consumer demand necessary for commercial success.
- Our ability to market Jeuveau® is limited to use for the treatment of glabellar lines, and if we want to expand the indications for which we market Jeuveau®, we will need to obtain additional regulatory approvals, which will be expensive and may not be granted.
- Third party claims of intellectual property infringement may prevent or delay our commercialization efforts and interrupt our supply of products.
- If we or any of our current or future licensors, including Daewoong, are unable to maintain, obtain or protect intellectual property rights related to Jeuveau® or any of our future product candidates, we may not be able to compete effectively in our market.
- We may need to increase the size of our organization, including our sales and marketing capabilities, in order to further market and sell Jeuveau® and we may experience difficulties in managing this growth.
- We rely on our digital technology and applications and our business and operations would suffer in the event of computer system failures or breach.
- We are subject to extensive government regulation, and we may face delays in or not obtain regulatory approval of our product candidates and our compliance with ongoing regulatory requirements may result in significant additional expense, limit or delay regulatory approval or subject us to penalties if we fail to comply.

Unless the context indicates otherwise, as used in this Quarterly Report on Form 10-Q, the terms “Evolus,” “company,” “we,” “us” and “our” refer to Evolus, Inc., a Delaware corporation, and our subsidiaries taken as a whole, unless otherwise noted.

EVOLUS™, Jeuveau®, Evolux® and Evolysse™ are trademarks of ours that are used in this Quarterly Report on Form 10-Q. Jeuveau® is the trade name in the United States for our approved product with non-proprietary name, prabotulinumtoxinA-xvfs. The product has different trade names outside of the United States, including Nuceiva® in Canada, Europe and Australia, but is referred to throughout this Quarterly Report on Form 10-Q as Jeuveau®. This Quarterly Report on Form 10-Q also includes trademarks, trade names and service marks that are the property of other organizations, such as BOTOX® and BOTOX® Cosmetic, which we refer to throughout this Quarterly Report on Form 10-Q as BOTOX. Solely for convenience, trademarks and trade names referred to in this Quarterly Report on Form 10-Q may appear without the ® and ™ symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights, or that the applicable owner will not assert its rights, to these trademarks and trade names. We do not intend our use or display

of other companies' trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements

Evolus, Inc.
Condensed Consolidated Balance Sheets
(in thousands, except par value and share data)

	June 30, 2023 (Unaudited)	December 31, 2022
ASSETS		
Current assets		
Cash and cash equivalents	$ 41,705	$ 53,922
Accounts receivable, net	28,996	22,448
Inventories	19,859	18,852
Prepaid expenses	4,297	3,902
Other current assets	1,603	1,678
Total current assets	96,460	100,802
Property and equipment, net	2,353	2,616
Operating lease right-of-use assets	1,523	1,947
Intangible assets, net	47,216	48,597
Goodwill	21,208	21,208
Other assets	223	2,813
Total assets	$ 168,983	$ 177,983
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	$ 7,835	$ 8,935
Accrued expenses	24,184	24,794
Accrued litigation settlement	—	5,000
Operating lease liabilities	1,349	1,320
Contingent royalty obligation payable to Evolus Founders	7,981	6,460
Total current liabilities	41,349	46,509
Operating lease liabilities	646	1,224
Contingent royalty obligation payable to Evolus Founders	39,100	39,850
Term loan, net of discount and issuance costs	94,829	71,879
Deferred tax liability	22	22
Total liabilities	175,946	159,484
Commitments and contingencies (Note 8)		
Stockholders' equity (deficit)		
Preferred stock, $0.00001 par value; 10,000,000 shares authorized; no shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	—	—
Common stock, $0.00001 par value; 100,000,000 shares authorized; 56,937,823 and 56,260,570 shares issued and outstanding at June 30, 2023 and December 31, 2022, respectively	1	1
Additional paid-in capital	523,729	516,129
Accumulated other comprehensive loss	(468)	(337)
Accumulated deficit	(530,225)	(497,294)
Total stockholders' equity (deficit)	(6,963)	18,499
Total liabilities and stockholders' equity (deficit)	$ 168,983	$ 177,983

See accompanying notes to consolidated financial statements.

Evolus, Inc.
Condensed Consolidated Statements of Operations and Comprehensive Loss
(in thousands, except share and per share data)
(Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Revenue:				
Product revenue, net	$ 48,680	$ 37,163	$ 89,727	$ 70,389
Service revenue	666	—	1,340	682
Total net revenues	49,346	37,163	91,067	71,071
Operating expenses:				
Product cost of sales (excludes amortization of intangible assets)	14,712	15,819	26,858	29,027
Selling, general and administrative	41,174	36,875	78,558	70,317
Research and development	1,208	1,550	2,589	2,018
In-process research and development	4,441	2,000	4,441	2,000
Revaluation of contingent royalty obligation payable to Evolus Founders	1,682	1,414	3,330	2,730
Depreciation and amortization	1,247	853	2,449	1,775
Total operating expenses	64,464	58,511	118,225	107,867
Loss from operations	(15,118)	(21,348)	(27,158)	(36,796)
Other income (expense):				
Interest income	164	4	263	4
Interest expense	(3,182)	(2,075)	(5,971)	(4,123)
Other income (expense), net	19	(24)	(19)	(31)
Loss before income taxes:	(18,117)	(23,443)	(32,885)	(40,946)
Income tax expense	23	28	46	26
Net loss	$ (18,140)	$ (23,471)	$ (32,931)	$ (40,972)
Other comprehensive loss:				
Unrealized loss, net of tax	(52)	(62)	(131)	(165)
Comprehensive loss	$ (18,192)	$ (23,533)	$ (33,062)	$ (41,137)
Net loss per share, basic and diluted	$ (0.32)	$ (0.42)	$ (0.58)	$ (0.73)
Weighted-average shares outstanding used to compute basic and diluted net loss per share	56,920,260	56,079,569	56,699,145	55,906,356

See accompanying notes to consolidated financial statements.

Evolus, Inc.
Condensed Consolidated Statements of Stockholders' (Deficit) Equity
(in thousands, except share data)
(Unaudited)

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity
	Shares	Amount				
Balance at December 31, 2021	55,576,988	$ 1	$ 504,757	$ —	$ (422,882)	$ 81,876
Issuance of common stock in connection with the incentive equity plan	464,376	—	17	—	—	17
Stock-based compensation	—	—	2,959	—	—	2,959
Net loss	—	—	—	—	(17,501)	(17,501)
Other comprehensive loss	—	—	—	(103)	—	(103)
Balance at March 31, 2022	**56,041,364**	**$ 1**	**$ 507,733**	**$ (103)**	**$ (440,383)**	**$ 67,248**
Issuance of common stock in connection with the incentive equity plan	22,049	$ —	$ 167	$ —	$ —	$ 167
Stock-based compensation	—	—	2,979	—	—	2,979
Net loss	—	—	—	—	(23,471)	(23,471)
Other comprehensive loss	—	—	—	(62)	—	(62)
Balance at June 30, 2022	**56,063,413**	**$ 1**	**$ 510,879**	**$ (165)**	**$ (463,854)**	**$ 46,861**

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount				
Balance at December 31, 2022	56,260,570	$ 1	$ 516,129	$ (337)	$ (497,294)	$ 18,499
Issuance of common stock in connection with the incentive equity plan	622,701	—	26	—	—	26
Stock-based compensation	—	—	3,294	—	—	3,294
Net loss	—	—	—	—	(14,791)	(14,791)
Other comprehensive loss	—	—	—	(79)	—	(79)
Balance at March 31, 2023	**56,883,271**	**$ 1**	**$ 519,449**	**$ (416)**	**$ (512,085)**	**$ 6,949**
Issuance of common stock in connection with the incentive equity plan	54,552	$ —	$ 109	$ —	$ —	$ 109
Stock-based compensation	—	—	4,171	—	—	4,171
Net loss	—	—	—	—	(18,140)	(18,140)
Other comprehensive loss	—	—	—	(52)	—	(52)
Balance at June 30, 2023	**56,937,823**	**$ 1**	**$ 523,729**	**$ (468)**	**$ (530,225)**	**$ (6,963)**

See accompanying notes to consolidated financial statements.

Evolus, Inc.
Condensed Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

	Six Months Ended June 30,	
	2023	**2022**
Cash flows from operating activities		
Net loss	$ (32,931)	$ (40,972)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	2,449	1,775
Stock-based compensation	7,465	5,938
Provision for bad debts	342	739
Amortization of operating lease right-of-use assets	424	376
Amortization of debt discount and issuance costs	577	533
Deferred income taxes	—	(11)
Revaluation of contingent royalty obligation payable to Evolus Founders	3,330	2,730
Changes in assets and liabilities:		
Accounts receivable	(6,890)	(7,108)
Inventories	(5,610)	(12,625)
Prepaid expenses	(395)	(2,324)
Other assets	77	4,399
Accounts payable	3,425	4,394
Accrued expenses	(610)	(1,456)
Accrued litigation settlement	(5,000)	(15,000)
Operating lease liabilities	(550)	(475)
Net cash used in operating activities	(33,897)	(59,087)
Cash flows from investing activities		
Purchases of property and equipment	(235)	(243)
Additions to capitalized software	(492)	(406)
Net cash used in investing activities	(727)	(649)
Cash flows from financing activities		
Payment of contingent royalty obligation to Evolus Founders	(2,559)	(2,055)
Proceeds from issuance of long-term debt, net of discounts	25,000	—
Payments for debt issuance costs	(38)	—
Issuance of common stock in connection with incentive equity plan	135	184
Net cash provided by (used in) financing activities	22,538	(1,871)
Effect of exchange rates on cash	(131)	(165)
Change in cash and cash equivalents	(12,217)	(61,772)
Cash and cash equivalents, beginning of period	53,922	146,256
Cash and cash equivalents, end of period	$ 41,705	$ 84,484

See accompanying notes to consolidated financial statements.

Evolus, Inc.
Condensed Consolidated Statements of Cash Flows (Continued)
(in thousands)
(Unaudited)

	Six Months Ended June 30,	
	2023	**2022**
Supplemental disclosure of cash flow information		
Cash paid for interest	$ 5,390	$ 3,582
Cash paid for income taxes	$ 56	$ 54

See accompanying notes to consolidated financial statements.

Evolus, Inc.
Notes to Condensed Consolidated Financial Statements
(in thousands, except share and per share data)
(Unaudited)

Note 1. Description of Business

Description of Business

Evolus, Inc., ("Evolus" or the "Company") is a performance beauty company focused on delivering products in the self-pay aesthetic market. The Company received the approval of its first product Jeuveau® (prabotulinumtoxinA-xvfs) from the U.S. Food and Drug Administration (the "FDA") in February 2019. The product was also approved by Health Canada in August 2018, the European Commission ("EC") in September 2019 and the Australian Therapeutics Good Administration ("TGA") in January 2023. Jeuveau® is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. The Company commercially launched Jeuveau® in the United States in May 2019, in Canada through a distribution partner in October 2019, and began its launch in Europe in September 2022. The Company currently generates all of its net revenues from Jeuveau®. The Company is headquartered in Newport Beach, California.

Liquidity and Financial Condition

The accompanying unaudited condensed consolidated financial statements have been prepared on a basis that assumes that the Company will continue as a going concern, and do not include any adjustments that may result from the outcome of this uncertainty. This basis of accounting contemplates the recovery of the Company's assets and the satisfaction of the Company's liabilities and commitments in the normal course of business and does not include any adjustments to reflect the possible future effects of the recoverability and classification of recorded asset amounts or amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern.

Since inception, the Company has incurred recurring net operating losses and negative cash flows from operating activities and management expects operating losses and negative cash flows to continue for at least the next twelve months. The Company recorded net loss from operations of $15,118 and a total net loss of $18,140 for the three months ended June 30, 2023. The Company used cash of $33,897 from operations during the six months ended June 30, 2023, which included the final lump sum settlement payment of $5,000 to Medytox and Allergan, Inc. and Allergan Limited (together, "Allergan"). As of June 30, 2023, the Company had $41,705 in cash and cash equivalents as well as $25,000 available under its term loan agreement with Pharmakon (described below) and an accumulated deficit of $530,225.

In December 2021, the Company entered into a $125,000 Term Loan agreement with BPCR Limited Partnership, BioPharma Credit Investments V (Master) LP, and Biopharma Credit PLC (collectively, "Pharmakon"). The first tranche of $75,000 was funded on December 29, 2021. The Company received net proceeds of $68,695 from Pharmakon, after issuance costs and debt discounts in December 2021. On December 5, 2022, the Company entered into a Second Amendment to the loan agreement to extend its option to draw down the second tranche of $50,000 until December 31, 2023. In exchange for the extension, the Company paid an amendment fee of $500 to Pharmakon. On May 9, 2023, the Company entered into a third amendment (the "Third Amendment") to the Pharmakon loan agreement. Under the Third Amendment, Pharmakon will advance the second tranche of $50,000 to the Company in two installments: (i) $25,000 advanced on May 31, 2023 and (ii) $25,000 to be advanced on December 15, 2023. The Pharmakon Term Loans will mature on the six-year anniversary of the closing date of the first tranche. See *Note 6. Term Loans* for additional information.

On March 8, 2023, the Company entered into an "at-the-market" sales agreement (the "ATM Sales Agreement") and filed a shelf registration statement on Form S-3 and corresponding prospectus with the SEC to permit sales under the ATM Sales Agreement, which registration statement became effective on June 8, 2023. The Company has not yet sold any shares under the ATM Sales Agreement. See *Note 9. Stockholders' Equity* for additional details.

The Company believes that its current capital resources, which consist of cash and cash equivalents, and the final tranche of $25,000 under the Pharmakon Term Loans, will be sufficient to fund its operations through at least the next twelve months from the date the accompanying condensed consolidated financial statements are issued based on its expected cash needs. The Company may need to raise additional capital to fund future operations or execute corporate development activities through entering into licensing or collaboration agreements with partners, grants or other sources of financing. Sufficient funds may not be available to the Company at all or on attractive terms when needed from equity or debt financings. If the Company is unable to obtain additional funding from these or other sources when needed, or to the extent needed, it may be necessary to reduce its scope of operations to reduce the current rate of spending through actions such as reductions in staff

and delaying, scaling back, or suspending certain research and development, sales and marketing programs and other operational goals.

Note 2. Basis of Presentation and Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed consolidated financial statements have been prepared on a consistent basis with the annual financial statements and in accordance with accounting principles generally accepted in the United States of America ("GAAP") and the requirements of the Securities and Exchange Commission ("SEC") for interim reporting. Pursuant to these SEC rules and regulations, the Company has condensed or omitted certain financial information and disclosures normally included in annual financial statements prepared in accordance with GAAP. In the opinion of management, the interim consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, considered necessary for a fair statement of the interim periods. The interim results presented herein are not necessarily indicative of the results of operations to be expected for the full year ending December 31, 2023 or for any other interim period.

The accompanying unaudited condensed consolidated financial statements and related disclosures should be read in conjunction with the financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022, as filed with the SEC on March 8, 2023.

Principles of Consolidation

The Company's unaudited condensed consolidated financial statements include the Company's accounts and those of the Company's wholly-owned subsidiaries, Evolus Pharma Limited, Evolus International Ltd. and Evolus Pharma BV, and have been prepared in conformity with GAAP. All intercompany transactions have been eliminated.

Use of Estimates

Management is required to make certain estimates and assumptions in order to prepare consolidated financial statements in conformity with GAAP. Such estimates and assumptions affect the reported consolidated financial statements. These estimates include, but are not limited to net revenues, allowance for doubtful accounts, fair value measurements, inventory valuations and stock-based compensation, among others. Management bases estimates on historical experience and on assumptions that management believes are reasonable. The Company's actual results could differ materially from those estimates.

Risks and Uncertainties

The Company is party to an agreement (the "Daewoong Agreement") with Daewoong Pharmaceutical Co. Ltd. ("Daewoong"), pursuant to which the Company received an exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, European Union, United Kingdom, members of the European Economic Area, Switzerland, Canada, Australia, certain members of the Commonwealth of Independent States, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Jeuveau® is manufactured by Daewoong in a facility in South Korea. The Company also has the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than Jeuveau®) in a territory covered by the Daewoong Agreement. The Company relies on Daewoong, its exclusive and sole supplier, to manufacture Jeuveau®. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect the Company's commercialization of Jeuveau®. See *Note 8. Commitments and Contingencies* and *Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement* for additional information.

The Company commercially launched Jeuveau® in the United States in May 2019 and in Canada through its distribution partner in October 2019. The Company also began commercially launching Jeuveau® in Europe in September 2022 and, as such, has a limited history of sales in those markets. If any previously granted approval to market and sell Jeuveau® is retracted or the Company is denied approval or approval is delayed by regulators in any other jurisdictions, it may have a material adverse impact on the Company's business and its consolidated financial statements.

Evolus, Inc.
Notes to Condensed Consolidated Financial Statements
(in thousands, except share and per share data)
(Unaudited)

The Company is also subject to risks common to companies in the pharmaceutical industry including, but not limited to, dependency on the commercial success of Jeuveau®, the Company's sole commercial product, significant competition within the medical aesthetics industry, its ability to maintain regulatory approval of Jeuveau®, third party litigation and challenges to its intellectual property, uncertainty of broad adoption of its product by physicians and patients, its ability to in-license, acquire or develop additional product candidates and to obtain the necessary approvals for those product candidates, and the need to scale manufacturing capabilities over time.

Any disruption and volatility in the global capital markets, including caused by other events, such as public health crises, increased inflation and rising interest rates, and the military conflict between Russia and Ukraine, may increase the Company's cost of capital and adversely affect its ability to access financing when and on terms that the Company desires. Any of these events could have a material adverse effect on the Company's business, financial condition, results of operations and cash flows.

Segment Reporting

Operating segments are identified as components of an enterprise about which separate discrete financial information is available for evaluation by the chief operating decision-maker. The Company has determined that it operates in a single operating and reportable segment. The Company's chief operating decision maker is its Chief Executive Officer who manages operations and reviews the financial information as a single operating segment for the purposes of allocating resources and evaluating its financial performance.

Concentration of Credit Risk

Financial instruments that potentially subject the Company to a concentration of credit risk consist of cash and cash equivalents and accounts receivable. Substantially all of the Company's cash is held by financial institutions that management believes are of high credit quality. Such deposits may, at times, exceed federally insured limits. To date, the Company has not experienced any losses associated with this credit risk and continues to believe that this exposure is not significant. The Company invests, or plans to soon invest, its excess cash, in line with its investment policy, primarily in money market funds and debt instruments of U.S. government agencies.

The Company's accounts receivable is derived from customers located principally in the United States. Concentrations of credit risk with respect to trade receivables are limited due to the Company's credit evaluation process. The Company does not typically require collateral from its customers. Credit losses historically have not been material. The Company continuously monitors customer payments and maintains an allowance for credit losses based on its assessment of various factors including historical experience, age of the receivable balances, and other current economic conditions or other factors that may affect customers' ability to pay.

Cash and Cash Equivalents

Cash and cash equivalents consist of cash and highly liquid investments with remaining maturities at purchase of three months or less that can be liquidated without prior notice or penalty. Cash and cash equivalents may include deposits, money market funds and debt securities. Amounts receivable from credit card issuers are typically converted to cash within two to four days of the original sales transaction and are considered to be cash equivalents.

Inventories

Inventories consist of finished goods held for sale and distribution. Cost is determined based on the estimated amount payable to the Company's supplier after accounting for any reimbursement receivable pursuant to the Daewoong Settlement Agreement (as such term is defined, and such agreement is discussed, in *Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement*), using the first-in, first-out method with prioritization of the items with the earliest expiration dates. Inventory valuation reserves are established based on a number of factors including, but not limited to, finished goods not meeting product specifications, product excess and obsolescence, or application of the lower of cost or net realizable value concepts. The determination of events requiring the establishment of inventory valuation reserves, together with the calculation of the amount of such reserves may require judgment. No material inventory valuation reserves have been recorded for the periods presented. Adverse changes in assumptions utilized in the Company's inventory reserve calculations could result in an increase to its inventory valuation reserves.

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Product cost of sales, excluding amortization of intangible assets, consisted of the inventory cost and certain royalties on the sale of Jeuveau® payable to Medytox and Allergan pursuant to the Medytox/Allergan Settlement Agreements (as such term is defined in *Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement)*, as partially offset by reimbursement receivable from Daewoong pursuant to the Daewoong Settlement Agreement with respect to such royalties.

Fair Value of Financial Instruments

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in an orderly transaction between market participants in a principal market on the measurement date.

The fair value hierarchy defines a three-tiered valuation hierarchy for disclosure of fair value measurement is classified and disclosed by the Company in one of the three categories as follows:

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities in active markets; quoted prices in markets that are not active; or other inputs that are observable, either directly or indirectly, or can be corroborated by observable market data for substantially the full term of the asset or liability; and
- Level 3—Prices or valuation techniques that require inputs that are unobservable that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

The categorization of a financial instrument within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement.

Property and Equipment

Property and equipment are stated at cost. Depreciation and amortization are provided using the straight-line method over the estimated useful lives of approximately five years. Leasehold improvements are amortized over the shorter of the estimated useful lives of the improvements or the term of the related lease.

Goodwill

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. The Company assesses goodwill for impairment annually and whenever events or changes in circumstances indicate that the carrying amount of goodwill may not be recoverable. The Company performs an annual qualitative assessment of its goodwill in the fourth quarter of each calendar year to determine if any events or circumstances exist, such as an adverse change in business climate or a decline in the overall industry demand, that would indicate that it would more likely than not reduce the fair value of a reporting unit below its carrying amount, including goodwill. If events or circumstances do not indicate that the fair value of a reporting unit is below its carrying amount, then goodwill is not considered to be impaired and no further testing is required. For the purpose of impairment testing, the Company has determined that it has one reporting unit. There was no impairment of goodwill for any of the periods presented.

Intangible Assets

The distribution right intangible asset related to Jeuveau® is amortized over the period the asset is expected to contribute to the future cash flows of the Company. The Company determined the pattern of this intangible asset's future cash flows could not be readily determined with a high level of precision. As a result, the distribution right intangible asset is being amortized on a straight-line basis over the estimated useful life of 20 years.

The Company capitalizes certain internal-use software costs associated with the development of its mobile and web-based customer platforms. These costs include personnel expenses and external costs that are directly associated with the software projects. These costs are included as intangible assets in the accompanying condensed consolidated balance sheets. The capitalized internal-use software costs are amortized on a straight-line basis over the estimated useful life of two years upon being placed in service.

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The Company reviews long-term and identifiable definite-lived intangible assets or asset groups for impairment when events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. If the sum of the expected future undiscounted cash flows is less than the carrying amount of the asset or an asset group, further impairment analysis is performed. An impairment loss is measured as the amount by which the carrying amount of the asset or asset groups exceeds the fair value for assets to be held and used or fair value less cost to sell for assets to be disposed of. The Company also reviews the useful lives of its assets periodically to determine whether events and circumstances warrant a revision to the remaining useful life. Changes in the useful life are adjusted prospectively by revising the remaining period over which the asset is amortized. There was no material impairment of long-lived assets for any periods presented.

Leases

At the inception of a contractual arrangement, the Company determines whether the contract contains a lease by assessing whether there is an identified asset and whether the contract conveys the right to control the use of the identified asset in exchange for consideration over a period of time. If both criteria are met, upon lease commencement, the Company records a lease liability which represents the Company's obligation to make lease payments arising from the lease, and a corresponding right-of-use ("ROU") asset which represents the Company's right to use an underlying asset during the lease term. Operating lease assets and liabilities are included in ROU assets, current portion of operating lease liabilities and noncurrent operating lease liabilities in the accompanying condensed consolidated balance sheets.

Operating lease ROU assets and lease liabilities are initially recognized based on the present value of the future minimum lease payments over the lease term at commencement date calculated using the Company's incremental borrowing rate applicable to the underlying asset unless the implicit rate is readily determinable. Operating lease ROU assets also include any lease payments made at or before lease commencement and exclude any lease incentives received, if any. The Company determines the lease term as the noncancelable period of the lease and may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise such options. The Company's leases do not contain any residual value guarantees. Leases with a term of 12 months or less are not recognized on the condensed consolidated balance sheets. For operating leases, the Company recognized rent expense on a straight-line basis over the lease term. There were no significant finance leases as of June 30, 2023.

Contingent Royalty Obligation Payable to Evolus Founders

The Company was acquired by Strathspey Crown Holdings Group, LLC ("SCH") in 2013 and subsequently by its subsidiary, Alphaeon Corporation ("Alphaeon"), by means of a stock purchase agreement ("Stock Purchase Agreement") pursuant to which Alphaeon assumed certain payment obligations related to the acquisition. On December 14, 2017, the Stock Purchase Agreement was amended ("Amended Stock Purchase Agreement"), and, as a result, effective upon the closing of the Company's initial public offering in February 2018, the Company assumed all of Alphaeon's payment obligations under the Amended Stock Purchase Agreement.

Payment obligations to the Evolus Founders consist of quarterly royalty payments of a low single digit percentage of net sales of Jeuveau®. The obligations terminate in the quarter following the 10-year anniversary of the first commercial sale of Jeuveau® in the United States. Under the Amended Stock Purchase Agreement, the Company recorded the fair value of all revised payment obligations owed to the Evolus Founders.

The Company determines the fair value of the contingent royalty obligation payable at each reporting period end based on Level 3 inputs using a discounted cash flows method. Changes in the fair value of the contingent royalty obligation payable are determined at each reporting period end and recorded in operating expenses in the accompanying condensed consolidated statements of operations and comprehensive loss and as a liability in the condensed consolidated balance sheets.

Long-Term Debt

Long-term debt represents the debt balance with Pharmakon (see *Note 6. Term Loans*), net of discount and issuance costs. Debt issuance costs represent legal, lender and consulting costs or fees associated with debt financing. Debt discounts and issuance costs are amortized into interest expense over the term of the debt.

Foreign Currency Translation

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The financial statements of foreign subsidiaries are measured using the local currency as the functional currency. Assets and liabilities are translated into U.S. dollars at current exchange rates as of balance sheet date, and income and expense items are translated into U.S. dollars using the average rates of exchange prevailing during the period. Gains and losses arising from translation are recorded in other comprehensive loss as a separate component of stockholders' equity. Foreign currency gains or losses on transactions denominated in a currency other than the Company's functional currency are recorded in other expenses, net in the accompanying condensed consolidated statements of operations and comprehensive loss.

Revenue Recognition

The Company recognizes revenue when control of the promised goods or services is transferred to its customers, in an amount that reflects the consideration to which the Company expects to be entitled in exchange for the goods or services. In order to achieve that core principle, a five-step approach is applied: (1) identify the contract with a customer, (2) identify the performance obligations in the contract, (3) determine the transaction price, (4) allocate the transaction price to the performance obligations in the contract, and (5) recognize revenue allocated to each performance obligation when the Company satisfies the performance obligation. A performance obligation is a promise in a contract to transfer a distinct good or service to the customer and is the unit of account for revenue recognition.

General

The Company generates product revenue from the sale of Jeuveau® in the United States and Europe, and service revenue from the sale of Jeuveau® through a distribution partner in Canada.

For product revenue, the Company recognizes revenue when control of the promised goods under a contract is transferred to a customer, in an amount that reflects the consideration the Company expects to receive in exchange for those goods as specified in the customer contract. The transfer of control occurs upon receipt of the goods by the customer since that is when the customer has obtained control of the goods' economic benefits. The Company does not provide any service-type warranties and does not accept product returns except under limited circumstances such as damages in transit or ineffective product. The Company also excludes any amounts related to taxes assessed by governmental authorities from revenue measurement. Shipping and handling costs associated with outbound product freight are accounted for as fulfillment costs and are included in selling, general and administrative expenses in the accompanying condensed consolidated statements of operations and comprehensive loss.

For service revenue, the Company evaluated the arrangement with the distribution partner in Canada and determined that it acts as an agent in the distribution of Jeuveau® in Canada as it does not control the product before control is transferred to a customer. The indicators of which party exercises control include primary responsibility over performance obligations, inventory risk before the good or service is transferred and discretion in establishing the price. Accordingly, the Company records the sale as service revenue on a net basis. Revenue from services is recognized in the period the service is performed for the amount of consideration expected to be received. The Company recognized $666 and $1,340 of service revenues for the three and six months ended June 30, 2023, respectively. For the three and six months ended June 30, 2022, service revenues were $0 and $682, respectively.

Disaggregation of Revenue

The Company's disaggregation of revenue is consistent with its operating segment as disclosed above.

Gross-to-Net Revenue Adjustments

The Company provides customers with discounts, such as trade and volume discounts and prompt pay discounts, that are directly reflected in the invoice price. Revenues are recorded net of sales-related adjustments, wherever applicable, primarily for the volume-based rebates, consumer loyalty programs and co-branded marketing programs.

- *Volume-based Rebates* — Volume-based rebates are contractually offered to certain customers. The rebates payable to each customer are determined based on the contract and quarterly purchase volumes.
- *Consumer Loyalty Program* — The Company's consumer loyalty program allows participating customers to earn rewards for qualifying treatments to their patients (i.e. consumers) using Jeuveau® and redeem the rewards for Jeuveau® in the future at no additional cost. The loyalty program represents a customer option that provides a

material right and, accordingly, is a performance obligation. At the time Jeuveau® product is sold to customers, the invoice price is allocated between the product sold and the estimated material right reward ("Reward") that the customer might redeem in the future. The standalone selling price of the Reward is measured based on historical sales data, estimated average selling price of Jeuveau® at the time of redemption, expected customer and consumer participation rates in the loyalty program, and estimated number of qualifying treatments to be performed by customers. The portion of invoice price allocated to the Reward is initially recorded as deferred revenue. Subsequently, when customers redeem the Reward and the related product is delivered, the deferred revenue is recognized in net revenues at that time.

- *Co-Branded Marketing Programs* — The Company offers eligible customers with a certain level of Jeuveau® purchases to receive advertising co-branded with the Company. The co-branded advertising represents a performance obligation. At the time Jeuveau® product is sold to customers, the invoice price is allocated between the product sold and the advertisement. The standalone selling price of the advertisement is measured based on the estimated market value of similar advertisement adjusted for the customer's portion of the advertisement. The portion of invoice price allocated to the advertisement is initially recorded as deferred revenue. Subsequently, when the advertisement airs, the deferred revenue is recognized in net revenues at that time.

Contract Balances

A contract with a customer states the terms of the sale, including the description, quantity and price of each product purchased. Amounts are recorded as accounts receivable when the Company's right to consideration becomes unconditional. The Company does not have any significant financing components in customer contracts given the expected time between transfer of the promised products and the payment of the associated consideration is less than one year. As of June 30, 2023 and December 31, 2022, all amounts included in accounts receivable, net on the accompanying condensed consolidated balance sheets are related to contracts with customers.

The Company did not have any contract assets nor unbilled receivables as of June 30, 2023 or December 31, 2022. Sales commissions are included in selling, general and administrative expenses when incurred.

Contract liabilities reflect estimated amounts that the Company is obligated to pay to customers or patients primarily under the rebate and deferred revenue associated with Rewards under the consumer loyalty program and co-branded marketing programs. The Company's contract liabilities are included in accounts payable and accrued expenses in the accompanying condensed consolidated balance sheets.

As of June 30, 2023 and December 31, 2022, the accrued revenue contract liabilities, primarily related to volume-based rebates, consumer loyalty program and co-branded marketing programs, were $8,941 and $9,011, respectively, which were recorded in accrued expenses in the accompanying condensed consolidated balance sheets. For the six months ended June 30, 2023 and 2022, provisions for rebate, consumer loyalty programs and co-branded marketing programs were $15,502 and $9,517, respectively, which were offset by related payments, redemptions and adjustments of $15,571 and $10,765, respectively.

During the six months ended June 30, 2023 and 2022, the Company recognized $7,689 and $7,566, respectively, of revenue related to amounts included in contract liabilities at the beginning of the period and did not recognize any revenue related to changes in transaction prices regarding its contracts with customers from previous periods.

Collectability

Accounts receivable are recorded at the invoiced amount and do not bear interest. At the time of contract inception or new customer account set-up, the Company performs a collectability assessment of the customer's creditworthiness. The Company assesses the probability that the Company will collect the entitled consideration in exchange for the goods sold, by considering the customer's ability and intention to pay when consideration is due. The Company's expected loss allowance methodology for accounts receivable is developed using historical collection experience, current and future economic and market conditions and periodic evaluation of customers' receivables balances using relevant available information, from internal and external sources, relating to past events, current conditions and forecasts. Historical credit loss experience provides the basis for estimation of expected credit losses and are adjusted as necessary using the relevant information available. The Company writes off accounts receivable balances when it is determined that there is no possibility of

collection. As of June 30, 2023 and December 31, 2022, allowance for credit losses was $2,495 and $2,050, respectively. For the three and six months ended June 30, 2023 provision for bad debts were $69 and $342, respectively, and the recovery of write-off amount was $103 and $103, respectively. For the three and six months ended June 30, 2022, provision for bad debts were $275 and $739, respectively, and the write-off amount was $64 and $85, respectively.

Practical Expedients

The Company expenses sales commissions when incurred as the amortization period is one year or less. These costs are recorded within selling, general and administrative expenses in the accompanying condensed consolidated statements of operations and comprehensive loss. The Company does not adjust the amount of promised consideration for the effects of the time value of money for contracts in which the anticipated period between when the Company transfers the goods or services to the customer and when the customer pays within one year.

Research and Development Expenses

Research and development costs are expensed as incurred. Research and development expenses include personnel-related costs, costs associated with pre-clinical and clinical development activities, costs associated with and costs for prototype products that are manufactured prior to market approval for that prototype product, internal and external costs associated with the Company's regulatory compliance and quality assurance functions, including the costs of outside consultants and contractors that assist in the process of submitting and maintaining regulatory filings, and overhead costs, including allocated facility related expenses.

In-process Research and Development

Intangible assets acquired that are used for research and development and have no future alternative use are expensed as in-process research and development.

Collaboration Agreement

In June 2022, the Company entered into a License and Research Collaboration Agreement (the "Collaboration Agreement") with a 3D printing company with biomaterial capabilities (the "Licensor"). Under the terms of the Collaboration Agreement, the Company was granted a license to the Licensor's technology to develop and commercialize any aesthetic product or non-therapeutic product that is created through the use or practice of the Licensor's patents. The Company paid $2,000 upon the signing of the Collaboration Agreement and has research funding, ongoing milestone and royalty payment obligations depending on the development plans, the success of such development and approval and commercialization of products. The upfront payment of $2,000 was recorded as in-process research and development expense in the six months ended June 30, 2022.

Symatese Agreement

On May 9, 2023, the Company and Symatese S.A.S ("Symatese"), entered into a License, Supply and Distribution Agreement (the "Symatese Agreement"), pursuant to which Symatese granted to the Company an exclusive right to commercialize and distribute its five dermal filler product candidates, including the products referred to as: (i) Lift; (ii) Smooth; (iii) Sculpt; (iv) Lips; and (v) Eye (collectively, the "Products") in the United States for use in the aesthetics and dermatological field of use. The Company also has the right of first negotiation to obtain a license from Symatese to commercialize and distribute any new products developed using the same technology as the Evolysse™ line of dermal fillers.

As consideration for the rights granted under the Symatese Agreement, the Company is required to make up to €16,200 in milestone payments to Symatese, including an initial payment of €4,100 within 30 days of execution of the Symatese Agreement, and additional annual payments of €1,600 in June 2025, €4,100 in June 2026, €3,200 in June 2027, and €3,200 in June 2028, in each case subject to three of the Products gaining approval prior to that date. The Company paid $4,441 as an upfront payment upon the signing of the Symatese Agreement and has developmental costs, ongoing milestone and royalty payment obligations. The Symatese Agreement is also subject to minimum purchase requirements and failure to meet such requirements may result in a reduction or termination of the Company's exclusive rights, subject to certain exceptions. Additionally, the Company agreed to a specified cost-sharing agreement with Symatese related to the registration of the Lips and Eye Products with the FDA.

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The initial term of the Symatese Agreement is fifteen (15) years from the first FDA approval of a Product, with automatic renewals for successive five (5)-year terms subject to the terms of the Symatese Agreement. The upfront payment of $4,441 was recorded as in-process research and development expense in the six months ended June 30, 2023.

Litigation Settlement

In February 2021, upon entering into certain agreements to settle intellectual property disputes relating to Jeuveau®, the Company agreed to pay to Allergan and Medytox $35,000 in multiple payments over two years, of which $15,000 was paid in the third quarter of 2021, $15,000 was paid in the first quarter of 2022, and $5,000 was paid in the first quarter of 2023, and issued 6,762,652 shares of its common stock to Medytox. In addition, for the period from December 16, 2020 through September 16, 2022 (the "Restricted Period"), the Company agreed to pay to Allergan and Medytox a royalty on the sale of Jeuveau®, based on a certain dollar amount per vial sold in the United States and a low-double digit royalty on net sales of Jeuveau® sold in other Evolus territories. Royalties for sales during the Restricted Period ended in the third quarter of 2022. For the period from December 16, 2020 to September 16, 2022, Daewoong agreed to reimburse the Company certain amounts with respect to the royalties payable to Medytox and Allergan. This reimbursement was received quarterly and recorded as an offset to the related royalties to Medytox and Allergan in the product cost of sales on the accompanying condensed consolidated statements of operations and comprehensive loss. For the period from September 17, 2022 to September 16, 2032, the Company agreed to pay Medytox a mid-single digit royalty percentage on all net sales of Jeuveau®. The royalty payments are made quarterly and recorded as product cost of sales on the accompanying condensed consolidated statements of operations and comprehensive loss in the periods the royalties are incurred.

As of June 30, 2023, there were no liabilities recorded in the accompanying condensed consolidated balance sheets related to the litigation settlement with Allergan and Medytox. As of December 31, 2022, a current liability of $5,000 was recorded in the accompanying condensed consolidated balance sheets related to the litigation settlement with Allergan and Medytox.

See *Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement* for the details of all litigation settlement agreements.

Stock-Based Compensation

The Company recognizes stock-based compensation expense for employees, consultants and members of the Board of Directors based on the fair value at the date of grant.

The Company uses the Black-Scholes option pricing model to value stock option grants. The Black-Scholes option pricing model requires the input of subjective assumptions, including the expected volatility of the Company's common stock, expected risk-free interest rate, and the option's expected life. The fair value of the Company's restricted stock units ("RSUs") is based on the fair value on the grant date of the Company's common stock. The Company also evaluates the impact of modifications made to the original terms of equity awards when they occur.

The Company uses a Monte Carlo simulation model to determine the fair value of performance units with market conditions at the grant date. The Monte Carlo simulation model involves the generation of a large number of possible stock price outcomes for the Company's stock which is assumed to follow a Geometric Brownian Motion. The use of the Monte Carlo simulation model requires the input of a number of assumptions including expected volatility of the Company's stock price, which is based on the historical volatility of its stock; risk-free interest rate, which is based on the treasury zero-coupon yield commensurate with the term of the performance unit as of the grant date; and expected dividends as applicable, which is zero, as the Company has never paid any cash dividends.

The fair value of stock options and RSUs with service conditions that are expected to vest is amortized on a straight-line basis over the requisite service period. Stock-based compensation for RSUs with performance or market conditions is recorded over the requisite service period using the accelerated attribution method. Stock-based compensation expense is recognized net of actual forfeitures when they occur, as an increase to additional paid-in capital in the condensed consolidated balance sheets and in the selling, general and administrative or research and development expenses in the condensed consolidated statements of operations and comprehensive loss.

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Income Taxes

The Company applies an estimated annual effective tax rate ("ETR") approach for calculating a tax provision or benefit for interim periods, as required under GAAP. The Company recorded an income tax expense of $23 and $28 for the three months ended June 30, 2023 and 2022, respectively, and an income tax expense of $46 and $26 for the six months ended June 30, 2023 and 2022, respectively. The Company's ETR differs from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2023 and 2022, primarily as a result of the impact of the change of the valuation allowance to offset its deferred tax assets.

A valuation allowance is recorded against deferred tax assets to reduce the net carrying value when it is more likely than not that some portion or all of a deferred tax asset will not be realized. In making such a determination, the Company considers all available positive and negative evidence, including future reversals of existing taxable temporary differences, projected future taxable income, and ongoing prudent and feasible tax planning strategies in assessing the amount of the valuation allowance. When the Company establishes or reduces the valuation allowance against its deferred tax assets, its provision for income taxes will increase or decrease, respectively, in the period such determination is made.

Additionally, the Company recognizes the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefit recognized in the consolidated financial statements for a particular tax position is based on the largest benefit that is more likely than not to be realized upon settlement. Accordingly, the Company establishes reserves for uncertain tax positions.

The Company monitors changes to the tax laws in the states it conducts business and files corporate income tax returns. The Company does not expect that changes to state tax laws through June 30, 2023 to materially impact its condensed consolidated financial statements.

Net Loss Per Share

Basic net loss per share is computed by dividing the net loss by the weighted-average number of shares of common stock outstanding during the period including contingently issuable shares. Diluted earnings per share is based on the treasury stock method and includes the effect from potential issuance of ordinary shares, such as shares issuable pursuant to the exercise of stock options and the vesting of restricted stock units. Because the impact of the options and non-vested RSUs are anti-dilutive during periods of net loss, there was no difference between the weighted-average number of shares used to calculate basic and diluted net loss per common share for the periods presented. Excluded from the dilutive net loss per share computation for the three and six months ended June 30, 2023 and 2022 were stock options of 5,768,909 and 5,141,749, respectively, and non-vested RSUs of 3,250,386 and 2,630,813, respectively, because their inclusion would have been anti-dilutive. Although these securities were anti-dilutive for these periods, they could be dilutive in future periods.

