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 March 31, 2019

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)

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 and posted on its corporate web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§ 232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, 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 April 26, 2019, 27,333,004 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 based on our current expectations, assumptions, estimates and projections about 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 facts may be deemed to be 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. Forward-looking statements include, but are not limited to, statements about:

- our ability to maintain regulatory approval of our sole product, Jeuveau™, and any related restrictions, limitations and warnings in the label of Jeuveau™ in a timely manner;
- the potential market size, opportunity and growth potential for Jeuveau™;
- the attractiveness of the product characteristics of Jeuveau™ (including the benefits of a 900 kilodalton, or kDa, botulinum toxin type A complex) and the rate and degree of physician and patient acceptance of Jeuveau™;
- our ability to successfully commercialize Jeuveau™, including our ability to build our own sales and marketing capabilities, or seek collaborative partners, to commercialize Jeuveau™;
- the pricing of Jeuveau™, and the flexibility of our pricing and marketing strategy compared to our competitors;
- the performance of our third-party licensors, suppliers, manufacturers and distributors;
- our expectations regarding our future development of Jeuveau™ for other indications and approval in other jurisdictions;
- the accuracy of our estimates regarding the amount and timing of expenses, future revenue, capital requirements and needs for additional financing;
- regulatory and legislative developments in the United States, European Union, or EU, Canada and other countries;
- developments and projections relating to our competitors and our industry, including competing products and procedures;
- the loss of key management personnel;
- our future financial performance and our ability to continue as a going concern;
- the ability of ALPHAEON Corporation, or ALPHAEON, our controlling stockholder, to control the direction of our business; and
- the results of current and any future legal proceedings.

The forward-looking statements included herein are not guarantees of future performance or events and are based on current expectations of our management based on available information and involve a number of risks and uncertainties, all of which are difficult or impossible to predict accurately and many of which are beyond our control. As such, our actual results may differ materially from those expressed in any forward-looking statements. Factors that may cause or contribute to such differences include, but are not limited to, those discussed in more detail in Item 2 "Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part I and Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q. Readers should carefully review these risks, as well as the additional risks described in other documents we file from time to time with the Securities and Exchange Commission, or SEC. 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. 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 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 these cautionary statements.

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™ and Jeuveau™ are two of our trademarks 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, 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. Financial Statements

Evolus, Inc.
Condensed Balance Sheets
(in thousands, except share data)

	March 31, 2019 (unaudited)	December 31, 2018 (Note 2)
ASSETS		
Current assets		
Cash and cash equivalents	$ 54,367	$ 93,162
Short-term investments	79,313	—
Inventories	2,578	—
Prepaid expenses and other current assets	2,826	1,177
Total current assets	139,084	94,339
Intangible assets, net	58,782	56,076
Goodwill	21,208	21,208
Operating lease right-of-use assets	810	—
Other assets	1,045	221
Total assets	$ 220,929	$ 171,844
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	$ 1,863	$ 1,558
Accrued expenses	6,735	3,718
Operating lease liabilities	802	—
Total current liabilities	9,400	5,276
Operating lease liabilities	29	25
Contingent royalty obligation payable to Evolus Founders, a related party	45,900	50,200
Contingent promissory note payable to Evolus Founders, a related party	17,153	16,904
Long-term debt, net of discounts and issuance costs	72,557	—
Deferred tax liability	533	15,055
Total liabilities	145,572	87,460
Commitments and contingencies (Note 7)		
Stockholders' equity		
Preferred Stock, $0.00001 par value; 10,000,000 shares authorized; no shares issued and outstanding at March 31, 2019 and December 31, 2018, respectively	—	—
Common Stock, $0.00001 par value; 100,000,000 shares authorized; 27,285,363 and 27,274,991 shares issued and outstanding at March 31, 2019 and December 31, 2018, respectively	1	1
Additional paid-in capital	209,365	207,408
Accumulated other comprehensive loss	(9)	—
Accumulated deficit	(134,000)	(123,025)
Total stockholders' equity	75,357	84,384
Total liabilities and stockholders' equity	$ 220,929	$ 171,844

See accompanying notes to financial statements.