Recently Adopted Accounting Pronouncements

In March 2020, the FASB issued Accounting Standards Update ("ASU") No. 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting* and in January 2021, the FASB issued ASU No. 2021-01, *Reference Rate Reform (Topic 848): Scope ("ASU 2021-01")*. Both ASU No. 2020-04 and ASU No. 2021-01 provides optional expedients and exceptions for applying GAAP to contracts, hedging relationships and other transactions that reference the London Interbank Offered Rate ("LIBOR") or another reference rate expected to be discontinued because of reference rate reform. ASU No. 2020-04 and ASU No. 2021-01 are effective upon issuance for contract modifications and hedging relationships, and the Company is allowed to elect to apply the amendments prospectively through December 31, 2022. In December 2022, the FASB issued ASU No. 2022-06, *Reference Rate Reform (Topic 848): Deferral of the Sunset Date of Topic 848*, which extends the temporary accounting rules under Topic 848 to December 31, 2024. The Company transitioned to SOFR from LIBOR on May 9, 2023. There are no material impacts to the consolidated financial statements.

In January 2017, the FASB issued ASU No. 2017-04, *Intangibles—Goodwill and Other (Topic 350): Simplifying the Test for Goodwill Impairment*. The update simplifies the accounting for goodwill impairment by removing step two of the goodwill impairment test, which requires a hypothetical purchase price allocation. A goodwill impairment will be the amount by which a reporting unit's carrying amount, including goodwill, exceeds its fair value. The impairment charge will be limited to the amount of goodwill allocated to that reporting unit. As amended by ASU No. 2019-10, the updated guidance is effective for

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the Company as a smaller reporting company beginning January 1, 2023. The standard requires prospective application. Early adoption is permitted. The Company adopted this guidance on the effective date of January 1, 2023. There are no material impacts to the consolidated financial statements as a result of this adoption.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments*, which modifies the measurement and recognition of credit losses for most financial assets and certain other instruments. The new standard requires the use of forward-looking expected credit loss models based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount, which may result in earlier recognition of credit losses under the new standard. The new guidance also modifies the impairment models for available-for-sale debt securities and for purchased financial assets with credit deterioration since their origination. Subsequent to the issuance of ASU No. 2016-13, the FASB issued ASU No. 2018-19, *Codification Improvements to Topic 326, Financial Instruments - Credit Losses*. This ASU does not change the core principle of the guidance in ASU No. 2016-13, instead these amendments are intended to clarify and improve operability of certain topics included within the credit losses standard. The FASB also subsequently issued ASU No. 2019-04 which did not change the core principle of the guidance in ASU No. 2016-13 but clarified that expected recoveries of amounts previously written off and expected to be written off should be included in the valuation account and should not exceed amounts previously written off and expected to be written off. As amended by ASU No. 2019-10, the updated guidance is effective for the Company as a smaller reporting company beginning January 1, 2023. The Company prospectively adopted this guidance on the effective date of January 1, 2023 and the adoption did not have a material impact to the consolidated financial statements and resulted in no adjustment to the Company's prior year earnings.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force), the American Institute of Certified Public Accountants, and the SEC did not, or are not believed by management to, have a material impact on the Company's present or future financial position, results of operations or cash flows.

Note 3. Fair Value Measurements

Assets and Liabilities Measured at Fair Value on a Recurring Basis

The Company measures and reports certain financial instruments as assets and liabilities at fair value on a recurring basis. The fair value of these instruments was as follows:

	As of June 30, 2023			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 47,081	$ —	$ —	$ 47,081

	As of December 31, 2022			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 46,310	$ —	$ —	$ 46,310

The Company did not transfer any assets or liabilities measured at fair value on a recurring basis between levels during the six months ended June 30, 2023 or 2022.

The Company determines the fair value of the contingent royalty obligation payable to Evolus Founders based on Level 3 inputs using a discounted cash flows method. The significant unobservable input assumptions that can significantly change the fair value include (i) projected amount and timing of net revenues during the payment period, which terminates at the end of the second quarter of 2029, (ii) the discount rate, and (iii) the timing of payments. During the three and six months ended June 30, 2023 and 2022, the Company utilized discount rates between 13.0% and 15.0%, reflecting changes in the Company's risk profile. Net revenue projections are also updated to reflect changes in the timing of expected sales.

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Significant increases (decreases) in the discount rate would result in a significantly lower (higher) fair value measurement, which could materially impact their fair value reported on the unaudited consolidated balance sheet.

The following table shows a reconciliation of the beginning and ending fair value measurements of the contingent royalty obligation payable:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Fair value, beginning of period	$ 46,650	$ 45,017	$ 46,310	$ 44,740
Payments	(1,251)	(1,016)	(2,559)	(2,055)
Change in fair value recorded in operating expenses	1,682	1,414	3,330	2,730
Fair value, end of period	$ 47,081	$ 45,415	$ 47,081	$ 45,415

Other Financial Assets and Liabilities

The Company's financial instruments consist primarily of cash and cash equivalents, accounts receivable, accounts payable, accrued expenses, lease liabilities, and long-term debt. The carrying amount of cash and cash equivalents, accounts receivable, accounts payable and accrued expenses approximates their fair value because of the short-term maturity of such instruments.

The Company estimates the fair value of long-term debt and operating lease liabilities using the discounted cash flow analysis based on the interest rates for similar rated debt securities (Level 2). As of June 30, 2023 and December 31, 2022, the fair value of long-term debt was $106,075 and $75,232, respectively. The fair value of operating lease liabilities as of June 30, 2023 and December 31, 2022 approximated their carrying value.

Note 4. Goodwill and Intangible Assets

The table below shows the weighted-average life, original cost, accumulated amortization and net book value by major intangible asset classification:

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets				
Distribution right	20	$ 59,076	$ (13,023)	$ 46,053
Capitalized software	2	9,207	(8,044)	1,163
Intangible assets, net		68,283	(21,067)	47,216
Indefinite-lived intangible asset				
Goodwill	*	21,208	—	21,208
Total as of June 30, 2023		$ 89,491	$ (21,067)	$ 68,424

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	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets				
Distribution right	20	$ 59,076	$ (11,545)	$ 47,531
Capitalized software	2	8,636	(7,570)	1,066
Intangible assets, net		67,712	(19,115)	48,597
Indefinite-lived intangible asset				
Goodwill	*	21,208	—	21,208
Total as of December 31, 2022		$ 88,920	$ (19,115)	$ 69,805

* Intangible assets with indefinite lives have an indeterminable average life.

The following table outlines the estimated future amortization expense related to intangible assets held as of June 30, 2023 that are subject to amortization:

Fiscal year	
Remaining in 2023	$ 2,040
2024	3,536
2025	2,975
2026	2,955
2027	2,955
Thereafter	32,755
	$ 47,216

Distribution right represents the license and associated distribution right to develop Jeuveau®, the initial term of which expires in September 2023 and is automatically extended for unlimited additional three-year terms provided that the Company meets certain performance requirements. Additionally, upon FDA approval of Jeuveau® on February 1, 2019, the in-process research and development project was completed and reclassified as a definite-lived distribution right intangible asset, which is amortized on a straight-line basis over the estimated useful life of 20 years.

The Company capitalized $286 and $156 for the three months ended June 30, 2023 and 2022, respectively, and $570 and $406 for the six months ended June 30, 2023 and 2022, respectively, related to costs of computer software developed for internal use. The software is amortized over a two-year period using the straight-line method. The Company recorded total intangible assets amortization expense of $997 and $773 for the three months ended June 30, 2023 and 2022, respectively, and $1,952 and $1,616 for the six months ended June 30, 2023 and 2022, respectively, within depreciation and amortization on the accompanying condensed consolidated statements of operations and comprehensive loss.

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Note 5. Accrued Expenses

Accrued expenses consisted of:

	June 30, 2023	December 31, 2022
Accrued royalties under the Medytox Settlement Agreement	$ 2,958	$ 2,618
Accrued payroll and related benefits	6,599	7,454
Accrued revenue contract liabilities	8,941	9,011
Other accrued expenses	5,686	5,711
	$ 24,184	$ 24,794

Note 6. Term Loans

Pharmakon Term Loans

On December 14, 2021, the Company entered into a loan agreement with Pharmakon. Pursuant to the terms of the agreement, Pharmakon agreed to make term loans to the Company in two tranches (the "Pharmakon Term Loans"). The first tranche of $75,000 was funded on December 29, 2021. On December 5, 2022, the Company entered into a Second Amendment to the loan agreement to extend the Company's option to draw down the second tranche of $50,000 until December 31, 2023, and paid an amendment fee of $500 to Pharmakon. The Pharmakon Term Loans will mature on the sixth-year anniversary of the closing date of the first tranche (the "Maturity Date").

On May 9, 2023, the Company entered into the Third Amendment to the loan agreement. Under the Third Amendment, Pharmakon will advance the second tranche of $50,000 to the Company in two installments: (i) $25,000 advanced on May 31, 2023 and (ii) $25,000 to be advanced on December 15, 2023. The Third Amendment amended the principal payment terms to seven quarterly payments, each in an amount equal to $1/12^{th}$ of the outstanding principal amount of the Pharmakon Term Loans following the 51st-month anniversary of the closing date of the first tranche and the remaining principal balance of the Pharmakon Term Loans on the Maturity Date. The Third Amendment replaced the interest rates based on LIBOR with interest rates based on the Secured Overnight Financing Rate ("SOFR") throughout the remaining term of the Pharmakon Term Loans.

Initially, the Pharmakon Term Loans accrued interest at a per annum rate equal to the 3-month U.S. Dollar LIBOR rate (subject to a LIBOR rate floor of 1.0%) plus 8.5% per annum. Beginning May 2023, the Pharmakon Term Loans accrue interest at a per annum rate equal to the 3-month SOFR rate (subject to a rate floor of 1.0%) plus 0.17% per annum.

The Company may elect to prepay all amounts, not less than $20,000, owed prior to the Maturity Date. Prepayments of the first tranche prior to the second anniversary of the closing date of the first tranche and prepayments of the second tranche prior to the second anniversary of the date on which the second tranche is drawn by the Company will be accompanied by a make whole amount equal to the sum of all interest that would have accrued through such second anniversary. Prepayments of the Pharmakon Term Loans will also be accompanied by a prepayment premium equal to the principal amount so prepaid multiplied by 3.0% if made prior to the third anniversary of the closing date of the first tranche, 2.0% if made on or after the third anniversary of the closing date of the first tranche but prior to the fourth anniversary of the closing date of the first tranche, and 1.0% if made on or after the fourth anniversary of the closing date of the first tranche but prior to the Maturity Date. If the Pharmakon Term Loans are accelerated following the occurrence of an event of default, including a material adverse change, the Company is required to immediately pay Pharmakon an amount equal to the sum of all outstanding principal, unpaid interest, and applicable make whole and prepayment premiums.

The Pharmakon Term Loans are secured by substantially all of the Company's assets. The Pharmakon Term Loans contain customary affirmative and restrictive covenants and representations and warranties. The affirmative covenants include, among others, certain information delivery requirements, obligations to maintain certain insurance, and certain notice requirements. The restrictive covenants include, among others, incurring certain additional indebtedness, consummating certain change in control transactions, or incurring any non- permitted lien or other encumbrance on the Company's assets,

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without Pharmakon's prior written consent. The Pharmakon Term Loans do not contain covenants requiring the Company to maintain a minimum cash threshold or minimum revenues or earnings. As of June 30, 2023, the Company was in compliance with its debt covenants.

At the closing date of the first tranche, the Company incurred $3,042 and $3,263 in debt discounts and issuance costs related to the Pharmakon Term Loans, respectively. Debt discounts and issuance costs related to the entire Pharmakon Term Loans have been allocated pro rata between the funded and unfunded portions. Debt discounts and issuance costs allocated to the first tranche of $75,000 have been presented as a deduction to the debt balance and are amortized into interest expense using the effective interest method. Debt discounts and issuance costs associated with the unfunded second tranche are deferred as assets until the tranche is drawn and are amortized into interest expense using the straight-line method over the term of the debt. Upon the first draw of the second tranche in May 2023, debt discounts and issuance costs associated with the second tranche were reclassified from assets to debt as a deduction to the debt balance.

As of June 30, 2023, the borrowings outstanding under the Pharmakon Term Loans were classified as long-term debt in the accompanying condensed consolidated balance sheets. The overall effective interest rate was approximately 14.97% and 13.96% for the first and second tranche, respectively, as of June 30, 2023.

As of June 30, 2023, the principal amounts of long-term debt maturities for each of the next five fiscal years are as follows:

Fiscal year		
Remainder of 2023	$	—
2024		—
2025		—
2026		41,667
2027		58,333
Total principal payments		100,000
Unamortized debt discounts and issuance costs		(5,171)
Long term debt, net of discounts and issuance costs	$	94,829

Note 7. Operating Leases

The Company's corporate headquarters in Newport Beach, California is leased under a five-year non-cancelable operating lease, which expires on January 31, 2025. Lease payments increase each year on February 1 based on an annual rent escalation clause. The Company has an option to extend the term of the lease for an additional 60 months, which is not recognized as part of its ROU assets and lease liabilities. In July 2023, the Company entered into an amendment to the existing lease agreement for the lease of additional space beginning August 2024. The amendment extends the lease expiration to January 31, 2030.

The Company's lease agreement does not contain any residual value guarantees or material restrictive covenants. The payments associated with the renewal will only be included in the measurement of the lease liability and ROU assets if the exercise of the renewal option is determined to be reasonably certain. The Company considers the timing of the renewal period and other economic factors such as the financial implications of a decision to extend or not to extend a lease in determining if the renewal option is reasonably certain to be exercised.

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The components of operating lease expense are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Fixed operating lease expense	$ 273	$ 269	$ 547	$ 538
Variable operating lease expense	28	23	62	47
	$ 301	$ 292	$ 609	$ 585

The weighted-average remaining lease term and discount rate are as follows:

	As of June 30,	
	2023	2022
Weighted-average remaining lease term (years)	1.6	2.6
Weighted-average discount rate	9.4 %	9.4 %

Operating lease expenses were included in the selling, general and administrative expenses in the accompanying condensed consolidated statements of operations and comprehensive loss. Operating lease right-of-use assets and related current and noncurrent operating lease liabilities are presented in the accompanying condensed consolidated balance sheets.

The following table presents the future minimum payments under the operating lease agreements with non-cancelable terms as of June 30, 2023:

Fiscal year	
Remainder of 2023	$ 663
2024	1,377
2025	115
Total operating lease payments	2,155
Less: imputed interest	(160)
Present value of operating lease liabilities	$ 1,995

Note 8. Commitments and Contingencies

Purchase Commitments

As of June 30, 2023, the Company has entered into commitments to purchase services and products for an aggregate amount of approximately $3,393. Certain minimum purchase commitments related to the purchase of Jeuveau® are described below.

License and Supply Agreement

The Daewoong Agreement includes certain minimum annual purchases that the Company is required to make in order to maintain the exclusivity of the license. The Company may, however, meet these minimum purchase obligations by achieving certain market share in the licensed territories. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and the Company's future market share in various jurisdictions.

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Legal Proceedings

Securities Class Action Lawsuit

On October 16 and 28, 2020, two putative securities class action complaints were filed in the U.S. District Court for the Southern District of New York by Evolus shareholders Armin Malakouti and Clinton Cox, respectively, naming the Company and certain of its officers as defendants. The complaints assert violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, claiming that the defendants made false and materially misleading statements and failed to disclose material adverse facts related to the Company's acquisition of the right to sell Jeuveau®, the complaint against the Company filed by Allergan and Medytox in the U.S. International Trade Commission related to Jeuveau® (the "ITC Action"), and risks related to the ITC Action. The complaints assert a putative class period of February 1, 2019 to July 6, 2020. The court consolidated the actions on November 13, 2020, under the caption *In re Evolus Inc. Securities Litigation*, No. 1:20-cv-08647 (PGG). On September 17, 2021, the court appointed a lead plaintiff and lead counsel. On November 17, 2021, the lead plaintiff filed an amended class action complaint against the Company, three of its officers, and Alphaeon Corporation, the Company's former majority shareholder. On January 18, 2022, the Company and the officer defendants served their motion to dismiss the amended complaint. On February 10, 2022, Alphaeon Corporation served its motion to dismiss the amended complaint. Both motions were fully briefed on June 16, 2022. The outcome of the legal proceeding is uncertain at this point. Based on information available to the Company at present, management cannot reasonably estimate a range of loss with respect to this matter.

Shareholder Derivative Lawsuit

On November 27, 2020 and December 2, 2020, two putative Evolus shareholders filed substantially similar shareholder derivative actions in the U.S. District Court for the Southern District of New York against certain of the Company's officers and directors as defendants. The complaints alleged substantially similar facts as those in the Securities Class Action and assert claims for, among other things, breach of fiduciary duty, waste of corporate assets, unjust enrichment, and violations of Section 14(a) of the Exchange Act and for contribution under Sections 10(b) and 21(D) of the Exchange Act. On December 29, 2020, the plaintiffs filed a joint stipulation to consolidate their actions and on February 5, 2021, the court consolidated the action under the caption *In re Evolus, Inc. Derivative Litigation*, No. 1:20-cv-09986-PPG, and adjourned defendants' time to move, answer or otherwise respond to the complaints. On September 20, 2021, the court so-ordered the parties' stipulated stay of the consolidated derivative suit pending the court's decision on the defendants' motion to dismiss the Securities Class Action.

It is possible that additional suits will be filed, or additional allegations will be made by stockholders, with respect to these same or similar or other matters and also naming the Company and/or its officers and directors as defendants. The Company believes that the complaints are without merit and intends to vigorously defend against it. However, the outcome of the legal proceeding is uncertain at this point. Based on information available to the Company at present, management cannot reasonably estimate a range of loss with respect to this matter.

Books and Records Demand

On March 5, 2021, the Company received a letter from a putative stockholder demanding inspection of specified categories of the Company's books and records under Section 220 of the Delaware General Corporations Law. The Company was subsequently informed that the stockholder sold his shares of the Company's common stock. On October 13, 2021, the Company received a substantially similar demand to inspect specified categories of the Company's books and records under Section 220 of the Delaware General Corporations Law from another putative stockholder. The subject of the demand is substantially similar to the allegations in the putative securities class action and derivative complaints described above. The Company responded to the demand in December 2021. The outcome of this matter is uncertain at this point. Based on information available to the Company at present, management cannot reasonably estimate a range of loss with respect to this matter.

Other Legal Matters

The Company is, from time to time, involved in various litigation matters or regulatory encounters arising in the ordinary course of business that could result in unasserted or asserted claims or litigation. These other matters may raise difficult and complex legal issues and are subject to many uncertainties, including, but not limited to, the facts and circumstances of each

particular case or claim, the jurisdiction in which each suit or regulatory encounter is brought, and differences in applicable laws and regulations. Except as set forth above, the Company does not believe that these other matters would have a material adverse effect on its accompanying financial position, results of operations or cash flows. However, the resolution of one or more of the other matters in any reporting period could have a material adverse impact on the Company's financial results for that period.

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because they involve claims that may be made against the Company in the future, but have not yet been made. The Company accrues a liability for such matters when it is probable that future expenditures will be made, and such expenditures can be reasonably estimated. No amounts were accrued as of June 30, 2023 and December 31, 2022.

Note 9. Stockholders' Equity

Preferred Stock

The Company has 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share. As of June 30, 2023, no shares of its preferred stock were issued and outstanding.

Common Stock

The Company has 100,000,000 authorized shares of common stock with a par value of $0.00001 per share. As of June 30, 2023, 56,937,823 shares of its common stock were issued and outstanding.

"At-the-market" Offerings of Common Stock

On March 8, 2023, the Company entered into the ATM Sales Agreement with Leerink Partners LLC (formerly known as SVB Securities LLC) (the "Sales Agent") pursuant to which shares of the Company's common stock can be sold from time to time for aggregate gross proceeds of up to $50,000 (the "ATM Program"). Under the ATM Sales Agreement, the Sales Agent is entitled to compensation, at a commission rate equal to 3.0% of the gross proceeds from sales of the Company's common shares under the ATM Program. The Company has not sold any shares under the ATM Sales Agreement.

2017 Omnibus Incentive Plan and Stock-based Compensation Allocation

The Company's 2017 Omnibus Incentive Plan (the "Plan") provides for the grant of incentive options to employees of the Company, and for the grant of non-statutory options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's officers, directors, consultants and employees of the Company. The maximum number of shares of common stock that may be issued under the Plan is 4,361,291 shares, plus an annual increase on each anniversary of November 21, 2017 equal to 4.0% of the total issued and outstanding shares of the Company's common stock as of such anniversary (or such lesser number of shares as may be determined by the Company's Board of Directors). As of June 30, 2023, the Company had an aggregate of 1,285,334 shares of its common stock available for future issuance under the Plan.

Stock Options

Options to purchase the Company's stock are granted at exercise prices based on the Company's common stock price on the date of grant. The option grants generally vest over a one- to four-year period. The options have a contractual term of ten years. The fair value of options is estimated using the Black-Scholes option pricing model, which has various inputs, including the grant date common share price, exercise price, risk-free interest rate, volatility, expected life and dividend yield. The change of any of these inputs could significantly impact the determination of the fair value of the Company's options as well as significantly impact its results of operations. The Company records stock-based compensation expense net of actual forfeitures when they occur.

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The weighted-average assumptions used in determining the fair value of stock options granted were as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Volatility	87.6 %	84.4 %	83.1 %	77.9 %
Risk-free interest rate	3.69 %	3.02 %	3.56 %	1.73 %
Expected life (years)	6.25	6.25	6.20	6.18
Dividend yield rate	— %	— %	— %	— %

A summary of stock option activity for the six months ended June 30, 2023, is presented below:

	Stock Options	Weighted Average Exercise Per Share	Weighted Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value
Outstanding, December 31, 2022	4,600,363	$ 9.25	6.57	$ 2,911
Granted	1,214,637	10.79		
Exercised	(24,533)	5.46		
Canceled/forfeited	(190,716)	11.25		
Outstanding, June 30, 2023	5,599,751	$ 9.53	7.05	$ 2,185
Exercisable, June 30, 2023	3,307,695	$ 9.91	5.70	$ 841

The aggregate intrinsic value of outstanding and exercisable options represents the excess of the fair market value of the Company's common stock over the exercise price of underlying options as of June 30, 2023 and December 31, 2022. For the three and six months ended June 30, 2023, the Company recognized $1,234 and $2,392 of stock-based compensation respectively. For the three and six months ended June 30, 2022, the Company recognized $1,092 and $2,487 of stock-based compensation respectively.

Restricted Stock Units

RSU grants generally vest over a one- to four-year period. The fair value of RSU grants is determined at the grant date based on the common share price.

A summary of RSU activity for the six months ended June 30, 2023, is presented below:

	Restricted Stock Units	Weighted Average Grant Date Fair Value Per Share
Outstanding, December 31, 2022	2,660,014	$ 7.46
Granted	1,412,809	10.58
Vested	(652,720)	7.00
Forfeited	(206,160)	8.20
Outstanding, June 30, 2023	3,213,943	$ 8.88

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For the three and six months ended June 30, 2023, the Company recognized $2,261 and $4,308 of stock-based compensation respectively. For the three and six months ended June 30, 2022, the Company recognized $1,798 and $3,332 of stock-based compensation respectively.

Performance Restricted Stock Units

In January 2023, the Company's Board of Directors granted 292,349 shares of performance restricted stock units ("PRSUs") to certain executive officers under the Plan. The PRSU awards function in the same manner as restricted stock units except that vesting terms are based on achievement of certain pre-established performance measures. For the three and six months ended June 30, 2023, $375 of stock-based compensation was recorded.

CEO Performance Award

For RSUs granted to employees that vest based on market conditions, such as the trading price of the Company's common stock exceeding certain price targets, the Company uses a Monte Carlo Simulation in estimating the fair value at grant date and recognizes compensation cost over the requisite service period. On May 8, 2023, the Company granted the Company's Chief Executive Officer ("CEO") an award of 560,000 PRSUs under the Plan.

The stock units subject to the award are subject to both performance- and time-based vesting requirements. 40% of the stock units subject to the award are eligible to vest if the average of the closing prices for a share of the Company's common stock over a period of 20 consecutive trading days is $30 or more and an additional 60% of the stock units subject to the award are eligible to vest if the average of the closing prices for a share of the Company's common stock over a period of 20 consecutive trading days is $50 or more, in each case within five years after the grant of the award and while the CEO is employed by the Company (or, in certain circumstances, within 20 days following a termination of his employment). Any stock units that become eligible to vest based on stock price will vest, subject to the CEO's continued service, over the four-year period after the grant date.

The Company used a Monte Carlo simulation to determine that the grant date fair value of the awards was $3,774. Compensation expense is recorded if the service condition is met regardless of whether the market condition is satisfied. The Company recognized $210 of stock-based compensation was included for the three months ended June 30, 2023.

Inducement Grants

From time to time, the Company has granted equity awards to its newly hired employees, including executives, in accordance with Nasdaq Listing Rule 5635(c)(4) and outside of the Company's Plan. Such grants were made pursuant to a stand-alone nonstatutory stock option agreement and a stand-alone RSU agreement, which were approved by the Compensation Committee of the Board of Directors. Any shares underlying the inducement grants are not, upon forfeiture, cancellation or expiration, returned to a pool of shares reserved for future issuance.

In February 2022, the Company granted options to purchase 171,103 shares of common stock and 39,012 RSUs as a material inducement to a newly hired executive. In September 2022, the Company granted options to purchase 169,158 shares of common stock and 36,443 RSUs as a material inducement to a newly hired executive. As of June 30, 2023, stock options to purchase 169,158 shares of common stock and 36,443 RSUs remained outstanding outside of the Plan. For the three and six months ended June 30, 2023, the Company recognized $91 and $180 of stock-based compensation respectively. For the three and six months ended June 30, 2022, the Company recognized $89 and $119 of stock-based compensation respectively.

The following table summarizes stock-based compensation expense:

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	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Selling, general and administrative	$ 3,983	$ 2,924	$ 7,150	$ 5,838
Research and development	188	55	315	100
	$ 4,171	$ 2,979	$ 7,465	$ 5,938

Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement

Medytox/Allergan Settlement Agreements

U.S. Settlement Agreement

Effective February 18, 2021, the Company, Allergan and Medytox entered into a Settlement and License Agreement (the "U.S. Settlement Agreement"), pursuant to which, among other things: (i) Allergan and Medytox agreed to file a petition requesting the remedial orders related to the ITC Action be rescinded with respect to the Company; (ii) Medytox agreed to dismiss substantially similar litigation in California against the Company; (iii) the Company, on the one hand, and Medytox and Allergan, on the other hand, agreed to mutually release certain claims they may have against one another and their respective affiliates; (iv) Allergan and Medytox granted to the Company and its agents a license to manufacture and commercialize certain products identified in the U.S. Settlement Agreement, including Jeuveau® (the "Licensed Products"), in the United States during the 21 month period that, pursuant to the ITC Action, the Company was restricted from, among other things, selling, marketing, or promoting such imported Jeuveau® in the United States (the "Restricted Period"); (v) the Company agreed to pay to Allergan and Medytox $35,000 in multiple payments over two years, of which the Company paid the first cash payment of $15,000 in the third quarter of 2021, the second cash payment of $15,000 in the first quarter of 2022, and the final cash payment of $5,000 in the first quarter of 2023; and (vi) during the Restricted Period, the Company agreed to pay to Allergan and Medytox certain confidential royalties on the sale of Licensed Products, calculated on dollar amount per vial sold of Licensed Products by or on behalf of the Company in the United States. Royalties for sales during the Restricted Period ended on September 16, 2022.

ROW Settlement Agreement

Effective February 18, 2021, the Company and Medytox entered into a Settlement and License Agreement (the "ROW Settlement Agreement" and, together with the U.S. Settlement Agreement, the "Medytox/Allergan Settlement Agreements"), pursuant to which, among other things: (i) the Company and Medytox agreed to mutually release certain claims they may have against one another and their respective affiliates; (ii) Medytox granted to the Company and its agents a license to manufacture and commercialize the Licensed Products, in Canada, the European Union, Switzerland, member countries and cooperating countries of the European Economic Area, certain members of the Commonwealth of Independent States, South Africa, Australia and Japan (the "ROW Territories") during the Restricted Period; (iii) Medytox granted to the Company and its agents a fully paid up license to manufacture and commercialize the Licensed Products in the ROW Territories and the United States from the end of the Restricted Period (the "Medytox License Period"); (iv) the Company and Medytox agreed to enter into the Share Issuance Agreement (as defined below) pursuant to which the Company issued 6,762,652 shares (the "Settlement Shares") of the Company's common stock, par value $0.00001 per share, to Medytox; (v) the Company and Medytox agreed to enter into the Registration Rights Agreement (as defined below), pursuant to which the Company granted certain registration rights to Medytox with respect to the Settlement Shares; (vi) during the Restricted Period that ended September 16, 2022, the Company agreed to pay Medytox a confidential low-double digit royalty on net sales of the Licensed Products sold by or on behalf of the Company in the ROW Territories; and (vii) during the Medytox License Period from September 17, 2022 to September 16, 2032, the Company agreed to pay Medytox a mid-single digit royalty percentage on net sales of the Licensed Products sold by or on behalf of the Company in the United States and the ROW Territories.

Share Issuance Agreement

In connection with the execution of the ROW Settlement Agreement, the Company and Medytox entered into a Share Issuance Agreement effective February 18, 2021 (the "Share Issuance Agreement"). Pursuant to the Share Issuance

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Agreement and subject to the terms and conditions set forth therein, among other things, the Company issued to Medytox the Settlement Shares to enter into the ROW Settlement Agreement and in consideration for Medytox's representations, warranties, and other agreements set forth in the Share Issuance Agreement. The Settlement Shares are subject to contractual restrictions on transfer that, subject to certain limited exceptions such as transfers to affiliates, prevented Medytox from transferring any shares of common stock prior to February 16, 2022 and, thereafter, prohibit Medytox from transferring more than 25% of the shares it holds prior to September 16, 2023, more than 50% of the shares it holds prior to September 16, 2024 and more than 75% of the shares it holds prior to September 16, 2025, with such contractual restrictions terminating on September 16, 2025.

Registration Rights Agreement

In connection with the execution of the ROW Settlement Agreement, the Company and Medytox also entered into a Registration Rights Agreement effective February 18, 2021 (the "Registration Rights Agreement"). Pursuant to the Registration Rights Agreement, among other things, the Company agreed, after March 31, 2022, (i) to comply with certain requests by Medytox to register for sale, under the Securities Act, the Settlement Shares, and (ii) to include the Settlement Shares in certain registrations by the Company of its securities for sale under the Securities Act, to the extent requested by Medytox, in each case subject to certain customary conditions, exceptions and limitations as set forth in the Registration Rights Agreement.

In addition, Medytox's registration rights under the Registration Rights Agreement will terminate at such time that Medytox is able to sell all of the Settlement Shares over a three-month period, or less, pursuant to an exemption to registration under the Securities Act. As of March 31, 2023, Medytox's registration rights under the Registration Rights Agreement have terminated.

As of June 30, 2023, the Company accrued $2,958 for royalties under the Medytox/Allergan Settlement Agreements. As of December 31, 2022, the Company accrued $2,618 for royalties under the Medytox/Allergan Settlement Agreements and $5,000 of accrued litigation settlement expense.

Daewoong Arrangement

Daewoong Settlement Agreement

On March 23, 2021, the Company and Daewoong entered into a Confidential Settlement and Release Agreement (the "Daewoong Settlement Agreement"), pursuant to which, among other things: (i) Daewoong agreed to (a) pay to the Company an amount equal to $25,500, which the Company received in April 2021, (b) pay certain legal fees incurred by the Company's litigation counsel in connection with its defense of the ITC Action (including any appeal of the resulting remedial orders), (c) cancel all remaining milestone payments, totaling $10,500 in aggregate, and (d) reimburse the Company certain amounts (calculated on a dollar amount per vials sold basis in the United States) for sales of certain products with respect to which the Company is required to pay Medytox and Allergan royalties pursuant to the U.S. Settlement Agreement; and (ii) the Company agreed to (a) release, on behalf of itself and certain of its affiliates and representatives, certain claims they may have against Daewoong related to the allegations made in or the subject matter of the Medytox/Allergan Actions, or any orders, remedies and losses resulting from the Medytox/Allergan Actions, and (b) coordinate with Daewoong on certain matters related to the Medytox/Allergan Actions.

Daewoong Agreement Amendment

In connection with the execution of the Daewoong Settlement Agreement, on March 23, 2021, the Company and Daewoong also entered into the Third Amendment to the Supply Agreement (the "Daewoong Agreement Amendment"). Pursuant to the Daewoong Agreement Amendment, the parties amended the Daewoong Agreement to (i) expand the territory within which the Company may distribute Jeuveau® to certain countries in Europe, (ii) reduce the period of time with respect to which the Company is required to deliver binding forecasts to Daewoong, (iii) introduce certain limitations on Daewoong's ability to convert the Company's exclusive license for certain territories to a non-exclusive license in the event the Company fails to meet certain minimum purchase requirements for such territory, (iv) adjust the minimum purchase requirements and reduce the transfer price per vial of Jeuveau® applicable to various territories, (v) require that any Jeuveau® supplied by Daewoong match certain shelf-life thresholds, and (vi) prohibit the Company from sharing certain confidential information of Daewoong with Medytox or its affiliates or representatives.

Evolus, Inc.
Notes to Condensed Consolidated Financial Statements
(in thousands, except share and per share data)
(Unaudited)

Total inventory payments to Daewoong were $13,619 and $27,752 for the three and six months ended June 30, 2023, respectively. Total inventory payments to Daewoong were $13,636 and $26,271 for the three and six months ended June 30, 2022, respectively.

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

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with the unaudited condensed consolidated financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2022 and other documents previously filed with the SEC. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs and involve numerous risks and uncertainties, including but not limited to those described in Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q. Actual results may differ materially from those contained in any forward-looking statements. You should carefully read "Special Note Regarding Forward-Looking Statements" and Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q.

Overview

We are a performance beauty company with a customer-centric approach to delivering breakthrough products in the self-pay aesthetic market. In February 2019, we received the approval of our first product Jeuveau® (prabotulinumtoxinA-xvfs) from the U.S. Food and Drug Administration, or FDA. In May 2019, we commercially launched Jeuveau® in the United States.

Jeuveau® is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. Our primary market is the self-pay aesthetic market, which includes medical products purchased by physicians and other customers that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. We believe we offer customers and consumers a compelling value proposition with Jeuveau®. Currently, onabotulinumtoxinA (BOTOX) is the neurotoxin market leader, and prior to the approval of Jeuveau®, was the only known 900 kDa botulinum toxin type A complex approved in the United States. We believe aesthetic physicians generally prefer the performance characteristics of the complete 900 kDa neurotoxin complex and are accustomed to injecting this formulation.

In August 2018, we received approval from Health Canada for the temporary improvement in the appearance of moderate to severe glabellar lines in adult patients under 65 years of age. We began marketing Jeuveau® in Canada in October 2019 through our distribution partner Clarion Medical Technologies, Inc., or Clarion. In September 2019, we also received approval from the European Commission, to market the product in all 27 European Union, or EU, member states plus the United Kingdom, Iceland, Norway and Liechtenstein. In January 2021, we received a positive decision from the European Commission to add the 50 unit product to the approval obtained in September 2019. We began our launch of Jeuveau® in Europe in September 2022 and we are finalizing plans for entering additional countries in Europe as part of a phased rollout. In January 2023, we received approval from the Australian Therapeutics Good Administration, or TGA, for regulatory approval of our neurotoxin product in Australia.

In November 2021, we announced the initiation of a Phase II clinical trial designed to investigate a higher strength dose of Jeuveau® in the frown lines. We completed our patient enrollment in the clinical study evaluating the "extra-strength" dose in the second quarter of 2022. This program provides us with the opportunity to offer the first multi-strength neurotoxin, giving customers and consumers increased treatment options. In June 2023, we announced the successful completion of the Phase II clinical trial. The interim data showed that the "extra-strength" formulation of Jeuveau® had a similar safety profile to the controls and demonstrated a median duration of at least 26 weeks based on the time for patients to return to baseline after treatment. We expect to present the final results of the "extra-strength" clinical trial in the fourth quarter of 2023.

On May 9, 2023, we entered into a License, Supply and Distribution Agreement, or the Symatese Agreement, with Symatese S.A.S, pursuant to which Symatese granted to us an exclusive right to commercialize and distribute five dermal filler product candidates which we collectively refer to as Evolysse™, including the products we refer to as: (i) Lift; (ii) Smooth; (iii) Sculpt; (iv) Lips; and (v) Eye in the United States for aesthetic and dermatological uses. We also have the right of first negotiation to obtain a license from Symatese for any new products developed using the same technology as the Evolysse™ line of dermal fillers.

Evolysse™ Lift, Smooth, and Sculpt are currently in advanced stages of clinical trials pursuant to an investigational device exemption, or IDE, from the FDA. We have agreed to a cost-sharing arrangement with Symatese to gain FDA approval of the Evolysse™ Lips and Eye products, and we expect to begin their clinical programs in 2023. Subject to FDA approval, we expect Evolysse™ Lift and Smooth to be commercially launched in the first half of 2025, Evolysse™ Sculpt to be launched in 2026 and Evolysse™ Lips and Eye to be launched in 2027.

Impact of Settlement Agreements

In February 2021, we settled litigation claims related to a complaint against us filed by Allergan, Inc. and Allergan Limited (together, "Allergan") and Medytox, Inc. ("Medytox") in the U.S. International Trade Commission related to Jeuveau® (the "ITC Action") and certain related matters by entering into a Settlement and License Agreement with Medytox and Allergan, which we refer to as the U.S. Settlement Agreement, and another Settlement and License Agreement with Medytox which we refer to as the Medytox Settlement Agreement. We refer to the U.S. Settlement Agreement and the ROW Settlement Agreement collectively as the Medytox/Allergan Settlement Agreements.

We have completed all obligations to Allergan and the majority of our obligations to Medytox under the Medytox/Allergan Settlement Agreements. The completed obligations consisted of (i) cash payments of $35.0 million, of which we paid the first payment of $15.0 million in the third quarter of 2021, the second payment of $15.0 million in the first quarter of 2022, and the final payment of $5.0 million in the first quarter of 2023, (ii) payment to Allergan and Medytox of certain royalties on the sale of Jeuveau®, based on a certain dollar amount per vial sold of Licensed Products by or on our behalf in the United States, from December 16, 2020 through September 16, 2022, (iii) payment to Medytox, from December 16, 2020 to September 16, 2022, of a low-double digit royalty on net sales of Jeuveau® sold by us or on our behalf in territories we have licensed outside the United States, and (iv) the issuance of 6,762,652 shares of our common stock to Medytox.

Going forward, our remaining obligation will be to pay Medytox a mid-single digit royalty percentage on net sales of Jeuveau® in the United States and all territories we have licensed outside the United States through September 16, 2032.

In addition, in March 2021, we entered into a Confidential Settlement and Release Agreement and certain related agreements with Daewoong Pharmaceutical Co. Ltd. ("Daewoong"), which we refer to as the Daewoong Settlement Agreement, under which Daewoong paid us $25.5 million in April 2021, cancelled all remaining milestone payments up to $10.5 million in aggregate under the Daewoong Settlement Agreement and reimbursed us certain amounts (calculated on a dollar amount per vials sold basis in the United States) for sales of certain products with respect to which we are required to pay Medytox and Allergan royalties pursuant to the U.S. Settlement Agreement. See *Note 10. Medytox/Allergan Settlement Agreements and Daewoong Arrangement* for additional details on the litigation settlement agreements.

As a result of the royalty payments that we are required to pay under the Medytox Settlement Agreements, our cost of sales and gross profit margin have been negatively impacted and will continue to be negatively impacted to a lesser extent from September 2022 to September 2032.

The Pharmakon Term Loans

On December 14, 2021, we entered into a loan agreement with BPCR Limited Partnership, BioPharma Credit Investments V (Master) LP, and Biopharma Credit PLC (collectively, "Pharmakon"). Pursuant to the terms of the agreement, Pharmakon agreed to make term loans to us in two tranches ("Pharmakon Term Loans"). The first tranche of $75.0 million was funded on December 29, 2021. On December 5, 2022, we entered into a Second Amendment to the loan agreement to extend our option to draw down the second tranche of $50.0 million until December 31, 2023. In exchange for the extension, we paid an amendment fee of $0.5 million to Pharmakon. On May 9, 2023, we entered into a Third Amendment to the loan agreement, which provides for the advancement of the second tranche of $50.0 million in two installments: (i) $25.0 million advanced on May 31, 2023 and (ii) $25.0 million to be advanced on December 15, 2023, subject to the terms and conditions of the Pharmakon Term Loans. The Pharmakon Term Loans will mature on the six-year anniversary of the closing date of the first tranche. See "—Liquidity and Capital Resources—The Pharmakon Term Loans" for further information.

Contingent Royalties to Evolus Founders

We are obligated to make quarterly future payments to the founders of Evolus, which we refer to as the Evolus Founders, of a low single digit percentage of net sales of Jeuveau®. These obligations will terminate at the end of the second quarter of 2029. The fair value of the obligations are valued quarterly and are referred to in our consolidated financial statements as the contingent royalty obligation.

Market Trends and Uncertainties

The global economy, including the financial and credit markets, has recently experienced extreme volatility and disruptions, including uncertainty regarding the stability of certain financial institutions, increases in inflation rates, rising interest rates, severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, and uncertainty about economic stability. We anticipate that the remainder of fiscal 2023 will continue to reflect a dynamic macroeconomic environment. We expect elevated levels of cost inflation to continue, potentially impacting consumer discretionary spending for aesthetic medical procedures. Markets experiencing uncertainty could have substantial high rates

of inflation. We cannot reasonably estimate the financial impact of increased inflation on our financial condition, results of operations or cash flows in the future.