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

	Three Months Ended March 31,	
	2019	**2018**
Operating expenses:		
Research and development	$ 2,353	$ 1,678
General and administrative	17,519	3,467
Revaluation of contingent royalty obligation payable to Evolus Founders, a related party	4,913	900
Depreciation and amortization	484	—
Total operating expenses	25,269	6,045
Loss from operations	(25,269)	(6,045)
Other income (expense):		
Interest income	389	—
Interest expense	(618)	(107)
Loss before income taxes	(25,498)	(6,152)
Income tax (benefit) expense	(14,523)	10
Net loss	$ (10,975)	$ (6,162)
Other comprehensive loss:		
Unrealized loss on available-for-sale securities, net of tax	(9)	—
Comprehensive loss	$ (10,984)	$ (6,162)
Net loss per share, basic and diluted	$ (0.40)	$ (0.30)
Weighted-average shares outstanding used to compute basic and diluted net loss per share	27,330,174	20,226,460

See accompanying notes to financial statements.

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

	Series A Preferred Stock		Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Stockholders' (Deficit) Equity
	Shares	Amount	Shares	Amount				
Balance at December 31, 2017	1,250,000	$ —	16,527,000	$ —	$ —	$ —	$ (75,543)	$ (75,543)
Deemed contribution from Parent, increase of related-party receivable	—	—	—	—	1,051	—	—	1,051
Deemed distribution to Parent, increase of convertible note obligation	—	—	—	—	(1,387)	—	(615)	(2,002)
Capital contribution from Parent, convertible note write-off	—	—	—	—	66,998	—	—	66,998
Capital contribution from Parent, forgiveness of related party borrowings	—	—	—	—	13,188	—	—	13,188
Preferred stock conversion upon initial public offering	(1,250,000)	—	2,065,875	—	—	—	—	—
Issuance of common stock upon initial public offering, net of issuance costs	—	—	5,047,514	1	53,445	—	—	53,446
Stock-based compensation	—	—	—	—	1,006	—	—	1,006
Net loss and comprehensive loss	—	—	—	—	—	—	(6,162)	(6,162)
Balance at March 31, 2018	—	$ —	23,640,389	$ 1	$ 134,301	$ —	$ (82,320)	$ 51,982
Balance at December 31, 2018	—	$ —	27,274,991	$ 1	$ 207,408	$ —	$ (123,025)	$ 84,384
Issuance of common stock in connection with the incentive equity plan	—	—	10,372	—	(58)	—	—	(58)
Stock-based compensation	—	—	—	—	2,015	—	—	2,015
Net loss	—	—	—	—	—	—	(10,975)	(10,975)
Other comprehensive loss	—	—	—	—	—	(9)	—	(9)
Balance at March 31, 2019	—	$ —	27,285,363	$ 1	$ 209,365	$ (9)	$ (134,000)	$ 75,357

See accompanying notes to financial statements.

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

	Three Months Ended March 31,	
	2019	**2018**
Cash flows from operating activities		
Net loss	$ (10,975)	$ (6,162)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	484	—
Amortization of discount on short-term investments	(120)	—
Stock-based compensation	1,998	1,006
Amortization of operating lease right-of-use assets	219	—
Amortization of debt discount and issuance costs	281	107
Deferred income taxes	(14,523)	10
Revaluation of contingent royalty obligation payable to Evolus Founders, a related party	4,913	900
Changes in assets and liabilities:		
Inventories	(2,578)	—
Prepaid expenses and other current assets	(1,649)	(356)
Accounts payable	305	205
Related party accounts payable	—	730
Accrued expenses	2,667	1,361
Operating lease liabilities	(222)	(2)
Net cash used in operating activities	(19,200)	(2,201)
Cash flows from investing activities		
Additions to capitalized software	(823)	—
Purchases of short-term investments	(79,202)	—
Net cash used in investing activities	(80,025)	—
Cash flows from financing activities		
Payment of contingent royalty obligation to Evolus Founders, a related party	(9,213)	—
Milestone payment for intangible assets	(2,000)	—
Proceeds from issuance of long-term debt, net of discounts	73,906	—
Payments for debt issuance costs	(2,205)	—
Proceeds from initial public offering, net of underwriters fees	—	56,330
Payments for offering costs	—	(686)
Related party borrowings	—	1,127
Payments on related party borrowings	—	(5,000)
Tax withholding paid on behalf of employees for stock-based awards	(58)	—
Net cash provided by financing activities	60,430	51,771
Change in cash and cash equivalents	(38,795)	49,570
Cash and cash equivalents, beginning of period	93,162	—
Cash and cash equivalents, end of period	$ 54,367	$ 49,570

See accompanying notes to financial statements.