Management's Use of Adjusted Gross Profit Margin

Adjusted gross profit and adjusted gross profit margin are not required by, nor presented in accordance with, United States generally accepted accounting principles, or GAAP. Adjusted gross profit is defined as total net revenues less product cost of sales, excluding amortization of an intangible asset. Adjusted gross profit margin is calculated as adjusted gross profit divided by total net revenues. Management believes that adjusted gross profit margin is an important measure for investors, as it is a key performance indicator to evaluate the profitability of sales without giving effect to costs that are not core to our cost of sales, such as the amortization of an intangible asset. Adjusted gross profit margin should not be considered a measure of financial performance under GAAP, and the items excluded from adjusted gross profit margin should not be considered in isolation or as an alternative to financial statement data presented in the condensed consolidated financial statements as an indicator of financial performance or liquidity. Adjusted gross profit margin is not a measurement determined in accordance with GAAP and is therefore susceptible to varying methods of calculation and has limitations as an analytical tool and may not be comparable to other similarly-titled metrics of other companies.

The following table presents reconciliations of adjusted gross profit to gross profit, the most directly comparable to GAAP measure, and adjusted gross profit margin to gross profit margin, the most directly comparable GAAP measure:

	Three Months Ended June 30,		Six Months Ended June 30,	
(in millions)	2023	2022	2023	2022
Total net revenues	$ 49.3	$ 37.2	$ 91.1	$ 71.1
Cost of sales:				
Product cost of sales (excludes amortization of intangible assets)	14.7	15.8	26.9	29.0
Amortization of distribution right intangible asset	0.7	0.7	1.5	1.5
Total cost of sales	15.5	16.6	28.3	30.5
Gross profit	33.9	20.6	62.7	40.6
Gross profit margin	*68.7 %*	*55.4 %*	*68.9 %*	*57.1 %*
Add: Amortization of distribution right intangible asset	0.7	0.7	1.5	1.5
Adjusted gross profit	$ 34.6	$ 21.3	$ 64.2	$ 42.0
Adjusted gross profit margin	*70.2 %*	*57.4 %*	*70.5 %*	*59.2 %*

Results of Operations

Comparison of the Three Months Ended June 30, 2023 and 2022

The following table summarizes our consolidated results of operations for the periods indicated:

	Three Months Ended June 30,	
(in millions)	2023	2022
Product revenue, net	$ 48.7	$ 37.2
Service revenue	0.7	—
Total net revenues	49.3	37.2
Operating expenses:		
Product cost of sales (excludes amortization of intangible assets)	14.7	15.8
Selling, general and administrative	41.2	36.9
Research and development	1.2	1.6
In-process research and development	4.4	2.0
Revaluation of contingent royalty obligation payable to Evolus Founders	1.7	1.4
Depreciation and amortization	1.2	0.9
Total operating expenses	64.5	58.5
Loss from operations	(15.1)	(21.3)
Other income (expense):		
Non operating expense, net	(3.0)	(2.1)
Other income (expense), net	0.0	0.0
Loss before income taxes:	(18.1)	(23.4)
Income tax expense	0.0	0.0
Net loss	(18.1)	(23.5)
Unrealized loss, net of tax	(0.1)	(0.1)
Comprehensive loss	$ (18.2)	$ (23.5)

Net Revenues

We currently operate in one reportable segment, and all of our net revenues are derived from sales of Jeuveau®. Net revenues consist of revenues, net of adjustments primarily for customer rebates, rewards related to the consumer loyalty program and co-branded marketing programs. Revenues are recognized when the control of the promised goods is transferred to the customer in an amount that reflects the consideration allocated to the related performance obligations and to which we expect to be entitled in exchange for those products or services.

Net revenues of Jeuveau® sales increased by $12.1 million, or 32.5%, to $49.3 million for the three months ended June 30, 2023 from $37.2 million for the three months ended June 30, 2022, primarily due to higher sales volumes. Net revenues during the three months ended June 30, 2023 consisted of $0.7 million of service revenue from the sale of Jeuveau® through a distribution partner in Canada, and we incurred no service revenue during the three months ended June 30, 2022. We anticipate our continued sales growth will depend on our ability to grow our customer base and increase purchases by our current customers in the competitive medical aesthetic market as well as on regulatory approval for the Evolysse™ dermal filler product line in the United States by Symatese.

Cost of Sales

Product Cost of Sales

Product cost of sales, excluding amortization of intangible assets, primarily consisted of the cost of inventory purchased from Daewoong. In addition, during the period from December 2020 to September 2022, product cost of sales, excluding

amortization of intangible assets, also included certain royalties on the sale of Jeuveau® payable to Medytox and Allergan pursuant to the Medytox/Allergan Settlement Agreements, partially offset by reimbursement receivable from Daewoong pursuant to the Daewoong Arrangement with respect to such royalties. Our royalty obligations to Allergan concluded on September 16, 2022, and beginning on September 17, 2022, our royalty obligations to Medytox were reduced to a mid-single digit percentage of net revenue through the expiration of our Medytox royalty obligation in September 2032.

Product cost of sales, excluding amortization of intangible assets, decreased by $1.1 million, or 7.0%, to $14.7 million for the three months ended June 30, 2023 from $15.8 million for the three months ended June 30, 2022, primarily due to reduced royalty obligations to Medytox, offset by an increase due to higher sales volume. We anticipate that our product cost of sales will fluctuate in line with changes in revenues until the expiration of our Medytox royalty obligation in September 2032.

Gross Profit Margin

Our gross profit margin was 68.7% and 55.4% for the three months ended June 30, 2023 and 2022, respectively. Our adjusted gross profit margin, calculated as total net revenues less product cost of sales, excluding amortization of intangible assets, as a percentage of net revenues was 70.2% and 57.4% for the three months ended June 30, 2023 and 2022, respectively. Our gross profit margin and adjusted gross profit margin were impacted negatively and materially through September 2022, by our payments under the Medytox/Allergan Settlement Agreements, partially offset by payments we received under the Daewoong Arrangement. Our gross profit margin and adjusted gross profit margin have been and will continue to be negatively impacted to a lesser extent from September 2022 to September 2032 as we pay royalty obligations to Medytox at a mid-single digit percentage of net revenue. We also anticipate our gross profit margin and adjusted gross profit margin will fluctuate as we implement various marketing programs that may affect the average selling price for Jeuveau® and as we expand internationally.

Selling, General and Administrative

Selling, general and administrative expenses increased by $4.3 million, or 11.7%, to $41.2 million for the three months ended June 30, 2023 from $36.9 million for the three months ended June 30, 2022, primarily resulting from increasing personnel costs related to our commercial expansion. Selling, general and administrative expenses may fluctuate in the future primarily due to potential changes in marketing strategies and international launches.

Research and Development

Research and development expenses decreased by $0.4 million to $1.2 million for the three months ended June 30, 2023 from $1.6 million for the three months ended June 30, 2022. We expect our research and development expenses to continue to increase if and when we develop further product candidates and as we pursue regulatory approvals in other jurisdictions.

In-process Research and Development

For the three months ended June 30, 2022, we recorded $2.0 million of in-process research and development expense in connection with the License and Research Collaboration Agreement (the "Collaboration Agreement") with a 3D printing company with biomaterial capabilities.

For the three months ended June 30, 2023, we recorded $4.4 million of in-process research and development expense in connection with the Symatese Agreement. Refer to *Note 2. Basis of Presentation and Summary of Significant Accounting Policies* for additional information.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

The change in the fair value of the contingent royalty obligation payable to Evolus Founders is recorded in operating expenses in each reporting period. During the three months ended June 30, 2023 and 2022, the revaluation charges of $1.7 million and $1.4 million, respectively, were primarily driven by changes in management assumptions relating to revenue forecasts, the discount rate used and the timing of cash flows.

Depreciation and Amortization

Depreciation and amortization increased by $0.3 million, or 33.3%, to $1.2 million for the three months ended June 30, 2023 from $0.9 million for the three months ended June 30, 2022, primarily due to an increase in amortization of internal use software and leasehold improvements.

Non-Operating Expense, Net

Non-operating expense, net, increased by $0.9 million, or 45.7%, to $3.0 million for the three months ended June 30, 2023 from $2.1 million for the three months ended June 30, 2022, primarily due to higher interest expense for the Pharmakon Term Loans. Interest on the Pharmakon Term Loans is based on a variable interest rate, which we expect will continue to fluctuate with market rates.

Income Taxes Expense

There was minimal income tax expense for each of the three months ended June 30, 2023 and 2022.

Comparison of the Six Months Ended June 30, 2023 and 2022

The following table summarizes our consolidated results of operations for the periods indicated:

	Six Months Ended June 30,	
(in millions)	**2023**	**2022**
Product revenue, net	$ 89.7	$ 70.4
Service revenue	1.3	0.7
Total net revenues	91.1	71.1
Operating expenses:		
Product cost of sales (excludes amortization of intangible assets)	26.9	29.0
Selling, general and administrative	78.6	70.3
Research and development	2.6	2.0
In-process research and development	4.4	2.0
Revaluation of contingent royalty obligation payable to Evolus Founders	3.3	2.7
Depreciation and amortization	2.4	1.8
Total operating expenses	118.2	107.9
Loss from operations	(27.2)	(36.8)
Other income (expense):		
Non operating expense, net	(5.7)	(4.1)
Other income (expense), net	0.0	0.0
Loss before income taxes:	(32.9)	(40.9)
Income tax expense	0.0	0.0
Net loss	(32.9)	(41.0)
Unrealized loss, net of tax	(0.1)	(0.2)
Comprehensive loss	$ (33.1)	$ (41.1)

Net Revenues

Net revenues of Jeuveau® sales increased by $19.9 million, or 28.0%, to $91.0 million for the six months ended June 30, 2023 from $71.1 million for the six months ended June 30, 2022, primarily due to higher sales volumes. Net revenues during the six months ended June 30, 2023 and 2022 consisted of $1.3 million and $0.7 million, respectively, of service revenue from the sale of Jeuveau® through a distribution partner in Canada. We anticipate our continued sales growth will depend on our ability to grow our customer base and increase purchases by our current customers in the competitive medical aesthetic market as well as on regulatory approval for the Evolysse™ dermal filler product line in the United States by Symatese.

Cost of Sales

Product Cost of Sales

Product cost of sales, excluding amortization of intangible assets, primarily consisted of the cost of inventory purchased from Daewoong. In addition, during the period from December 2020 to September 2022, product cost of sales, excluding amortization of intangible assets, also included certain royalties on the sale of Jeuveau® payable to Medytox and Allergan pursuant to the Medytox/Allergan Settlement Agreements, partially offset by reimbursement receivable from Daewoong pursuant to the Daewoong Arrangement with respect to such royalties. Our royalty obligations to Allergan concluded on September 16, 2022, and beginning on September 17, 2022, our royalty obligations to Medytox were reduced to a mid-single digit percentage of net revenue through the expiration of our Medytox royalty obligation in September 2032.

Product cost of sales, excluding amortization of intangible assets, decreased by $2.1 million, or 7.2%, to $26.9 million for the six months ended June 30, 2023 from $29.0 million for the six months ended June 30, 2022, primarily due to reduced royalty obligations to Medytox, offset by an increase due to higher sales volume. We anticipate that our product cost of sales will fluctuate in line with changes in revenues until the expiration of the Medytox royalty obligation n September 2032.

Gross Profit Margin

Our gross profit margin was 68.9% and 57.1% for the six months ended June 30, 2023 and 2022, respectively. Our adjusted gross profit margin, calculated as total net revenues less product cost of sales, excluding amortization of intangible assets, as a percentage of net revenues was 70.5% and 59.2% for the six months ended June 30, 2023 and 2022, respectively. Our gross profit margin and adjusted gross profit margin were impacted negatively and materially through September 2022 by our payments under the Medytox/Allergan Settlement Agreements, offset by payments we received under the Daewoong Arrangement. Our gross profit margin and adjusted gross profit margin have been and will continue to be negatively impacted to a lesser extent from September 2022 to September 2032 as we pay royalty obligations to Medytox at a mid-single digit percentage of net revenue. We also anticipate our gross profit margin and adjusted gross profit margin will fluctuate as we implement various marketing programs that may affect the average selling price for Jeuveau® and as we expand internationally.

Selling, General and Administrative

Selling, general and administrative expenses increased by $8.3 million, or 11.8%, to $78.6 million for the six months ended June 30, 2023 from $70.3 million for the six months ended June 30, 2022, primarily resulting from increasing personnel costs related to our commercial expansion. Selling, general and administrative expenses may fluctuate in the future primarily due to potential changes in marketing strategies and international launches.

Research and Development

Research and development expenses increased by $0.6 million to $2.6 million for the six months ended June 30, 2023 from $2.0 million for the six months ended June 30, 2022. We expect our research and development expenses to continue to increase if and when we develop further product candidates and as we pursue regulatory approvals in other jurisdictions.

In-process Research and Development

For the six months ended June 30, 2022, we recorded $2.0 million of in-process research and development expense in connection with the Collaboration Agreement. For the six months ended June 30, 2023, we recorded $4.4 million of in-process research and development expense in connection with the Symatese Agreement. Refer to *Note 2. Basis of Presentation and Summary of Significant Accounting Policies* for additional information.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

The change in the fair value of the contingent royalty obligation payable to Evolus Founders is recorded in operating expenses in each reporting period. During the six months ended June 30, 2023 and 2022, the revaluation charges of $3.3 million and $2.7 million, respectively, were primarily driven by changes in management assumptions relating to revenue forecasts, the discount rate used and the timing of cash flows.

Depreciation and Amortization

Depreciation and amortization increased by $0.6 million, or 33.3%, to $2.4 million for the six months ended June 30, 2023 from $1.8 million for the six months ended June 30, 2022, primarily due to an increase in amortization of internal use software and leasehold improvements.

Non-Operating Expense, Net

Non-operating expense, net, increased by $1.6 million, or 39%, to $5.7 million for the six months ended June 30, 2023 from $4.1 million for the six months ended June 30, 2022, primarily due to higher interest expense for the Pharmakon Term Loans. Interest on the Pharmakon Term Loans is based on a variable interest rate, which we expect will continue to fluctuate with market rates.

Income Taxes Expense

There was minimal income tax expense for each of the six months ended June 30, 2023 and 2022.

Liquidity and Capital Resources

As of June 30, 2023 we had cash and cash equivalents of $41.7 million, positive working capital of $55.1 million and stockholders' deficit of $7.0 million.

We began selling Jeuveau® in May 2019 and have a relatively limited history of generating revenues. Since inception, we have incurred recurring net operating losses and have an accumulated deficit of $530.2 million as of June 30, 2023 as a result of ongoing efforts to develop and commercialize Jeuveau®, including providing selling, general and administrative support for our operations. We had net loss of $32.9 million and $41.0 million for the six months ended June 30, 2023 and 2022, respectively. We had net loss from operations of $27.2 million and $36.8 million for the six months ended June 30, 2023 and 2022, respectively. We used net cash of $33.9 million and $59.1 million in operating activities for the six months ended June 30, 2023 and 2022, respectively. We expect to continue to incur significant expenses for the foreseeable future as we increase marketing efforts for Jeuveau® in the U.S., Europe, and Australia, pursue regulatory approvals in other jurisdictions and ready for commercial launch of the Evolysse™ Lift, Smooth, and Sculpt dermal filler product line.

Impact of Inflation

The markets in which we operate are currently experiencing increased inflation. While we do not believe that inflation has had a material impact on our business, revenues or operating results during the periods presented, a prolonged inflationary environment could increase our cash required for operations and impact our liquidity position.

"At-the-market" Offerings of Common Stock

On March 8, 2023, we entered into an "at-the-market" sales agreement (the "ATM Sales Agreement") with Leerink Partners, LLC (formerly known as SVB Securities LLC) (the "Sales Agent") pursuant to which shares of our common stock could be sold from time to time for aggregate gross proceeds of up to $50.0 million (the "ATM Program"). Under the ATM Sales Agreement, the Sales Agent is entitled to compensation, at a commission rate equal to 3.0% of the gross proceeds from sales of our common shares under the ATM Program. We have not yet sold any shares under the ATM Sales Agreement.

The Pharmakon Term Loans

On December 14, 2021, we entered into a loan agreement with Pharmakon. Pursuant to the terms of the agreement, Pharmakon agreed to make term loans to us in two tranches. The first tranche of $75.0 million was funded on December 29, 2021. We received net proceeds of approximately $68.7 million from Pharmakon, after issuance costs and debt discounts. On December 5, 2022, we entered into a Second Amendment to the loan agreement to extend our option to draw down the second tranche of $50.0 million until December 31, 2023. On May 9, 2023, we entered into a Third Amendment to the loan agreement, which provides for the advancement of the second tranche of $50.0 million in two installments: (i) $25.0 million advanced on May 31, 2023 and (ii) $25.0 million to be advanced on December 15, 2023, subject to the terms and conditions of the Pharmakon Term Loans. We are required to pay interest only under the loan agreement until March 2026, after which we make seven equal quarterly payments, each in an amount equal to $1/12^{th}$ of the outstanding principal amount of the loan. We pay the remaining principal of the loan on the maturity date. The Pharmakon Term Loans will mature on the sixth year anniversary of the closing date of the first tranche. The term loan bears an annual interest rate equal to the 3-month secured overnight financing rate ("SOFR") (subject to a SOFR rate floor of 1.0%) plus 0.17% per annum. The proceeds of the Pharmakon Term Loans are used to fund our general corporate and working capital requirements.

Contingent Royalties to Evolus Founders

We are obligated to make quarterly royalty payments of a low-single digit percentage of net sales of Jeuveau® to the Evolus Founders. These obligations terminate at the end of the second quarter of 2029. The fair value of the obligations is valued quarterly and is referred to in our condensed consolidated financial statements as the contingent royalty obligation.

As of June 30, 2023, we recorded an aggregate balance of $47.1 million on our balance sheet for the future royalty payment obligation to Evolus Founders.

Litigation Settlement

As described in "—Overview—Impact of Settlement Agreements," on February 18, 2021, upon entering into the Medytox/Allergan Settlement Agreements, we agreed to pay to Allergan and Medytox $35.0 million in multiple payments over two years, of which we paid the first payment of $15.0 million in the third quarter of 2021, the second payment of $15.0 million in the first quarter of 2022, and the final payment of $5.0 million in the first quarter of 2023. We also issued 6,762,652 shares of common stock to Medytox. In addition, during the period from December 16, 2020 through September 16, 2022, we agreed to pay to Allergan and Medytox royalties on the sale of Jeuveau®, based on a certain dollar amount per vial sold in the United States, and a low-double digit royalty on net sales of Jeuveau® sold in other Evolus territories. During the period from September 17, 2022 to September 16, 2032, we agreed to pay to Medytox a mid-single digit royalty percentage on all net sales of Jeuveau®. The royalty payments are made quarterly.

As described in "—Overview—Impact of Settlement Agreements," on March 23, 2021, upon entering the Daewoong Arrangement, Daewoong paid us $25.5 million in April 2021, cancelled all remaining milestone payments up to $10.5 million in aggregate under the Daewoong Arrangement and agreed to reimburse us certain amounts (calculated on a dollar amount per vials sold basis in the United States) for sales of certain products with respect to which we are required to pay Medytox and Allergan royalties pursuant to the U.S. Settlement Agreement.

License and Supply Agreement

The Daewoong Agreement includes certain minimum annual purchases we are required to make in order to maintain the exclusivity of the license. We may, however, meet these minimum purchase obligations by achieving certain market share in our licensed territories. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions.

Symatese Agreement

The Symatese Agreement includes certain milestone payments, development cost-sharing arrangements, and minimum annual purchases we are required to make in order to maintain the exclusivity of the license. We may, however, meet these minimum purchase obligations by achieving certain market share in our licensed territory. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share.

Operating Leases

Our corporate headquarters in Newport Beach, California is under a five-year non-cancelable operating lease, which expires on January 31, 2025 with an option to extend the term for an additional 60 months. Lease payments increase based on an annual rent escalation clause that occurs on each February 1 anniversary. We may, under certain circumstances, terminate the lease on the 36 months anniversary of the lease commencement date by providing a written notice 12 months prior to such anniversary and paying a termination fee equal to six months basic rent plus certain other expenses.

Current and Future Capital Requirements

We believe that our current capital resources, which consist of cash and cash equivalents, future cash generated from operations, and cash available under the Pharmakon Term Loans, will be sufficient to satisfy our cash requirements for at least the next twelve months for working capital to support our daily operations and meet commitments under our contractual obligations with third parties, although we may wish to access the debt and equity markets or other sources of financing to satisfy our long-term cash requirements as further discussed below.

We have based our projections of capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources, which consist of cash and cash equivalents, cash generated from operations, and cash available under the Pharmakon Term Loans, sooner than we expect. Our cash requirements depend on numerous factors, including but

not limited to, the impact of any potential disruptions to our supply chain, inflation or other economic conditions, uncertainty regarding the stability of certain financial institutions, and other long-term commitments and contingencies. Because of the numerous risks and uncertainties associated with research, development and commercialization of our products, we are unable to estimate the exact amount of our operating capital requirements. In such case, we may be required to raise additional capital to fund future operations through the incurrence of debt, the entry into licensing or collaboration agreements with partners, sale of equity securities, grants or other sources of financing. However, there can be no assurance such financing or other alternatives will be available to us on acceptable terms, or at all. The global economy, including the financial and credit markets, has recently experienced significant volatility and disruptions, including severely diminished liquidity and credit availability and rising interest rates. These conditions may adversely impact our ability to raise additional capital on acceptable terms, or at all.

Our future funding requirements will depend on many factors, including, but not limited to:

- the rate of revenue growth for Jeuveau® in the United States and success of planned international launches;
- the timing of regulatory approval for the Evolysse™ dermal filler product line in the United States by Symatese;
- development costs and milestone payments related to the Evolysse™ products;
- our ability to forecast demand for our products, scale our supply to meet that demand and manage working capital effectively;
- corporate development activities including the purchase, license, or other acquisition of products and services to add to our product or service offerings;
- the number, characteristics, and development stage of any future product candidates we may develop or acquire;
- the timing and costs of any ongoing or future clinical programs we may conduct;
- the cost of manufacturing our product or any future product candidates and any products we successfully commercialize, including costs associated with our supply chain;
- the timing and amounts of the royalty and other payments payable in connection with the Medytox Settlement Agreement;
- the amounts of the royalty payable to the Evolus Founders;
- the cost of commercialization activities for Jeuveau® or any future product candidates are approved or cleared for sale, including marketing, sales and distribution costs;
- the cost of maintaining a sales force, the productivity of that sales force, the market acceptance of our products and the actions and product introductions of our competitors;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of any such agreements that we may enter into;
- any product liability or other lawsuits related to our products;
- the cost of any current litigation, including our ongoing securities class action lawsuit and shareholder derivative lawsuit;
- the expenses needed to attract and retain skilled personnel;
- the costs associated with being a public company;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing intellectual property and any other future intellectual litigation we may be involved in; and
- the timing, receipt and amount of sales of any future approved or cleared products, if any.

Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Six Months Ended June 30,	
(in millions)	2023	2022
Net cash provided by (used in):		
Operating activities	$ (33.9)	$ (59.1)
Investing activities	(0.7)	(0.6)
Financing activities	22.5	(1.9)
Effect of exchange rates on cash	(0.0)	(0.2)
Change in cash and cash equivalents	(12.1)	(61.8)
Cash and cash equivalents, beginning of period	53.9	146.3
Cash and cash equivalents, end of period	$ 41.7	$ 84.5

Operating Activities

For the six months ended June 30, 2023, operating activities used $33.9 million of cash, which primarily resulted from our net loss of $32.9 million. Net operating assets and liabilities improved by $15.6 million, primarily driven by timing of collections from customers, payments to vendors, the timing of inventory purchases from our supplier, and the final cash litigation settlement payment of $5.0 million to Medytox and Allergan. Operating activities also includes adjustments for certain non-cash charges including $7.5 million of stock-based compensation expense, $3.3 million in revaluation of our contingent royalty obligation, $0.3 million of provision of allowance for doubtful accounts and $2.4 million of depreciation and amortization.

For the six months ended June 30, 2022, operating activities used $59.1 million of cash, which primarily resulted from our net loss of $41.0 million. Net operating assets and liabilities changed by $30.2 million, primarily driven by timing of receipts from customers and payments to vendors and the second cash litigation settlement payment of $15.0 million to Medytox and Allergan. Operating activities also includes adjustments for certain non-cash charges including $5.9 million of stock-based compensation expense, $2.7 million in revaluation of our contingent royalty obligation, $0.7 million of provision of allowance for doubtful accounts and $1.8 million of depreciation and amortization.

Investing Activities

Cash used in investing activities was $0.7 million for the six months ended June 30, 2023 compared to $0.6 million for the six months ended June 30, 2022.

Financing Activities

Cash provided by financing activities was $22.5 million for the six months ended June 30, 2023, compared to $1.9 million of cash used in financing activities for the six months ended June 30, 2022. For the six months ended June 30, 2023, cash provided by financing activities resulted from $25.0 million net proceeds from drawing on the second tranche of the Pharmakon Term Loans as described above.

Indebtedness

See "—Liquidity and Capital Resources" for a description of our Pharmakon Term Loans.

Material Cash Requirements

Our material cash requirements from known contractual and other obligations primarily consist of (i) principal and interest payments related to our Pharmakon Term Loans, (ii) quarterly royalty payments to the Evolus Founders of a low single digit percentage of net sales of Jeuveau® (these obligations terminate in the quarter after the 10-year anniversary of the first commercial sale of Jeuveau® in the United States), (iii) quarterly royalty payments to Medytox of a low-double digit royalty on net sales of Jeuveau® sold in the United States and other Evolus territories (during the period from September 17, 2022 to September 16, 2032), (iv) minimum purchase obligations under the Daewoong Agreement, (v) milestone payments,

development cost-sharing arrangements, and minimum annual purchases under the Symatese Agreement, and (vi) obligations under operating leases related to our office spaces. During the six months ended June 30, 2023, there were no material changes to these obligations as reported in our Annual Report on Form 10-K for the year ended December 31, 2022, except as described above with the respect to the Symatese Agreement.

Critical Accounting Policies and Estimates

Management's discussion and analysis of our financial condition and results of operations are based on our consolidated financial statements, which have been prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and related disclosure of contingent assets and liabilities, revenue and expenses at the date of the consolidated financial statements as well as the expenses incurred during the reporting period. Generally, we base our estimates on historical experience and on various other assumptions in accordance with GAAP that we believe to be reasonable under the circumstances. Actual results may differ materially from these estimates under different assumptions or conditions and such differences could be material to the financial position and results of operations. On an ongoing basis, we evaluate our estimates and assumptions in light of changes in circumstances, facts and experience.

There have been no material changes to our critical accounting policies and estimates as discussed in our Annual Report on Form 10-K filed for the year ended December 31, 2022. However, we adopted ASC 326 on January 1, 2023, which requires us to estimate the allowance for credit losses using relevant available information, from internal and external sources, relating to past events, current conditions and reasonable and supportable forecasts. Historical credit loss experience provides the basis for estimation of expected credit losses and are adjusted as necessary using the relevant information available.

Recently Issued and Adopted Accounting Pronouncements

We describe the recently issued and adopted accounting pronouncements that apply to us in *Note 2. Summary of Significant Accounting Policies-Recent Accounting Pronouncements*.

Item 3. Quantitative and Qualitative Disclosure About Market Risk.

Not applicable.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

As of June 30, 2023, our management, with the participation of our Chief Executive Officer and our Chief Financial Officer, who serve as our principal executive officer and principal financial officer, respectively, performed an evaluation of the effectiveness of the design and operation of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act. Our disclosure controls and procedures are designed to ensure (a) that information required to be disclosed in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and (b) that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer concluded that, as of June 30, 2023, our disclosure controls and procedures were effective at a reasonable assurance level.

Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objective and management necessarily applies its judgment in evaluating the cost-benefit relationship of possible controls and procedures.

Changes in Internal Control over Financial Reporting

During the three months ended June 30, 2023, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred with respect to the quarter ended June 30, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II—Other Information

Item 1. Legal Proceedings

See “Legal Proceedings” in *Note 8. Commitments and Contingencies* for information regarding legal proceedings.

Item 1A. Risk Factors

The risks and uncertainties discussed below update, supersede and replace the risks and uncertainties previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2022, which was filed with the SEC on March 8, 2023, and previously disclosed in Part II, Item 1A of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, which was filed with the SEC on May 9, 2023. We do not believe any of the changes constitute material changes from the risk factors previously disclosed in such prior Annual Report on Form 10-K.

An investment in our company involves a high degree of risk. You should carefully consider the risks and uncertainties described below together with all the other information in this Quarterly Report on Form 10-Q, including Part I, Item 2"Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements and the notes thereto included in Part I, Item 1. If any of the following risks actually occurs, our business, reputation, financial condition, results of operations, revenue, and future prospects could be seriously harmed. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. Unless otherwise indicated, references to our business being seriously harmed in these risk factors will include harm to our business, reputation, financial condition, results of operations, revenue and future prospects. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.

Risks Related to Our Business and Strategy

We currently depend entirely on the successful commercialization of our only commercially available product, Jeuveau®. If we are unable to successfully market and sell Jeuveau®, we may not generate sufficient revenue to continue our business.

We currently have only one commercially available product, Jeuveau®, and our business presently depends entirely on our ability to successfully market and sell it in a timely manner. We commercially launched in the United States in May 2019 and through a distribution partner in Canada in October 2019. We commercially launched in Europe in September 2022 and as such, we have a limited history of generating revenue for Jeuveau® in those markets. Our near-term prospects, including our ability to generate revenue, as well as our future growth, depend entirely on the successful commercialization of Jeuveau®. The commercial success of Jeuveau® will depend on a number of factors, including our ability to successfully commercialize Jeuveau®, whether alone or in collaboration with others, including our ability to hire, retain and train sales representatives in the United States. Our ability to market and sell Jeuveau® is also dependent on the willingness of consumers to pay for Jeuveau® relative to other discretionary items, especially during economically challenging times. Additional factors necessary for the successful commercialization of Jeuveau® include the availability, perceived advantages, relative cost, relative safety of Jeuveau® and relative efficacy of competing products, the timing of new product introductions by our competitors, and the sales and marketing tactics of our competitors, including bundling of multiple products, in response to our launch of Jeuveau®. Each of these factors may vary on a country by country basis as we expand our operations.

If we do not achieve one or more of these factors, many of which are beyond our control, in a timely manner or at all, we could experience significant issues commercializing Jeuveau®. Further, we may never be able to successfully market and sell Jeuveau® or any future product candidates. In addition, our experience as a commercial company is limited. Accordingly, we may not be able to generate sufficient revenue through the sale of Jeuveau® or any future product candidates to continue our business.

We have a limited operating history and have incurred significant losses since our inception and anticipate that we may incur losses in the future. We have only one product and limited commercial sales, which, together with our limited operating history, makes it difficult to assess our future viability.

We are a performance beauty company with a limited operating history. To date, we have invested substantially all of our efforts and financial resources in the clinical development, regulatory approval, and commercial launch of Jeuveau®, which is currently our only commercially available product. We began selling Jeuveau® in the United States in May 2019 and through a distribution partner in Canada in October 2019. We began selling Jeuveau® in Europe in September 2022 and, as such, have a limited history of generating revenue in those markets. We have incurred losses in each year since our inception in 2012. We have a limited operating history upon which you can evaluate our business and prospects. Consequently, any predictions about our future success, performance or viability may not be as accurate as they could be if we had a longer operating history or greater experience commercializing a product. In addition, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in

the medical aesthetics field. We continue to incur significant expenses related to the commercialization of Jeuveau®. We recorded a net loss of $32.9 million for the six months ended June 30, 2023, and we recorded a net loss of $74.4 million and net loss of $46.8 million for the years ended December 31, 2022 and 2021, respectively. We had an accumulated deficit as of June 30, 2023 of $530.2 million. Our ability to achieve revenue and profitability is dependent on our ability to successfully market and sell Jeuveau®. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our prior losses, combined with expected future losses, may adversely affect the market price of our common stock and, if needed, our ability to raise capital to continue operations.

We are reliant on Symatese to achieve regulatory approval for the Evolysse™ product line in the United States. Failure to obtain approval or obtain approval on our estimated time frame for the Evolysse™ product line would negatively affect our ability to sell these products.

The FDA regulatory process for medical devices such as Evolysse™ is complex, time-consuming and subject to numerous inherent risks. Before Evolysse™ can be marketed in the United States, Symatese must submit and the FDA must approve a Premarket Approval, or PMA. For the PMA approval process, the FDA must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, pre-clinical, clinical trial, manufacturing and labeling data. In addition, modifications to products that are approved through a PMA application generally need FDA approval.

We are substantially dependent on our relationship with Symatese for the regulatory approval process of the Evolysse™ dermal filler product candidates. While we have agreed to share certain costs associated with the regulatory approval process to provide our experience to Symatese, Symatese is ultimately responsible for obtaining regulatory approval of the Evolysse™ product line. If Symatese encounters difficulties or delays in obtaining regulatory approvals for these products, our ability to commercialize and generate revenue from these products could be materially and adversely affected. As a result, our reliance on Symatese for the regulatory approval process exposes us to risks associated with Symatese's ability to successfully navigate the complex regulatory landscape. If we are unable to manage these risks effectively, it could have a material adverse effect on our business, financial condition, and results of operations.

In addition, if Symatese fails to maintain compliance with applicable regulatory requirements or if regulatory authorities impose new requirements, the approval process could be delayed or approvals could be denied. This may result in additional costs, reduced revenue projections, and potential harm to our business, reputation and market position.

We may require additional financing to fund our future operations or execute corporate development activities, and a failure to obtain additional capital when so needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our operations.

We have utilized substantial amounts of cash since our inception in order to conduct clinical development to support regulatory approval and launch of Jeuveau® in the United States, Europe, Canada, and Australia. We expect that we will continue to expend substantial resources for the foreseeable future in order to continue to market and sell Jeuveau® and for the clinical development of any additional product candidates we may choose to pursue. While we believe that we currently have adequate capital resources, which consist of cash and cash equivalents and cash generated from operations, to operate our business until our business generates profits and positive cash flow, this belief is based upon certain financial assumptions including net revenue, gross margin, working capital and expense assumptions. If these assumptions are incorrect, or if we experience other risks or uncertainties set forth in this Quarterly Report on Form 10-Q, we may require additional capital to operate our business.

We expect to expend resources furthering the development and continuation of our marketing programs and commercialization infrastructure in connection with commercializing Jeuveau® within and outside of the United States. In the long term, our expenditures will include costs associated with the continued commercialization of Jeuveau®, research and development, approval and commercialization of products and any of our future product candidates, including our proposed higher strength dose of Jeuveau® and the Evolysse™ line of dermal fillers, such as research and development, conducting preclinical studies and clinical trials and manufacturing and supplying as well as marketing and selling any products approved for sale. Because the commercialization expenditures needed to meet our sales objectives are highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully market and sell Jeuveau® or, if approved, the Evolysse™ line of dermal fillers. We may in the future, also, acquire other companies or products which may be costly and which may require additional capital to operate. In addition, other unanticipated costs may arise. Accordingly, our actual cash needs may exceed our expectations.

If we were to raise additional capital through marketing and distribution arrangements, or other collaborations, strategic alliances or licensing arrangements with third parties, we may have to relinquish certain valuable rights to our product candidates, technologies, future revenue streams or research programs or grant licenses on terms that may not be favorable to us. If we raise additional capital through public or private equity offerings or offerings of securities convertible into our equity, the ownership interest of our existing stockholders will be diluted and the terms of any such securities may have a preference over our common stock. Debt financing, receivables financing and royalty financing may also be coupled with an equity component, such as warrants to purchase our capital stock, which could also result in dilution of our existing stockholders' ownership, and such dilution may be material. Additionally, if we raise additional capital through debt financing, we will have increased fixed payment obligations and may be subject to covenants limiting or restricting our ability to take specific actions, such as incurring additional debt or making capital expenditures to meet specified financial ratios, and other operational restrictions, any of which could restrict our ability to market and sell Jeuveau® or any future product candidates or operate as a business and may result in liens being placed on our assets. If we were to default on any of our indebtedness, we could lose such assets.

In addition, the global economy, including the financial and credit markets, has recently experienced significant volatility and disruptions, including severely diminished liquidity and credit availability and rising interest rates. In the event we are unable to raise sufficient capital to fund our commercialization efforts to achieve specified minimum sales targets under the Daewoong Agreement and the Symatese Agreement, we will lose exclusivity of the license that we have been granted under the Daewoong Agreement and the Symatese Agreement. In addition, if we are unable to raise additional capital when required or on acceptable terms, we will be required to take actions to address our liquidity needs which may include the following: significantly reduce operating expenses and delay, reduce the scope of or discontinue some of our development programs, commercialization efforts or other aspects of our business plan, out-license intellectual property rights to our product candidates and sell unsecured assets, or a combination of the above. As a result, our ability to achieve profitability or to respond to competitive pressures would be significantly limited and may have a material adverse effect on our business, results of operations, financial condition and/or our ability to fund our scheduled obligations on a timely basis or at all.

If we or our counterparties do not comply with the terms of our settlement agreement with Medytox, we may face litigation or lose our ability to market and sell Jeuveau®, which would materially and adversely affect our ability to carry out our business and our financial condition and ability to continue as a going concern.

Effective February 18, 2021, we entered into a Settlement and License Agreement with Medytox which we refer to as the Medytox Settlement Agreement.

Under the Medytox Settlement Agreement we obtained (i) a license to commercialize, manufacture and to have manufactured for us certain products identified in the Medytox Settlement Agreements, including Jeuveau® (the "Licensed Products"), in the United States and other territories where we license Jeuveau®, (ii) the dismissal of outstanding litigation against us, including the ITC Action, a rescission of the related remedial orders, and the dismissal of a civil case in the Superior Court of California against us, which we refer to together with any claims (including claims brought in Korean courts) with a common nexus of fact as the Medytox/Allergan Actions, and (iii) releases of claims against us for the Medytox/Allergan Actions. Going forward we are obligated to pay to Medytox a mid-single digit royalty percentage on net sales of Jeuveau® in the United States and all territories we have licensed outside the United States until September 16, 2032. In addition, under the Medytox Settlement Agreement we made certain representations and warranties and agreed to certain customary positive and negative covenants.

In the event we fail to comply with the terms of the Medytox Settlement Agreement, subject to applicable cure periods, Medytox would have the ability to terminate the Medytox Settlement Agreement and thereby cancel the licenses granted to us and re-institute litigation against us. Any litigation may result in remedies against our products, resulting in either an injunction prohibiting our sales, or with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties, any of which would materially and adversely affect our ability to generate revenue from Jeuveau®, to carry out our business, and to continue as a going concern.

Additionally, if Medytox fails to comply with the terms of the Medytox Settlement Agreement and comply with the covenants and agreements under the Medytox Settlement Agreement, it could materially and adversely affect our ability to generate revenue from Jeuveau®, to carry out our business, and to continue as a going concern. For example, as required by the Medytox Settlement Agreement, in February 2021 Medytox filed a document with the Korean court that its litigation with Daewoong would not affect our right to have Jeuveau® manufactured by Daewoong or exported to us. If Medytox were to breach the Medytox Settlement Agreement and rescind this filing and the Korean court issued a ruling against Daewoong, our

supply of Jeuveau® could be hindered. We would also be required to engage in costly and time-consuming litigation in order to enforce our rights under the Medytox Settlement Agreement.

The terms of the Medytox Settlement Agreement will reduce our profitability until the royalty obligations expire, and may affect the extent of any discounts we may offer to our customers.

As a result of the royalty payments that we are required to pay under the Medytox Settlement Agreement, our profitability has and will be adversely impacted for the period that we are required to pay royalties. We may be able to offset a portion of the loss of profitability by decreasing any discount to customers on Jeuveau® as compared to discounts we provided to customers prior to the Medytox Settlement Agreement. If we reduce discounts for any customers, their volume of purchases may decrease which would have a material and adverse effect on our business and results of operations.

We are subject to risks associated with a public health crisis, including the COVID-19 pandemic and other outbreaks of contagious diseases.

We are subject to risks associated with public health crises, including relating to the COVID-19 pandemic. The COVID-19 pandemic had, and may continue to have, a material adverse effects on our business, financial condition, results of operations and cash flows. Other public health crises, including any future outbreaks of contagious diseases, could have a similar material adverse effect on our business. Financial and operational impacts that we experienced in connection with the COVID-19 pandemic, and may experience as a result of future COVID-19 outbreaks or other public health crises, include:

- a decline in the rates of elective procedures;
- difficulties in enrolling patients in clinical programs;
- changes in the availability of our key personnel;
- temporary closures of our facilities or the facilities of our business partners, customers, third party service providers or other vendors;
- interruptions to our supply chain and distribution channels; and
- downstream economic effects, including disruptions capital or financial markets, increased inflation and rising interest rates.

Depending on the severity of the financial and operational impacts, our business, financial condition, and results of operations may be materially adversely impacted. The extent to which any future public health crises may impact our business, results of operations, and financial condition depends on many factors which are highly uncertain and are difficult to predict. These factors include, but are not limited to, the duration and spread of any outbreak, its severity, the actions to contain or address the impact of the outbreak, the timing, distribution, and efficacy of vaccines and other treatments, United States and foreign government actions to respond to possible reductions in global economic activity, and how quickly and to what extent normal economic and operating conditions can resume.

Unfavorable global economic conditions could adversely affect our business, financial condition or results of operations.

Because we do not expect Jeuveau® for the treatment of glabellar lines or, subject to regulatory approval, the Evolysse™ line of dermal fillers to be reimbursed by any government or third-party payor, our only product is and will continue to be paid for directly by the consumer. Demand for Jeuveau® and, subject to regulatory approval, the Evolysse™ line of dermal fillers, is accordingly tied to the discretionary spending levels of our targeted consumer population. A severe or prolonged economic downturn, instability or crises affecting banks or other financial institutions, or inflation in consumer prices, as we are currently experiencing, could result in a variety of risks to our business, including a decline in the discretionary spending of our target consumer population, which could lead to a weakened demand for Jeuveau®, Evolysse™, or any future product candidates. A severe or prolonged economic downturn may also affect our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy, instability or crises affecting banks or other financial institutions, or political disruption could also strain our suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our products. Inflation in the markets we serve could similarly impact our revenues, as consumer spending power could decline. Any of the foregoing could harm our business.

In addition, our business strategy was developed based on a number of important assumptions about the self-pay healthcare market. For example, we believe that the number of self-pay healthcare procedures will increase in the future. However, these

trends are uncertain and limited sources exist to obtain reliable market data. Therefore, sales of Jeuveau® or any of our future product candidates could differ materially from our projections if our assumptions are incorrect.

Adverse developments affecting the financial services industry, including events or concerns involving liquidity, defaults or non-performance by financial institutions, could adversely affect our business, financial condition or results of operations.

The funds in our operating accounts are held in banks or other financial institutions. Our cash held in non-interest bearing and interest-bearing accounts exceeds applicable Federal Deposit Insurance Corporation ("FDIC") insurance limits. Bank failures, events involving limited liquidity, defaults, non-performance or other adverse developments occur with respect to the banks or other financial institutions that hold our funds, or that affect financial institutions or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks may lead to widespread demands for customer withdrawals and liquidity constraints that may result in market-wide liquidity problems, which could adversely impact our liquidity. For example, on March 10, 2023, the FDIC announced that Silicon Valley Bank had been closed by the California Department of Financial Protection and Innovation. On March 26, 2023, the assets, deposits and loans of Silicon Valley Bank were acquired by First-Citizens Bank & Trust Company. Although we did not have any funds in Silicon Valley Bank or other institutions that have been closed, we cannot guarantee that the banks or other financial institutions that hold our funds will not experience similar issues.

In addition, investor concerns regarding the U.S. or international financial systems could result in less favorable commercial financing terms, including higher interest rates or costs and tighter financial and operating covenants, or systemic limitations on access to credit and liquidity sources, thereby making it more difficult for us to acquire financing on terms favorable to us , or at all, and could have material adverse impacts on our liquidity, our business, financial condition or results of operations, and our prospects. Our business may be adversely impacted by these developments in ways that we cannot predict at this time, there may be additional risks that we have not yet identified, and we cannot guarantee that we will be able to avoid negative consequences.

Our products face significant competition and our failure to effectively compete may prevent us from achieving significant market penetration and expansion.

Jeuveau® is approved for use and Evolysse™ is being investigated for use in facial aesthetic medicine. The facial aesthetic market is highly competitive and dynamic and is characterized by rapid and substantial technological development and product innovations. Our products face, and we anticipate that our future products will face, significant competition from other facial aesthetic products, such as other injectable and topical botulinum toxins and dermal fillers. Our products may also compete with unapproved and off-label treatments. Many of our potential competitors, including Allergan, and now AbbVie Inc., which acquired Allergan, who first launched BOTOX for cosmetic uses in 2002 and has since maintained the highest market share position in the aesthetic neurotoxin market with its BOTOX product, are large, experienced companies that enjoy significant competitive advantages, such as substantially greater financial resources enabling them to, among other things, market and discount aggressively. Competitors may also have greater brand recognition for their products, larger sales forces and larger aesthetic product portfolios allowing the companies to bundle products to provide customers more choices and to further discount their products. Additionally, our competitors have greater existing market share in the facial aesthetic medicine market and long-standing customer loyalty programs and sales contracts with large customers which creates established business and financial relationships with customers, aesthetic societies and universities.

These competitors may also try to compete with our aesthetic products on price both directly, through rebates and promotional programs to high volume physicians and coupons to consumers, and indirectly, through attractive product bundling with complimentary products, such as dermal fillers that offer convenience and an effectively lower price compared to the total price of purchasing each product separately. These companies may also seek to compete based on their longer operating history. Larger companies may be better capitalized than us and, accordingly, are able to offer greater customer loyalty benefits to encourage repeat use of their products and finance a sustained global advertising campaign to compete with our commercialization efforts at launch. A number of our larger competitors also have access to a significant number of studies and publications that they could use to compete with us.

In the long term, we expect to expand our focus to the broader self-pay healthcare market. Competitors and other parties may seek to impact regulatory approval of our future product applications through the filing of citizen petitions or other similar documents, which could require costly and time-consuming responses to the regulatory agencies. Larger competitors could seek to prevent or delay our commercialization efforts via costly litigation which can be lengthy and expensive and serve to distract our management team's attention. We could face competition from other sources as well, including academic

institutions, governmental agencies and public and private research institutions. In addition, we are aware of other companies also developing and/or marketing products in one or more of our target markets, including competing injectable botulinum toxin type A formulations that are currently in Phase III clinical development in North America for the treatment of glabellar lines. For example, Revance Therapeutics, Inc. obtained approval for an injectable botulinum toxin type A neurotoxin on September 8, 2022, called "Daxxify." Additionally, Hugel Inc., submitted a BLA to the FDA for an injectable botulinum toxin type A neurotoxin and received a Complete Response Letter from the FDA in April 2023. With the approval of the Revance Therapeutic's BLA and the potential approval of Hugel, Inc.'s BLA, we expect the competition in the U.S. injectable botulinum toxin market to further increase. We would face similar risks with respect to any future product candidates that we may seek to develop or commercialize in the broader self-pay healthcare market. Successful competitors in that market have the ability to effectively discover, obtain patents, develop, test and obtain regulatory approvals for products, as well as the ability to effectively commercialize, market and promote approved products, including communicating the effectiveness, safety and value of products to actual and prospective customers and medical staff.

Our strategy of competing in the aesthetic neurotoxin market is dependent on the marketing and pricing flexibility that we believe is afforded to a company with a portfolio limited to self-pay healthcare, comprised of products and procedures that are not reimbursed by third-party payors. In the event that regulations applicable to reimbursed products are changed to apply to self-pay healthcare products, we would no longer have this flexibility and we may not be able to compete as effectively with our competitors which may have a material effect on our business, financial condition and results of operations. Additionally, as a result of the royalty payments that we are required to pay under the Medytox Settlement Agreement, we may not be able to discount Jeuveau® to the extent that we previously provided discounts to customers without impacting our gross profit margins. If we increase prices for any customers, their volume of purchases may decrease which would have a material and adverse effect on our business and results of operations.

In addition, competitors may develop new technologies within the aesthetic market that may be superior in safety and efficacy to our products or offer alternatives to the use of toxins or dermal fillers, including surgical and radio frequency techniques. To compete successfully in the aesthetic market, we will have to demonstrate that our products are at least as safe and effective as current products sold by our competitors. Competition in the aesthetic market could result in price-cutting and reduced profit margins, any of which would harm our business, financial condition and results of operations.

Due to less stringent regulatory requirements, there are many more aesthetic products and procedures available for use in international markets than are approved for use in the United States. There are also fewer limitations on the claims that our competitors in international markets can make about the effectiveness of their products and the manner in which they can market them. As a result, we expect to face more competition in these markets than in the United States.

Our commercial opportunity could also be reduced or eliminated if our competitors develop and commercialize products that are safer, are more effective, have fewer or less severe side effects, are more convenient or are less expensive than Jeuveau® or any other product that we may develop. Our competitors also may obtain FDA or other regulatory approval for these products more rapidly than we may obtain approval for our products, which could result in our competitors establishing a strong market position before we are able to enter the market, which may create additional barriers to successfully commercializing Jeuveau® and any future product candidates and attracting physician and consumer demand.

Our products may fail to achieve the broad degree of physician adoption and use or consumer demand necessary for continued commercial success.

Jeuveau® or, subject to regulatory approval, the Evolysse™ line of dermal fillers may fail to gain sufficient market acceptance by physicians, consumers and others in the medical aesthetics community to continue to grow our net revenues. The continued commercial success of Jeuveau® and any future product candidates, including a proposed higher strength dose of Jeuveau® and the Evolysse™ line of dermal fillers, will depend significantly on the broad adoption and use of the resulting product by physicians for approved indications, including, in the case of Jeuveau®, the treatment of glabellar lines and other aesthetic indications that we may seek to pursue. We are aware that other companies are seeking to develop alternative products and treatments, any of which could impact the demand for our products.

The degree and rate of physician adoption of Jeuveau® and any product candidates depend on a number of factors, including the cost, profitability to our customers, consumer demand, characteristics and effectiveness of the product. Our success will also depend our ability to create compelling marketing programs, training of our customers and ability to overcome any biases physicians or consumers may have toward the use, safety and efficacy of existing products over our products. Moreover, our competitors may utilize negative selling efforts or offer more compelling marketing or discounting programs than we are able to offer, including by bundling multiple aesthetic products to provide a more comprehensive offering than

we can so long as Jeuveau® remains our only commercially available product.

In addition, in its clinical trials, Jeuveau® was clinically tested and compared to BOTOX. Jeuveau® is the only known neurotoxin product in the United States with a 900 kDa complex other than BOTOX. We believe that aesthetic physicians' familiarity with the 900 kDa complex's handling, preparation and dosing will more easily facilitate incorporation of Jeuveau® into their practices. However, the ease of integration of Jeuveau® into a physician's practice may not be as seamless as we anticipate.

With respect to consumer demand, the treatment of glabellar lines with Jeuveau® is an elective procedure, the cost of which must be borne by the consumer, and we do not expect costs related to the treatment to be reimbursable through any third-party payor, such as Medicaid, Medicare or commercial insurance. The decision by a consumer to undergo treatment with Jeuveau® for the treatment of glabellar lines or other aesthetic indications that we may pursue may be influenced by a number of factors, including the cost, efficacy, safety, perception, marketing programs for, and physician recommendations of Jeuveau® versus competitive products or procedures. Moreover, consumer demand may fluctuate over time as a result of consumer sentiment about the benefits and risks of aesthetic procedures generally and Jeuveau® in particular, changes in demographics and social trends, rising inflation and general consumer confidence and consumer discretionary spending, which may be impacted by the COVID-19 outbreak, economic and political conditions.

If Jeuveau®, Evolysse™, or any product candidates fails to achieve the broad degree of physician adoption necessary for commercial success or the requisite consumer demand, our operating results and financial condition will be adversely affected, which may delay, prevent or limit our ability to generate revenue and continue our business.

Our ability to market Jeuveau® is limited to use for the treatment of glabellar lines, and if we want to expand the indications for which we market Jeuveau®, we will need to obtain additional regulatory approvals, which will be expensive and may not be granted.

We have received regulatory approval for Jeuveau® in the United States for the treatment of moderate to severe glabellar lines. The terms of that approval restrict our ability to market or advertise Jeuveau® for other indications, which could limit physician and consumer adoption. Under the U.S. Federal Food Drug and Cosmetic Act, we may generally only market Jeuveau® for approved indications. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin products and may be able to market such products for use in a way we cannot. For example, we are aware that one of our competitors, Allergan (now AbbVie), has obtained and plans to obtain additional indications for its neurotoxin product within medical aesthetics and, therefore, is able to market its product across a greater number of indications than Jeuveau®. If we are unable to obtain approval for indications in addition to our approval for glabellar lines, our marketing efforts for Jeuveau® will be severely limited. As a result, we may not generate physician and consumer demand or approval of Jeuveau®.

We rely on our digital technology and applications and our business and operations would suffer in the event of computer system failures or breach.

We are reliant on our digital technology, including our Evolus Practice App, which allows customers to open a new account, order Jeuveau®, pay invoices and engage with our customer experience team and medical affairs representatives. In the event that our digital technology is unable to function in the manner it was designed or at all, we would experience difficulty processing customer orders and requests in a timely manner or at all which would have a material adverse effect on our business, results of operations and financial condition.

The systems underlying our digital technology may not be adequately designed or may not operate with the reliability and redundancy necessary to avoid performance delays or outages that could be harmful to our business. If our digital technology is unavailable when customers attempt to access them, or if they do not load as quickly as expected, users may not use our technology as often in the future, or at all, and our ability to sell our products through a more limited sales force may be disrupted and we may not realize the efficiencies of leveraging our digital technology, any of which could adversely affect our business and financial performance. As the number of users of our digital technology continues to grow we will need an increasing amount of technical infrastructure, including network capacity and computing power, to continue to satisfy our needs. It is possible that we may fail to continue to effectively scale and grow our technical infrastructure to accommodate these increased demands, which may adversely affect our customers' experience with our digital technology which may decrease our revenue and harm our results of operations.

Despite the implementation of security measures, our internal computer systems, and those of third parties on which we rely, are vulnerable to disruption or damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication

and electrical failures, cyberattacks or cyber intrusions, insider threats, persons who access our systems in an unauthorized manner, or inadvertent misconfiguration of our systems. The risk of a security incident or system disruption, particularly through cyberattacks or cyber intrusions, including by computer hackers, foreign governments and cybercriminals, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. Interruptions in our operations caused by such an event could result in a material disruption of our current or future product development programs. The costs to us to mitigate network security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant, and while we have implemented security measures to protect our data security and information technology systems, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service, government files or penalties and other harm to our business and our competitive position. Interruptions in our operations caused by such an event could also result in a material disruption in our relationship with our customers. For example, if our Evolus Practice App were rendered inoperable, we would have to process orders by telephone or otherwise which may result in slower processing times and harm to our reputation.

Moreover, a computer security incident that affects our systems or results in the unauthorized access to financial information, personally identifiable information (PII), customer information or data, including credit card transaction data or other sensitive information, could materially damage our reputation. In addition, such a security incident may require notification to governmental agencies, the media or individuals pursuant to various international, federal and state privacy and security laws, including the General Data Protection Regulation (GDPR), the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Clinical Health Act of 2009, and its implementing rules and regulations, as well as regulations promulgated by the Federal Trade Commission and state breach notification laws. Additionally, the regulatory environment governing information, security and privacy laws is increasingly demanding and continues to evolve and a number of states have adopted laws and regulations that may affect our privacy and data security practices regarding the use, disclosure and protection of PII. For example, the California Consumer Privacy Act, among other things, has created new individual privacy rights and imposes increased obligations on companies handling PII. In the event of a security incident, we would also be exposed to the risk of litigation and potential liability, which could materially adversely affect our business, results of operations and financial condition. Our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyberattacks and other related security incidents.

Jeuveau® or any other product candidate for which we seek approval as a biologic may face competition sooner than anticipated.

With the enactment of the Biologics Price Competition and Innovation Act of 2009, or the BPCI Act, as part of the Patient Protection and Affordable Care Act, an abbreviated pathway for the approval of biosimilar or interchangeable biological products was created. The abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics. Under the BPCI Act, an application for a biosimilar product cannot be approved by the FDA until twelve years after the original branded product was approved under a Biologics License Application, or BLA. The law is complex and is still being interpreted and implemented by the FDA. For example, one company has filed a Citizen Petition requesting that the FDA not apply the BPCI Act to pre-enactment BLAs. As a result, its ultimate impact, implementation and meaning are subject to uncertainty. While it is uncertain when such processes intended to implement the BPCI Act may be fully adopted by the FDA, any such processes could have a material adverse effect on the future commercial prospects for our biological products.

We believe that Jeuveau® should qualify for the twelve-year period of exclusivity. However, there is a risk that this exclusivity could be shortened due to congressional action or otherwise, or that the FDA will not consider any of our product candidates to be a reference product for competing products, potentially creating the opportunity for competition sooner than anticipated. Moreover, the extent to which a biosimilar product, once approved, will be substituted for any one of our reference products in a way that is similar to traditional generic substitution for non-biological products is not yet clear and will depend on a number of marketplace and regulatory factors that are still developing.

If we are found to have improperly promoted off-label uses, or if physicians misuse our products or use our products off-label, we may become subject to prohibitions on the sale or marketing of our products, significant fines, penalties, sanctions, or product liability claims, and our image and reputation within the industry and marketplace could be harmed.

The FDA and other regulatory agencies strictly regulate the marketing and promotional claims that are made about pharmaceutical products, such as Jeuveau®. In particular, a product may not be promoted for uses or indications that are not approved by the FDA or other similar regulatory authorities as reflected in the product's approved labeling. Physicians could use Jeuveau® on their patients in a manner that is inconsistent with the approved label of the treatment of moderate to severe

glabellar lines, potentially including for the treatment of other aesthetic or therapeutic indications. If we are found to have promoted such off-label uses, we may receive warning letters from and be subject to other enforcement actions by the FDA, the European Medicines Agency, or EMA, and other regulatory agencies, and become subject to significant liability, which would materially harm our business. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we become the target of such an investigation or prosecution based on our marketing and promotional practices, we could face similar sanctions, which would materially harm our business. In addition, management's attention could be diverted from our business operations, significant legal expenses could be incurred, and our reputation could be damaged. The FDA has also required that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed in order to resolve FDA enforcement actions. If we are deemed by the FDA to have engaged in the promotion of our products for off-label use, we could be subject to FDA prohibitions or other restrictions on the sale or marketing of our products and other operations or significant fines and penalties, and the imposition of these sanctions could also affect our reputation and position within the industry. In addition, regulatory authorities outside the United States may impose similar fines, penalties or sanctions.

Physicians may also misuse Jeuveau® or any future product we offer or use improper techniques, potentially leading to adverse results, side effects or injury, which may lead to product liability claims. If Jeuveau® or any future product candidates are misused or used with improper techniques or are determined to cause or contribute to consumer harm, we may become subject to costly litigation by our customers or their patients. Product liability claims could divert management's attention from our core business, be expensive to defend, result in sizable damage awards against us that may not be covered by insurance and subject us to negative publicity resulting in reduced sales of our products. Furthermore, the use of Jeuveau® or any future product candidates for indications other than those cleared by the FDA may not effectively treat such conditions, which could harm our reputation in the marketplace among physicians and consumers. Any of these events could harm our business and results of operations and cause our stock price to decline.

Our products may cause serious or undesirable side effects or possess other unexpected properties that could delay or prevent their regulatory approval, limit the commercial profile of approved labeling, result in post-approval regulatory action or in product liability lawsuits.

Unforeseen side effects from Jeuveau®, Evolysse™, or any product we may offer in the future could arise either during clinical development or after marketing such product. Undesirable side effects caused by product candidates could cause us or regulatory authorities to interrupt, modify, delay or halt clinical trials and could result in a more restrictive label or the delay or denial of regulatory approval by the FDA, the EMA or similar regulatory authorities. Results of clinical trials could reveal a high and unacceptable severity and prevalence of side effects. In such an event, trials could be suspended or terminated and the FDA, the EMA or similar regulatory authorities could order us to cease further development of or deny approval of product candidates for any or all targeted indications. The drug or device-related side effects could affect patient recruitment or the ability of enrolled patients to complete the trial or result in product liability claims. Any of these occurrences may harm our business, financial condition, operating results and prospects.

Additionally, if we or others identify undesirable side effects, or other previously unknown problems, caused by Jeuveau®, or any of our future product candidates, after obtaining regulatory approval in the United States or other jurisdictions, a number of potentially negative consequences could result, including regulatory authorities withdrawing approval or limiting the marketing of our products, requiring a recall of the product, requiring additional warnings on our product labeling or medication guides or instituting Risk Evaluation and Mitigation Strategies, or REMS. In order to mitigate these risks, regulatory authorities may require additional costly clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product. As a result of any of these actions our sales of the product may decrease significantly, we may be required to expend material amounts to comply with any requirements of the regulatory authorities, we could be sued in a product liability lawsuit and held liable for harm caused to patients, and our brand and reputation may suffer.

We face an inherent risk of product liability as a result of the commercialization of Jeuveau®, Evolysse™, and any of our future product candidates. For example, we may be sued if any product we develop allegedly causes injury or is found to be otherwise unsuitable during product testing, manufacturing, marketing or sale. Any such product liability claims may include allegations of defects in manufacturing, defects in design, a failure to warn of dangers inherent in the product, negligence, strict liability and a breach of warranties. Claims could also be asserted against us under state consumer protection acts. If we cannot successfully defend ourselves against product liability claims, we may incur substantial liabilities or be required to limit commercialization of our products. Even a successful defense would require significant financial and management resources and result in decreased demand for Jeuveau®, Evolysse™ or any future product candidates or products we may develop, termination of clinical trial sites or entire trial programs, injury to our reputation and significant negative media

attention, withdrawal of clinical trial participants or cancellation of clinical trials and significant costs and diversion management's time to defend the related litigation.

Our inability to obtain and maintain sufficient product liability insurance at an acceptable cost and scope of coverage to protect against potential product liability claims could prevent or inhibit the commercialization of Jeuveau®, Evolysse™, or any future products that we develop. We currently carry product liability insurance covering our clinical trials. Although we maintain such insurance, any claim that may be brought against us could result in a court judgment or settlement in an amount that is not covered, in whole or in part, by our insurance or that is in excess of the limits of our insurance coverage. Our insurance policies also have various exclusions and deductibles, and we may be subject to a product liability claim for which we have no coverage. We will have to pay any amounts awarded by a court or negotiated in a settlement that exceed our coverage limitations or that are not covered by our insurance, and we may not have, or be able to obtain, sufficient capital to pay such amounts. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses.

Any of the above events could prevent us from achieving or maintaining market acceptance of the affected product, negatively impact our revenues and could substantially increase the costs of commercializing our products. The demand for our products could also be negatively impacted by any adverse effects of a competitor's product or treatment.

Our failure to successfully in-license, acquire, develop and market additional product candidates or approved products would impair our ability to grow our business.

Although most of our effort is focused on the commercialization of Jeuveau®, a key element of our long-term strategy is to in-license, acquire, develop, market and commercialize a portfolio of products to serve the self-pay aesthetic market. Jeuveau® is currently our sole commercially available product and Evolysse™ has not yet been approved for use by the FDA. Our competitors are currently able to bundle multiple aesthetic products to provide a more comprehensive offering than we can as a single product company. Because our internal research and development capabilities are limited, we may be dependent upon pharmaceutical and other companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify and select promising aesthetic product candidates and products, negotiate licensing or acquisition agreements with their current owners and finance these arrangements.

The process of proposing, negotiating and implementing a license or acquisition of a product candidate or approved product is lengthy and complex. Other companies, including some with substantially greater financial, marketing, sales and other resources, may compete with us for the license or acquisition of product candidates and approved products. We have limited resources to identify and execute the acquisition or in-licensing of third-party products, businesses and technologies and integrate them into our current infrastructure. Moreover, we may devote resources to potential acquisitions or licensing opportunities that are never completed, or we may fail to realize the anticipated benefits of such efforts. We may not be able to acquire the rights to additional product candidates on terms that we find acceptable, or at all.

Further, any product candidates that we acquire may require additional development efforts prior to commercial sale, including preclinical or clinical testing and approval by the FDA, the EMA and other similar regulatory authorities. All product candidates are prone to risks of failure during product development, including the possibility that a product candidate will not be shown to be sufficiently safe and effective for approval by regulatory authorities. In addition, any approved products that we acquire may not be manufactured or sold profitably or achieve market acceptance.

We may need to increase the size of our organization, including our sales and marketing capabilities, in order to further market and sell Jeuveau® and we may experience difficulties in managing this growth.

As of June 30, 2023, we had 215 employees, all of whom were full-time employees. Our management and personnel, systems and facilities currently in place may not be adequate to support future growth. Our need to effectively execute our growth strategy requires that we identify, recruit, retain, incentivize and integrate any additional employees to effectively manage any future clinical trials, manage our internal development efforts effectively while carrying out our contractual obligations to third parties, and continue to improve our operational, financial and management controls, reporting systems and procedures.

We face risks in building and managing a sales organization whether internally or by utilizing third parties, including our ability to retain and incentivize qualified individuals, provide adequate training to sales and marketing personnel, generate sufficient sales leads, effectively manage a geographically dispersed sales and marketing team, adequately provide complementary products to be offered by sales personnel, which may otherwise put us at a competitive disadvantage relative to companies with more extensive product lines, and handle any unforeseen costs and expenses. Any failure or delay in the

development of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of these products.

Due to our limited financial resources and our limited experience in managing a company with such anticipated growth, we may not be able to effectively manage the expansion of our operations or recruit and train additional qualified personnel. The physical expansion of our operations may lead to significant costs and may divert our management and business development resources. Any inability to manage growth could delay the execution of our development and strategic objectives or disrupt our operations.

Our business may be materially adversely affected by the impact of geopolitical tensions, including the ongoing military conflict between Russia and Ukraine, on the global economy and capital markets.

U.S. and global markets are experiencing volatility and disruption following the escalation of geopolitical tensions and the ongoing military conflict between Russia and Ukraine. Although the length and impact of the ongoing military conflict is highly unpredictable, the conflict in Ukraine has led to market disruptions, including significant volatility in commodity prices, credit and capital markets, as well as supply chain interruptions, which could continue. Other such geopolitical conflicts, particularly in the regions in which we operate or seek to expand, could have a similar impact.

Additionally, the military conflict in Ukraine has led to the imposition of sanctions and other penalties by the U.S., EU and other countries against Russia. Russian military actions and the resulting sanctions have adversely affected the global economy and financial markets and could lead to further instability and lack of liquidity in capital markets, which could make it more difficult for us to obtain additional funds at terms favorable to us, or at all.

Although our business has not been materially impacted by the ongoing military conflict between Russia and Ukraine, it is impossible to predict the extent to which our operations, or those of our suppliers and manufacturers, will be impacted in the short and long term, or the ways in which the conflict may impact our business. The extent and duration of the military action, sanctions and resulting market disruptions are impossible to predict, but could be substantial.

Our international operations will expose us to risks, and failure to manage these risks may adversely affect our operating results and financial condition.

We currently have operations in the United States, Canada, and Europe. International operations are subject to a number of inherent risks, and our future results could be adversely affected by a number of factors, including differences in demand for our products due to local requirements or preferences, the difficulty of hiring and managing employees with cultural and geographic differences and the costs of complying with differing regulatory requirements. Additionally, we may experience difficulties and increased costs due to differences in laws related to enforcing contracts, protecting intellectual property, taxes, tariffs and export regulations. The current conflict between Ukraine and Russia may also impact European economies and consumer discretionary spending negatively. We do not have significant international operations in Russia, Ukraine, or the surrounding regions that have been impacted by the conflict directly.

Our international operations will also subject us to risks related to multiple, conflicting and changing laws and regulations such as privacy regulations, including the GDPR, tax laws, export and import restrictions, employment laws, immigration laws, labor laws, regulatory requirements and other governmental approvals, permits and licenses. Additionally, we will face heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements. These and other factors could harm our ability to gain future revenue and, consequently, materially impact our business, operating results and financial condition.

Fluctuations in currency exchange rates may negatively affect our financial condition and results of operations.

Exchange rate fluctuations may affect the costs that we incur in our operations. The main currencies to which we are exposed to such fluctuations are the British pound and the EU euro. The exchange rates between these currencies and the U.S. dollar in recent years have fluctuated significantly and may continue to do so in the future. A depreciation of these currencies against the U.S. dollar will decrease the U.S. dollar equivalent of the amounts derived from foreign operations reported in our consolidated financial statements, and an appreciation of these currencies will result in a corresponding increase in such amounts. The cost of certain items, such as raw materials, manufacturing, employee salaries and transportation and freight, required by our operations may be affected by changes in the value of the relevant currencies. To the extent that we are required to pay for goods or services in foreign currencies, such as under our Symatese Agreement, which has payments denominated in Euros, the appreciation of such currencies against the U.S. dollar will tend to negatively affect our business.

There can be no assurance that foreign currency fluctuations will not have a material adverse effect on our business, financial condition and results of operations.

If we fail to attract and keep senior management and key scientific personnel, we may be unable to market and sell Jeuveau® successfully, or any future products we develop.

Our success depends in part on our continued ability to attract, retain and motivate highly qualified management. We believe that our future success is highly dependent upon the contributions of our senior management, particularly David Moatazedi, our President, Chief Executive Officer and member of our board of directors, Sandra Beaver, our Chief Financial Officer, and Rui Avelar, our Chief Medical Officer and Head of R&D, as well as other members of our senior management team. The loss of services of any of these individuals could delay or prevent the successful development of our product pipeline, completion of our planned clinical trials or the commercialization of Jeuveau®, Evolysse™ or any future products we develop.

In addition, we could experience difficulties attracting and retaining qualified employees in the future. For example, competition for qualified personnel in the pharmaceuticals and medical aesthetic field is intense due to the limited number of individuals who possess the skills and experience required by our industry. We may not be able to attract and retain quality personnel on acceptable terms, or at all. In addition, to the extent we hire personnel from competitors, we may be subject to allegations that they have been improperly solicited or that they have divulged proprietary or other confidential information or that their former employers own their research output.

Our strategy of focusing exclusively on the self-pay healthcare market may limit our ability to increase sales or achieve profitability.

Our strategy is to focus exclusively on the self-pay healthcare market. This focus may limit our ability to increase sales or achieve profitability. For example, to maintain our business model, we have chosen not to offer products or services available in the broader healthcare market that are reimbursed by third-party payors such as Medicare, Medicaid or commercial insurance. This eliminates our ability to offer a substantial number of products and indications for Jeuveau® or any future products, such as Evolysse™.

For example, under the Daewoong Agreement our rights to market and sell Jeuveau® are limited to cosmetic indications and under the Symatese Agreement our rights are limited to aesthetic and dermatologic uses. Daewoong has subsequently licensed the rights to the therapeutic indications for Jeuveau® to a third party. As a result, we do not have the ability to expand the permitted uses of our products for therapeutic indications.

Jeuveau® is the only U.S. neurotoxin without a therapeutic indication, although other companies may seek to develop a similar product in the future. We believe pursuing an aesthetic-only non-reimbursed product strategy allows for meaningful strategic advantages in the United States, including pricing and marketing flexibility. However, physicians may choose to not pass any cost benefits received by them due to such pricing flexibility to their patients. In addition, companies offering aesthetic products competitive to Jeuveau®, whether they pursue an aesthetic-only non-reimbursed product strategy or not, may nonetheless try to compete with Jeuveau® on price both directly through rebates, promotional programs and coupons and indirectly through attractive product bundling and customer loyalty programs. Our business, financial results and future prospects will be materially harmed if we cannot generate sufficient consumer demand for Jeuveau®.

Our business involves the use of hazardous materials, and we and our third-party manufacturer and supplier must comply with environmental laws and regulations, which can be expensive and restrict how we do business.

Our research and development and manufacturing activities in the future may, and our licensors' manufacturing and supplying activities presently do, involve the controlled storage, use and disposal of hazardous materials, including botulinum toxin type A, a key component of Jeuveau®, and other hazardous compounds. We and our licensors are subject to laws and regulations governing the use, manufacture, storage, handling and disposal of these hazardous materials. In some cases, these hazardous materials and various wastes resulting from their use are stored at our licensors' facilities pending their use and disposal. We and our licensors cannot eliminate the risk of contamination, which could cause an interruption of any of our licensor's manufacturing processes, our commercialization efforts, business operations and environmental damage resulting in costly clean-up and liabilities under applicable laws and regulations governing the use, manufacture, storage, handling and disposal of these materials and specified waste products. Although we believe that the safety procedures utilized by our licensors for handling and disposing of these materials generally comply with the standards prescribed by these laws and regulations, this may not eliminate the risk of accidental contamination or injury from these materials. In such an event, we may be held liable for any resulting damages and such liability could exceed our resources, and state or federal or other

applicable authorities may curtail our use of certain materials and interrupt our business operations. Furthermore, environmental laws and regulations are complex, change frequently and have tended to become more stringent.

We may use third-party collaborators to help us develop, validate or commercialize any new products, and our ability to commercialize such products could be impaired or delayed if these collaborations are unsuccessful.

We may license or selectively pursue strategic collaborations for the development, validation and commercialization of Jeuveau®, Evolysse™, and any future product candidates. In any third-party collaboration, we would be dependent upon the success of the collaborators in performing their responsibilities and their continued cooperation. Our collaborators may not cooperate with us or perform their obligations under our agreements with them. Our collaborators may choose to pursue alternative technologies in preference to those being developed in collaboration with us. The development, validation and commercialization of our product candidates will be delayed if collaborators fail to conduct their responsibilities in a timely manner or in accordance with applicable regulatory requirements or if they breach or terminate their collaboration agreements with us. Disputes with our collaborators could also impair our reputation or result in development delays, decreased revenues and litigation expenses.

In addition, we may face significant competition in seeking appropriate collaborators. Whether we reach a definitive agreement for a collaboration will depend, among other things, upon our assessment of the collaborator's resources and expertise, the terms and conditions of the proposed collaboration and the proposed collaborator's evaluation of a number of factors. Those factors may include the design or results of clinical trials, the likelihood of approval by the FDA or similar regulatory authorities outside the United States, the potential market for the subject product candidate, the costs and complexities of manufacturing and delivering such product candidate to consumers, the potential of competing products, the existence of uncertainty with respect to our ownership of technology, which can exist if there is a challenge to such ownership without regard to the merits of the challenge and industry and market conditions generally. The collaborator may also consider alternative product candidates or technologies for similar indications that may be available to collaborate on and whether such a collaboration could be more attractive than the one with us for our product candidate. Collaborations are complex and time-consuming to negotiate and document.

We may not be able to negotiate collaborations on a timely basis, on acceptable terms, or at all. If we are unable to do so, we may have to curtail the development of such product candidate, reduce or delay its development program or one or more of our other development programs, delay its potential commercialization or reduce the scope of any sales or marketing activities, or increase our expenditures and undertake development or commercialization activities at our own expense. If we elect to increase our expenditures to fund development or commercialization activities on our own, we may need to obtain additional capital, which may not be available to us on acceptable terms or at all. If we do not have sufficient funds, we may not be able to further develop our product candidates or bring them to market and generate revenue.

Our ability to use our net operating loss carryforwards and certain other tax attributes may be limited.

We have incurred substantial losses during our history and we may never achieve profitability. To the extent that we continue to generate taxable losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards, or NOLs, and other pre-change tax attributes, such as research tax credits, to offset its post-change income may be limited. As of December 31, 2022, we had $318.8 million of federal NOLs and $214.3 million of state NOLs available to offset our future taxable income, if any. As of December 31, 2022, we had federal research and development credit carryforwards of $2.9 million. These federal and state NOLs and federal research and development tax credit carryforwards expire at various dates beginning in 2034. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we earn net taxable income, our ability to use our pre-change NOLs to offset U.S. federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

Increases in interest rates would increase the cost of servicing our debt and could reduce our profitability and limit our cash available to fund our growth strategy.

The Pharmakon Term Loans have, and any additional debt we subsequently incur may have, a variable rate of interest. Higher interest rates could increase debt service requirements on our current variable rate indebtedness (even though the amount borrowed remains the same) and on any debt we subsequently incur, and could reduce funds available for operations,

future business opportunities or other purposes and materially and adversely affect our profitability, cash flows and results of operations.

On May 9, 2023, we and Pharmakon entered into the Third Amendment to the Loan Agreement. Among other changes, the Third Amendment implements the transition from a London Interbank Offered Rate ("LIBOR") based interest rate to a Secured Overnight Financing Rate ("SOFR") based interest rate. SOFR is calculated differently from LIBOR and since the initial publication of SOFR, daily changes in the rate have, on occasion, been more volatile than daily changes in comparable benchmark or market rates. It is possible that SOFR over time may bear little or no relation to the historical actual or historical indicative data. It is possible that the volatility of and uncertainty around SOFR as a LIBOR replacement rate and the applicable credit adjustment would result in higher borrowing costs for us, and could adversely affect our liquidity, financial condition, and earnings. The consequences of these developments with respect to LIBOR cannot be entirely predicted and span multiple future periods but could result in an increase in the cost of our variable rate debt which may negatively impact our financial results.

Risks Related to Our Relationship with Our Licensors

We rely on the Daewoong Agreement and the Symatese Agreement and any termination or loss of significant rights, including exclusivity, under these agreements would materially and adversely affect our business.

Our ability to exclusively commercialize Jeuveau® and Evolysse™ are completely dependent on the Daewoong Agreement and the Symatese Agreement, respectively. Under each agreement we have numerous obligations, including minimum product purchases, milestone payments and commercialization and development obligations. If we breach any material obligation, our partners may terminate or decrease our rights under the agreements. If we were to lose rights under either agreement we would experience an immediate reduction in our revenues and future business opportunities. We believe it would be difficult to find an alternative supplier of these products. In addition, to the extent the alternative supplier has not secured regulatory approvals in a jurisdiction, we would have to expend significant resources to obtain regulatory approvals that may never be obtained or require several years to obtain, which could significantly delay commercialization. We may be unable to raise additional capital to fund our operations during this extended time on terms acceptable to us or at all. Additionally, if we experience delays as a result of a dispute with either of our partners the demand for our products could be materially and adversely affected.

We currently rely solely on Daewoong to manufacture Jeuveau® and on Symatese to manufacture Evolysse™ and as such, any production or other problems with either licensor could adversely affect us.

We depend solely upon Daewoong for the manufacturing of Jeuveau® and on Symatese to manufacture Evolysse™. Although alternative sources of supply may exist, the number of third-party suppliers with the necessary manufacturing and regulatory expertise and facilities is limited, and it could be expensive and take a significant amount of time to arrange for and qualify alternative suppliers, which could have a material adverse effect on our business. Suppliers of any new product candidate would be required to qualify under applicable regulatory requirements and would need to have sufficient rights under applicable intellectual property laws to the method of manufacturing the product candidate. Obtaining the necessary FDA approvals or other qualifications under applicable regulatory requirements and ensuring non-infringement of third-party intellectual property rights could result in a significant interruption of supply and could require the new manufacturer to bear significant additional costs which may be passed on to us.

In addition, our reliance on Daewoong and Symatese entails additional risks, including reliance on our partners for regulatory compliance and quality assurance, the possible breach of either the Daewoong Agreement by Daewoong or the Symatese Agreement by Symatese, and the possible termination or nonrenewal of either agreement at a time that is costly or inconvenient for us. Our failure, or the failure of our partners, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products. Our dependence on our partners also subjects us to all of the risks related to our partner's business, which are all generally beyond our control. Our partners' ability to perform their obligations under their respective agreements is dependent on their operational and financial health, which could be negatively impacted by several factors, including changes in the economic, political and legislative conditions in their home countries and the broader region in general and the ability of our partners to continue to successfully attract customers and compete in its market.

Additionally, we are dependent on our licensors for day-to-day compliance with cGMP for production of our products. Facilities used by our licensors to produce the drug substance, devices and materials or finished products for commercial sale must pass inspection and be approved by the FDA and other relevant regulatory authorities. If the safety of our products is

compromised due to a failure to adhere to applicable laws or for other reasons, we may not be able to successfully commercialize our product and we may be held liable for injuries sustained as a result. In addition, the manufacturing facilities of certain of our suppliers are located outside of the United States. This may give rise to difficulties in importing our product into the United States or other countries as a result of, among other things, regulatory agency approval requirements, taxes, tariffs, local import requirements such as import duties or inspections, incomplete or inaccurate import documentation or defective packaging. Any of these factors could adversely impact our ability to effectively market and sell our products.

Any failure or refusal by our licensors or any other third party to supply our products that we may develop could delay, prevent or impair our clinical development or commercialization efforts.

Moreover, our licensors developed the manufacturing process for our products in facilities outside the United States. If these facilities were to be damaged, destroyed or otherwise unable to operate or comply with regulatory requirements, whether due to earthquakes, fire, floods, hurricanes, storms, tornadoes, other natural disasters, public health emergencies (such as the COVID-19 outbreak) employee malfeasance, terrorist acts, power outages or otherwise, or if operations at the facility is disrupted for any other reason, such an event could jeopardize our licensors' ability to manufacture our products as promptly as we or our customers expect or possibly at all. If our licensors are unable to manufacture our products within a timeframe that meets our and our customers' expectations, our business, prospects, financial results and reputation could be materially harmed. Any disaster recovery and business continuity plans that we and our licensors may have in place or put in place may not be adequate in the event of a serious disaster or similar event. We may incur substantial expenses as a result of our or our licensors' lack of disaster recovery and business continuity plans, or the adequacy thereof, which could have a material adverse effect on our business.

We forecast the demand for commercial quantities of our products, and if our forecasts are inaccurate, we may experience delays in shipments, increased inventory costs or inventory levels, and reduced cash flow.

We purchase our products from our licensors, Daewoong and, subject to regulatory approval, Symatese. Pursuant to our agreements with our licensors, we are obligated to submit forecasts of anticipated product orders and may, from time to time, submit purchase orders on the basis of these forecasting requirements. Our limited historical experience may not provide us with enough data to accurately predict future demand. In addition, we expect our licensors to manufacture our products for other markets in which we do not have exclusive rights. If our business significantly expands, our demand for commercial products would increase and our licensors may be unable to meet our increased demand. In addition, our product will have fixed future expiration dates. If we overestimate requirements for our products, we will have excess inventory, which may have to be disposed of if such inventory exceeds approved expiration dates, which would result in lost revenues and increase our expenses. If we underestimate requirements for our products, we may have inadequate inventory, which could interrupt, delay or prevent delivery of our products to our customers. Any of these occurrences would negatively affect our financial performance.

Risks Related to Intellectual Property

Third-party claims of intellectual property infringement may prevent or delay our commercialization efforts and interrupt our supply of products.

Our commercial success depends in part on our avoiding infringement of the proprietary rights of third parties. Competitors in the field of dermatology, medical aesthetic and neurotoxins have developed large portfolios of patents and patent applications in fields relating to our business. In particular, there are patents held by third parties that relate to the treatment with neurotoxin-based products for the indication we are currently marketing. There may also be patent applications that have been filed but not published that, when issued as patents, could be asserted against us. There is a substantial amount of litigation, both within and outside the United States, involving patent and other intellectual property rights in the technology, medical device and pharmaceutical industries, including patent infringement lawsuits, interferences, oppositions and inter-party reexamination proceedings before the U.S. Patent and Trademark Office, or USPTO. Numerous U.S. and foreign issued patents and pending patent applications, which are owned by third parties, exist in the fields in which we are developing Jeuveau®. As the technology, medical device and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidates may be subject to claims of infringement of the patent rights of third parties.