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

Supplemental disclosure of cash flow information:		
Cash paid for interest	$ 336	$ —
Cash paid for amounts included in the measurement of operating lease liabilities	$ 238	$ —
Non-cash investing and financing information:		
Related party receivable	$ —	$ 73,690
Related party borrowings	$ —	$ (68,767)
Note obligation	$ —	$ (140,688)
Contingent royalty obligation payable to Evolus Founders, a related party	$ —	$ 39,700
Contingent promissory note payable to Evolus Founders, a related party	$ —	$ 16,042
Capital contribution from Parent, convertible note write-off	$ —	$ 66,998
Capital contribution from Parent, forgiveness of related party borrowings	$ —	$ 13,188
Deferred offering costs	$ —	$ (2,885)
Deferred offering costs, unpaid	$ —	$ (74)
Accounts payable, paid by Parent	$ —	$ (163)
Operating lease right-of-use assets obtained in exchange for operating lease liabilities	$ 1,029	$ —
Capitalized software recorded in accounts payable and accrued expenses	$ 350	$ —

See accompanying notes to financial statements.

Evolus, Inc.

Notes to Condensed Financial Statements

Note 1. Organization

Organization and Description of Business

Evolus, Inc., ("Evolus" or the "Company") is a performance beauty company focused on delivering products in the self-pay aesthetic market. On February 1, 2019, the U.S. Food and Drug Administration (the "FDA") approved the Company's first product Jeuveau™ (prabotulinumtoxinA-xvfs) ("Product"). The Product 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 is headquartered in Newport Beach, California.

On February 12, 2018, the Company completed its initial public offering ("IPO") and issued 5,047,514 shares of common stock, which included the exercise by the underwriters of their option to purchase 47,514 additional shares of common stock, at an offering price to the public of $12.00 per share. The Company received net proceeds of approximately $56.3 million after deducting underwriting discounts and commissions, excluding other offering costs. In connection with the IPO, the Company's then-outstanding shares of Series A preferred stock were automatically converted into 2,065,875 shares of common stock. In connection with the completion of its IPO, the Company's amended and restated certificate of incorporation was further amended and restated to provide for 100,000,000 authorized shares of common stock with a par value of $0.00001 per share and 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share.

In July 2018, the Company completed a follow-on public offering (the "Follow-On Offering") in which the Company sold 3,600,000 shares of its common stock, which included the exercise in full by the underwriters of their option to purchase an additional 600,000 shares of common stock in August 2018, at a price to the public of $20.00 per share. The Company received net proceeds of approximately $67.7 million from the Follow-On Offering, after deducting underwriting discounts and commissions, excluding other offering expenses.

In connection with the completion of its IPO, the Company also entered into a services agreement (the "Services Agreement") with ALPHAEON Corporation ("ALPHAEON" or "Parent"), its controlling stockholder. The Services Agreement sets forth certain agreements between ALPHAEON and the Company that govern the respective responsibilities and obligations between ALPHAEON and the Company as it relates to the services to be performed between the parties. Pursuant to the Services Agreement, ALPHAEON provides the Company, and the Company provides ALPHAEON, certain administrative and development support services. Prior to the IPO, the Company was dependent upon ALPHAEON for its working capital and financing requirements.

As of March 31, 2019, ALPHAEON, which is majority-owned by SCH-AEON, LLC ("SCH"), owned 56.0% of the Company's outstanding shares of common stock.

Liquidity and Financial Condition

The accompanying unaudited condensed financial statements have been prepared on a basis that assumes that the Company will continue as a going concern. Since inception, the Company has incurred recurring net operating losses. The Company has recorded a net loss and comprehensive loss of $11.0 million and $6.2 million for the three months ended March 31, 2019 and 2018, respectively. Additionally, the Company used cash of $19.2 million and $2.2 million in operations during the three months ended March 31, 2019 and 2018, respectively. As of March 31, 2019, the Company had $54.4 million in cash and cash equivalents, $79.3 million in short-term investments, and an accumulated deficit of $134.0 million.

The Company's ability to execute on its business strategy, meet its future liquidity requirements, and achieve profitable operations, is dependent on a number of factors, including its ability to gain market acceptance of its Product and achieve a level of revenues adequate to support its cost structure, and operate its business and sell products without infringing third party intellectual property rights.

The Company believes that its current capital resources are sufficient to fund operations through at least the next twelve months from the date the accompanying financial statements are issued based on the expected cash burn rate. The Company may be required to raise additional capital to fund future operations through the sale of its equity securities, incurring debt to the extent as allowed under existing debt arrangement, 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 significantly reduce its current rate of spending through reductions in staff and delaying, scaling back, or suspending certain research and development and sales and marketing programs and other operational goals.

Note 2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited condensed 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 footnotes disclosures normally included in annual financial statements prepared in accordance with GAAP. In the opinion of management, the interim financial statements reflect all adjustments, which include 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, 2019 or for any other interim period.

The accompanying unaudited condensed 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, 2018, as filed with the SEC on March 20, 2019.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates, judgments, and assumptions that affect the amounts reported in the financial statements and disclosures made in the accompanying notes. Actual results could materially differ from those estimates, judgments, and assumptions. Management considers many factors in selecting appropriate financial accounting policies and controls and in developing the estimates and assumptions that are used in the preparation of these financial statements. Management must apply significant judgment in this process. In addition, other factors may affect estimates, including expected business and operational changes, sensitivity and volatility associated with the assumptions used in developing estimates, and whether historical trends are expected to be representative of future trends. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates.

On an ongoing basis, the Company evaluates the most significant estimates, including those related to the fair values of financial instruments, intangible assets and goodwill, useful lives of intangible assets, inventory valuation, lease liabilities, and royalty obligations, among others. Although the Company bases these estimates on historical experience, knowledge of current events and actions it may undertake in the future, and on various other assumptions that are believed to be reasonable, this process may result in actual results differing materially from those estimated amounts used in the preparation of the financial statements.

Risk and Uncertainties

The Company received regulatory approval from the FDA and Health Canada to commercialize the Product, however, it has not made any product sales. The Product also requires regulatory approval from the European Medicines Agency ("EMA") and other similar regulatory authorities prior to commercial sales in the related jurisdictions. The Company submitted a Marketing Authorization Application to the EMA, and it was accepted for review in July 2017. In April 2019, the Committee for Medicinal Products for Human Use ("CHMP"), adopted a positive opinion, recommending marketing authorization for the product. The CHMP recommendation will be reviewed by the European Commission, which has the authority to approve medicines for the European Union. The Product and any future product candidates of the Company may not receive necessary approvals in the jurisdictions where approval is sought. If the Company is denied approval or approval is delayed, it may have a material adverse impact on the Company's business and its financial statements.

The Company is subject to risks common to early stage companies in the pharmaceutical industry including, but not limited to, dependency on the clinical and commercial success of the Product and any future product candidates, ability to obtain regulatory approval of the Product and any future product candidates in the jurisdictions where approval is sought, the need

for substantial additional financing to achieve its goals, uncertainty of broad adoption of its approved products, if any, by physicians and patients, significant competition and untested manufacturing capabilities.

In 2013, Evolus and Daewoong Pharmaceuticals Co., Ltd. ("Daewoong") entered into an agreement (the "Daewoong Agreement"), pursuant to which, the Company has an exclusive distribution license to the Product from Daewoong for aesthetic indications in the United States, European Union, Canada, Australia, Russia, Commonwealth of Independent States, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Product 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 the Product) in a territory covered by the Daewoong Agreement. The Company relies on Daewoong, its exclusive and sole supplier, to manufacture the Product. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect the Company's commercialization of the Product.

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 purposes of allocating resources and evaluating its financial performance.

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 and that can be liquidated without prior notice or penalty. Cash and cash equivalents may include deposits, money market funds, and debt securities.