Third parties may assert that we or any of our current or future licensors, including Daewoong, are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, methods of manufacture or methods for treatment related to the use or manufacture of Jeuveau® or any future product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that Jeuveau® or any future product candidates may infringe. In addition,

third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of Jeuveau® or any future product candidates, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtain a license under the applicable patents or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our methods of use, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtain a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all.

In addition to claims of patent infringement, third parties may bring claims against us asserting misappropriation of proprietary technology or other information in the development, manufacture and commercialization of Jeuveau® or any of our future product candidates. Defense of such a claim would require dedicated time and resources, which time and resources could otherwise be used by us toward the maintenance of our own intellectual property and the development and commercialization of Jeuveau® and any of our future product candidates or by any of our current or future licensors for operational upkeep and manufacturing of our products. For example, prior to entering into the Medytox Settlement Agreement, we were a defendant in a lawsuit brought by Medytox in the Superior Court of the State of California, or the Medytox Litigation, and a respondent in an action filed by Allergan and Medytox in the U.S. International Trade Commission, each alleging, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain, or the BTX strain, that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture Jeuveau® (which Medytox claims is similar to its biopharmaceutical drug, Meditoxin) using the BTX strain, and that Daewoong thereby interfered with Medytox's plan to license Meditoxin to us, or the Medytox Litigation. Each of the Medytox Litigation and the ITC Action diverted the attention of our senior management and were costly, in terms of legal costs and the ultimate payments and royalties to be paid under the Medytox Settlement Agreement.

Additionally, we are aware that multiple entrants into the United States dermal filler market have faced litigation related to allegations of intellectual property infringement and have either expended large amounts of money to defend these claims, attempted to invalidate a third-party's intellectual property as a defense, or have entered into settlement and license agreements in order to commercialize their dermal filler products. As the importer of record and commercial distributor of Evolysse™, we may be required to defend these cases, which may result in increased legal costs and royalty costs.

Parties making claims against us or any of our current or future licensors may request and obtain injunctive or other equitable relief, which could effectively block our ability to further develop and commercialize one or more of our product candidates. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement, we or any of our current or future licensors may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement, obtain one or more licenses from third parties which may not be commercially or more available, pay royalties or redesign our infringing products or manufacturing processes, which may be impossible or require substantial time and monetary expenditure. Furthermore, even in the absence of litigation, we may need to obtain licenses from third parties to advance our research, manufacture clinical trial supplies or allow commercialization of our products or any future product candidates. We may fail to obtain any of these licenses at a reasonable cost or on reasonable terms, if at all. In that event, we would be unable to further develop and commercialize one or more of our product candidates, which could harm our business significantly. Similarly, third-party patents could exist that might be enforced against our products, resulting in either an injunction prohibiting our sales, or with respect to our sales, an obligation on our part to pay royalties and/or other forms of compensation to third parties.

If we or any of our current or future licensors, including Daewoong and Symatese, are unable to maintain, obtain or protect intellectual property rights related to our products, we may not be able to compete effectively in our market.

We and our current licensors, Daewoong and Symatese, currently rely upon a combination of trademarks, trade secret protection, confidentiality agreements and proprietary know-how. Botulinum toxin cannot be patented, as it is produced by *Clostridium botulinum*, a gram-positive, rod-shaped, anaerobic, spore-forming, motile bacterium with the ability to produce the neurotoxin botulinum. Only the manufacturing process for botulinum toxin can be patented, for which Daewoong has obtained a U.S. patent. Our trade secrets and other confidential proprietary information and those of our licensors could be disclosed or competitors could otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we or any of our current or future licensors may encounter significant problems in protecting and defending our or their intellectual property both in the United States and internationally. If we or any of our current or future licensors are unable to prevent material disclosure of the non-patented

intellectual property related to our products to third parties, we may not be able to establish or maintain a competitive advantage in our market, which could adversely affect our business.

In addition to the protection afforded by trademarks, confidentiality agreements and proprietary know-how, we may in the future rely upon in-licensed patents for any future product offerings. The strength of patents we may in-license in the technology and healthcare fields involves complex legal and scientific questions and can be uncertain. The patent applications that we may in-license may fail to result in issued patents with claims that cover any of our future product candidates in the United States or in other foreign countries, and the issued patents that we may in-license may be declared invalid or unenforceable.

We are reliant on the ability of our licensors, to maintain their intellectual property and protect their intellectual property against misappropriation, infringement or other violation. We may not have primary control over our future licensors' patent prosecution activities. Furthermore, we may not be allowed to comment on prosecution strategies, and patent applications may be abandoned by the patent owner without our knowledge or consent. With respect to patents that are issued to our licensors, or patents that may be issued on patent applications, third parties may challenge their validity, enforceability or scope, which may result in such patents being narrowed or invalidated. As a licensee, we are reliant on Daewoong, Symatese, and our future licensors to defend any third-party claims. Our licensors may not defend or prosecute such actions as vigorously or in the manner that we would have if entitled to do so, and we will be subject to any judgment or settlement resulting from such actions. Also, a third-party may challenge the validity of our in-licensing transactions. Furthermore, even if they are unchallenged, any of our future in-licensed patents and patent applications may not adequately protect the licensors or our intellectual property or prevent others from designing around their or our claims.

We may become involved in lawsuits to protect or enforce our intellectual property or the patents and other intellectual property of our licensors, which could be expensive and time-consuming.

Competitors may infringe our intellectual property, including any future patents we may acquire, or the patents and other intellectual property of our licensors, including Daewoong or Symatese. As a result, we or any of our current or future licensors may be required to file infringement claims to stop third-party infringement or unauthorized use. This can be expensive, particularly for a company of our size, and time-consuming. In addition, in an infringement proceeding, a court may decide that a patent of ours or any of our current or future licensors is not valid or is unenforceable, or may refuse to stop the other party from using the technology at issue on the grounds that our patent claims do not cover its technology or that the factors necessary to grant an injunction against an infringer are not satisfied.

An adverse determination of any litigation or other proceedings could put one or more of such patents at risk of being invalidated or interpreted narrowly. Interference, derivation or other proceedings brought at the USPTO may be necessary to determine the priority or patentability of inventions with respect to any of our future patent applications or those of our licensors or collaborators. Litigation or USPTO proceedings brought by us or any of our current or future licensors may fail or may be invoked against us or our licensors by third parties. Even if we are successful, domestic or foreign litigation or USPTO or foreign patent office proceedings may result in substantial costs and distraction to our management or the management of any of our current or future licensors, including Daewoong or Symatese. We may not be able, alone or with any of our current or future licensors or collaborators, to prevent misappropriation of our proprietary rights, particularly in countries where the laws may not protect such rights as fully as in the United States.

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

Most of our competitors are larger than we are and have substantially greater resources. They are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. In addition, the uncertainties associated with litigation could compromise our ability to raise the funds necessary to continue our clinical trials, continue our internal research programs, or in-license needed technology or other product candidates. There could also be public announcements of the results of the hearing, motions, or other interim proceedings or developments. If securities analysts or investors perceive those results to be negative, it could cause the price of shares of our common stock to decline.

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

Filing, prosecuting and defending patents on product candidates in all countries throughout the world would be prohibitively expensive, and our intellectual property rights in some countries outside the United States can be less extensive than those in the United States. In addition, the laws of some foreign countries do not protect intellectual property rights to the same extent as federal and state laws in the United States and in some cases may even force us to grant a compulsory license to competitors or other third parties. Consequently, we may not be able to prevent third parties from using our inventions in all countries outside the United States or from selling or importing products made using our inventions in and into the United States or other jurisdictions. Competitors may use our technologies in jurisdictions where we have not obtained patent protection to develop their own products and further, may export otherwise infringing products to territories where we have patent protection, but enforcement is not as strong as that in the United States. These products may compete with our products and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

Many companies have encountered significant problems in protecting and defending intellectual property rights in foreign jurisdictions. The legal systems of certain countries, particularly certain developing countries, do not favor the enforcement of patents and other intellectual property protection, particularly those relating to biopharmaceuticals, which could make it difficult for us to stop the infringement of our patents or marketing of competing products in violation of our proprietary rights generally. Proceedings to enforce our patent rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business, could put our patents at risk of being invalidated or interpreted narrowly and our patent applications at risk of not issuing and could provoke third parties to assert claims against us. We may not prevail in any lawsuits that we initiate, and the damages or other remedies awarded, if any, may not be commercially meaningful. Accordingly, our efforts to enforce our intellectual property rights around the world may be inadequate to obtain a significant commercial advantage from the intellectual property that we develop or license.

In addition, our ability to protect and enforce our intellectual property rights may be adversely affected by unforeseen changes in domestic and foreign intellectual property laws.

If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.

In addition to seeking patents for our product candidates, we also rely on trade secrets, including unpatented know-how, technology and other proprietary information, to maintain our competitive position.

We seek to protect our trade secrets, in part, by entering into non-disclosure and confidentiality agreements with parties who have access to them, such as our employees, collaborators, consultants, advisors and other third parties. We expect to enter into confidentiality and invention assignment agreements with our employees and consultants. Despite these efforts, any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive and time-consuming, and the outcome is unpredictable. In addition, some courts within and outside the United States are less willing or unwilling to protect trade secrets. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed.

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

We employ individuals who were previously employed at other pharmaceutical or medical aesthetic companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We may also be subject to claims that former employers or other third parties have an ownership interest in our patents. Litigation may be necessary to defend against these claims. We may not be successful in defending these claims, and even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees. Any litigation or the threat thereof may adversely affect our ability to hire employees. A loss of key personnel or their work product could diminish or prevent our ability to commercialize product candidates, which could have an adverse effect on our business, results of operations and financial condition.

We may need to license intellectual property from third parties, and such licenses may not be available or may not be available on commercially reasonable terms.

A third party may hold intellectual property, including patent rights that are important or necessary to the development of Evolysse™ or our future product candidates including certain formulations and methods of production of these products. It may be necessary for us to use the patented or proprietary technology of third parties to commercialize our product candidates, in which case we would be required to obtain a license from these third parties on commercially reasonable terms, or our business could be harmed, possibly materially.

If our trademarks and trade names are not adequately protected, then we may not be able to build name recognition in our markets of interest and our business may be adversely affected.

Our registered or unregistered trademarks or trade names may be challenged, infringed, circumvented or declared generic or determined to be infringing on other marks. We may not be able to protect our rights to these trademarks and trade names, which we need to build name recognition by potential partners or customers in our markets of interest. Over the long term, if we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively, and our business may be adversely affected.

Third parties may assert that we are using trademarks or trade names that are confusingly similar to their marks. If any third party were able to establish that our trademarks or trade names were infringing their marks, that third party may be able to block our ability to use the infringing trademark or trade name. In addition, if a third party were to bring such a claim, we would be required to dedicate time and resources to fight the claim, which time and resources could otherwise be used toward the maintenance of our own intellectual property.

Parties making claims against us may request and obtain injunctive or other equitable relief, which could prevent our ability to use the subject trademarks or trade names. Defense of these claims, regardless of their merit, would involve substantial litigation expense and would be a substantial diversion of employee resources from our business. In the event of a successful claim of infringement against us, we may have to pay substantial damages, including treble damages and attorneys' fees for willful infringement. We may be required to re-brand one or more of our products, product candidates, or services offered under the infringing trademark or trade name, which may require substantial time and monetary expenditure. Third parties could claim senior rights in marks which might be enforced against our use of trademarks or trade names, resulting in either an injunction prohibiting our sales under those trademarks or trade names.

Risks Related to Government Regulation

Our business and products are subject to extensive government regulation.

We are subject to extensive, complex, costly and evolving regulation by federal and state governmental authorities in the United States, the EU, Canada and other countries, principally by the FDA, the U.S. Drug Enforcement Administration, the Centers for Disease Control and Prevention, the EMA and other similar regulatory authorities. Our partners Daewoong and Symatese are also subject to extensive regulation by the FDA and their own country's regulatory authorities as well as other regulatory authorities. Our failure to comply with all applicable regulatory requirements, or our partner's failure to comply with applicable regulatory requirements, including those promulgated under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Controlled Substances Act, may subject us to operating restrictions and criminal prosecution, monetary penalties and other enforcement or administrative actions, including, sanctions, warnings, product seizures, recalls, fines, injunctions, suspension, revocation of approvals, or exclusion from future participation in the Medicare and Medicaid programs.

Following regulatory approval, we, and our direct and indirect suppliers, including Daewoong and Symatese, remain subject to the periodic inspection of our plants and facilities, review of production processes, and testing of our products to confirm that we are in compliance with all applicable regulations. Adverse findings during regulatory inspections may result in requirements that we implement REMS programs, requirements that we complete government mandated clinical trials, and government enforcement actions including those relating to labeling, advertising, marketing and promotion, as well as regulations governing manufacturing controls.

If we experience delays in obtaining approval or if we fail to obtain approval of our product candidates, the commercial prospects for our product candidates may be harmed and our ability to generate revenue will be materially impaired.

We may not obtain regulatory approval for the commercialization of any future product candidates.

The research, testing, manufacturing, labeling, approval, selling, import, export, marketing and distribution of drug and biologic products are subject to extensive regulation by the FDA and other regulatory authorities in the United States and other countries, with regulations differing from country to country. If we, our products or the manufacturing facilities for our products fail to comply with applicable regulatory requirements, a regulatory agency may:

- impose restrictions on the marketing or manufacturing of the product, suspend or withdraw product approvals or revoke necessary licenses;
- issue warning letters, show cause notices or untitled letters describing alleged violations, which may be publicly available;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- commence criminal investigations and prosecutions;
- impose injunctions;
- impose other civil or criminal penalties;
- suspend any ongoing clinical trials;
- delay or refuse to approve pending applications or supplements to approved applications filed by us;
- refuse to permit drugs or active ingredients to be imported or exported;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require us to initiate a product recall.

Any of the foregoing could materially harm our business and reputation. Prior to obtaining approval to commercialize a product candidate in the United States or abroad, we or our collaborators must demonstrate with substantial evidence from well-controlled clinical trials, and to the satisfaction of the FDA, the EMA or other similar foreign regulatory authorities, that such product candidates are safe and effective for their intended uses. Results from preclinical studies and clinical trials can be interpreted in different ways. Even if we and our collaborators believe the preclinical or clinical data for our product candidates are promising, such data may not be sufficient to support approval by the FDA, the EMA and other similar regulatory authorities. Administering product candidates to humans may produce undesirable side effects, which could interrupt, delay or halt clinical trials and result in the FDA, the EMA or other similar regulatory authorities delaying or denying approval of a product candidate for any or all targeted indications.

Regulatory approval of a BLA or BLA supplement, PMA, marketing authorization application, or MAA, or other product approval is not guaranteed, and the approval process is expensive and may take several years. The FDA, the EMA and other regulatory authorities have substantial discretion in the approval process. Despite the time and expense expended, failure can occur at any stage, and we could encounter problems that cause us to abandon, modify or repeat clinical trials, or perform additional preclinical studies and clinical trials. The number of preclinical studies and clinical trials that will be required for the FDA, the EMA or other regulatory approval varies depending on the product candidate, the disease or condition that the product candidate is designed to address and the regulations applicable to any particular product candidate. The FDA, the EMA and other regulatory authorities can delay, limit or deny approval of a product candidate for many reasons, including the following:

- a product candidate may not be deemed safe, effective, pure or potent;
- the data from preclinical studies and clinical trials may not be deemed sufficient;
- the FDA or other regulatory authorities might not approve our third-party manufacturers' processes or facilities;

- deficiencies in the formulation, quality control, labeling, or specifications of a product candidate or in response to citizen petitions or similar documents filed in connection with the product candidate;
- general requirements intended to address risks associated with a class of drugs, such as a new REMS requirement for neurotoxins, dermal fillers or other aesthetic products;
- the enactment of new laws or promulgation of new regulations that change the approval requirements; or
- the FDA or other regulatory authorities may change their approval policies or adopt new regulations.

If any future product candidates fail to demonstrate safety and efficacy in clinical trials or do not gain approval, our business and results of operations will be materially and adversely harmed.

We are subject to ongoing regulatory obligations and continued regulatory review, which may result in significant additional expense, limit or delay regulatory approval and subject us to penalties if we fail to comply with applicable regulatory requirements.

Jeuveau® and, subject to regulatory approval, Evolysse™ and any other approved products are subject to continual regulatory review by the FDA, the EMA and other similar regulatory authorities.

Any regulatory approvals that we or our collaborators receive for any future product candidates may also be subject to limitations on the approved indications for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase IV clinical trials, and surveillance to monitor the safety and efficacy of the product. In addition, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for Jeuveau® and any other future product candidates, such as Evolysse™, will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMP requirements and compliance with good clinical practice, or GCP, requirements, for any clinical trials that we conduct post-approval. Later discovery of previously unknown problems with Jeuveau® or any future product candidates, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things: restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls; fines, warning letters or holds on clinical trials; refusal by the FDA, the EMA or other similar regulatory authorities to approve pending applications or supplements to approved applications filed by us or our strategic collaborators or suspension or revocation of product license approvals; product seizure or detention or refusal to permit the import or export of products; and injunctions or the imposition of civil or criminal penalties.

Our ongoing regulatory requirements may also change from time to time, potentially harming or making costlier our commercialization efforts. If we are slow or unable to adapt to changes in existing requirements or the adoption of new requirements or policies, or if we are not able to maintain regulatory compliance, we may lose any marketing approval that we may have obtained and we may not achieve or sustain profitability, which would adversely affect our business.

If we fail to obtain regulatory approvals in foreign jurisdictions for Jeuveau® or any future product candidates, we will be unable to market our products outside of the United States.

In addition to regulations in the United States, we are and will be subject to a variety of foreign regulations governing manufacturing, clinical trials, commercial sales and distribution of our future products. Whether or not we obtain FDA approval for a product candidate, we must obtain approval of the product by the comparable regulatory authorities of foreign countries before commencing clinical trials or marketing in those countries. The approval procedures vary among countries and can involve additional clinical testing, and the time required to obtain approval may differ from that required to obtain FDA approval. Clinical trials conducted in one country may not be accepted by regulatory authorities in other countries. Approval by the FDA does not ensure approval by regulatory authorities in other countries, and approval by one or more foreign regulatory authorities does not ensure approval by regulatory authorities in other foreign countries or by the FDA. The foreign regulatory approval process may include all of the risks associated with obtaining FDA approval. We may not be able to file for regulatory approvals or to do so on a timely basis, and even if we do file, we may not receive necessary approvals to commercialize our products in markets outside of the United States.

Jeuveau® or any future products may cause or contribute to adverse medical events that we are required to report to

regulatory agencies and if we fail to do so, we could be subject to sanctions that would materially harm our business.

Some participants in our clinical trials have reported adverse events after being treated with Jeuveau®. If we are successful in commercializing Jeuveau® or any other product candidate, including Evolysse™, the FDA and other regulatory agency regulations require that we report certain information about adverse medical events if those products may have caused or contributed to those adverse events. The timing of our obligation to report would be triggered by the date we become aware of the adverse event as well as the nature of the event. We may fail to report adverse events that we become aware of within the prescribed timeframe. We may also fail to appreciate that we have become aware of a reportable adverse event, especially if it is not reported to us as an adverse event or if it is an adverse event that is unexpected or removed in time from the use of our products. If we fail to comply with our reporting obligations, the FDA, the EMA or other similar regulatory authorities could take action including criminal prosecution, the imposition of civil monetary penalties, seizure of our products, or delay in approval or clearance of future products.

We may in the future be subject to various U.S. federal and state laws pertaining to health care fraud and abuse, including anti-kickback, self-referral, false claims and fraud laws, and any violations by us of such laws could result in fines or other penalties.

While we do not expect that Jeuveau® or Evolysse™ will subject us to the various U.S. federal and most state laws intended to prevent health care fraud and abuse, we may in the future become subject to such laws. The Anti-Kickback Statute prohibits the offer, receipt, or payment of remuneration in exchange for or to induce the referral of patients or the use of products or services that would be paid for in whole or part by Medicare, Medicaid or other federal health care programs. Remuneration has been broadly defined to include anything of value, including cash, improper discounts, and free or reduced price items and services. Many states have similar laws that apply to their state health care programs as well as private payors. Violations of anti-kickback and other applicable laws can result in exclusion from federal health care programs and substantial civil and criminal penalties.

The federal False Claims Act, or FCA, imposes liability on persons who, among other things, present or cause to be presented false or fraudulent claims for payment by a federal health care program. The FCA has been used to prosecute persons submitting claims for payment that are inaccurate or fraudulent, that are for services not provided as claimed, or for services that are not medically necessary. The FCA includes a whistleblower provision that allows individuals to bring actions on behalf of the federal government and share a portion of the recovery of successful claims. Some state law equivalents of the above federal laws, such as the Anti-Kickback Statute and FCA, apply to items or services regardless of whether the good or service was reimbursed by a government program, so called all-payor laws. These all-payor laws could apply to our sales and marketing activities even if the Anti-Kickback Statute and FCA laws are inapplicable.

If our marketing or other arrangements were determined to violate anti-kickback or related laws, including the FCA or an all-payor law, then we could be subject to penalties, including administrative, civil and criminal penalties, damages, fines, disgorgement, the exclusion from participation in federal and state healthcare programs, individual imprisonment or the curtailment or restructuring of our operations, any of which could materially and adversely affect our ability to operate our business and our financial results.

State and federal authorities have aggressively targeted pharmaceutical companies for alleged violations of these anti-fraud statutes, based on improper research or consulting contracts with doctors, certain marketing arrangements with pharmacies and other healthcare providers that rely on volume-based pricing, off-label marketing schemes, and other improper promotional practices. Companies targeted in such prosecutions have paid substantial fines, have been ordered to implement extensive corrective action plans, and have in many cases become subject to consent decrees severely restricting the manner in which they conduct their business, among other consequences. Additionally, federal and state regulators have brought criminal actions against individual employees responsible for alleged violations. If we become the target of such an investigation or prosecution based on our contractual relationships with providers or institutions, or our marketing and promotional practices, we could face similar sanctions, which would materially harm our business.

Also, the FCPA and similar worldwide anti-bribery laws generally prohibit companies and their intermediaries from making improper payments to non-U.S. officials for the purpose of obtaining or retaining business. Our internal control policies and procedures may not protect us from reckless or negligent acts committed by our employees, future distributors, partners, collaborators or agents. Violations of these laws, or allegations of such violations, could result in fines, penalties or prosecution and have a negative impact on our business, results of operations and reputation.

Legislative or regulatory healthcare reforms in the United States and other countries may make it more difficult and costly for us to obtain regulatory clearance or approval of any future product candidates and to produce, market, and distribute

our products after clearance or approval is obtained.

From time to time, legislation is drafted and introduced in the U.S. Congress or other countries that could significantly change the statutory provisions governing the regulatory clearance or approval, manufacture, and marketing of regulated products or the reimbursement thereof. In addition, regulations and guidance are often revised or reinterpreted by the FDA and other regulatory authorities in ways that may significantly affect our business and our products. Any new regulations or revisions or reinterpretations of existing regulations may impose additional costs or lengthen review times of any future product candidates. Such changes could, among other things, require changes to manufacturing or marketing methods, changes to product labeling or promotional materials, recall, replacement, or discontinuance of one or more of our products; and additional recordkeeping.

Each of these would likely entail substantial time and cost and could materially harm our business and our financial results. In addition, delays in receipt of or failure to receive regulatory clearances or approvals for any future products would harm our business, financial condition and results of operations.

Risks Related to Our Common Stock

Medytox and Daewoong each own a significant portion of our common stock and may exert significant control over our business.

We had 56,937,823 shares of common stock issued and outstanding as of June 30, 2023. As of June 30, 2023, Medytox owned 8.9% of our outstanding shares of common stock and Daewoong owned 5.5% of our outstanding shares of common stock.

This concentrated ownership position may provide Medytox or Daewoong with influence in determining the outcome of corporate actions requiring stockholder approval, including the election and removal of directors. The significant stock ownership by Medytox and Daewoong may also discourage transactions involving a change-of-control of our company, including transactions in which you as a holder of our common stock might otherwise receive a premium for your shares.

Securities class action and derivative lawsuits have been filed against us and certain of our officers and directors, which could result in substantial costs and could divert management attention.

As disclosed in Part II, Item 1. “Legal Proceedings” we and certain of our officers have been named as defendants in a securities class action lawsuit and we are a nominal defendant in derivative lawsuits filed against certain of our officers and directors. We maintain director and officer’s insurance coverage and continue to engage in vigorous defense of such litigation. If we are not successful in our defense of such litigation, we could be forced to make significant payments to or other settlements with our stockholders and their lawyers outside of our insurance coverage, and such payments or settlement arrangements could have a material adverse effect on our business, operating results or financial condition. We may also be the target of this type of litigation in the future, as companies that have experienced volatility in the market price of their stock have been subject to securities act litigation. Even if the claims asserted in these lawsuits are not successful, the litigation could result in substantial costs and significant adverse impact on our reputation and divert management’s attention and resources, which could have a material adverse effect on our business, operating results or financial condition.

The trading price of our common stock has been volatile, and purchasers of our common stock could incur substantial losses.

Our stock price is volatile. For example, the closing price of our common stock during the six months ended June 30, 2023 has ranged from a low of $7.23 to a high of $11.05. The stock market in general and the market for earlier stage pharmaceutical and medical aesthetic companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price for our common stock may be influenced by many factors, some of which are beyond our control, including:

- changes in financial estimates or guidance, including our ability to meet our future revenue and operating profit or loss estimates or guidance;
- the public’s reaction to our earnings releases, other public announcements and filings with the SEC or those of companies that are perceived to be similar to us;
- variations in our financial results or those of companies that are perceived to be similar to us;

- any termination or loss of rights under the Daewoong Agreement or the Symatese Agreement;
- adverse developments in the regulatory approval process for Evolysse™;
- the FDA or other U.S. or foreign regulatory or legal actions or changes affecting us or our industry;
- adverse developments concerning our manufacturer or any future strategic partnerships;
- adverse developments affecting our compliance with the Medytox Settlement Agreement;
- adverse developments concerning litigation pending against us;
- introductions and announcements of new technologies and products by us, any commercialization partners or our competitors, and the timing of these introductions and announcements;
- success or failure of competitive products or medical aesthetic products generally;
- announcements of results of clinical trials or regulatory approval or disapproval of product candidates;
- unanticipated safety concerns related to the use of Jeuveau® or any of our future products;
- changes in the structure of healthcare payment systems;
- announcements by us or our competitors of significant acquisitions, licenses, strategic partnerships, new product approvals and introductions, joint ventures or capital commitments;
- overall financial market conditions for the pharmaceutical and biopharmaceutical sectors and issuance of securities analysts' reports or recommendations;
- rumors and market speculation involving us or other companies in our industry;
- short selling of our common stock or the publication of opinions regarding our business prospects in a manner that is designed to create negative market momentum;
- sales of substantial amounts of our stock by Medytox, Daewoong or other significant stockholders or our insiders, or the expectation that such sales might occur;
- news reports relating to trends, concerns and other issues in medical aesthetics market or the pharmaceutical or biopharmaceutical industry;
- operating and stock performance of other companies that investors deem comparable to us and overall performance of the equity markets;
- additions or departures of key personnel, including our Chief Executive Officer, Chief Financial Officer, and Chief Medical Officer;
- intellectual property, product liability or other litigation against us, our manufacturer or other parties on which we rely or litigation against our general industry;
- changes in our capital structure, such as future issuances of securities and the incurrence of additional debt;
- changes in accounting standards, policies, guidelines, interpretations or principles;
- economic conditions in the markets in which we operate, including those related to COVID-19 and the Russian-Ukrainian conflict; and
- other factors described in this "Risk Factors" section.

In addition, the stock market in general, and the market for pharmaceutical, biotechnology and medical aesthetics companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may affect the market price of our common

stock, regardless of our actual operating performance. In the past, following periods of volatility in the overall market and the market prices of a particular company's securities, securities class action litigation has often been instituted against that company. We may become the target of this type of litigation in the future. Securities litigation, if instituted against us, could result in substantial costs and divert our management's attention and resources from our business.

Future sales of our common stock by us, Medytox, Daewoong or others, or the perception that such sales may occur, could depress the market price of our common stock.

Sales by us of a substantial number of shares of our common stock in the public market, or the perception that these sales might occur, could significantly reduce the market price of our common stock and could impair our ability to raise capital through the sale of additional equity securities.

Additionally, as discussed above, each of Medytox and Daewoong owns a significant portion of our outstanding shares of common stock. Additionally, the shares of common stock held by Medytox are subject to contractual restrictions on transfer that, subject to certain limited exceptions such as transfers to affiliates prohibit Medytox from transferring more than 25% of the shares it holds prior to September 16, 2023, more than 50% of the shares it holds prior to September 16, 2024 and more than 75% of the shares it holds prior to September 16, 2025, with such contractual restrictions terminating on September 16, 2025. The sale by Medytox or Daewoong of a substantial number of shares of our common stock, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

We have filed a registration statement with the SEC covering shares of our common stock available for future issuance under our 2017 Omnibus Incentive Plan and may file future registration statements covering shares of our common stock for future issuance under any future plans. Upon effectiveness of such registration statements, any shares subsequently issued under such plans will be eligible for sale in the public market, except to the extent that they are restricted by the contractual arrangements discussed above and subject to compliance with Rule 144 in the case of our affiliates. Sales of a large number of the shares issued under these plans in the public market, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

Anti-takeover provisions in our certificate of incorporation and bylaws, as well as Delaware law, could discourage a takeover.

Our certificate of incorporation, bylaws and Delaware law contain provisions that might enable our management to resist a takeover and might make it more difficult for an investor to acquire a substantial block of our common stock. These include the following provisions:

- permit our board of directors to issue shares of preferred stock, with any rights, preferences and privileges as they may designate, without stockholder approval, which could be used to dilute the ownership of a hostile bidder significantly;
- provide that the authorized number of directors may be changed only by resolution of our board of directors and that a director may only be removed for cause by the affirmative vote of the holders of at least 66 2/3% of our voting stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes, with each class serving staggered three-year terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;
- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company;

- prohibit cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates; and
- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, which may delay the ability of our stockholders to force consideration by our company of a take-over proposal or to take certain corporate actions, including the removal of directors.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, we are subject to Section 203 of the General Corporation Law of the State of Delaware, or the DGCL, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This provision could have the effect of delaying or preventing a change-of-control, whether or not it is desired by or beneficial to our stockholders. Further, other provisions of Delaware law may also discourage, delay or prevent someone from acquiring us or merging with us.

Our certificate of incorporation designates the Court of Chancery of the State of Delaware as the sole and exclusive forum for certain types of actions and proceedings that may be initiated by our stockholders, which could limit our stockholders' ability to obtain a favorable judicial forum for disputes with us or our directors, officers, employees or agents.

Our certificate of incorporation provides that, unless we consent in writing to an alternative forum, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for all "internal corporate claims." "Internal corporate claims" are claims that are based upon a violation of a duty by a current or former director, officer or stockholder in such capacity, or as to which Title 8 of the DGCL confers jurisdiction upon the Court of Chancery of the State of Delaware, or the Court of Chancery, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants and the claim not being one which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. For example, this choice of forum provision would not apply to claims brought pursuant to the Exchange Act or the Securities Act of 1933, as amended, or any other claim for which the federal courts have exclusive jurisdiction. Any person purchasing or otherwise acquiring any interest in any shares of our capital stock shall be deemed to have notice of and to have consented to this provision of our certificate of incorporation. The choice of forum provision in our certificate of incorporation will not relieve us of our duties to comply with the federal securities laws and the rules and regulations thereunder, and our stockholders will not be deemed to have waived our compliance with these laws, rules and regulations.

This choice of forum provision may limit our stockholders' ability to bring a claim in a judicial forum that they find favorable for disputes with us or our directors, officers, employees or agents, which may discourage such lawsuits against us and our directors, officers, employees and agents even though an action, if successful, might benefit our stockholders. Stockholders who do bring a claim in the Court of Chancery could face additional litigation costs in pursuing any such claim, particularly if they do not reside in or near Delaware. The Court of Chancery may also reach different judgments or results than would other courts, including courts where a stockholder considering an action may be located or would otherwise choose to bring the action, and such judgments or results may be more favorable to us than to our stockholders. Alternatively, if a court were to find this provision of our certificate of incorporation inapplicable to, or unenforceable in respect of, one or more of the specified types of actions or proceedings, we may incur additional costs associated with resolving such matters in other jurisdictions, which could have a material adverse effect on our business, financial condition or results of operations.

Claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

Our certificate of incorporation and bylaws provide that we can indemnify our directors and officers, in each case to the fullest extent permitted by Delaware law. Separate indemnity agreements have been issued with each director and executive officer.

In addition, as permitted by Section 145 of the DGCL, our bylaws and our indemnification agreements that we have entered into with our directors and officers, among other things provide that:

- We have indemnified our directors and officers for serving us in those capacities, or for serving as a director, officer, employee or agent of other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that we may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to our best interest and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.
- We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.
- We will be required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.
- The rights conferred in our bylaws will not be exclusive. We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

As a result, claims for indemnification by our directors and officers may reduce our available funds to satisfy successful third-party claims against us and may reduce the amount of money available to us.

We are an "emerging growth company," and the reduced reporting requirements available to emerging growth companies could make our common stock less attractive to investors.

We qualify as an "emerging growth company," as defined in the JOBS Act. For as long as we remain an emerging growth company, we may take advantage of certain exemptions from various reporting requirements that are applicable to other public companies. These provisions include, but are not limited to:

- being permitted to have only two years of audited financial statements and only two years of related selected financial data and management's discussion and analysis of financial condition and results of operations disclosure;
- an exemption from compliance with the auditor attestation requirement in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act;
- reduced disclosure about executive compensation arrangements in our periodic reports, registration statements and proxy statements; and
- exemptions from the requirements to seek non-binding advisory votes on executive compensation or golden parachute arrangements.

To the extent we take advantage of any of these exemptions, the information that we provide stockholders may be different than what is available with respect to other public companies. Investors may find our common stock less attractive because we will rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our stock price may be more volatile.

Even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company" which would allow us to take advantage of many of the same exemptions from disclosure requirements, including exemption from compliance with the auditor attestation requirements of Section 404(b) as long as we do not otherwise also qualify as an "accelerated filer" or "large accelerated filer" for SEC reporting purposes and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Investors could find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our trading price may be more volatile.

General Risk Factors

Our business could be negatively affected as a result of actions of activist stockholders, and such activism could impact the trading value of our securities.

Stockholders may, from time to time, engage in proxy solicitations or advance stockholder proposals, or otherwise attempt to effect changes and assert influence on our board of directors and management. Activist campaigns that contest or conflict with our strategic direction or seek changes in the composition of our board of directors could have an adverse effect on our operating results and financial condition. A proxy contest would require us to incur significant legal and advisory fees, proxy solicitation expenses and administrative and associated costs and require significant time and attention by our board of directors and management, diverting their attention from the pursuit of our business strategy. Any perceived uncertainties as to our future direction and control, our ability to execute on our strategy, or changes to the composition of our board of directors or senior management team arising from a proxy contest could lead to the perception of a change in the direction of our business or instability which may result in the loss of potential business opportunities, make it more difficult to pursue our strategic initiatives, or limit our ability to attract and retain qualified personnel and business partners, any of which could adversely affect our business and operating results. If individuals are ultimately elected to our board of directors with a specific agenda, it may adversely affect our ability to effectively implement our business strategy and create additional value for our stockholders. We may choose to initiate, or may become subject to, litigation as a result of the proxy contest or matters arising from the proxy contest, which would serve as a further distraction to our board of directors and management and would require us to incur significant additional costs. In addition, actions such as those described above could cause significant fluctuations in our stock price based upon temporary or speculative market perceptions or other factors that do not necessarily reflect the underlying fundamentals and prospects of our business.

If securities or industry analysts publish unfavorable research about our business or decrease the frequency or cease to provide coverage of our company, our stock price and trading volume could decline.

The trading market for our common stock depends in part on the research and reports that equity research analysts publish about us and our business. If one or more of the equity research analysts who cover us downgrades our common stock or issues other unfavorable commentary or research the price of our common stock may decline. If one or more equity research analysts ceases coverage of our company or fails to publish reports on us regularly, demand for our common stock could decrease, which in turn could cause the trading price or trading volume of our common stock to decline.

We have not paid dividends in the past and do not expect to pay dividends in the future, and any return on investment may be limited to the value of our stock.

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future, and the payment of dividends is also restricted under our credit facility. The payment of dividends on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our board of directors may consider relevant. If we do not pay dividends, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain executive management and qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, the Sarbanes-Oxley Act, the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Nasdaq Marketplace Rules and other applicable securities rules and regulations. Complying with these rules and regulations will increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources, particularly after we are no longer an "emerging growth company," as defined in the JOBS Act. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results. The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. In order to maintain and, if required, improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight may be required. As a result, management's attention may be diverted from other business concerns, which could adversely affect our business and operating results. We may need to hire more employees in the future or engage outside consultants to assist us in complying with these requirements, which will increase our costs and expenses.

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and

governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased selling, general and administrative expenses and a diversion of our management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

On August 1, 2023, Peter Farrell, provided notice of his intention to voluntarily resign from his position as a member of our Board of Directors effective as of September 30, 2023. Dr. Farrell is not resigning as a result of any disagreement with us or our Board of Directors. Dr. Farrell serves as a Class I Director and as a member of our Audit Committee and Nominating and Corporate Governance Committee. The Board of Directors intends to replace Dr. Farrell with at least one additional qualified existing director to its Audit Committee and to its Nominating and Corporate Governance Committee prior to Dr. Farrell's departure.

Item 6. Exhibits.

EXHIBIT INDEX

Exhibit Number	Exhibit Title	Incorporated by Reference				Filed Herewith (x)
		Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	8-K	001-38381	3.1	2/12/18	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation, dated June 12, 2023	8-K	001-38381	3.1	6/14/23	
3.3	Amended and Restated Bylaws	8-K	001-38381	3.2	2/12/18	
10.1‡	Fifth Amendment to Supply Agreement, dated as of April 20, 2023, by and between Daewoong Pharmaceutical Co. Ltd. and Evolus, Inc.					X
10.2‡	License, Supply, and Distribution Agreement, dated as of May 9, 2023 by and between Symatese S.A.S. and the Registrant					X
10.3‡	Third Amendment to Loan Agreement, dated as of May 9, 2023, by and among Evolus, Inc. (as Borrower and a Credit Party), BioPharma Credit PLC (as Collateral Agent), BPCR Limited Partnership (as a Lender), and BioPharma Credit Investments V (Master) LP (as a Lender).					X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
32.1#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					

The information in Exhibit 32.1 shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or the Exchange Act, or otherwise subject to the liabilities of that section, nor shall it be deemed incorporated by reference in any filing under the Securities Act or the Exchange Act (including this Quarterly Report on Form 10-Q), unless the Registrant specifically incorporates the foregoing information into those documents by reference.

‡ Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K.

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SIGNATURES

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

Evolus, Inc.

Date: August 2, 2023

By: /s/ David Moatazedi
David Moatazedi
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 2, 2023

By: /s/ Sandra Beaver
Sandra Beaver
Chief Financial Officer
(Principal Financial Officer)

5TH AMENDMENT

This **5TH AMENDMENT** ("5**th Amendment**") is made and entered into on April 20th, 2023 ("**5th Amendment Effective Date**") by and between Daewoong Pharmaceutical Co., Ltd. ("**DAEWOONG**") and Evolus, Inc. **EVOLUS** and

as amends that certain License & Supply Agreement between the Parties dated September 30, 2013, as amended by that certain First Amendment dated February 26, 2014 and that certain Second Amendment dated July 15, 2014 and that certain Third Amendment dated March 23, 2021 and that certain fourth Amendment dated December 12th, 2022 (collectively, the "**Original Agreement**")and

WHEREAS, DAEWOONG and EVOLUS desire to amend the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. CAPITALIZED TERMS. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings assigned to them in the Original Agreement. All references to the term "Agreement" in the Original Agreement shall be deemed to include all of the terms and conditions of this 5th Amendment.

2. AMENDMENT.

(a) New Definition(s). Article 1 of the Original Agreement is hereby amended by adding the following definition(s):

""**National Core Technology**" means any Information herein containing important industrial technology designated by the Ministry of Trade, Industry and Energy of the Republic of Korea, pursuant to the Korean Act on Prevention of Divulgence and Protection of Industrial Technology, among others, any information related to the production technology of botulinum toxin-producing strains and botulinum toxin manufacturing process, and/or any information set forth in Common Technical Document ("**CTD**"), including but not limited to process controls, control of materials, controls of clinical steps and intermediaries, process validation and/or evaluation, manufacturing process development, batch formula, or manufacturing facilities and equipment.""

""Representative" has the meaning set forth in Section 14.2."

(b) Amendment of Section 14.1. Section 14.1 of the Original Agreement is hereby amended and restated in its entirety and replaced with the following:

"14. 1 Each of the Parties will keep strictly confidential, and not disclose, use or exploit any of the Information of the other Party without prior written consent of such other Party (i) in the case of Information being a trade secret or National Core Technology, as long as such Information remains a trade secret or National Core Technology, and (ii) in the case of any other Information, during the Term of this Agreement and for three (3) years thereafter,, except in the performance of its obligations and exercise of its rights under this Agreement. Each Party will treat the other Party's Information with the same degree of confidentiality as it keeps its own confidential information (but in no event will it use less than reasonable care with such Information). Notwithstanding the foregoing, the provisions of this Article 14 shall not apply to any information that can be shown by the Receiving Party:

(a) To have been known or in the possession of the Receiving Party prior to the date of its actual receipt from the Disclosing Party without breaching any provision of this Agreement or any other agreement between the Parties or of any agreement between the Disclosing Party and a Third Party, by such Third Party.

(b) To be or to have become available to the public other than through any act or omission of the Receiving Party in breach of this Agreement or any other agreement between the Parties;

(c) To have been disclosed to the Receiving Party, other than under an obligation of confidentiality, by a Third Party that had no obligation to the Disclosing Party not to disclose such information to others; or

(d) To have been subsequently independently developed by the Receiving Party without use of the Disclosing Party Information as demonstrated by competent contemporaneous tangible records."