Short-Term Investments

Short-term investments as of March 31, 2019 consisted of available-for-sale U.S. Treasury securities with original maturities greater than three months and remaining maturities of less than twelve months. These investments are recorded at fair value based on quoted prices in active markets, with unrealized gains and losses excluded from earnings and reported in other comprehensive loss in the Company's condensed statements of operations and comprehensive loss. Purchase premiums and discounts are recognized in interest expense using the effective interest method over the terms of the securities. Realized gains and losses and declines in fair value that are deemed to be other than temporary are reflected in the condensed statements of operations and comprehensive loss using the specific-identification method. The Company periodically reviews all available-for-sale securities for other than temporary declines in fair value below the cost basis whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The Company also evaluates whether it has plans or is required to sell short-term investments before recovery of their amortized cost bases. To date, the Company has not identified any other than temporary declines in fair value of its short-term investments.

Inventories

As of March 31, 2019, inventories consist of finished goods held for sale and distribution. Inventory valuation reserves are established based on a number of factors including, but not limited to finished goods not meeting product specifications, product obsolescence, or application of the lower of cost (first-in, first-out method) 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.

Evolus, Inc.

Notes to Condensed Financial Statements

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. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

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.

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 reviews goodwill for impairment annually and whenever events or changes in circumstances indicate the carrying amount of goodwill may not be recoverable. The Company performs an annual qualitative assessment of its goodwill in the fourth quarter 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. If further testing is required, the Company performs a two-step process. The first step involves comparing the fair value of the Company's reporting unit to its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, the second step of the test is performed by comparing the carrying value of the goodwill in the reporting unit to its implied fair value. An impairment charge is recognized for the excess of the carrying value of goodwill over its implied fair value. For the purpose of impairment testing, the Company has determined that it has one reporting unit. There has been no impairment of goodwill for any of the periods presented.

Intangible Assets

Upon FDA approval of the Product on February 1, 2019, in process research and development ("IPR&D") related to the Product was evaluated as completed and reclassified to a definite-lived distribution right intangible asset, which 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 Company concluded it will be 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 balance sheets. The capitalized internal-use software costs are amortized on a straight-line basis over the estimated useful life upon placing in service.

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 (assets to be held and used) or fair value less cost to sell (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 has been no impairment of long-lived assets for any periods presented.

Contingent Royalty Obligation Payable to the Evolus Founders, a Related Party

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

Contingent Promissory Note Payable to Evolus Founders, a Related Party

On February 12, 2018, the Company recognized a contingent promissory note payable at present value using a discount rate for similar rated debt securities based on an estimated date that the Company believed the contingent promissory note will mature. Accretion related to the contingent promissory note is recorded in interest expense in the statements of operations and comprehensive loss with a corresponding increase to the non-current liabilities in the balance sheets.

Long-Term Debt

The Company recorded borrowings classified as long-term debt in the accompanying condensed balance sheets. Debt discounts and issuance costs have been allocated pro rata between the funded and unfunded portions. Debt issuance costs represent legal, lender, and consulting costs or fees associated with debt financing. Debt discounts and issuance costs related to the outstanding borrowings are presented as a deduction to the debt balance and are accreted to interest expense using the effective interest method.

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") are 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 fair value of equity awards that are expected to vest is amortized on a straight-line basis over the requisite service period. Stock-based compensation expense is recognized net of actual forfeitures when they occur, as an increase to additional paid-in capital in the balance sheets and in the general and administrative or research and development expenses in the statements of operations and comprehensive loss.

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 a benefit for income taxes of $14.5 million for the three months ended March 31, 2019 and did not record significant tax provision or benefit for the three months ended March 31, 2018. The Company's ETR differs from the U.S. federal statutory tax rate of 21% primarily as a result of the impact of a valuation allowance on its deferred tax assets.

The Company accounts for income taxes using the asset and liability method. Under this method, deferred tax assets and liabilities are determined on the basis of differences between the financial statements and tax basis of assets and liabilities using enacted tax rates in effect for the year in which the differences are expected to reverse.

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, management 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.

As of each reporting date, the Company considers evidence, both positive and negative, that could affect its view of the future realization of deferred tax assets. As of December 31, 2018, the deferred tax assets were primarily the result of U.S. net operating loss and tax credit carryforwards, and a valuation allowance of $34.5 million was recorded against the gross deferred tax asset balance. As of March 31, 2019, management determined there is sufficient positive evidence to conclude that it is more likely than not that deferred taxes of $14.5 million are realizable as a result of future reversals of existing taxable temporary differences associated with the Company's amortizable distribution right intangible asset which was reclassified from an IPR&D intangible asset upon FDA approval of the Product in February 2019. Therefore, for the three months ended March 31, 2019, the Company released $14.5 million of its valuation allowance.

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 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.

In accordance with Securities and Exchange Commission ("SEC") Staff Accounting Bulletin No. 118, the Company's accounting for the elements of the Tax Cuts and Jobs Act was complete as of December 31, 2018 and no adjustments were made to the original provisional estimate recorded in 2017.

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 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 three months ended March 31, 2019 and 2018.

Recently Adopted Accounting Pronouncements

In August 2018, the SEC adopted the final rule under SEC Release No. 33-10532, *Disclosure Update and Simplification*, amending certain disclosure requirements that were redundant, duplicative, overlapping, outdated or superseded. In addition, the amendments expanded the disclosure requirements on the analysis of stockholders' equity for interim financial statements. Under the amendments, an analysis of changes in each caption of stockholders' equity presented in the balance sheet must be provided in a note or separate statement. The analysis should present a reconciliation of the beginning balance to the ending balance of each period for which a statement of comprehensive income is required to be filed. This final rule was effective on November 5, 2018. The Company adopted the guidance on January 1, 2019, and such adoption did not have a material impact on its financial statements.

In July 2018, the Financial Accounting Standards Board (the "FASB") issued Accounting Standards Update ("ASU") No. 2018-09, *Codification Improvements*, which clarifies certain amendments to guidance that may have been incorrectly or inconsistently applied by certain entities and includes Amendments to Subtopic 718-740, *Compensation - Stock Compensation - Income Taxes*. The guidance in paragraph 718-740-35-2, as amended by the amendments in ASU 2016-09, *Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*, is unclear on whether an entity should recognize excess tax benefits (or tax deficiencies) for compensation expense that is taken on the entity's tax return. The amendment to paragraph 718-740-35-2 in this update clarifies that an entity should recognize excess tax benefits in the period in which the amount of deduction is determined. The Company adopted the guidance on January 1, 2019, and such adoption did not have a material impact on its financial statements.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-based Payment Accounting,* which amends the financial reporting for stock-based payments issued to nonemployees and also expands the scope of ASC 718, *Compensation - Stock Compensation*, to also include stock-based payments issued to nonemployees for goods and services. The amendment substantially aligns accounting for stock-based

payments to employees and nonemployees. The Company early adopted the guidance in the quarter ended December 31, 2018. The adoption did not have a material impact on the Company's financial statements.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation—Stock Compensation (Topic 718),* which amends the scope of modification accounting for stock-based payment arrangements. The amendment provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting. The Company adopted this guidance effective January 1, 2018 and this guidance did not have a material impact on its financial statements.

In February 2016, the FASB issued ASU No. 2016-02 and its related amendments which introduced *Leases (Topic 842, or "ASC 842")*, a new comprehensive lease accounting model that supersedes the current lease guidance under *Leases (Topic 840)*. The new accounting standard requires lessees to recognize right-of-use ("ROU") assets and corresponding lease liabilities for all leases with lease terms of greater than 12 months. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. In July 2018, the FASB added a transition option for implementation that allows companies to continue to use the legacy guidance in ASC 840, Leases, including its disclosure requirements, in the comparative periods presented in the year of adoption. The Company adopted the guidance effective January 1, 2019. The Company elected the transition package of three practical expedients permitted under the transition guidance and elected the optional transition method that allows for a cumulative-effect adjustment in the period of adoption, without a restatement of prior periods. Further, the Company elected a short-term lease exception policy, permitting the Company to not apply the recognition requirements of this standard to short-term leases (i.e. leases with terms of 12 months or less) and an accounting policy to account for lease and non-lease components as a single component for certain classes of assets. As a result of the adoption, the Company adjusted its beginning balance for the quarter ended March 31, 2019 by recording operating lease ROU assets and liabilities through a cumulative-effect adjustment. The adoption impacted the accompanying condensed balance sheet, but did not have an impact on the condensed statements of operations and comprehensive loss.