(c) Amendment of Section 14.2. Section 14.2 of the Original Agreement is hereby amended and restated in its entirety and replaced with the following.

"14.2 Receiving Party shall ensure that its Affiliates, directors, officers, employees, agents, and consultants who have access to Information, shall consider and hold any of the Information as herein contemplated; provided that Receiving Party shall restrict access and use of the Disclosing Party's Information containing National Core Technology either in part or full to the Receiving Party's Affiliates, directors, officers, employees, agents, and consultants (each a "Representative"), unless any such Representative (i) has a definable need to know or access to Information, and (ii) signs a pledge of confidentiality and agrees not to divulge any Information containing National Core Technology. The Receiving Party shall provide the Disclosing Party with the pledges of confidentiality signed by Representatives upon request by the Disclosing Party."

(d) Addition of Sections 14.4, 14.8 and 14.9. Article 14 of the Original Agreement is hereby further amended to add the following new Sections 14.8 and 14.9.

14.4. The Receiving Party shall keep Confidential Information belonging to the Disclosing Party in appropriately secure locations. Upon expiration or termination of this Agreement, the Receiving Party, upon the written request of the Disclosing Party, shall (i) promptly return to the Disclosing Party or destroy (with such destruction to be certified to the Disclosing Party in writing by an officer of the Receiving Party) all Confidential Information transferred or prepared by the Disclosing Party and all copies or reproductions of such documents; (ii) use its commercially reasonable efforts to delete all Confidential Information transferred or prepared by the Disclosing Party from any computer, word processor, disk or similar electronic device; and (iii) within ten (10) days of receipt of such written request from the Disclosing Party, certify to the Disclosing Party in writing its compliance with the foregoing; provided, however, that the Receiving Party may retain one (1) copy of any Confidential Information in an appropriately secure location solely for archival purposes, to the extent required by law; provided that such Confidential Information so retained shall remain subject to the confidentiality obligations of this Agreement.

"14.8 Each Party understands and acknowledges that any disclosure or misappropriation of any of Information in violation of this Article 14 may cause the Disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any such further disclosure or misappropriation and for such other relief as the Disclosing Party deems appropriate. Such right of the Disclosing Party shall be exercisable in addition to the remedies otherwise available at law or in equity."

"14.9 Without limiting DAEWOONG's audit right set forth in Section 1.27, for purposes of ensuring the EVOLUS's compliance with applicable laws and performance of confidentiality obligations hereunder, DAEWOONG shall have the right ("Monitoring Right") to, including through its Affiliates, or Representatives, (i) visit and inspect the property and premises of EVOLUS and discuss with the responsible directors, officers, and employees of the EVOLUS and (ii) review and examine the internal procedures established and maintained by EVOLUS concerning the protection of Information, and EVOLUS shall cooperate with the exercise of the Monitoring Right by DAEWOONG; provided that (a) DAEWOONG shall give the EVOLUS not less than thirty (30) calendar

days' prior notice in writing; (b) such inspection and/or monitoring shall be performed during normal business hours and shall be limited to the activities related to performance of the confidentiality obligations hereunder; (c) all information provided to DAEWOONG, its Affiliates, or Representatives during any such inspection and/or monitoring shall be deemed Information and is subject to the confidentiality obligations hereunder; (d) DAEWOONG may not exercise the Monitoring Right more than once each calendar year; and (e) DAEWOONG shall bear its own costs of an inspection and/or monitoring set forth herein. DAEWOONG may request EVOLUS to remedy any deficiency identified during the inspection and/or monitoring within fourteen days if the deficiency relates to EVOLUS's performance of this Agreement, or within sixty (60) days if the deficiency relates to any other matter, including compliance with applicable laws, and EVOLUS shall comply with such request."

3. SUPPLEMENT.

The Parties have agreed to supplement the Original Agreement as set forth herein.

(a) The Parties agrees that DAEWOONG performs CBPA testing for the purpose of routine release testing for the Product in the European Territories by its designee ("CRO") and the Parties bear a service fee of such CBPA testing ("Service Fee") as follows;

- Phase 1 of CBPA testing ("Phase 1") means the CBPA testing performed before 1) DAEWOONG 's technical transfer for CBPA testing is completed and 2) DAEWOONG conducts CBPA testing on their own. Certificate of Analysis, the result of the Phase 1, will be issued under the name of both DAEWOONG and EVOLUS, and [***].

- Phase 2 of CBPA testing ("Phase 2") means the CBPA testing performed after 1) DAEWOONG 's technical transfer for CBPA testing is completed and 2) DAEWOONG conducts CBPA testing on their own. Certificate of Analysis, the result of the Phase 2, will be issued under the name of EVOLUS only, and [***].

(b) EVOLUS agrees to reimburse DAEWOONG for Service Fee paid by DAEWOONG to CRO upon the written request of DAEWOONG, and EVOLUS shall pay to DAEWOONG such Service Fee within thirty (30) days from the receipt of the invoice by DAEWOONG.

4. COUNTERPARTS. This 5th Amendment may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument. Signatures to this 5th Amendment transmitted by facsimile, email, portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of this Agreement shall have the same effect as the physical delivery of the paper document bearing original signatures.

5. NO OTHER AMENDMENTS. Except as herein set forth, the Original Agreement has not been modified and, as amended by this 5th Amendment, remains in full force and effect. To the extent there are any inconsistencies or ambiguities between the specific subject matter of this 5th Amendment and the Original Agreement, the terms of this 5th Amendment shall supersede the Original Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this 5th Amendment effective as of the 5th Amendment Effective Date.

DAEWOONG PHARMACEUTICAL CO., LTD.	**Evolus, Inc.**
By: /s/Seng-Ho Jeon	By: /s/David Moatazedi
Name: Seng-Ho Jeon	Name: David Moatazedi
Title: CEO & President	Title: CEO

LICENSE, SUPPLY, AND DISTRIBUTION AGREEMENT

This License, Supply, and Distribution Agreement ("Agreement") is effective as of May 9, 2023, ("Effective Date") between:

Symatese, a French *société par actions simplifiée* with a sole shareholder, registered with the Lyon Trade and Companies Register under number [***], whose registered office is located [***], represented by its current Directeur Général, Mr. Jean-Paul Gérardin, duly empowered for the purposes herein (hereinafter referred to as "Symatese");

and

Evolus, Inc., a Delaware Corporation, whose registered office is 520 Newport Center Dr., Suite 1200, Newport Beach, CA, 92660 USA, represented by its current Chief Executive Officer, Mr. David Moatazedi duly empowered for the purposes herein (Hereinafter referred to as "Evolus").

Symatese and Evolus are referred to individually as a "Party" and collectively as the "Parties".

RECITALS

A. Symatese develops, markets, and sells injectable products for aesthetic and dermatologic uses and, as such, has developed a range of wrinkle-filling product using an innovative technology code named as FASY Technology (as defined below).

B. Evolus desires to market, sell, and distribute, on an exclusive basis, Symatese's dermal filler products in the Territory for use in the Field (as defined below).

C. Symatese and Evolus desire to enter into this Agreement for such dermal filler products under the terms and conditions set out below.

In consideration of the premises and the mutual covenants contained herein, the Parties agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement (other than headings) have the following meanings set forth in this Article 1, or, if not listed in this Article 1, the meanings as designated in the text of this Agreement.

1.1 "Affiliate" means, with respect to a Person, any Person who directly or indirectly Controls or is Controlled by or is under common Control with such Person. Notwithstanding the foregoing, neither Party will be deemed an Affiliate of the other Party.

1.2 "Applicable Law" means the applicable provisions of any and all national, regional, provincial, territorial, state and local laws, treaties, legislation, statutes, rules, regulations, administrative codes, and ordinances, and any and all directives, and orders or administrative decisions of any Governmental Authority having jurisdiction over or related to the subject matter of this Agreement.

1.3 "Business Day" means any day (excluding Saturdays and Sundays) that is not a legal holiday in [***], and is not a day on which banking institutions in such states are required by Applicable Law to be closed.

1.4 "Calendar Quarter" means each of the three (3) month periods ending March 31, June 30, September 30, and December 31; provided, that: (a) the first Calendar Quarter of the Term shall extend from the Effective Date to the end of the first complete such three (3)-month period thereafter; and (b) the final Calendar Quarter of the Term shall end on the last day of the Term.

1.5 "cGMP" means the then-current good manufacturing practices as required by the FDA under provisions of 21 C.F.R. Parts 210, 211 and 820 (as applicable) and all applicable FDA rules, regulations, orders and guidance, and the requirements with respect to current good manufacturing practices prescribed by the European Community under provisions of "The Rules Governing Medicinal Products in the European Community, Volume 4, Good Manufacturing Practices, Annex 13, Manufacture of Investigational Medicinal Products, July 2003," or the equivalent Applicable Law of an applicable Governmental Authority.

1.6 "Clinical Study" means any study of a medical device, biologic or pharmaceutical product involving human subjects or specimens thereof, including human factors and user comprehension studies and the pre-trial and post-trial work necessary to establish, conduct and complete a trial that is conducted to evaluate feasibility, support a Regulatory Approval or to support post-market research.

1.7 "Commercialize," "Commercializing" or "Commercialization" mean any activities undertaken relating to the promotion, marketing, sale, and distribution of products and services including marketing, advertising, importing, having imported, distributing, exporting, having exported, selling, offering for sale, transporting, customs clearance, warehousing, invoicing, handling and delivery to consumers, and the process of Commercialization. Commercialization also includes sales force efforts, detailing, advertising, medical education, planning, marketing, sales force training, and sales and distribution. The term "Commercialize" shall mean in all sales channels applicable to a field, whether direct or indirect, including all consumer sales channels, retail channels, insurance channels and distributor channels. For clarity, Commercialization does not include obtaining or maintaining Regulatory Approval for such products and services nor any activities related to Development or Manufacturing.

1.8 "Commercially Reasonable Efforts" means, in respect of a Party and an obligation under this Agreement, the level of efforts and resources (measured as of the time that such efforts and resources are required to be used under this Agreement) that are commonly and reasonably used by such Party (together with its Affiliates) to Develop, Manufacture or Commercialize, as the case may be, a product owned by such Party or to which it has rights, which product is at a similar stage in its development or product life and is of a similar market and profitability potential to the Product based on all other Relevant Factors. Notwithstanding the foregoing, if the performance of a Party's obligations under the Agreement is impaired by the other Party's failure to perform its obligations under the Agreement, the determination of whether such first Party has used Commercially Reasonable Efforts in performing a given obligation will be determined in the context of such other Party's failure. The Parties understand that the level of effort may change over time, reflecting changes in the status of a Product. Furthermore, Commercially Reasonable Efforts will not mean that a Party commits that it will actually accomplish an applicable task, or that it will devote thereto efforts or resources beyond those that a prudent commercial enterprise would devote, even though remaining motivated to do so as described above.

1.9 "Components" means all components or ingredients used in the Manufacturing of a Product under this Agreement.

1.10 "Confidential Information" means any information, data or documents, regardless of their nature (technical, scientific, financial, etc.) or subject-matter (know-how, methods, processes, etc.), medium (written, hard-copy or digital documents, etc.) or transmission method (written or oral) (i) disclosed by or on behalf of a Party to or on behalf of the other Party after the Effective Date, or (ii) to which the receiving party has access within the framework of the performance of this Agreement, or (iii) generated during the performance of this Agreement. In particular, the existence, nature and content of this Agreement are Confidential Information.

1.11 "Contract Provider" means any Third Party who supplies Symatese with any Component and/or Packaging necessary to Manufacture a Product.

1.12 "Contract Year" means each period beginning on January 1 and ending on December 31; provided that the first Contract Year of the Term extends from the First Commercial Sale of the first Product in the Territory for the Field until to December 31 of the then-current Contract Year, and the last Contract Year extends from January 1 of such Contract Year until the effective date of the termination of this Agreement or the expiration of the Initial Term.

1.13 "Control," "Controls," or "Controlled" means:

(a) with respect to any Intellectual Property Rights, Regulatory Materials, or other information, the possession by a Party, including through its Affiliates, of the ability to disclose, grant access to, license or sublicense such Intellectual Property Rights, Regulatory Materials, or other information as provided for herein without violating the terms of any agreement or other arrangement with any Third Party; and

(b) with respect to a Person, ownership directly or through one or more Affiliates, of more than fifty percent (50%) of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or more than fifty percent (50%) of the equity interests in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby a Party controls or has the right to control the board of directors or equivalent governing body of a corporation or other entity, or the ability to cause the direction of the management or policies of a corporation or other entity.

1.14 "Development," "Develop," or "Developed" means development activities with respect to a product, including pre-clinical research and development, clinical development, testing, Clinical Studies, supporting Manufacturing activities and related regulatory activities, for obtaining Regulatory Approval. For clarity, Development does not include any activities related to Commercialization or Manufacturing.

1.15 "Direct Sales" means the sale of Product by Evolus [***].

1.16 "Disputed Matter" has the meaning set forth in Section 17.1.

1.17 "Excluded Claim" means a dispute, controversy or claim that concerns: (a) the construction, scope, validity, enforceability, inventorship or infringement of any Patent, trademark, or copyright; or (b) any antitrust, anti-monopoly or competition law or regulation, whether or not statutory.

1.18 "Eye Product" means the dermal filler Product developed by Symatese and referred to as "Eye".

1.19 "Facilities" means the manufacturing facilities of Symatese where the Product is Manufactured, as set forth on **Exhibit A**.

1.20 "FASY Technology" means the technical information, data, knowledge and trade secrets owned by Symatese, patentable or non-patentable, relating to the design and manufacture of [***] necessary and useful for the development, manufacture and marketing of the Products referred to in **Exhibit A**.

1.21 "FDA" means the United States Food and Drug Administration or any successor agency.

1.22 "Field" means all aesthetics and dermatologic uses or indications, including all uses by dermatologists, plastic surgeons, medical spas, and other aesthetic practitioners.

1.23 "First Commercial Sale" means the first sales of Products on a Product-by-Product and jurisdiction-by-jurisdiction basis, the first sale by Evolus to a Third Party for end use

or consumption of a Product after Regulatory Approval has been granted with respect to such Product for the Field in such jurisdiction. A First Commercial Sale shall not include any Product supplied for use in clinical trials, for research, as Samples, or for other non-commercial uses.

1.24 "GCP" means current good clinical practices as established under Applicable Laws.

1.25 "Governmental Authority" means any court, agency, authority, department, regulatory body or other instrumentality of any government or country or of any national, federal, state, provincial, regional, county, city or other political subdivision of any such government or any supranational organization of which any such country is a member, which has competent and binding authority to decide, mandate, regulate, enforce, or otherwise control the activities of the Parties or their Affiliates contemplated by this Agreement.

1.26 "GLP" means current good laboratory practices as established under Applicable Laws.

1.27 "Intellectual Property Rights" means (i) all worldwide rights, title and interest in and to any patents, letter Patents, industrial models, design patents, petty patents, patents of importation, utility models, certificates of invention, and/or other indicia of inventorship and/or invention ownership, and any and all applications for any of the foregoing, and including any such rights granted upon any reissue, division, continuation or continuation-in-part or extensions, now or hereafter filed, related to any such applications or patents, and all discoveries or inventions, whether or not patentable; (ii) all worldwide rights, title and interest in and to all know-how and trade secret rights arising under the common law, state law, federal law or the laws of any foreign country; (iii) all trademarks; and (iv) all worldwide copyright rights, moral rights and all other literary property and/or other rights of authorship, whether or not registered, and all registrations and applications for registration relating thereto.

1.28 "Label" means any FDA-approved label affixed to a Product Package, pursuant to the terms of this Agreement, in accordance with Applicable Laws.

1.29 "Labeling" means the Label and any FDA-approved printed material that will accompany a Product when sold in its final form, including without limitation any Instructions for Use.

1.30 "Lip Product" means the dermal filler Product developed by Symatese and referred to as "Lips".

1.31 "Manufacture," "Manufactured" or "Manufacturing" means any processes and activities conducted for the manufacture of products or any component thereof for Development or Commercialization thereof, including packaging, labeling, quality control and quality assurance testing. Manufacturing shall include obtaining products and services from contract manufacturers. For clarity, Manufacturing does not include any activities related to Commercialization or Development.

1.32 "Material Communications" means any letters, reports, or other documents received by, or sent to, any Governmental Authority that relates to a Product, a Facility, or such processes or procedures.

1.33 "Net Sales Evolus" means the net sales of the Product sold by Evolus to any Third Party, as reported by Evolus and determined in accordance with U.S. Generally Accepted Accounting Principles, including requirements for revenue recognition.

1.34 "Packaging" means all material used to prepare a fully packaged Product, including, but not limited to, containers, cartons, vials, syringes, Labels, blister packs, inserts and

shipping cases, as applicable, each of which shall conform to the Regulatory Approval. "Package" has a correlative meaning.

1.35 "Patents" means the rights and interests in and to issued patents and pending patent applications (which, for purposes of this Agreement, include certificates of invention, supplementary protection certificates and applications therefor, applications for certificates of invention and priority rights) in any country or jurisdiction, including all international applications, provisional applications, substitutions, continuations, continuations-in-part, continued prosecution applications including requests for continued examination, divisional applications and renewals, and all letters, patents or certificates of invention granted thereon, and all reissues, reexaminations, term extensions, term adjustments, term restorations, renewals, substitutions, confirmations, registrations, revalidations, revisions and additions of or to any of the foregoing, in each case, in any country or jurisdiction.

1.36 "Person" means any individual, partnership, joint venture, limited liability company, corporation, firm, trust, association, unincorporated organization, Governmental Authority, or other entity not specifically listed herein.

1.37 "Products" means those dermal filler products listed on **Exhibit A**.

1.38 "Products Forecast" has the meaning set forth in Section 3.2(a).

1.39 "QSR" means the Quality System Regulation applicable to the design, manufacture, packaging, labeling, storage, and testing of medical devices, including the Products.

1.40 "Quality Agreement" means a Quality Assurance/Quality Control Agreement to be entered into by the Parties which will set forth certain obligations of the Parties in relation to the design, manufacture, packaging, storage, quality control, and testing of the Products in accordance with QSR, and including obligations related to marketing and materiovigilance.

1.41 "Regulatory Approval" means any approvals, registrations, licenses, permits, certificates, consents, clearances, exemptions, medical device approvals, medical device registration certificates, or authorizations that are required for the use, Development, and Commercialization of Product in the Territory in the Field.

1.42 "Regulatory Materials" means regulatory applications, submissions, notifications, communications, correspondence, registrations, Regulatory Approvals, or other filings made to, received from, or otherwise conducted with a Regulatory Authority to Develop, Manufacture, or Commercialize a Product in the Territory.

1.43 "Relevant Factors" means the following factors (as applicable): [***].

1.44 "Sample" means a Unit of the Products listed in **Exhibit A** that is provided to customers free of charge on an educational, training or promotional basis and labeled as "Free Sample" or similar wording or is used for other non-commercial purposes such as for research and development or clinical trials. For the avoidance of doubt, a Sample shall not be considered the same as a "Product" which is specifically designated for commercial sale.

1.45 "Specifications" means the specifications for the Products as applicable from time to time during the Term and attached hereto as **Exhibit A**, which Specifications shall at a minimum conform to the Regulatory Approval.

1.46 [***].

1.47 "Shelf-Life Threshold" means, at the time of shipment to Evolus of a Product or Sample that the shelf life is at least:

(a) During the first Contract Year, [***] of the shelf life stated on the Product Label or the Regulatory Approval, or

(b) After the first Contract Year at least [***] of the of that stated on the Product Label or the Regulatory Approval.

1.48 "Term" has the meaning set forth in Section 14.1.

1.49 "Territory" means the United States of America, including its territories and possessions.

1.50 "Third Party" means a Person that is not Symatese or Evolus nor an Affiliate of Symatese or Evolus.

1.51 "Trademarks" means the trademarks, existing or future, (i) used and owned by Symatese to designate its technology, which shall include the mention "By Symatese", that EVOLUS undertakes to use systematically as part of its distribution commitment, and (ii) used and owned by Evolus to designate the Products listed in **Exhibit A**.

1.52 "Unit" means a single syringe of the corresponding Product.

2. LICENSE, APPOINTMENT AND EXCLUSIVITY

2.1. Exclusive Evolus Appointment. Symatese hereby appoints Evolus, and Evolus hereby accepts such appointment, as Symatese's sole and exclusive (even as to Symatese) licensee for the Commercialization of Products for the Field in the Territory, and Evolus shall use Commercially Reasonable Efforts to Commercialize the Products in the Territory for the Field. Evolus may establish any sub-distributors without the prior written consent of Symatese. Nothing in this Agreement shall limit or prohibit Evolus from Commercializing other products, including in the Field in the Territory.

2.2. Right of First Negotiation. During the Term, if Symatese develops any improved products from the FASY Technology, then Symatese shall promptly notify Evolus in writing and provide a reasonably detailed description of each such product that is part of the FASY Technology (each, a "FASY Notice"). Upon receipt of such FASY Notice, Evolus shall have [***] days to notify Symatese in writing whether Evolus is interested in distributing and Commercializing such product that is covered by such FASY Notice (exclusively or non-exclusively) in the Field in the Territory. If Evolus provides such notice, the Parties will negotiate in good faith, for a period of [***] days (unless extended by the Parties), an agreement containing the commercially reasonable terms for the distribution and Commercialization of such FASY Technology in the Field in the Territory. The Party shall not be obligated to enter into a definitive agreement with respect to such product that is covered by such FASY Notice, and if the Parties have not entered into a definitive agreement for such product within the [***] day negotiation period, or if Evolus does not timely respond to the FASY Notice, then Symatese shall be free to negotiate with any Third Party with respect to the distribution and Commercialization of such product.

2.3. Negative Covenant. Symatese covenants that it will not use or practice, or allow any Third Party to use or practice, the FASY Technology in the Territory for the Field. If Symatese grants any Third Party the right to use FASY Technology in the Territory for uses outside the Field, the agreement containing such grant shall include provisions and safeguard to prevent the sale of the Product by a Third Party in the Territory for the Field, including, but not limited to ensuring that: (a) the formulations of any such products using the FASY Technology are materially different from the Product and utilize different branding and trademarks; and (b) Evolus shall be expressly designated as the beneficiary of these provisions and warranties.

3. SUPPLY TERMS

3.1. Supply Terms. Symatese will supply the fully Manufactured and packaged Products to Evolus during the Term for Commercializing such Products for the Field in the Territory in accordance with this Article 3:

(a) Minimum Purchase Requirement. Subject to Sections 3.1(b), 3.1(c), and 3.1(d), the total Product ordered by Evolus annually during a Contract Year of the Initial Term (excluding any purchases of Samples) shall be greater than or equal to the annual minimum purchase requirement for such Contract Year (the "Minimum Purchase Requirement") for the Product in the Territory for the Field, in each case according to the table below:

Contract Year	Annual Minimum Purchase Requirement Product (per Unit)	Market Share
Year 1	[***]	[***]
Year 2	[***]	[***]
Year 3	[***]	[***]
Year 4	[***]	[***]
Year 5	[***]	[***]
Year 6	[***]	[***]
Year 7	[***]	[***]
Year 8	[***]	[***]
Year 9	[***]	[***]
Year 10 through expiration of the Initial Term	[***]	[***]

(b) Purchase Target Adjustment. The calculation of the Minimum Purchase Requirement for each Contract Year is based on a Unit and assumes: [***].

(i) As an example, [***].

(c) Minimum Purchase Calculation. Determining the achievement of the Minimum Purchase Requirement for a given Contract Year shall be based on: (i) the number of Units of Product actually received by Evolus in the Contract Year, plus (ii) the number of Units

of Product subject to firm Purchase Orders or in the binding Products Forecast with requested delivery dates prior to the end of such Contract Year.

(d) Effect of Failure to Meet Minimum Purchase Requirement. If Evolus fails to purchase the Minimum Purchase Requirement in any Contract Year but achieves the corresponding market share for the Product in the Territory for the Field for such Contract Year, then Evolus shall be deemed to have achieved the Minimum Purchase Requirement for such Contract Year. Subject to the foregoing, if Evolus fails to purchase the Minimum Purchase Requirement for [***], Symatese shall have the right to convert the exclusive right granted to Evolus under Section 2.1 into a right non-exclusive, and, if Evolus also fails in this [***], whether or not exclusivity has been withdrawn after the[***], Symatese shall have the right to terminate this Agreement in accordance with Section 14.2(c); except that Symatese's rights in the foregoing shall not apply if Evolus' failure to purchase the Minimum Purchase Requirement for any such Contract Year is attributable to or the result of a force majeure under Section 16.11, Symatese's supply failure, or Symatese's willful misconduct or breach of this Agreement. The Parties agree that this Section 3.1(d) is Symatese's sole and complete remedy for Evolus' failure to achieve the Minimum Purchase Requirement.

3.2. Forecasts and Ordering.

(a) At least [***] days prior to the anticipated date of the First Commercial Sale for a Product in the Territory for the Field, Evolus shall prepare and provide Symatese with a written non-binding rolling forecast, on a month-by-month basis, of its total requirement for Products, including desired delivery dates, for the following [***] months ("Products Forecast"). Starting after the First Commercial Sale, on the first Business Day of each month during the Term, Evolus shall submit to Symatese a Products Forecast a where the first [***] months of each Products Forecast shall be binding, and the remainder of the Products Forecast shall be non-binding.

(b) Evolus shall submit written purchase orders for Products ("Purchase Orders") at least [***] days prior to the requested shipment date for such Purchase Order. Any Purchase Order may be amended solely by written agreement of the Parties. No terms and conditions contained in any Purchase Order, acknowledgment, invoice, bill of lading, acceptance or other preprinted form issued by either Party shall be effective to the extent such terms or conditions are inconsistent with or modify any term or condition contained in this Agreement unless explicitly approved in writing by both Parties.

(c) Symatese shall notify Evolus within [***] days after Symatese receives a Purchase Order from Evolus indicating if Symatese accepts or rejects such Purchase Order. Symatese may accept a Purchase Order by: (i) initiating performance under such Purchase Order; (ii) accepting full payment from Evolus as consideration for such Purchase Order; or (iii) expressly accepting such Purchase Order in writing. Immediately after acceptance by Symatese, each Purchase Order shall be binding upon Symatese.

(d) If Symatese believes that it will not be able to satisfy Evolus' requirements for the Products, it shall promptly notify Evolus, specifying the reasons for the expected delay and its anticipated duration. In the event of any shortage of Product's in Symatese's inventory, Symatese shall, on order by Evolus, ship to Evolus at least as many units of the Product as Symatese ships to any other customer who has historically ordered similar quantities of Products, taking into account all customers' purchase histories and industries, among other things. If any Product is subject to limited availability at any time and Evolus has placed Purchase Orders for such Product, then either before or after the date such Product becomes subject to limited availability, Symatese agrees to notify Evolus before filling any Purchase Order for such Product, and Evolus has the right, in its sole discretion and without liability or penalty, to cancel any existing Purchase Order for such Product.

(e) **Delivery Terms**. Symatese shall deliver all Products to Evolus [***] (Incoterms 2020) Symatese's distribution facility, and the time, quantity, and delivery locations terms are of the essence under this Agreement. For each shipment associated with a Purchase Order, Symatese shall include in such shipment: (a) a packing slip that describes the Products delivered and states the Purchase Order number; and (b) documentation demonstrating that the Products meet the then-current Specifications. Evolus shall bear all costs of shipping, including the costs of any taxes (other than any income taxes of Symatese) or import approvals that are required. Evolus shall be responsible for clearing the Products through customs. Subject to Section 3.3, title to, and risk of loss of, the Products ordered by Evolus shall pass to Evolus on delivery of the Products.

3.3. Safety Stock. Symatese and Evolus shall, at their respective cost and expense, during the term of this Agreement, maintain a quantity of Product inventory on [***] basis equal to Evolus' requirements for Product equal to: (a) if the approved shelf life of the Product is [***] months or less, [***] months of such Product, based on Evolus' most recent Products Forecast; and (b) if the approved shelf life of the Product is greater than [***] months, [***] months of such Product based on Evolus' most recent Products Forecast ("Safety Stock"). The Safety Stock shall be: (x) maintained for the sole benefit of Evolus and its Affiliates; (y) stored at a secure facility in compliance with cGMP; and (z) shall not be used for the benefit of Symatese, its Affiliates or any customer of Symatese (other than Evolus and its Affiliates). Symatese shall rotate the Safety Stock on a "First Expiry-First Out" basis for routine fulfillment of firm Purchase Orders, subject the Shelf-Life Threshold. Such Safety Stock shall be independent of any safety stock maintained for the benefit of Symatese or any other customer of Symatese. In the event Symatese is not able to supply Evolus Product pursuant to any firm Purchase Order, Symatese shall draw upon the Safety Stock maintained for Evolus to make up for any shortfall. Within [***] days after the end of each Calendar Quarter, Symatese shall deliver a report to Evolus describing the quantities of the Safety Stock remaining as of the end of such Calendar Quarter.

3.4. Maximum Sample Purchases. During a given Contract Year, on a Product-by-Product basis, Evolus shall not place an Order for Samples of such Product that exceeds the amount set forth below:

(a) During the first Contract Year a particular Product is sold in the Territory: [***] times ([***]) the total Units of the Product purchased during the Contract Year.

(b) During the second Contract Year a particular Product is sold in the Territory, [***] times the total Units of the Product purchased during the Contract Year.

(c) For the third and subsequent Contract Year a particular Product is sold in the Territory, [***] times the total Units of the Product purchased during the Contract Year.

Any purchases of Samples above the thresholds set forth above shall be deemed to be purchases of Product (and not Samples) at the higher Price set forth for Product and shall count toward the Minimum Purchase Requirement for such Product for such Contract Year.

3.5. Acceptance and Rejection, **Non-Conforming Product**.

(a) A Product is non-conforming ("Non-Conforming") if the Product:

(i) has not been manufactured, filled, tested, packaged, stored, and supplied by Symatese in accordance with (i) all applicable QSRs in the Territory, (ii) all Applicable Laws in the Territory, (iii) all requirements of Governmental Authorities in the Territory, (iv) the Regulatory Approvals, (v) the Specifications, (vi) the Quality Agreement, and (vii) this Agreement;

(ii) has not been manufactured, filled, tested, packaged, and stored at the Facilities, with such Facilities having been approved by the Governmental Authorities in the Territory and the country of manufacture;

(iii) is adulterated or misbranded under any Applicable Laws in the Territory;

(iv) does not meet the Shelf-Life Threshold;

(v) is not free from defects in material, manufacturing, and workmanship for the shelf-life of the Product; or

(vi) does not comply with any accepted Purchase Order.

(b) If any delivery of Product is Non-Conforming in relation to any matter discoverable upon visual inspection made with reasonable care, then Evolus will notify Symatese within [***] days after receipt of the Product. If any delivery of Product is Non-Conforming in relation to any matter which is not discoverable upon visual inspection made with reasonable care, then Evolus shall also notify Symatese within [***] days after discovery. Symatese shall promptly notify Evolus as to whether it confirms or denies that the Product is Non-Conforming.

(c) If Symatese does not agree that the Product is Non-Conforming, then the Parties shall submit information regarding the disputed shipment to each other for review. If the Parties cannot agree as to whether the Product is Non-Conforming within [***] after Evolus' initial claim that a Product is Non-Conforming, then upon the request of either Party the dispute shall be submitted to a mutually acceptable independent laboratory with a minimum of [***] years of senior level experience manufacturing pharmaceutical products and complying with guidelines and regulations of the Governmental Authorities in the Territory. If the independent laboratory determines the Product is not Non-Conforming, then Evolus shall pay for the Product. The costs of the independent laboratory shall be borne by the Party with whom the independent laboratory disagrees.

(d) If any Product delivered by Symatese hereunder is determined to be Non-Conforming, then Symatese shall promptly replace, at its expense (all costs included) the Non-Conforming Product with a substitute Product that conforms to the requirements of this Agreement at Symatese's expense, and Evolus shall, in accordance with Symatese's written instructions, return or destroy all Non- Conforming Product.

3.6. Delays.

(a) In the event Symatese is unable to supply to Evolus, in whole or in part, the Products requested for any reason, then Symatese shall notify Evolus as promptly as possible in writing of such shortage, or potential shortage, or inability to timely supply a Product and, if possible, the date when Symatese will again be able to supply such Product. Symatese shall use its best efforts to remedy any shortfall of a Product as expeditiously as possible, and until such shortfall is remedied, use its best efforts to manage its filling capacity with preference for such Product over other products of Symatese.

(b) In addition, if an event occurs during the manufacture of any Product batch which is likely to materially affect the safety, efficacy, or regulatory status of the Product, Symatese shall notify Evolus as soon as reasonably possible (but in any event no later than [***] Business Days of becoming aware of the process event). Evolus and Symatese shall consult with each other as to the disposition of all affected batches of the Product, which disposition shall be at the expense of Symatese. Symatese agrees to report to Evolus in compliance with the terms and conditions of the Quality Agreement any atypical process events, regardless of whether they are or are not likely to materially affect the safety, efficacy, or regulatory status of the Product. No Product may be reworked unless the rework procedure is in conformity with (i) all applicable

QSRs in the Territory, (ii) all Applicable Laws in the Territory, (iii) all requirements of Governmental Authorities in the Territory, (iv) the Quality Agreement, and (v) this Agreement, and Evolus provides its prior written consent.

3.7. Shortages. In the event of any shortages of any Product, Component or Packaging, Symatese undertakes to make its best efforts to fulfill its manufacturing obligations and, to the extent of Evolus' order forecasts.

3.8. Reports. Upon written request from Evolus, Symatese shall provide Evolus with a report detailing projected shipment dates for Purchase Orders and the capacity and status of all Facilities.

4. PRICING AND PAYMENTS

4.1. Price. For each Unit of the Products ordered in each Purchase Order, Symatese shall charge Evolus according to the table below (the "Price").

Product Use	**Unit Price (Euro)**
Product	[***]
Sample	[***]

4.2. Price adjustments. The Prices outlined in Section 4.1 will remain fixed until [***]. Starting [***], these Prices will be reviewed by the Parties and adjusted annually according to the following formula (the "Price Adjustment"):

New Product Unit Price = [***]

New Sample Unit Price= [***]

(a) **Definitions**: For purposes of Section 4.2: [***]

4.3. Invoicing. Symatese shall submit an invoice to Evolus with each shipment of the Products supplied to Evolus under each Purchase Order for the amount due for such shipment. Evolus shall pay undisputed amounts in each invoice to Symatese within [***] of the invoice date, it being specified that the payments of the various invoices shall be made OUR (i.e. costs borne by the issuer). Evolus shall notify Symatese in writing of any dispute regarding an invoice within [***] days of Evolus' receipt of such invoice. The Parties shall seek to resolve all such disputes promptly and in good faith. Notwithstanding anything to the contrary, Symatese shall continue performing its obligations under this Agreement during any such dispute.

4.4. Exclusive Distribution Right Milestone Payments. In consideration for the exclusive distribution right and other benefits conferred on Evolus under the Agreement, Evolus shall pay to Symatese each milestone payment set forth in the table below after the occurrence of each corresponding milestone event (each, a "Milestone Payment"). Each Milestone Payment shall become due and payable by Evolus within [***] days after achievement of the applicable milestone event. By express agreement, once the milestone for a particular Milestone Payment is reached the Milestone Payment is definitively acquired by Symatese and is in no way refundable to Evolus for any reason whatsoever, including, but not limited to, early termination or cancellation of the Agreement, whatever the cause, or any other reason based on the execution of the Agreement and its consequences.

Milestone Event	Milestone Payment Amount (Euros)
Upon execution of this Agreement	€ 4,100,000
June 30, 2025, subject to Symatese achieving Regulatory Approval for at least three (3) different Products in the Territory for the Field or, at the latest, on the date of Regulatory Approval of these three (3) different Products if this date occurs after the aforementioned date	€ 1,600,000
June 30, 2026, subject to Symatese achieving Regulatory Approval for at least three (3) different Products in the Territory for the Field or, at the latest, on the date of Regulatory Approval of these three (3) different Products if this date occurs after the aforementioned date	€ 4,100,000
June 30, 2027, subject to Symatese achieving Regulatory Approval for at least three (3) different Products in the Territory for the Field or, at the latest, on the date of Regulatory Approval of these three (3) different Products if this date occurs after the aforementioned date	€ 3,200,000
June 30, 2028, subject to Symatese achieving Regulatory Approval for at least three (3) different Products in the Territory for the Field or, at the latest, on the date of Regulatory Approval of these three (3) different Products if this date occurs after the aforementioned date	€ 3,200,000

4.5. Royalty Payments. In partial consideration for the exclusive distribution right and other benefits conferred on Evolus under the Agreement, Evolus shall pay Symatese in U.S. dollars a royalty of [***] percent ([***]%) of Net Sales Evolus of the Products in the Territory for the Field by Evolus during the Term after the First Commercial Sale of each Product, except that, if the Direct Sales of Products made by Evolus in the Territory for the Field in a given Contract Year is less than [***] percent ([***]%) of the cumulative sales of Products made by Evolus in the Territory during this same Contract Year, the royalty shall be increased to [***]% of Net Sales Evolus for such Contract Year (and reverting to [***]% for the subsequent Contract Year).

4.6. Royalty Reporting. Within [***] days following the end of each Calendar Quarter after the First Commercial Sale, Evolus shall remit to Symatese all royalty payments due for the applicable Calendar Quarter, together with a written report in sufficient detail to permit Symatese to confirm the accuracy the royalty payments made by Evolus. On an annual basis, Symatese shall have the right, at its own cost, to audit the amount paid under the royalty payments.

4.7. Payments. All amounts due from Evolus to Symatese hereunder shall be paid by wire transfer to an account designated in writing in advance by Symatese, it being specified that the transfers shall be made OUR (i.e. costs borne by the issuer). Any undisputed payments or portions thereof that are not paid on the date such payments are due shall bear simple interest at the lower of: (a) [***] percent ([***]%) per annum; or (b) the maximum rate permissible by governing law.

4.8. Taxes. If laws or regulations require that taxes be withheld, Evolus shall: (a) deduct those taxes from the payment; (b) pay the taxes to the proper taxing authority; and (c) send evidence of the obligation together with proof of tax payment to Symatese within [***] following that tax payment.

(a) **Tax Forms**. On the Effective Date, Symatese shall provide Evolus with a validly completed and duly executed IRS Form W-8BEN-E (or IRS Form W-9 if applicable) claiming any exemption from or reduced rate of withholding described in clause. It is anticipated that the form will claim benefits under the U.S.-France Income Tax Treaty and prior to the expiration of any tax forms, Symatese shall provide Evolus with a validly completed and duly executed new tax form.

5. DISTRIBUTION TERMS

5.1. Products Commercialization. Evolus shall use Commercially Reasonable Efforts after Regulatory Approval for the Product has been obtained by Symatese to:

(a) Commercialize the Products in the Territory for the Field in accordance with Applicable Law;

(b) Subject to Section 5.1(b)(i), commence the First Commercial Sale of at least [***] Products within [***] months of the [***] Product receiving the necessary Regulatory Approvals for that Product ("Standard Commercialization Period").

(i) Notwithstanding the foregoing, Evolus shall have the right to delay the First Commercial Sale of [***], provided that:

(1) [***]; and

(2) [***].

(ii) In the event Evolus exercises its right to delay the First Commercial Sale [***].

(iii) Evolus shall provide Symatese with [***]; and

(c) maintain sufficient facilities and appropriate, trained staff and personnel for the Commercialization of the Product.

5.2. Marketing and Branding.

(a) **Joint Marketing Committee**. Within [***] days of the Effective Date, the Parties will form a joint marketing committee (the "Marketing Committee") comprised of at least one (1) representative from each Party, and at all times an equal number of representatives of each Party. Such representatives shall have sufficient experience and qualifications to facilitate discussions and activities within the scope of the Marketing Committee's responsibilities. The Marketing Committee may invite non-members to participate in the discussions and meetings, provided that such participants will have no voting authority at the Marketing Committee meeting and are subject to confidentiality provisions no less strict that those described in Article 10. The Marketing Committee's purpose shall be to facilitate the flow

of information between the Parties with respect to commercial and marketing insights and vision for the Product, and such other functions as appropriate, to further the purposes of this Agreement, as may be mutually agreed to in writing by the Parties. The Marketing Committee may form sub-committees as needed to address such other functions. The Marketing Committee will not have any decision-making authority over any matters referred to it under this Agreement.

(b) **Use of Trademarks.** Evolus will have the right to brand the Products using trademarks, logos, and trade names as Evolus, in its sole discretion, deems appropriate for the Product in the Territory (the "Evolus Trademark") and at no additional cost to Evolus, Evolus shall have the right, but not obligations to use the Trademark licensed to Evolus under Section 9.1.

5.3. Recalls. If a Party is required to recall, or on its own initiative recalls, any of the Products, the Parties agrees to assist each other in such a recall. Evolus agrees that if a recall occurs, Evolus will notify all affected customers promptly and will promptly provide Symatese with a written status report of the recall. Symatese agrees, at Evolus' discretion, either to refund the Price of the recalled Products to the end user, or to replace recalled Products within a reasonable time, including freight and applicable duties and taxes. The Party responsible for the cause of such recall shall bear the costs of such recall, except that, if neither Party is the cause of such recall, then the Parties shall equally share the costs of such recall. The obligations set forth in this Section 5.3 shall survive the expiration or earlier termination of this Agreement.

5.4. Adverse Event Reporting. Promptly after the Effective Date the Parties shall negotiate in good faith and enter into a safety data exchange agreement on reasonable and customary terms, including that each Party shall (i) comply with all safety monitoring requirements under Applicable Law; (ii) be responsible for timely reporting all adverse events, recalls, complaints, and safety data related to the Product in the Territory to the applicable Governmental Authorities in accordance with Applicable Law; and (iii) promptly report to the other Party any adverse event, customer complaint, or communication from any Governmental Authority related to the Products in the Territory, and in all events, with sufficient detail and time to allow the other Party to meet its regulatory reporting requirements under Applicable Law.

5.5. Records. Evolus shall use Commercially Reasonable Efforts to maintain at its principal place of business adequate, complete, and detailed books and records of all purchases, sales, advertising expenditures, inventory and other transactions and information related to the Products.

6. MANUFACTURE OF PRODUCT

6.1. Packaging and Production. Symatese shall apply Labeling to each Product and Package each Product in accordance with the Labeling and Packaging specifications set forth in the Regulatory Approvals. All Packaging materials shall be included in the Price. The Parties shall agree to Labeling for Products in the Territory that is differentiated from labeling for Products outside of the Territory and Evolus shall have the ability to use variations to the package colors used by Symatese and to use alternative naming conventions for the suffix in the Product name currently being used by Symatese, subject to the prior written approval of Symatese, which approval shall not unreasonably withheld or delayed; provided, that if Symatese shall not respond to any Evolus request within [***] Business days, it shall be deemed to have approved such request.

6.2. Restrictions on Changes to Product. The Parties acknowledge that once Regulatory Materials have been submitted to a Governmental Authority, any change whatsoever to (a) a Product, (b) any Component in a Product, (c) the Packaging of a Product, or (d) any process, method, or procedure related to Section 6.2(a)-(c), may jeopardize the Regulatory Approval of a Product. Symatese shall not make any changes whatsoever, regardless of how minimal or extensive, to the Product, any Component, or the Packaging of a Product, or any related process, method or procedure used in connection with Manufacturing the Product

(including, without limitation, changes to Contract Provider(s) or the Facilities), without obtaining the prior written approval of Evolus, which shall not be unreasonably withheld, conditioned or delayed, for such change. To the extent of any changes, Symatese shall pay all fees and charges payable to the Governmental Authorities which may be required in connection with any change. Symatese shall continue to supply Evolus with Products which satisfy the Regulatory Approval until such time as any new change of Products are approved by the Governmental Authority, if such approval is necessary.

6.3. Manufacturing Facilities.

(a) All Products supplied to Evolus pursuant to this Agreement shall be manufactured only by Symatese and/or its Affiliates at the Facilities described in **Exhibit A**, or at such other facility as may be mutually agreed between the Parties in writing and which complies with the requirements of this Agreement. If Symatese has a Product manufactured on its behalf by an Affiliate, then Symatese shall cause and obligate its Affiliate to comply with all provisions of this Agreement applicable to the manufacture of such Product, and any reference to Symatese in such provisions shall, as appropriate, be deemed to include a reference to the applicable Affiliate of Symatese.

(b) Symatese shall maintain the Facilities so that they are in compliance at all times with (i) all applicable QSRs in the Territory, (ii) all Applicable Laws in the Territory, (iii) all requirements of Governmental Authorities in the Territory, (iv) the Quality Agreement, and (v) this Agreement. Symatese shall, throughout the Term, at its own cost, obtain and maintain (and cause any Contract Provider selected by Symatese to obtain and maintain) any and all licenses, registrations, permits, orders, authorizations and consents (including facility licenses, permits, and controlled substance registrations) and pay all applicable facility fees, as required by the Governmental Authorities in the Territory to Manufacture, Package, store, and ship the Product in compliance with QSRs, or as otherwise required to perform Symatese's obligations under this Agreement.

(c) Symatese shall upon request provide Evolus with status updates and capacity planning of its Facilities.

6.4. Testing. Symatese shall test all Products prior to delivery to Evolus to ensure that each Product meets the Specifications. With the delivery of each shipment of Product, Symatese shall provide Evolus with a certificate of analysis in accordance with the terms of the Quality Agreement and which verifies that such Product complies with the Specifications. Symatese shall be responsible for all applicable release testing of such Product in accordance with (a) all applicable QSRs in the Territory, (b) all Applicable Laws in the Territory, (c) all requirements of any Governmental Authority.

6.5. Inspections.

(a) During the Term and until one (1) year after the expiration date for the last Product supplied hereunder, and thereafter in the event a claim against Evolus regarding a Product is threatened or commenced, Symatese shall permit Evolus' representatives to enter the Facilities, upon reasonable prior notice and during normal business hours, for the purpose of inspecting the Facilities and quality control procedures and confirming compliance with (i) all applicable QSRs in the Territory, (ii) all Applicable Laws in the Territory, (iii) all requirements of Governmental Authorities in the Territory, (iv) the Quality Agreement, and (v) this Agreement. If during any such inspection Evolus discovers any instances in which Symatese has not complied with the foregoing, then Symatese shall promptly provide to Evolus a written plan for correcting such deficiencies, including a proposed timetable for implementing such corrections, and shall ensure that such deficiencies are corrected, at Symatese's sole expense, as soon as reasonably practicable.

(b) Symatese shall routinely inspect the Facilities to confirm compliance with (i) all applicable QSRs and GLPs in the Territory, (ii) all Applicable Laws in the Territory, (iii) all requirements of Governmental Authorities in the Territory, (iv) the Quality Agreement, and (v) this Agreement. Upon request, Symatese shall provide Evolus with the results of its inspections to the extent related to a Product, including either a list of deficiencies and plan for correction or a certificate confirming that the Facilities are in compliance with the terms of this Section 6.5(b).

(c) If Symatese receives any notification of any inspection of a Facility by any Governmental Authority, or any warning letter or similar correspondence from any Governmental Authority relating to a Product, then Symatese shall (i) promptly provide Evolus with notice of the inspection and all notices, correspondence, and related documents received from or sent to the applicable Governmental Authorities by Symatese, (ii) promptly furnish Evolus with copies of all reports and notices received by Symatese as a result of any such inspection, (iii) provide to Evolus a written plan for correcting such any deficiencies documented by the Governmental Authorities, including a proposed timetable for implementing such corrections, (iv) ensure that any deficiencies are corrected, at Symatese's sole expense, as soon as reasonably possible, and (v) keep Evolus informed of all material developments regarding such inspections and any follow-on actions.

6.6. Quality Assurance/Quality Control. The Parties shall enter into a separate master Quality Agreement within [***] months from the Effective Date.

6.7. No Contract Manufacturing. Except with the consent of Evolus or in connection with Section 8.1, which consent may be withheld in Evolus' absolute discretion, only Symatese and its Affiliates shall manufacture the Products for supply to Evolus, and no sublicensees of Symatese or other Third Parties shall manufacture the Products for supply to Evolus.

6.8. Records and Batch Samples. Symatese shall maintain, and shall cause its Contract Providers, if any, to maintain all records and batch samples necessary to comply with all Applicable Laws relating to the Development, testing, Manufacture, Packaging, storage and supply of the Product, and the performance of its obligations under this Agreement. All such records and batch samples shall be maintained for such period as may be required pursuant to the Applicable Laws or in the absence of such, Symatese policy; provided, however, that all records and batch samples relating to the manufacture, stability, and quality control of each batch of the Product shall be retained at least until the second (2nd) anniversary of the end of the approved shelf-life for all Products from such batch.

6.9. Inspection of Books and Records. During the Term, and thereafter for the greater of (a) the period stipulated by the Applicable Laws in the Territory, and (b) [***], Symatese agrees that Evolus, at reasonable times upon reasonable prior notice, may inspect and copy the research and development and manufacturing books and records of Symatese, including audits of any contracted provider, pertaining to Symatese's obligations under this Agreement for purposes of ensuring compliance with the terms of this Agreement. Symatese agrees to obtain the foregoing right of inspection for Evolus with respect to the relevant books and records of Symatese's Contract Providers, if any.

7. DEVELOPMENT AND REGULATORY MATTERS

7.1. Symatese Development and Regulatory Obligations. Subject to Section 7.2, as between the Parties, Symatese shall, at its sole expense, be responsible for the Development of Product in the Territory for use in the Field, including the performance of Clinical Studies, Product testing, and the conduct of regulatory activities required to obtain and maintain all Regulatory Approvals necessary for all activities and uses of Product in the Territory for the Field. All Development Activities shall be conducted in compliance with all Applicable Laws, including cGMP, GCP and GLP. Symatese shall keep Evolus reasonably informed as to the progress of Symatese's Development activities and its regulatory activities relating to Product in

the Territory, including its correspondence and meetings with Governmental Authorities and other governmental agencies in the Territory.

7.2. Development of Eye Product and Lip Product. To support the Development of the Eye Product and Lip Product for use in the Field in the Territory, Evolus agrees to lead the Development of the Eye Product and Lip Product. Evolus agrees to contribute up to [***] percent ([***]%) of the total Third-Party Development costs incurred by it with respect thereto, and Symatese shall remain liable for the remaining [***] percent ([***]%) of the Third-Party Development costs incurred by Evolus; provided that, the total Third-Party Development costs Symatese shall be liable for during the Term for the Development of the Eye Product and Lip Product shall not exceed [***] US Dollars ($[***] USD) (the "Symatese Threshold"). The monetary obligations under this section shall be exclusive of any withholding taxes imposed (which taxes shall be borne by the Party withholding such taxes). In connection with the foregoing, Evolus shall invoice Symatese for any Third-Party Development costs up to the Symatese Threshold. Symatese shall pay all undisputed invoices within [***] days of the invoice date.

7.3. Regulatory Approval Holder. Subject to Applicable Laws, Symatese shall apply for Regulatory Approval for the Products with the Evolus Trademarks that are owned by Evolus and listed on **Exhibit A** for use with the Product in the Field in the Territory. As a legal manufacturer, Symatese shall be the owner of the registration of the Products with the FDA.

7.4. Improvement of Shelf Life. Prior to the First Commercial Sale and throughout the Term, Symatese agrees to work in good faith to perform stability testing to increase the stated shelf life in any Regulatory Approval of the Products to at least [***] months.

7.5. Information Exchange.

(a) **Deficiency**. If Symatese is notified of a deficiency in any Regulatory Materials, then Symatese shall immediately notify Evolus, and the Parties shall consult with each other regarding appropriate responses and timing. Symatese shall respond to such deficiency. The Parties acknowledge that the Governmental Authorities may require an expedited response to their inquiries and in such case shall work together to ensure that responses are filed within the requisite deadlines.

(b) **Government Communications**.

(i) the Parties shall promptly (but in any event not later than [***] Business Days) provide each other with copies of all Material Communications with any Governmental Authority, including, without limitation, adverse event reports and safety reports, regarding a Product, the Facilities, or the procedures or processes used in connection with a Product; and

(ii) the notification obligation in this Section 7.5(b) shall be twenty-four (24) hours if a Governmental Authority is commencing or threatening seizure of a Product or, with respect to Symatese, closure of or suspension of operations at a Facility.

(c) Evolus shall be entitled to review Symatese's responses to any Material Communications relating to the Product prior to their submission, if practicable, and Evolus' reasonable views and comments shall be taken into account prior to submission, subject to Evolus' comments being submitted on a timely basis. Symatese shall also use its best efforts to provide Evolus with the notice, information, documentation, and opportunity to comment provided for above with respect to any Symatese Contract Provider.

(d) At least each Calendar Quarter during the Initial Term, each Party shall keep the other fully informed of the material status of regulatory and commercial developments

related to the Products in the Field in its respective territory, including any material decision by any Governmental Authority of their respective territory.

7.6. Right of Reference. Each Party hereby grants to the other the right of reference to all regulatory filing and materials pertaining to the Products submitted by or on behalf of such Party, solely for the purpose of obtaining Regulatory Approvals for Product in Territory in the Field.

7.7. Cooperation. The Parties shall cooperate with each other with respect to the activities governed by this Article 7, including executing documents and providing information to the other Party. Further, Evolus shall, at no cost to Symatese, provide reasonable assistance to Symatese in connection with its Development and regulatory activities for Product in the Territory for the Field, including by providing reasonable technical assistance and input in the regulatory activities required to obtain Regulatory Approval and providing reasonable assistance with Clinical Studies required to obtain such Regulatory Approval.

7.8. Diligence. Symatese shall use Commercially Reasonable Efforts, alone or in conjunction with its Affiliates, to obtain Regulatory Approval for, and Develop and Manufacture at least [***] Product for the Territory in the Field.

7.9. Quality Control. Symatese shall use Commercially Reasonable Efforts to Develop and Manufacture the Products in accordance with all Applicable Law in all material respects, including where applicable cGMP, and maintain ongoing quality assurance and testing procedures sufficient to satisfy regulatory requirements under Applicable Law.

8. SYMATESE OBLIGATIONS

8.1. Manufacturing Facility

(a) Symatese currently has an operational and efficient Facility for Manufacturing the Product (current facility). As a guarantee of continuity supply of the Products to Evolus according to this Agreement, Symatese undertakes to set up a second Facility for Manufacturing the Product that is as operational and efficient as the current Facility to create additional Manufacturing capacity (additional facility).

(b) The Parties shall form a sub-committee of the Marketing Committee, composed of at least one (1) member of each Party, to provide updates and feedback on the build-out in accordance with the QSR and Quality Agreement and approvals of any Governmental Authority for the second Facility.

9. INTELLECTUAL PROPRIETARY RIGHTS

9.1. Trademark License. Symatese hereby grants to Evolus a royalty-free, exclusive, non-assignable, non-transferable, non-sublicensable, to use the Trademarks solely in connection with the advertising, sale, distribution, and Commercialization of the Products in the Territory. Evolus shall use the Trademarks: (i) in compliance with Applicable Laws; and (ii) in reasonable conformity with the style and appearance standards that are substantially equivalent to those standards maintained by Symatese as of the Effective Date.

9.2. IP Ownership. Each Party will retain ownership and all right, title and interest to all Intellectual Property Rights existing prior to the Effective Date or conceived, reduced to practice, made, or developed by such Party outside of the activities performed under this Agreement. Evolus will also retain ownership of the Evolus Trademarks. Joint research is not contemplated by this Agreement. If the Parties decide to engage in joint research during the Term, then the Parties shall negotiate and enter into a separate joint research agreement.

9.3. No Other Proprietary Rights. Except as expressly stated in this Agreement, nothing shall grant either Party any right, title, or interest in and to any Patent application, Patent, trade secret, trademark, or other Intellectual Property Right of the other Party, whether expressly, by implication or by estoppel.

9.4. Infringement. Evolus shall be responsible for handling any infringement in the Territory of any Evolus Trademarks, Patents, or other Intellectual Property Rights of Evolus or its Affiliates related to the Products, of which Evolus may learn, including initiating any protective action with respect to such infringement, and Symatese agrees to cooperate to the fullest extent necessary to enable Evolus to conduct such defense.

9.5. Third Party Licenses. During the Term, [***].

10. CONFIDENTIALITY

10.1. Confidentiality and Non-Use Obligations. Subject to Section 10.3, the Parties each undertake to keep in strict confidence and not disclose to any Third Party, or to use themselves other than for the performance of their respective obligations, or the exercise of their respective rights, under this Agreement any, proprietary, Confidential Information in any form directly or indirectly belonging or relating to the other Party, or its Affiliates, disclosed by or on behalf of a Party and received by the other Party pursuant to or in the course of this Agreement or the performance of this Agreement. The Parties agree that a Party receiving Confidential Information of the other Party shall not disclose such Confidential Information to any Third Party without prior written consent of the other Party, except for disclosures made in confidence to any Third Party under written terms consistent with this Agreement.

10.2. Permitted Disclosures. A Party may disclose Confidential Information disclosed by the other Party to the extent such disclosure is reasonably necessary in the following instances:

(a) when complying with applicable governmental laws, regulations (including the regulations of applicable securities exchanges) or judicial orders; *provided* that notice of any such disclosure shall be sent to the other Party as soon as practicable prior to any such disclosure to provide the other Party an opportunity to challenge or limit the disclosure obligations.

(b) when disclosing to actual or potential investors, investment bankers, lenders, other financing sources or acquirors (and attorneys and independent accountants thereof) in connection with potential investment, acquisition, collaboration, merger, public offering, due diligence or similar investigations by such Third Parties or in confidential financing documents, provided that, in each case, any such Third Party agrees to be bound by terms of confidentiality and non-use (or, in the case of the receiving Party's attorneys and independent accountants, such Third Party is obligated by applicable professional or ethical obligations) that are no less stringent than those contained in this Agreement (except to the extent that a shorter confidentiality period is customary in the industry), except in the case of disclosure of any trade secrets or know-how related to the Manufacturing of the Product, which disclosure shall require prior written consent prior to such disclosure; or

(c) when disclosing to a receiving Party's: (i) Affiliates, potential or actual collaborators, partners, and licensees (including potential co-marketing and co-promotion contractors); (ii) potential or actual investment bankers, acquirers, lenders or investors; and (iii) employees, consultants and agents; each of whom, prior to disclosure, must be bound by similar obligations of confidentiality and non-use as set forth in this Article 10.

10.3. Duration and Exceptions. The obligations contained in this Article 10 shall survive for a period of [***] following the expiry or termination of this Agreement for any reason, except with respect to any Confidential Information qualifying as, and properly identified

as a trade secret under Applicable Law, for which the duty of confidence set forth herein shall not expire, and shall remain valid so long as such Confidential Information qualifies as a trade secret. Notwithstanding the foregoing, the obligations of confidentiality contained in this Article 10 shall not apply to any Confidential Information which:

(a) is publicly disclosed by the disclosing Party, either before or after it is disclosed to the receiving Party hereunder;

(b) was known to the receiving Party or any of its Affiliates, without obligation to keep it confidential, prior to disclosure by the disclosing Party;

(c) is subsequently disclosed on a non-confidential basis to the receiving Party or any of its Affiliates by a Third Party lawfully in possession thereof and without confidentiality or non-sue obligations; or

(d) is published by a Third Party or otherwise becomes publicly available or enters the public domain, either before or after it is disclosed to the receiving Party, and is not directly or indirectly supplied by the receiving Party in violation of this Agreement.

10.4. Press Release. Each Party agrees not to, and agrees to cause its Affiliates not to, issue any press release or other public statement disclosing the existence of Agreement or the transactions contemplated hereby, unless such press release or other public statement is approved by the other Party in writing (such approval not to be unreasonably withheld, delayed or conditioned); except that, each Party will be authorized to make any disclosure, without the approval of the other Party, that is required by Applicable Laws (including the US Securities Act of 1933, as amended, and the US Securities Exchange Act of 1934, as amended) or the rules of any securities exchange. Nevertheless, it is agreed between the Parties that the first press release relating to this Agreement is subject to the prior written approval of both Parties.

11. REPRESENTATIONS AND WARRANTIES

11.1. Authorization; Enforceability. Each Party represents and warrants to the other Party that: (a) it is a corporation duly organized and validly existing under the laws of its jurisdiction of organization and has all requisite power and authority to enter into this Agreement; (b) it is duly authorized by all requisite action to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby, and that the same do not conflict or cause a default with respect to such Party's obligations under any other agreement; and (c) it has duly executed and delivered this Agreement.

11.2. Compliance with Laws, Permits and Licenses. Both Parties represent and warrant to the other Party that their actions under this Agreement shall comply with all Applicable Laws and regulations pertaining to the Development, Manufacture, supply, and use of the Products, including the including, if applicable, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and any laws enacted to implement the Organisation of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Officials in International Business Transactions. Each Party further represents and warrants that it has and shall throughout the Term, at its expense, obtain and maintain any and all licenses, permits, orders, authorizations, and consents required by the Governmental Authority in the Territory to perform its obligations under this Agreement.

11.3. Debarment. Both Parties represent and warrant to the other Party that in the course of the Development, Manufacture, and Commercialization of the Products, the Parties have not and shall not knowingly use any employee, consultant, or subcontractor who has ever been debarred or is the subject of debarment or convicted of a crime for which a Person could be debarred (including by the FDA under 21 U.S.C. § 335a (or subject to a similar sanction of any other Governmental Authority)). Each Party shall notify the other immediately upon becoming aware (a) that any of its employees, consultants, or subcontractors has been debarred or is the

subject of debarment proceedings by any Governmental Authority, or (b) that any part of this Section 11.3 is no longer true and correct.

11.4. Products Warranty. Symatese warrants to Evolus that:

(a) the Products supplied to Evolus under this Agreement shall be Manufactured in accordance with cGMP, the Regulatory Approval and conform with the Specifications and will be free from significant defects in material and workmanship;

(b) the Products supplied to Evolus under this Agreement are free of defects in design;

(c) no claim, lien, or action exists or is threatened against Symatese that would interfere with the Commercialization of the Products;

(d) no Products, nor the Manufacture or Commercialization of the Products, infringes any Third Party Intellectual Property Rights;

(e) the Evolus will receive good and valid title to the Products, free and clear of all encumbrances and liens of any kind;

(f) the Products are manufactured and supplied in accordance with Applicable Law; and

(g) all Products meet the Shelf-Life Threshold upon shipment to Evolus.

Evolus shall notify Symatese of any warranty claim for a Product under this Section 11.4. Upon receipt of a warranty claim, Symatese shall promptly repair or replace the applicable Product, at no charge to Evolus.

12. INDEMNIFICATION AND INSURANCE

12.1. Indemnification by Evolus. Subject to Section 12.3, Evolus hereby agrees to indemnify, defend and hold harmless Symatese, its Affiliates, and its and their respective directors, employees and agents ("Symatese Indemnitees") from any and all claims, suits, demands, losses, liabilities, damages, penalties or expenses, including reasonable attorney fees, (collectively, "Claims") by any Third Party arising from or related to the negligence, gross negligence, willful misconduct, or breach of this Agreement (including a breach of any of the representations or warranties in Article 11) by Evolus, its Affiliates or any of their permitted sub-distributors, sales representatives or employees, except, in each case, to the extent such Claims result from the negligence, gross negligence, willful misconduct, or breach of this Agreement by any Symatese Indemnitee.

12.2. Indemnification by Symatese. Subject to Section 12.3, Symatese hereby agrees to indemnify, defend and hold harmless Evolus, its Affiliates, and its and their respective directors, employees and agents from any and all Claims by any Third Party arising from or related to the negligence, gross negligence, willful misconduct, or breach of this Agreement (including a breach of any of the representations or warranties in Article 11) by any Symatese Indemnitee, except, in each case, to the extent such Claims result from the negligence, gross negligence, willful misconduct, or breach of this Agreement by Evolus, its Affiliates or any of their permitted sub-distributors, sales representatives or employees.

12.3. Procedures. For a Party to exercise its rights under Section 12.1 or Section 12.2, the Party seeking to exercise its rights (the "Indemnified Party") must: (a) promptly notify the other Party (the "Indemnifying Party") of the Claim; *provided* that failure to give such notice shall not relieve Indemnifying Party of its obligations except where, and solely to the extent that, such failure actually and materially prejudices the rights of Indemnifying Party; (b) provide

reasonable cooperation to the Indemnifying Party (and its insurer), as reasonably requested, at Indemnifying Party's reasonable cost and expense; and (c) tender to the Indemnifying Party (and its insurer) full authority to defend or settle the Claim; *provided* that the Indemnifying Party shall not settle or compromise the Claim in any manner which would: (i) require any payment by the Indemnified Party; (ii) require an admission of legal wrongdoing in any way on the part of the Indemnified Party; or (iii) effect an amendment of this Agreement, in each case without the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld, delayed, or conditioned. Neither Party has any obligation to indemnify the other Party in connection with any settlement made without the Indemnifying Party's written consent. The Indemnified Party has the right to participate at its own expense in the Claim and in selecting counsel therefor.

12.4. Insurance. During the Term, Evolus shall use Commercially Reasonable Efforts to procure and maintain insurance from a reputable insurer that is consistent with normal business practices of similarly situated companies. Upon request of a Party, the other Party shall list such other Party as additional insured on any insurance policies procured and maintained under this Agreement and shall provide the other Party with written evidence of insurance upon request. Each Party shall provide the other Party with written notice at least [***] days prior to the cancellation, non renewal or material change in such insurance. Each Party shall, upon the written request of the other Party, furnish to the other Party a certificate of insurance evidencing the foregoing coverage.

13. LIMITATIONS OF LIABILITY

13.1. EXCLUSION OF CONSEQUENTIAL DAMAGES. EXCEPT FOR BREACH OF A PARTY'S OBLIGATIONS UNDER ARTICLE 10, AND EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 12 REGARDING CLAIMS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING LOST PROFITS, IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

13.2. LIABILITY LIMITATION. EXCEPT FOR BREACH OF A PARTY'S OBLIGATIONS UNDER ARTICLE 10, AND EXCEPT AS OTHERWISE PROVIDED IN ARTICLE 12 REGARDING CLAIMS, UNDER NO CIRCUMSTANCES SHALL THE TOTAL LIABILITY OF EVOLUS AND ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, EXCEED THE TOTAL AMOUNT PAID BY EVOLUS TO SYMATESE UNDER THIS AGREEMENT DURING THE SIX (6) MONTHS PRECEDING SUCH ACTION OR CLAIM (AS DETERMINED IN REFERENCE TO THE DATE OF FILING OF SUCH ACTION OR CLAIM).

13.3. Independence of Provisions. The Parties agree that Sections 13.1 and 13.2 are independent of any exclusive remedies for breach of warranty set forth in this Agreement. Furthermore, Symatese and Evolus each agrees that the Prices for Products set forth in this Agreement reflect the allocation of risk set forth in this Agreement, and that the Parties would not enter into this Agreement without these limitations on its liabilities.

14. TERM AND TERMINATION

14.1. Term. Subject to Section 14.2, this Agreement commences on the Effective Date and continues until the day that is the fifteen (15) year anniversary of the date of the first Regulatory Approval achieved for a Product in the Territory ("Initial Term"). After the Initial Term, this Agreement shall automatically renew for successive five (5)-year terms (each, a "Subsequent Term") for so long as Evolus meets the Minimum Purchase Requirements and the

Agreement is not terminated by either other Party pursuant to Section 14.2(a). The Initial Term and each Subsequent Term shall collectively be the "Term".

14.2. Termination.

(a) If either Party believes that the other is in material breach of its obligations hereunder, then the non-breaching Party may deliver notice of such breach to the other Party. The allegedly breaching Party shall have [***] days to cure such breach from the receipt of the notice, except that, if such breach is capable of being cured but is not cured within such [***]-day period, the breaching Party may cure such breach during an additional period as is reasonable in the circumstances by initiating actions to cure such breach during such [***]-day period and using Commercially Reasonable Efforts to pursue such actions. If the allegedly breaching Party fails to cure that breach within the applicable period set forth above, then the Party originally delivering the notice of breach may terminate this Agreement on written notice of termination. The Parties agree that the termination remedy under this Section 14.2(a) are to be invoked only if the applicable material breach cannot be adequately remedied through a combination of specific performance and the payment of money damages as available to the non-breaching Party in accordance with this Agreement.

(b) Evolus may terminate this Agreement promptly by written notice of termination to Symatese if Symatese fails to obtain Regulatory Approval for at least one (1) Product in the Territory in the Field on or before [***]. Such termination shall be effective[***] days after Symatese's receipt of notice from Evolus.

(c) Symatese may terminate this Agreement promptly by written notice of termination to the Evolus for Evolus' failure to purchase the Minimum Purchase Requirements set forth under Section 3.1. Such termination shall be effective [***] days after Evolus' receipt of notice from Symatese.

14.3. Effect of Termination or Expiration.

(a) The rights of each Party against the other Party that have accrued up to the date of such termination or expiration shall remain in force after the termination or expiration of this Agreement.

(b) Evolus' obligations to pay any Milestone Payments for milestones not achieved as of the effective date of the termination shall cease, and Evolus shall have the right to continue selling Products during the [***] days following the effective date of the termination, subject to payment of royalties under Section 4.5. At the end of such the [***] period, Evolus shall destroy any remaining supplies of unsold Products and send a certification of such destruction to Symatese.

(c) Each receiving Party shall return to the disclosing Party or destroy, at the disclosing Party's election, all Confidential Information of disclosing Party, including all copies thereof and all materials, substances and compositions delivered or provided by disclosing Party to receiving Party, except that receiving Party may keep one copy of such Confidential Information in its legal files solely for the purpose of enabling it to comply with the provisions of this Agreement, and receiving Party shall not be required to remove such Confidential Information from its back-up or archive electronic records, including its electronic laboratory notebook and laboratory information management systems.

(d) The Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement. Termination of this Agreement will not constitute a waiver of any of either Party's rights, remedies, or defenses under this Agreement, at law, in equity, or otherwise.

(e) Termination is not the sole remedy under this Agreement and, whether or not termination is implemented and notwithstanding anything contained in this Agreement to the contrary, all other remedies will remain available except as agreed to otherwise herein.

14.4. Survival. The provisions of Article 10 shall survive the expiration or termination of this Agreement and shall continue in effect for [***]. Additionally, the provisions of: (a) Articles 1, 11 through 13, 15, 16, and 17 shall survive any expiration or termination of this Agreement; (b) Sections 9.3, 9.4, 14.3 and 14.4.shall survive any expiration or termination of this Agreement; and (c) Sections 3.5 - 3.7, 4.1, 4.2, 4.3, 4.5 - 4.8, 5.3 - 5.5, 6.1 - 6.9, 7.1, 7.2, and 7.5, shall survive any expiration or termination of this Agreement, but solely with respect to any obligations that accrued: (i) prior to termination or expiration of the Agreement; or (ii) pursuant to Section 14.3(b).

15. DATA PROTECTION

15.1. Under this Agreement, the Parties may exchange files and/or information containing personal data, as defined in Article 4 of the GDPR ("Personal Data"). The Parties undertake to comply with all Applicable Laws and regulation in respect of data protection, in particular the EU General Data Protection Regulation n°2016/679 of April 27, 2016 ("GDPR"), as well as other regulations present or future, applicable to Personal Data processed for performance of this Agreement.

15.2. The Parties shall take all necessary steps to protect in the best possible conditions of security and confidentiality the Personal Data that they collect and/or process under this Agreement. In addition, the Parties shall retain and / or process such data only for the strict performance of this Agreement and shall ensure that such data remain fully intact and in no way deformed, damaged or accessible by third parties not expressly authorized.

15.3. Finally, if either Party becomes aware of a Personal Data breach within the meaning of Article 4 of GDPR, it undertakes (i) to notify such breach to the other Party no later than 48 hours from its discovery and (ii) to provide adequate information to the other Party so that the latter can comply with its obligations to the competent data protection authority (CNIL) within the time limit set by Article 33 of the GDPR.

16. GENERAL PROVISIONS

16.1. Notices. Unless otherwise stated in this Agreement, any notice, report, payment or document to be given by a Party to the other Party will be in writing and shall be deemed given when delivered personally or mailed by certified or registered mail, postage prepaid (such mailed notice to be effective on the date which is three (3) Business Days after the date of mailing), or sent by nationally recognized overnight courier (such notice sent by courier to be effective one business day after it is deposited with such courier), or sent by email or facsimile (such notice sent by email or facsimile to be effective when sent, if confirmed by certified or registered mail or overnight courier) as follows:

If to Symatese:

Address: ZI Les Troques, 69630 Chaponost
Attention: Directeur général
[***]
[***]

If to Evolus:

Address: 520 Newport Center Dr., Suite 1200
Newport Beach, CA 92692
Attention: CEO
[***]
[***]

with a copy to:

Address: ZI Les Troques, 69630 Chaponost
Attention: Direction financière
[***]
[***]

with a copy to:

Address: 520 Newport Center Dr., Suite 1200
Newport Beach, CA 92692
Attention: Legal
[***]
[***]

or to such other place as either Party may designate as to itself by written notice to the other Party.

16.2. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of England and Wales, without regard to the conflict of laws principles thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

16.3. Amendment and Waiver. No amendments or waivers of the terms and conditions of this Agreement shall be binding upon either Party unless in writing, signed by the Parties and specifying the provision of this Agreement that is amended or waived. No waiver by either Party of any breach of this Agreement by the other Party shall be effective as to any other breach, whether of the same or any other term or condition and whether occurring before or after the date of such waiver.

16.4. English Language. This Agreement was prepared in the English language, which language shall govern the interpretation of, and any dispute regarding, the terms of this Agreement.

16.5. Independent Contractors. Each Party represents that it is acting on its own behalf as an independent contractor and is not acting as an agent (or legal representative) for or on behalf of the other Party or any Third Party. This Agreement and the relationship hereby established by and between Symatese and Evolus do not constitute a partnership, joint venture, franchise, agency, or contract of employment. Evolus is not granted, and shall not exercise, the right or authority to assume or create any obligation or responsibility on behalf of or in the name of Symatese or its Affiliates.

16.6. Assignment. Neither Party may assign this Agreement, or its rights or obligations hereunder, without the prior written consent of the other Party; *except* that either Party may assign this Agreement, or all of its rights and obligations hereunder: (a) to an Affiliate, or (b) if a transfer or sale to a Third Party of all or substantially all of that Party's assets or business that relate to this Agreement occurs, whether by change of control, merger, sale of stock, sale of assets or otherwise. Any assignment in violation of this Section 16.6 shall be null and void. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

16.7. Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other term or provision hereof. The Parties agree that they shall negotiate in good faith or shall permit a court to replace any provision hereof so held invalid, illegal, or

unenforceable with a valid provision which is as similar as possible in substance to the invalid, illegal or unenforceable provision.

16.8. Interpretation. Headings in this Agreement are included for ease of reference only and shall have no legal effect. This Agreement shall be deemed to comprise the language mutually chosen by the Parties and no rule of strict construction shall be applied against any Party. Unless otherwise expressly provided herein or the context of this Agreement otherwise requires: (a) the singular shall include the plural and vice versa, (b) words of any gender include each other gender, (c) words such as "herein", "hereof," "hereby" and "hereunder" refer to this Agreement as a whole; (d) the words "include(s)," "including," "such as," and "for example" shall be deemed to be followed by the phrase "but not limited to," "without limitation," or words of similar import unless otherwise specified; (e) the word "or" shall be deemed to include the word "and" (e.g., "and/or"); (f) references to a particular statute, law or regulation include all rules and regulations promulgated thereunder and any successor statute, law, rules or regulations then in effect, in each case including the then-current amendments thereto; (g) references to "Article," "Section," "subsection," "clause," or other subdivision, or an Exhibit or Appendix, without reference to a documents are to the specified provision, Exhibit, or Appendix to this Agreement; (h) the word "will" shall be construed to have the same meaning and effect as the word "shall"; (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein); (j) any reference herein to any Person shall be construed to include the Person's or entity's successors and assigns; (k) the word "notice" means notice in writing (whether or not specifically stated) and shall include notices, consents, approvals and other written communications contemplated under this Agreement; (l) provisions that require that a Party, the Parties or any committee hereunder "agree," "consent" or "approve" or the like shall require that such agreement, consent or approval be specific and in writing, whether by written agreement, letter, approved minutes or otherwise, including by e-mail; and (m) unless stated otherwise, references to any specific law, rule or regulation, or article, section or other division thereof, shall be deemed to include the then-current amendments thereto or any replacement or successor law, rule or regulation thereof.

16.9. Entire Agreement. The terms, conditions and provisions contained in this Agreement constitute the entire understanding of the Parties with respect to the transactions and matters contemplated hereby and supersede all previous communications, representations, agreements, and understandings relating to the subject matter hereof. For clarity, this Agreement shall supersede any prior confidentiality or non-disclosure agreement that was between the Parties and that covered the subject matter of this Agreement ("Prior CDA"), and all Confidential Information (as defined therein) exchanged between the Parties under the Prior CDA prior to the Effective Date shall be governed by the Prior CDA, while all Confidential Information exchanged between the Parties as of or after the Effective Date shall be governed by this Agreement.

16.10. Further Assurances. Each Party covenants and agrees that subsequent to the execution and delivery of this Agreement, and without any additional consideration, it shall execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary to effectuate the terms and conditions of this Agreement.

16.11. Force Majeure. No Party shall be held liable to the other Party, or be deemed to have defaulted under or breached this Agreement, for failure or delay in performing any obligation under this Agreement to the extent such failure or delay is caused by or results from causes beyond the reasonable control of the affected Party, potentially including epidemics, pandemics (including COVID-19), embargoes, war, acts of war (whether war be declared or not), acts of terrorism, insurrections, riots, civil commotions, strikes, lockouts or other labor disturbances or shortages, fire, floods, or other acts of God, or acts by any Governmental Authority (including shelter-in-place orders, quarantine orders, or lock down orders), or unavailability of materials related to the manufacture of Products. The affected Party shall notify

the other Party of such force majeure circumstances as soon as reasonably practical and shall promptly undertake and continue diligently all Commercially Reasonable Efforts necessary to cure such force majeure circumstances or to perform its obligations in spite of the ongoing circumstances.

16.12. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be signed and delivered by facsimile, or electronically in PDF format, each of which will be binding when sent.

17. DISPUTE RESOLUTION

17.1. Dispute Resolution. The Parties agree that any dispute, controversy or claim that arises out of, or relates to, this Agreement ("Disputed Matter") shall be resolved solely by means of the procedures set forth in this Article 17, and that such procedures constitute legally binding obligations that are an essential provision of this Agreement. If either Party fails to observe the procedures of this Article 17, as may be modified by their written agreement, the other Party may bring an action for specific performance of these procedures in any court of competent jurisdiction.

17.2. Arbitration. Each Disputed Matter that is not an Excluded Claim shall be finally resolved by binding arbitration administered by the International Chamber of Commerce (the "ICC").

(a) The seat and venue of the arbitration shall be [***]. There shall be three (3) arbitrators, each of whom shall have significant legal or business experience in the medical device, biotechnology, or pharmaceutical industry, and none of whom shall be a current or former employee or director, or a current significant shareholder, of either Party or any of their respective Affiliates or any sublicensee. Such arbitrators shall be selected pursuant to the following:

(i) The claimant (the "Claimant") shall designate one (1) arbitrator in the notice of arbitration (the "Notice of Arbitration"). If the Claimant does not designate one (1) arbitrator in its Notice of Arbitration, the ICC shall, within [***] days upon application by either Party, appoint one (1) arbitrator for the Claimant.

(ii) The respondent (the "Respondent") shall designate one (1) arbitrator in the answer to the Notice of Arbitration (the "Answer to the Notice of Arbitration"). If the Respondent fails: (A) to designate one (1) arbitrator in its Answer to the Notice of Arbitration; or (B) to file its Answer to the Notice of Arbitration by the time that it is required to do so, the ICC shall, within [***] days upon application by either Party, appoint one (1) arbitrator for the Respondent.

(iii) The two (2) arbitrators so appointed above shall, within fifteen (15) days of confirmation of the second arbitrator, designate a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation within the [***] days from the confirmation of the second arbitrator, the ICC shall, within [***] upon application by either Party, appoint the presiding arbitrator.

(b) The arbitration proceedings shall be conducted in English. The arbitration tribunal shall apply the Arbitration Rules of the ICC (the "ICC Rules") in force when the Notice of Arbitration is submitted in accordance with the ICC Rules, and the ICC Rules are deemed to be incorporated by reference to this sub-Section. Where the ICC Rules are in conflict with the provisions of this Section 17.2, including the provisions concerning the appointment of arbitrators, the provisions of this Section 17.2 shall prevail.

(c) The arbitrators shall decide any Disputed Matter submitted by the Parties to the arbitration strictly in accordance with the internal laws of [***] and shall not apply any other substantive law.

(d) Each Party shall cooperate with the other Party in making full disclosure of and providing complete access to all relevant information and documents requested by the other in connection with such arbitration proceedings; provided, that the Disputed Matter shall be resolved in a confidential manner, and none of the foregoing information or documents or the result of the arbitration shall be disclosed or otherwise used unless required by law or to a court in aid of enforcement of the arbitration award.

(e) During arbitration and prior to an arbitration award being granted, the Parties shall continue to perform those obligations under this Agreement that are not in dispute.

(f) Either Party may apply to the arbitrators for interim injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. The arbitrators' authority to award punitive or any other type of damages not measured by a Party's compensatory damages shall be subject to the limitation set forth in Article 13.

(g) Except to the extent necessary to confirm or enforce an award or as may be required by Applicable Laws, neither Party nor an arbitrator may disclose the existence, content, or results of an arbitration without the prior written consent of the other Party. In no event shall an arbitration be initiated after the date when commencement of a legal or equitable proceeding based on the dispute, controversy or claim would be barred by the applicable statute of limitations.

(h) The Parties agree that, if a Disputed Matter arises over the nature or quality of performance under this Agreement, neither Party may terminate this Agreement until final resolution of the Disputed Matter through arbitration or other judicial determination. The Parties further agree that any payments made pursuant to this Agreement pending resolution of the Disputed Matter shall be refunded if an arbitrator or court determines that such payments are not due.

17.3. Provisional Remedies. Nothing in this Agreement shall limit the right of either Party to seek to obtain in any court of competent jurisdiction or arbitration panel any equitable or interim relief or provisional remedy, including injunctive relief, that may be necessary to protect the rights or property of that Party, and such an action by such Party may be filed and maintained notwithstanding any ongoing discussions between the Parties or any ongoing arbitration proceeding. In addition, either Party may bring an action in any court of competent jurisdiction to resolve disputes pertaining to any Excluded Claims, and no such Excluded Claim shall be subject to arbitration pursuant to Section 17.2. Seeking or obtaining such equitable or interim relief or provisional remedy in a court shall not be deemed a waiver of the Agreement under the dispute resolution provisions set forth herein. For clarity, any such equitable remedies shall be cumulative and not exclusive and are in addition to any other remedies that either Party may have under this Agreement or Applicable Laws.

[Signature page follows.]

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

SYMATESE EVOLUS
Symatese S.A.S Evolus, Inc.

/s/ Jean-Paul Gérardin /s/ David Moatazedi
By: Jean-Paul Gérardin By: David Moatazedi
Title: Directeur général Title: Chief Executive Officer

Exhibit A
[***]

THIRD AMENDMENT TO LOAN AGREEMENT

This THIRD AMENDMENT TO LOAN AGREEMENT (this "Amendment"), dated and effective as of May 9, 2023 (the "Third Amendment Effective Date"), is made by and among EVOLUS, INC., a Delaware corporation (as "**Borrower**" and a Credit Party), BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales with company number 10443190 (as the "**Collateral Agent**"), BPCR LIMITED PARTNERSHIP, a limited partnership established under the laws of England and Wales with registration number LP020944 (as a "**Lender**"), and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership acting by its general partner, BioPharma Credit Investments V GP LLC (as a "**Lender**").