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, the Company calculates the associated lease liability and corresponding ROU assets upon lease commencement using a discount rate based on a credit-adjusted secured borrowing rate commensurate with the term of the lease. The Company records lease liabilities within current or noncurrent liabilities based upon the length of time associated with the lease payments. The operating lease ROU assets includes any lease payments made and excludes lease incentives and initial direct costs incurred, if any, and are recorded as noncurrent assets. Lease terms may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise that option. There are no significant finance leases as of March 31, 2019. Leases with an initial term of 12 months or less are not recorded on the accompanying condensed balance sheet. Lease expense for minimum lease payments is recognized on a straight-line basis over the lease term.

The impact of the adoption of ASC 842 on the accompanying condensed balance sheet as of January 1, 2019 was as follows (in thousands):

	December 31, 2018	Adjustments Due to the Adoption of ASC 842	January 1, 2019
*Right-of-use assets**			
Operating lease right-of-use assets	$ —	$ 1,029	$ 1,029
Operating lease liabilities			
Current	$ —	$ 916	$ 916
Noncurrent	$ —	$ 138	$ 138

* Operating lease right-of-use assets includes deferred rent of $25,000.

Recent Accounting Pronouncements

In November 2018, the FASB issued ASU No. 2018-18, *Clarifying the Interaction between Topic 808 and Topic 606*, which requires transactions in collaborative arrangements to be accounted for under ASC 606, *Revenue from Contracts with Customers*, if the counter-party is a customer for a good or service that is a distinct unit of account. The amendments also preclude entities from presenting consideration from transactions with a collaborator that is not a customer together with revenue recognized from contracts with customers. The guidance is effective for interim and annual reporting periods during

the year ending December 31, 2020. Early adoption is permitted, including in any interim period. The Company is currently evaluating the impact that the adoption of this guidance will have on its financial statements and related disclosures.

In August 2018, the FASB issued ASU No. 2018-15, *Intangibles-Goodwill and Other-Internal-Use Software: Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract*. ASU 2018-15 requires implementation costs incurred by customers in cloud computing arrangements (i.e., hosting arrangements) to be capitalized under the same premises of authoritative guidance for internal-use software, and deferred over the noncancellable term of the cloud computing arrangements plus any option renewal periods that are reasonably certain to be exercised by the customer or for which the exercise is controlled by the service provider. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2021. Early adoption is permitted. The Company is in the process of determining the effects the adoption will have on its financial statements as well as whether to early adopt the new guidance.

In August 2018, the FASB issued ASU No. 2018-13, *Fair Value Measurement (Topic 820): Disclosure Framework — Changes to the Disclosure Requirements for Fair Value Measurement*. The update is part of the disclosure framework project and eliminates certain disclosure requirements for fair value measurements, requires entities to disclose new information, and modifies existing disclosure requirements. Under the new guidance, entities will no longer be required to disclose the amount of and reasons for transfers between Level 1 and Level 2 of the fair value hierarchy, or valuation processes for Level 3 fair value measurements. However, public companies will be required to disclose the range and weighted average of significant unobservable inputs used to develop Level 3 fair value measurements, and related changes in unrealized gains and losses included in other comprehensive income. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2020. Early adoption is permitted. The Company is currently evaluating the impact this change will have on its financial statements as well as whether to early adopt the new guidance.

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. The update is effective for the Company beginning January 1, 2020. The standard requires prospective application. Early adoption is permitted. The Company is evaluating the effect of this standard on its financial statements and related disclosures as well as whether to early adopt the new guidance.

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 2016-13, the FASB issued ASU 2018-19, Codification Improvements to Topic 326, Financial Instruments -Credit Losses. This ASU does not change the core principle of the guidance in ASU 2016-13, instead these amendments are intended to clarify and improve operability of certain topics included within the credit losses standard. The guidance is effective for interim and annual reporting periods beginning after December 15, 2019 and interim periods within those periods, and early adoption is permitted. This will be effective for the Company during the year ending December 31, 2020. The Company is in the process of determining the effects the adoption will have on its financial Statements and reviewing credit loss models to assess the impact of the adoption of the standard on the financial statements.

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. Related Party Transactions

Services with ALPHAEON

Prior to the Company's IPO, the Company had funded its operations primarily through contributions and related party borrowings from ALPHAEON. For the quarter ended March 31, 2018, $0.4 million was included in Evolus' general

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Notes to Condensed Financial Statements

and administrative expenses that were generated by transactions with ALPHAEON. After completion of the Company's IPO on February 12, 2018, ALPHAEON did not incur any administrative or research and development expenses on the Company's behalf. As of December 31, 2018 and March 31, 2019, there were no related party accounts receivable, payable, or debt with ALPHAEON, respectively.