Recitals

A. Collateral Agent, Lenders and Borrower have entered into that certain Loan Agreement dated as of December 14, 2021, as amended by that certain First Amendment to Loan Agreement dated as of April 5, 2022 and that Second Amendment to Loan Agreement dated as of December 5, 2022 (the "Loan Agreement").

B. In accordance with Section 11.5 of the Loan Agreement, Borrower (acting for its own behalf and on behalf of the other Credit Parties), Collateral Agent and Lenders desire to amend the Loan Agreement on the terms and conditions set forth herein.

Agreement

Now, Therefore, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. All capitalized terms used in this Amendment (including in the recitals hereof) and not otherwise defined herein shall have the meanings assigned to them in the Loan Agreement. The rules of interpretation set forth in the first paragraph of Section 13.1 of the Loan Agreement shall be applicable to this Amendment and are incorporated herein by this reference.

2. Amendments to Loan Agreement. Subject to Borrower having delivered to the Collateral Agent by electronic mail or facsimile a completed and executed Advance Request with respect to the Tranche B Loan Amount concurrent with Borrower's execution and delivery of this Amendment on the Third Amendment Effective Date, which shall be irrevocable on and after the Third Amendment Effective Date shall bind Borrower to borrow fifty percent (50.0%) of the Tranche B Loan Amount on May 31, 2023 and fifty percent (50.0%) of the Tranche B Loan Amount on December 15, 2023:

a. The Loan Agreement shall be amended by adding as the fourth paragraph in Section 1 of the Loan Agreement the following:

"The Collateral Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Collateral Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to the Borrower. The Collateral Agent may select information sources or services in its reasonable

discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service."

b. The Loan Agreement shall be amended by deleting in its entirety Section 2.2(a)(ii) of the Loan Agreement and replacing it as follows:

"(ii) Each Lender severally agrees to make a term loan to Borrower on the Tranche B Closing Date in an original principal amount equal to such Lender's Tranche B Commitment, which such term loan shall be funded in two equal portions as indicated in the Advance Request for the Tranche B Loan and described in the definition of Tranche B Closing Date (individually or collectively, as the context dictates, the "**Tranche B Loan**"."

c. The Loan Agreement shall be amended by deleting in their entirety Sections 2.2(b)(i) and (b)(ii) of the Loan Agreement and replacing them as follows:

"(i) "With respect to each Tranche A Loan, (A) Borrower shall make seven (7) equal quarterly principal payments of such Tranche A Loan, each in an amount equal to one-twelfth of the cumulative principal balance of such Tranche A Loan commencing on the first Payment Date that occurs following the 51st-month anniversary of the Tranche A Closing Date (the "**Initial Principal Payment Date**") and continuing quarterly (each, a "**Subsequent Principal Payment Date**"), and (B) thereafter, Borrower shall make a principal payment of such Tranche A Loan in an amount equal to the remaining unpaid principal balance of such Tranche A Loan on the Term Loan Maturity Date; provided, however, that if any such date is not a Business Day, the applicable principal shall be due and payable on the Business Day immediately preceding such date.

(ii) With respect to each Tranche B Loan, (A) Borrower shall make seven (7) equal quarterly principal payments of such Tranche B Loan, each in an amount equal to one-twelfth of the cumulative principal balance of such Tranche B Loan commencing on the Initial Principal Payment Date and continuing quarterly on each Subsequent Principal Payment Date, and (B) thereafter, Borrower shall make a principal payment of such Tranche B Loan in an amount equal to the remaining unpaid principal balance of such Tranche B Loan on the Term Loan Maturity Date; provided, however, that if any such date is not a Business Day, the applicable principal shall be due and payable on the Business Day immediately preceding such date."

d. The Loan Agreement shall be amended by deleting in its entirety Section 2.2(c)(ii) of the Loan Agreement and replacing it as follows:

"(ii) Upon a Change in Control, Borrower shall promptly, and in any event no later than ten (10) days after the consummation of such Change in Control, notify the Collateral Agent in writing of the occurrence of a Change in Control, which notice shall include reasonable detail as to the nature, timing and other circumstances of such Change in Control (such notice, a "**Change in Control Notice**"). Borrower shall prepay in full all of the Term Loans advanced by Lenders under this Agreement, no later than ten (10) Business Days after the consummation of such Change in Control, in an amount equal to the sum of (A) all unpaid principal and any and all accrued and unpaid interest with respect to the Term Loans (such interest to be calculated based on Term SOFR for the Interest Period during which such Change in Control is consummated), and (B) any and all amounts payable with respect to the prepayment under this Section 2.2(c)(ii) pursuant to Section 2.2(e) and Section 2.2(f) (as applicable), together with any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents (including pursuant to Section 2.4). The Collateral Agent will promptly notify each Lender of its receipt of the Change in Control Notice, and the amount of such Lender's Applicable Percentage of such prepayment."

e. The Loan Agreement shall be amended by deleting in its entirety Section 2.2(g) of the Loan Agreement and replacing it as follows:

"(g) Any Makewhole Amount or Prepayment Premium payable as a result of any prepayment of the Term Loans pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall be presumed to be the liquidated damages sustained by each applicable Lender as the result of the early redemption and repayment of such Term Loan Notes and Borrower agrees that it is reasonable under the circumstances currently existing. BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE REQUIREMENTS OF LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY MAKEWHOLE AMOUNT OR PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH PREPAYMENT OR ACCELERATION OR OTHERWISE. Borrower expressly agrees that (to the fullest extent it may lawfully do so) that: (i) each Makewhole Amount and Prepayment Premium is reasonable and is the product of an arm's-length transaction among sophisticated business people, ably represented by counsel; (ii) each Makewhole Amount and Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment thereof is made; (iii) there has been a course of conduct among Lenders and Borrower giving specific consideration in this transaction for such agreement to pay each Makewhole Amount and Prepayment Premium; and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.2(g) and Section 8.6. Borrower expressly acknowledges that its agreement to pay the Makewhole Amount and Prepayment Premium, as the case may be, to applicable Lenders as herein described is a material inducement to such Lenders to make any Credit Extension. Without affecting any of any Lender's rights or remedies hereunder or in respect hereof, if Borrower fails to pay the applicable Makewhole Amount or Prepayment Premium when due, then the amount thereof shall thereafter bear interest until paid in full at the Default Rate.

f. The Loan Agreement shall be amended by deleting in its entirety Section 2.3(a)(i) of the Loan Agreement and replacing it as follows:

"(i) Subject to Section 2.3(b) below, the principal amount outstanding under each Term Loan shall accrue interest at a per annum rate equal to Adjusted Term SOFR for the Interest Period therefor *plus* the Applicable Margin (the "**Term Loan Rate**"), which interest shall be payable quarterly in arrears in accordance with this Section 2.3."

g. The Loan Agreement shall be amended by deleting in its entirety Section 2.3(a)(iii) of the Loan Agreement and replacing it as follows:

"(iii) Interest is due and payable quarterly on each Interest Date, as calculated by the Collateral Agent (which calculations shall be deemed correct absent manifest error), commencing on the Interest Date occurring from and after the Third Amendment Effective Date; provided, however, that if any such date is not a Business Day, the applicable interest shall be due and payable on the Business Day immediately preceding such date."

h. The Loan Agreement shall be amended by deleting in its entirety Section 2.3(d) of the Loan Agreement and replacing it as follows:

"(d) Payments. Except as otherwise expressly provided herein, all Term Loan payments and any other payments hereunder by (or on behalf of) Borrower shall be made on the date specified herein to such bank account of each applicable Lender as such Lender (or the Collateral Agent) shall have designated in a written notice to Borrower delivered on or before the Tranche A Closing Date (which such notice may be updated by such Lender (or the Collateral Agent) by written notice to the Borrower from time to time after the Tranche A Closing Date). Except as otherwise expressly provided herein, interest is payable quarterly on each Interest Date. Payments of principal or interest received after 11:00 a.m. on such date are considered received at the opening of business on the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. When any payment is due on a day that is not a Business Day,

such payment is due on the immediately preceding Business Day. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Any payments of principal or interest required to be paid under Section 2.2(b) or Section 2.3 hereof with respect to a Term Loan shall not be considered a prepayment hereunder unless so designated in writing by Borrower in accordance with Section 2.2(c)(i)."

i. The Loan Agreement shall be amended by deleting in its entirety Section 2.3(e) of the Loan Agreement and replacing it as follows:

"(e) Conforming Changes. In connection with the use or administration of Term SOFR, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Collateral Agent will promptly notify Borrower and Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR."

j. The Loan Agreement shall be amended by adding as Section 2.3(f) of the Loan Agreement the following:

"(f) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5^{th}) Business Day after the date notice of such Benchmark Replacement is provided to Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Collateral Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(ii) Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Collateral Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Collateral Agent will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to sub-clause (iv) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Collateral Agent or, if applicable,

any Lender (or group of Lenders) pursuant to this Section 2.3(f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.3(f).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Collateral Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to sub-clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor."

k. The Loan Agreement shall be amended by replacing the phrase "…the United States of America, any state thereof or the District of Columbia..." in Section 2.6(d)(i) of the Loan Agreement with the phase "…the United States…"

l. The Loan Agreement shall be amended by adding, in alphabetical order, the following clauses (f) and (g) to Section 2.6 of the Loan Agreement:

"(f) Tax Status of Borrower. Borrower is currently treated as a corporation for U.S. federal income tax purposes. Borrower shall not take any affirmative action (including not making any election under Section 301.7701-3(c) of the Treasury Regulations (or any successor provision) by way of filing an IRS Form 8832) to change its U.S. entity tax classification without the prior written consent of the Required Lenders.

(g) Tax Reporting Assistance. Borrower shall use best efforts to assist any Lender (i) in the computation of accruals with respect to any "original issue discount" or "market discount" arising with respect to the Term Loans for U.S. federal income tax purposes, and (ii) with its compliance with any associated tax reporting or filing requirements of such Lender or its partners, members or beneficial owners."

m. The Loan Agreement shall be amended by deleting in its entirety the lead-in to Section 3.2 of the Loan Agreement and replacing it as follows:

"**Conditions Precedent to Tranche B Loan**. Each Lender's obligation to advance its Applicable Percentage of each portion of the Tranche B Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:"

n. The Loan Agreement shall be amended by deleting in its entirety Section 3.2(d) of the Loan Agreement and replacing it as follows:

"(d) no prepayment of the principal amount of the Tranche A Loan or any portion of the Tranche B Loan has been made, in whole or in part pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche A Loan or the Tranche B Loan pursuant to Section 8.1(a); and"

o. The Loan Agreement shall be amended by deleting in its entirety Section 3.5 of the Loan Agreement and replacing it as follows:

"**Procedures for Borrowing**. Subject to the prior satisfaction of all other applicable conditions to the making of each Term Loan set forth in this Agreement, to obtain the Term Loans, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile a completed Advance Request Form for the Term Loans executed by a Responsible Officer of Borrower (which notice shall be irrevocable on and after the date on which such notice is given and Borrower shall be bound to make a borrowing in accordance therewith), in which case each Lender agrees to advance an amount equal to its Applicable Percentage of the applicable Term Loan Amount to Borrower on the applicable Closing Date, by wire transfer of same day funds in Dollars, to such account(s) in the United States as may be designated in writing to the Collateral Agent by Borrower at least two (2) Business Days prior to such Closing Date; provided, however, that with respect to the Tranche B Loan, Borrower shall deliver to the Collateral Agent by electronic mail or facsimile, such completed Advance Request with respect to both portions of the Tranche B Loan Amount on the Third Amendment Effective Date, which shall specify that such borrowing shall be bifurcated, with fifty percent (50.0%) of the Tranche B Loan Amount to be advanced on May 31, 2023 and fifty percent (50.0%) of the Tranche B Loan Amount to be advanced on December 15, 2023; provided, further, that the borrowing of each portion of the Tranche B Loan Amount shall be subject to the Collateral Agent's receipt of such completed Advance Request as well as the applicable conditions precedent set forth in Sections 3.2, 3.3 and 3.4."

p. The Loan Agreement shall be amended by deleting in its entirety the phrase "..., CPRA…" in each of the first and second sentences of Section 4.19(l) of the Loan Agreement.

q. The Loan Agreement shall be amended by deleting in its entirety Section 8.6 of the Loan Agreement and replacing it as follows:

"**8.6 Demand Waiver; Makewhole Amount; Prepayment Premium.** Except for such notices as are expressly required under the terms of the Loan Documents, Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by the Collateral Agent on which Borrower is liable. Borrower acknowledges and agrees that if the maturity of all Obligations shall be accelerated pursuant to Section 8.1(a) by reason of the occurrence of an Event of Default, the applicable Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, shall become due and payable by Borrower upon such acceleration, whether such acceleration is automatic or is effected by the Collateral Agent's or any Lender's declaration thereof, as provided in Section 8.1(a), and shall also become due and payable in the event the Obligations are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other similar means, and Borrower shall pay the applicable Makewhole Amount and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, as compensation to Lenders for the loss of its investment opportunity and not as a penalty, and Borrower waives any right to object thereto in any voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise."

r. The Loan Agreement shall be amended by deleting in its entirety the Collateral Agent's notice details in Section 9 of the Loan Agreement and replacing them as follows:

"BioPharma Credit Plc
c/o Link Group, Company Matters Ltd.
6th Floor
65 Gresham Street
London EC2V 7NQ
United Kingdom
Attn: Company Secretary
Tel: +44 01 392 477 500
Fax: +44 01 392 438 288
Email: biopharmacreditplc@linkgroup.co.uk

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: +1 (212) 883-2296
Fax: +1 (917) 210-4048
Email: pharmakon@pharmakonadvisors.com

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: +1 (212) 872-8081
Fax: +1 (212) 872-1002
Email: gsecol@akingump.com"

s. The Loan Agreement shall be amended by deleting in its entirety Section 11.2(a) of the Loan Agreement and replacing it as follows:

"(a) Borrower agrees to indemnify and hold harmless each of the Collateral Agent, Lenders and its and their respective Affiliates (and its or their respective successors and assigns) and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof (each such Person, an "**Indemnified Person**") from and against any and all Indemnified Liabilities; provided, however, that (i) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the bad faith, gross negligence or willful misconduct of such Indemnified Person (or any of such Indemnified Person's Affiliates or controlling Persons or any of their respective directors, officers, managers, partners, members, agents, sub-agents or advisors), in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction, (ii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from a material breach of any obligation of such Indemnified Person hereunder, and (iii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from any claim by one Indemnified Person against another Indemnified Person that does not relate to any act or omission of Borrower or any Credit Party (other than against the Collateral Agent or any intercreditor agent in their respective capacities as such), and (iv) no Credit Party shall be liable for any settlement of any claim or proceeding effected by any Indemnified Person without the prior written consent of such Credit Party (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such consent or if there shall be a final judgment against an Indemnified Person, each of the Credit Parties shall, jointly and severally with each other Credit Parties, indemnify and hold harmless such Indemnified Person from and against any loss or liability by reason of such settlement or judgment in the manner set forth in this Agreement. This Section 11.2(a) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any non-Tax claim."

t. The Loan Agreement shall be amended by deleting in its entirety Section 11.12 of the Loan Agreement and replacing it as follows:

"11.12 Electronic Execution of Documents. The words "execution," "execute," "signed," "signature," and words of like import in this Agreement and the other Loan Documents shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a

paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act."

u. The Loan Agreement shall be amended by deleting in its entirety clause (t) of the definition of Permitted Indebtedness in Section 13.1 of the Loan Agreement and replacing it as follows:

"(t) Indebtedness of Borrower in the form of a working capital or revolving loan facility with a maximum credit line of no more than $15,000,000 (plus any ordinary course interest, fees and other amounts) at any time; provided, that, subject and pursuant to a subordination, intercreditor, or other similar agreement among the Collateral Agent, Borrower and the lender (or representative or agent thereof) under such facility, in form and substance reasonably satisfactory to the Collateral Agent and the lender (or representative or agent thereof) under such facility, such Indebtedness may be secured on a first-priority basis by Liens solely on (x) Collateral constituting (i) accounts receivable, (ii) finished product Inventory, (iii) all supporting obligations in respect of the foregoing and (iv) all proceeds of the foregoing, and (y) all other assets, other than Collateral, over which an accounts receivable-based revolving lender would customarily have a first priority Lien to secure the obligations under such facility, and such Liens may be senior in rank, order of priority and enforcement to the security interests and Liens of the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties in any of such assets to secure the Obligations at all times until all of the obligations under such facility have been paid, performed or discharged in full and Borrower has no further right to obtain any extension of credit thereunder; provided, further, that no Subsidiary shall guarantee, or provide a Lien to secure, the obligations under such facility without the prior written consent of the Collateral Agent or Required Lenders (in its or their sole discretion)."

v. The Loan Agreement shall be amended by deleting in its entirety clause (j) of the definition of Permitted Liens in Section 13.1 of the Loan Agreement and replacing it as follows:

"(j) (i) Liens securing Indebtedness permitted under clause (t) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments and restatements of such Indebtedness permitted under clause (v) of the definition of "Permitted Indebtedness"), and (ii) Liens securing Indebtedness permitted under clause (d) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments or restatements of such Indebtedness permitted under clause (v) of the definition of "Permitted Indebtedness"); provided, that, such Lien does not extend to or cover any assets or properties other than those that are (x) subject to such Capital Lease Obligations or (y) acquired with or otherwise financed by such Indebtedness;"

w. The Loan Agreement shall be amended by deleting in its entirety each of the definitions of CCPA, Data Protection Laws, Governmental Authority, Health Care Laws, Indemnified Liabilities, Interest Date, Interest Period, Lender Expenses, Payment Date, Tranche A Closing Date, Tranche B Closing Date, Tranche B Commitment, Tranche B Loan Amount and Tranche B Makewhole Amount in Section 13.1 of the Loan Agreement and replacing them, in alphabetical order, as follows:

""**CCPA**" means the provisions of the California Consumer Privacy Act, as amended by the California Privacy Rights Act and codified at Cal. Civ. Code § 1798.100 et seq., with any implementing regulations."

""**Data Protection Laws**" means any and all applicable foreign or domestic (including U.S. federal, state and local), statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of Governmental Authorities relating to privacy, security, notification of breaches, or confidentiality of personal data (including individually identifiable information) or and other sensitive information, in each case, in any manner applicable to any Credit Party or any of its Subsidiaries, including, to the extent applicable, HIPAA, Section 5 of the FTC Act and other consumer protection laws, GDPR, PIPEDA, CCPA and other comprehensive state privacy laws, CMIA and other U.S. state medical information privacy laws and genetic testing laws."

""**Governmental Authority**" means any nation or government, any state or other political subdivision thereof, any agency (including Regulatory Agencies and data protection authorities), government department, authority, instrumentality, regulatory body, commission, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization."

""**Health Care Laws**" means, collectively: (a) applicable federal, state or local laws, rules, regulations, codes, orders, ordinances, statutes and requirements issued under or in connection with Medicare, Medicaid or any other Government Payor Program; (b) applicable federal and state laws and regulations governing the privacy, security, confidentiality, or notification of breaches regarding health information, including HIPAA and Section 5 of the FTC Act; (c) applicable federal, state and local fraud and abuse laws of any Governmental Authority, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (d) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (e) the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h); (f) any applicable reporting and disclosure requirements, including any arising under Section 603 of the Veteran's Health Care Act (Quarterly and Annual Non-Federal Average Manufacturer Price and Federal Ceiling Price), Best Price, Federal Supply Schedule Contract Prices and Tricare Retail Pharmacy Refunds, and Medicare Part D; (g) health care laws, rules, codes, statutes, regulations, orders, ordinances and requirements pertaining to Medicare or Medicaid; (h) federal, state or local laws, rules, regulations, ordinances, statutes and requirements relating to (x) the regulation of managed care, third party payors and Persons bearing the financial risk for the provision or arrangement of health care services, (y) billings to insurance companies, health maintenance organizations and other Managed Care Plans or otherwise relating to insurance fraud and (z) any insurance, health maintenance organization or managed care Requirements of Law; (i) the interoperability, information blocking, and health information technology certification regulations promulgated under the 21st Century Cures Act (to the extent effective); (j) CDC regulations (including regulations implemented by the CDC Division of Select Agents and Toxins ("DSAT") or otherwise relating to the Federal Select Agent Program ("FSAP"), such as 7 C.F.R. Part 331, 9 C.F.R. Part 121, and 42 C.F.R. Part 73); and (k) any other applicable domestic or foreign health care laws, rules, codes, regulations, manuals (to the extent such manuals are binding and have the force of law), orders, ordinances, and statutes relating to the research, development, testing, approval, licensure, post-approval or post-licensure monitoring, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale, distribution or sale of or payment for Product."

""**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, reasonable and documented out-of-pocket fees, expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees, expenses and disbursements of one counsel for Indemnified Persons plus, as applicable, one local legal counsel in each relevant material jurisdiction and one intellectual property legal counsel, and in the case of an actual or perceived conflict of interest, one additional counsel for such affected Indemnified Persons, in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened in writing by any Person, whether or not any such Indemnified Person shall have commenced such proceeding or hearing or be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnified Persons in enforcing any indemnity hereunder) whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnified Person, in any manner relating to or arising out of this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any Lender's agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or any enforcement of any of the Loan

Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty of the Obligations)).”

““**Interest Date**” means the last day of each calendar quarter, commencing with the last day of the calendar quarter during which the Third Amendment Effective Date occurs.”

““**Interest Period**” means: (a) as to each Term Loan, (i) with respect to the Tranche A Loan, the period commencing on (and including) the Tranche A Closing Date and ending on (and including) the first Interest Date occurring from and after the Third Amendment Effective Date, and (ii) with respect to the Tranche B Loan, the period commencing on (and including) the Tranche B Closing Date and ending on (and including) the first Interest Date following the Tranche B Closing Date; and (b) thereafter, with respect to each Term Loan, each period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (i) the next Interest Date and (ii) the Term Loan Maturity Date.”

““**Lender Expenses**” means, collectively:

(a) all reasonable and documented out-of-pocket fees and expenses of the Collateral Agent and, as applicable, each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel, manufacturing consultants or intellectual property experts (it being agreed that such consultant or expert fees, expenses and disbursements shall be limited to one such consultant and one such expert for the Collateral Agent, Lenders and such Related Parties, taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Person) therefor, (i) incurred in connection with developing, preparing, negotiating, syndicating, executing and delivering, and interpreting, investigating and administering, the Loan Documents (or any term or provision thereof), any commitment, proposal letter, letter of intent or term sheet therefor or any other document prepared in connection therewith, (ii) incurred in connection with the consummation and administration of any transaction contemplated therein, (iii) incurred in connection with the performance of any obligation or agreement contemplated therein, (iv) incurred in connection with any modification or amendment of any term or provision of, or any supplement to, or the termination (in whole or in part) of, any Loan Document, (v) incurred in connection with internal audit reviews and Collateral audits, or (vi) otherwise incurred with respect to the Credit Parties in connection with the Loan Documents, including any filing or recording fees and expenses; and

(b) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent and each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel therefor for the Collateral Agent, Lenders and such Related Parties taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Person) in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out,” (ii) the enforcement or protection or preservation of any right or remedy under any Loan Document, any Obligation, with respect to any of the Collateral or any other related right or remedy, or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any Insolvency Proceeding) related to any Credit Party or any Subsidiary of any Credit Party in respect of any Loan Document or Obligation, or otherwise in connection with any Loan Document or Obligation (or the response to and preparation for any subpoena or request for document production relating thereto); provided, that, except with respect to an Insolvency Proceeding, to the extent such enforcement entails the Collateral Agent or any Lender commencing legal action of any sort against Borrower, any fees and expenses incurred in connection therewith shall only be payable by Borrower to the extent the Collateral Agent or any Lender is successful in such legal action.”

““**Payment Date**” means, with respect to the Term Loans and as the context dictates: (a) the Initial Principal Payment Date; (b) thereafter, each Subsequent Principal Payment Date; and (c) the Term Loan Maturity Date.”

““**Tranche A Closing Date**” means the date on which the Tranche A Loan is advanced by Lenders, which is December 29, 2021.”

““**Tranche B Closing Date**” means the date on which the Tranche B Loan is advanced by Lenders, which, as indicated in the Advance Request for the Tranche B Loan and subject to the satisfaction of the conditions precedent to the Tranche B Loan set forth in Section 3.2, Section 3.3, Section 3.4 and Section 3.5, shall be (a) May 31, 2023 with respect to fifty percent (50.0%) of the Tranche B Loan Amount and (b) December 15, 2023 with respect to the remaining fifty percent (50.0%) of the Tranche B Loan Amount.”

““**Tranche B Commitment**” means, with respect to any Lender, each commitment of such Lender to make the Credit Extensions relating to the Tranche B Loan on the Tranche B Closing Date in the aggregate principal amount set forth opposite such Lender’s name on Exhibit D attached hereto; provided, however, that the parties hereto agree that each such commitment, and any obligations of such Lender hereunder with respect thereto, shall terminate automatically without any further action by any party hereto and be of no further force and effect if (x) any prepayment, in whole or in part, of principal amount of the Tranche A Loan is made pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche A Loan pursuant to Section 8.1(a) on or before the Tranche B Closing Date or (y) the Tranche B Closing Date does not occur on or before December 31, 2023 (in either of which case, for purposes of this Agreement, such Lender’s Tranche B Commitment equals zero).”

““**Tranche B Loan Amount**” means an original principal amount requested by Borrower of not more than Fifty Million Dollars ($50,000,000.00), which shall amount shall be bifurcated in two $25,000,000.00 portions as indicated in the Advance Request for the Tranche B Loan; provided, that if either of the events described clauses (x) or (y) in the proviso to the definition of “Tranche B Commitment” occurs, the Tranche B Loan Amount, for purposes of this Agreement, equals zero or Twenty-Five Million Dollars ($25,000,000.00), as applicable).”

““**Tranche B Makewhole Amount**” means, as of any date of prepayment of the Tranche B Loan occurring prior to the 2nd-year anniversary of the Tranche B Closing Date, an amount equal to the sum of all interest that would have accrued and been payable from such date of prepayment through the 2nd-year anniversary of the Tranche B Closing Date on the amount of principal prepaid; provided, that, the Tranche B Closing Date is May 31, 2023 for purposes of determining whether a Tranche B Makewhole Amount is due and owing hereunder with respect to the portion of the Tranche B Loan Amount funded on May 31, 2023, and the Tranche B Closing Date is December 15, 2023 for purposes of determining whether a Tranche B Makewhole Amount is due and owing hereunder with respect to the portion of the Tranche B Loan Amount funded on December 15, 2023.”

x. The Loan Agreement shall be amended by deleting in its entirety each of the definitions of Alternate Benchmark Rate, Alternate Benchmark Rate Start Date, CPRA, Early Opt-in Determination, Interest Rate Determination Date, LIBOR Rate, LIBOR Rate Replacement Date, and LIBOR Rate Transition Event in Section 13.1 of the Loan Agreement.

y. The Loan Agreement shall be amended by adding, in alphabetical order, each of the following definitions to Section 13.1 of the Loan Agreement:

““**Adjusted Term SOFR**” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.”

““**Applicable Margin**” means, for any day, as to any Term Loan, a rate *per annum* equal to eight and one-half percent (8.50%).”

““**Available Tenor”** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to Section 2.3(e).”

““**Benchmark”** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.3(e).”

““**Benchmark Replacement**” means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Collateral Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) 0.170% (17.0 basis points); or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Collateral Agent and Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.”

““**Benchmark Replacement Adjustment**” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Collateral Agent and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.”

““**Benchmark Replacement Date**” means a date and time determined by the Collateral Agent in its reasonable discretion, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); and

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof)."

""**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof)."

""**Benchmark Unavailability Period**" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(e) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(e)."

""**CMIA**" means the California Confidentiality of Medical Information Act, codified at Cal. Civ. Code pt. 2.6 § 56 et seq."

""**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of

"Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods and other technical, administrative or operational matters) that the Collateral Agent decides (after consultation with Borrower) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Collateral Agent in a manner substantially consistent with market practice (or, if the Collateral Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Collateral Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Collateral Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents)."

""**Daily Simple SOFR**" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Collateral Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for bilateral business loans; provided, that if the Collateral Agent decides that any such convention is not administratively feasible for the Collateral Agent, then the Collateral Agent may establish another convention in its reasonable discretion."

""**Floor**" means a rate of interest equal to 1.00% *per annum*."

""**Initial Principal Payment Date**" is defined in Section 2.2(b)(i)."

""**Periodic Term SOFR Determination Day**" has the meaning specified in the definition of Term SOFR."

""**Relevant Governmental Body**" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto."

""**Section 5 of the FTC Act**" means the Section 5(a) of the U.S. Federal Trade Commission Act (15 U.S.C. § 45), which prohibits unfair and deceptive acts or practices in or affecting commerce and serves as the primary basis for U.S. Federal Trade Commission authority on privacy and security."

""**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator."

""**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate)."

""**Subsequent Principal Payment Date**" is defined in Section 2.2(b)(i)."

""**Term SOFR**" means, for any day in any calendar month, the Term SOFR Reference Rate for a tenor of three (3) months on the day (such day, the "**Periodic Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days' prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day."

""**Term SOFR Adjustment**" means a percentage equal to 0.170% *per annum*."

""**Term SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Collateral Agent in its reasonable discretion)."

""**Term SOFR Reference Rate**" means the forward-looking term rate based on SOFR."
""**Third Amendment Effective Date**" means May 9, 2023."

""**U.S. Government Securities Business Day**" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities."

z. The Loan Agreement shall be amended by deleting in their entirety the Tranche B Commitments of each Lender in Exhibit D of the Loan Agreement and replacing each of them as follows:

"Tranche B Commitment:
$12,500,000.00 (May 31, 2023)
$12,500,000.00 (December 15, 2023)"

aa. The Loan Agreement shall be amended by deleting in its entirety the notice details of each Lender in Exhibit D of the Loan Agreement and replacing them as follows:

"BPCR LIMITED PARTNERSHIP
c/o Link Group, Company Matters Ltd.
6th Floor
65 Gresham Street
London EC2V 7NQ
United Kingdom
Attn: Company Secretary
[***]

with copies (which shall not constitute notice) to:

PHARMAKON ADVISORS, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
[***]

and

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
[***]

"BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP
c/o BioPharma Credit Investments V GP LLC
c/o Walkers Corporate Limited

190 Elgin Avenue,
George Town, Grand Cayman KY1-9008
Attn: Pedro Gonzalez de Cosio

with copies (which shall not constitute notice) to:

PHARMAKON ADVISORS, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
[***]

and

AKIN GUMP STRAUSS HAUER & FELD LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
[***]"

ab. The Loan Agreement shall be amended by deleting in its entirety Exhibits B-1 and B-2 to the Loan Agreement and replacing them with Exhibits B-1 and B-2 attached to this Amendment.

3. Representations and Warranties; Reaffirmation; Covenant to Deliver.

a. Borrower hereby represents and warrants to each Lender and the Collateral Agent as follows:

i. Borrower has all requisite power and authority to enter into this Amendment and to carry out the transactions contemplated hereby.

ii. This Amendment has been duly executed and delivered by Borrower and is the legally valid and binding obligation of such Person, enforceable against such Person in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general principles of equity.

iii. The execution, delivery and performance by Borrower of this Amendment have been duly authorized and do not and will not: (A) contravene the terms of such Person's Operating Documents; (B) violate any Requirements of Law, except to the extent that such violation could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; (C) conflict with or result in any breach or contravention of, or require any payment to be made under any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or affecting such Person or the assets or properties of such Person or any of its Subsidiaries or any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Person or any of its properties or assets are subject, except to the extent that such conflict, breach, contravention or payment could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; (D) require any Governmental Approval, or other action by, or notice to, or filing with, any

Governmental Authority (except such Governmental Approvals or other actions, notices and filings which have been duly obtained, taken, given or made on or before the Third Amendment Effective Date and are in full force and effect), except for those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; (E) require any approval, consent, exemption or authorization, or other action by, or notice to, or filing with, any Person other than a Governmental Authority, including such Person's stockholders, members or partners, (except such approvals, consents, exemptions, authorizations, actions, notices and filings which have been or will be duly obtained, taken, given or made on or before the Third Amendment Effective Date and are in full force and effect), except for those approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change; or (F) constitute a material breach of or a material default under (which such default has not been cured or waived) or an event of default (or the equivalent thereof, however described) under, or could reasonably be expected to give rise to the cancellation, termination or invalidation of or the acceleration of such Person's or any Subsidiary's obligations under, any Material Contract.

iv. Both before and immediately after giving effect to this Amendment, no Event of Default or Default has occurred and is continuing.

b. Borrower hereby ratifies, confirms, reaffirms, and acknowledges its obligations under the Loan Documents to which it is a party and agrees that the Loan Documents remain in full force and effect, undiminished by this Amendment, except as expressly provided herein. By executing this Amendment, Borrower acknowledges that it has read, consulted with its attorneys regarding, and understands, this Amendment.

4. References to and Effect on Loan Agreement. Except as specifically set forth herein, this Amendment shall not modify or in any way affect any of the provisions of the Loan Agreement, which shall remain in full force and effect and is hereby ratified and confirmed in all respects. On and after the Third Amendment Effective Date, all references in the Loan Agreement to "this Agreement," "hereto," "hereof," "hereunder," or words of like import shall mean the Loan Agreement as amended by this Amendment.

5. Successors and Assigns. This Amendment binds and is for the benefit of Borrower, the other Credit Parties, Lenders and Collateral Agent and each of their respective successors and permitted assigns.

6. Governing Law; Venue; Jury Trial Waiver. This Amendment shall be construed in accordance with and governed by the law of the State of New York. The provisions of Section 10 (*Choice of law, Venue and Jury Trial Waiver Etc*.) of the Loan Agreement shall apply hereto as if more fully set forth herein as if references therein to "this Agreement" were references to this Amendment.

7. Counterparts. This Amendment may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, is an original, and all taken together, constitute one Amendment. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging means (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for under any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned hereto have caused this Amendment to be executed as of the date first written above by each of their officers thereunto duly authorized.

EVOLUS, INC.,
as Borrower and a Credit Party on its own behalf and on behalf of each other Credit Party

By__/s/ Sandra Beaver_____
Name: Sandra Beaver
Title: CFO

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalesz de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BPCR LIMITED PARTNERSHIP,
as a Lender

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalesz de Cosio
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP,
as Lender

By: BioPharma Credit Investments V GP LLC,
its general partner

By: Pharmakon Advisors, LP,
its Investment Manager

By /s/ Pedro Gonzalesz de Cosio
Name: Pedro Gonzalez de Cosio
Title: CEO and Managing Member

EXHIBIT B-1

THIS TRANCHE A NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1273 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). HOLDERS OF THIS TRANCHE A NOTE SHOULD CONTACT LAUREN SILVERNAIL, CHIEF FINANCIAL OFFICER, EVOLUS, INC., 520 NEWPORT CENTER, DRIVE SUITE 1200, NEWPORT BEACH, CA 92660 IN WRITING TO OBTAIN (1) THE ISSUE PRICE AND ISSUE DATE OF THIS TRANCHE A NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THIS TRANCHE A NOTE AND (3) THE YIELD TO MATURITY OF THIS TRANCHE A NOTE.

AMENDED AND RESTATED SECURED TRANCHE A LOAN PROMISSORY NOTE

$37,500,000.00.00 Dated: _____, 2023

FOR VALUE RECEIVED, the undersigned, EVOLUS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of THIRTY-SEVEN MILLION AND FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($37,500,000.00), plus interest on the aggregate unpaid principal amount of this Amended and Restated Secured Tranche A Loan Promissory Note (this "**Tranche A Note**") at a *per annum* rate equal to Adjusted Term SOFR for the Interest Period therefor *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of December 14, 2021 by and among Borrower, Lender, BioPharma Credit PLC, as Collateral Agent, the other Lenders from time to time party thereto and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. This Amended and Restated Secured Tranche A Loan Promissory Note amends and restates in its entirety that certain Secured Tranche A Loan Promissory Note, dated December 29, 2021, in the aggregate principal amount of Thirty-Seven Million and Five Hundred Thousand Dollars and Zero Cents ($37,500,000.00). Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall make seven (7) equal quarterly principal payments of the Tranche A Loan, each in an amount equal to one-twelfth of the cumulative principal balance of the Tranche A Loan, commencing on the Initial Principal Payment Date and continuing quarterly on each Subsequent Principal Payment Date and, thereafter, Borrower shall make a principal payment of the Tranche A Loan in an amount equal to the remaining unpaid principal balance of the Tranche A Loan on the Term Loan Maturity Date; provided, however, that if any such date is not a Business Day, the applicable principal shall be due and payable on the Business Day immediately preceding such date. All unpaid principal with respect to the Tranche A Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche A Note commencing on, and including, the date of this Tranche A Note, and shall accrue on this Tranche A Note, or any portion thereof, for the day on which this Tranche A Note or such portion is paid. Interest on this Tranche A Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche A Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche A Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche A Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche A Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche A Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche A Note are hereby waived except for such notices as are expressly required under the Loan Documents.

THIS TRANCHE A NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche A Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche A Note to the contrary, the right to the principal of, and stated interest on, this Tranche A Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche A Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche A Note on the part of any other Person.

[*Balance of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, Borrower has caused this Tranche A Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

EVOLUS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

EXHIBIT B-2

SECURED TRANCHE B LOAN PROMISSORY NOTE

$12,500,000.00 Dated: [_____], 202_

FOR VALUE RECEIVED, the undersigned, EVOLUS, INC., a Delaware corporation ("**Borrower**"), HEREBY PROMISES TO PAY to [BPCR LIMITED PARTNERSHIP] [BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP] ("**Lender**"), or its registered assignees, the principal amount of TWELVE MILLION, FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS ($12,500,000.00), plus interest on the aggregate unpaid principal amount of this Secured Tranche B Loan Promissory Note (this "**Tranche B Note**") ") at a *per annum* rate equal to Adjusted Term SOFR for the Interest Period therefor *plus* the Applicable Margin, and in accordance with the terms of the Loan Agreement dated as of December 14, 2021 by and among Borrower, Lender, BioPharma Credit PLC, as Collateral Agent, the other Lenders from time to time party thereto and the other parties thereto (as may be amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount, all accrued and unpaid interest hereunder, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents shall be due and payable on the Term Loan Maturity Date. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Borrower shall make seven (7) equal quarterly principal payments of the Tranche B Loan, each in an amount equal to one-twelfth of the cumulative principal balance of the Tranche B Loan, commencing on the Initial Principal Payment Date and continuing quarterly on each Subsequent Principal Payment Date and, thereafter, Borrower shall make a principal payment of the Tranche B Loan in an amount equal to the remaining unpaid principal balance of the Tranche B Loan on the Term Loan Maturity Date; provided, however, that if any such date is not a Business Day, the applicable principal shall be due and payable on the Business Day immediately preceding such date. All unpaid principal with respect to the Tranche B Loan (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any other amounts payable under the Loan Documents) is due and payable in full on the Term Loan Maturity Date. Interest shall accrue on this Tranche B Note commencing on, and including, the date of this Tranche B Note, and shall accrue on this Tranche B Note, or any portion thereof, for the day on which this Tranche B Note or such portion is paid. Interest on this Tranche B Note shall be payable in accordance with Section 2.3 of the Loan Agreement.

Principal, interest and all other amounts due with respect to this Tranche B Note are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Tranche B Note.

The Loan Agreement, among other things, (a) provides for the making of secured Term Loans by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Tranche B Note may not be prepaid except as set forth in Section 2.2(c) of the Loan Agreement or as expressly provided in Section 8.1 of the Loan Agreement.

This Tranche B Note and the obligation of Borrower to repay the unpaid principal amount of this Tranche B Note, interest thereon, and all other amounts due Lender under the Loan Agreement are secured pursuant to the Collateral Documents.

Presentment for payment, demand, notice of protest and all other demands and notices of any kind in connection with the execution, delivery, performance and enforcement of this Tranche B Note are hereby waived except for such notices as are expressly required under the Loan Documents.

THIS TRANCHE B NOTE SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

Note Register; Ownership of Note. The ownership of an interest in this Tranche B Note shall be registered on a record of ownership maintained by Borrower. Notwithstanding anything else in this Tranche B Note to the contrary, the right to the principal of, and stated interest on, this Tranche B Note may be transferred only if the transfer is registered on such record of ownership and the transferee is identified as the owner of an interest in the obligation. Borrower shall be entitled to treat the registered holder of this Tranche B Note (as recorded on such record of ownership) as the owner in fact thereof for all purposes and shall not be bound to recognize any equitable or other claim to or interest in this Tranche B Note on the part of any other Person.

[*Balance of Page Intentionally Left Blank*]

IN WITNESS WHEREOF, Borrower has caused this Tranche B Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

EVOLUS, INC.,
as Borrower

By: _____

Name: _____

Title: _____

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moatazedi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Evolus, Inc.;

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

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

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

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

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

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

/s/ David Moatazedi
David Moatazedi
President, Chief Executive Officer and Director
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Sandra Beaver, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Evolus, Inc.;

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

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

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

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

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

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

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

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

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2023

/s/ Sandra Beaver
Sandra Beaver
Chief Financial Officer
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. § 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

Each of the undersigned hereby certifies, in accordance with 18 U.S.C. § 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, in his or her capacity as an officer of Evolus, Inc., that, to his or her knowledge:

(1) the Quarterly Report on Form 10-Q of Evolus, Inc. for the quarter ended June 30, 2023 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Evolus, Inc.

Date: August 2, 2023

By: /s/ David Moatazedi
David Moatazedi
President and Chief Executive Officer
(Principal Executive Officer)

Date: August 2, 2023

By: /s/ Sandra Beaver
Sandra Beaver
Chief Financial Officer
(Principal Financial Officer)