Note Obligation

In 2016, ALPHAEON entered into two separate debt transactions: (i) a convertible note with one of its stockholders, also a related party (the "Bridge Note") with a principal amount of $2.5 million and (ii) a Secured Convertible Note Purchase Agreement (the "Purchase Agreement") pursuant to which ALPHAEON could issue up to an aggregate of $55.0 million ("Note Facility" and together with the Bridge Note, the "Notes"). The Notes have substantially similar terms and accrue simple interest at a rate of ten percent (10%) per annum, subject to adjustment pursuant to terms of the Notes.

In April 2017, ALPHAEON amended and restated the Purchase Agreement (the "Amended and Restated Secured Note Purchase Agreement"). Concurrently, the Company also executed two substantially similar guaranty and security agreements (the "Guaranty Agreements"), with the holders of the Notes, pursuant to which, the Company jointly and severally agreed to pay the redemption amount of 2.5 times the principal amount of the Notes upon maturity if not paid by ALPHAEON. As a co-obligor to these Notes, the Company applied the accounting guidance provided in ASC 405-40, *Obligations Resulting from Joint and Several Liability Arrangements*.

The Company initially recorded a liability and corresponding deemed distribution to ALPHAEON as a reduction to additional paid-in-capital in equity in April 2017 to reflect the joint and several liability. These amounts were subsequently adjusted to reflect changes in the balance of the Note obligation.

During the first quarter of 2018, ALPHAEON issued $0.8 million additional convertible promissory notes, including $0.1 million convertible promissory notes to Murthy Simhambhatla, Ph.D., the Company's former President and Chief Executive Officer and former member of the board of directors. As a result of this additional issuance, the total note obligations under all the Notes increased by $2.0 million from $138.7 million as of December 31, 2017 to $140.7 million (2.5 times the total outstanding principal amount of $56.3 million) immediately prior to the IPO. Approximately $0.6 million in excess of the then balance of additional paid-in capital was recorded in accumulated deficit.

As provided for within the Amended and Restated Secured Note Purchase Agreement and Guaranty Agreements, in conjunction with its recognition of the joint and several liability, the Company also recorded a receivable from ALPHAEON, which equaled the current balance of the amounts owed to ALPHAEON under its related party borrowing arrangements. In January 2018 immediately prior to its IPO, the Company recorded an increase of $1.1 million in the receivable from ALPHAEON with a corresponding increase in additional paid-in capital. The related party receivable balance increased to $73.7 million immediately prior to the IPO.

As of February 12, 2018, the Company was released of the $140.7 million note obligation for all guaranty and security obligations under the Guaranty Agreements, and the related party receivable from ALPHAEON of $73.7 million was settled, resulting in a capital contribution of $67.0 million. ALPHAEON's security interest in Evolus' assets was also terminated.

Evolus Founders

Certain of the Evolus Founders from whom SCH purchased its equity interests include individuals who were previously employed by the Company in operational roles, including J. Christopher Marmo, Ph.D., the Company's former Chief Operating Officer.

Payment Obligations Related to the Acquisition by ALPHAEON

The Company was acquired by SCH-AEON, LLC ("SCH"), in 2013 and subsequently by ALPHAEON by means of a stock purchase agreement ("Stock Purchase Agreement"), pursuant to which ALPHAEON took on 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, the Company assumed all of ALPHAEON's payment obligations under the acquisition. Refer to the notes to the financial statements in the Company's Annual Report on Form 10-K for the year ended December 31, 2018 for details of the acquisition of the Company.

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Under the Amended Stock Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for the Product for the treatment of glabellar lines which was paid in full during the first quarter of 2019, (ii) quarterly royalty payments of a low single digit percentage of net sales of the Product within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of the Product outside of the United States, and (iv) a $20.0 million promissory note that will mature on the 2.5 years anniversary of the first commercial sale of the Product in the United States. The revised payment obligations set forth in (ii) and (iii) above will terminate in the quarter following the 10 year anniversary of the first commercial sale of the Product in the United States. Under the Amended Stock Purchase Agreement, the Company recorded the fair value of all revised payment obligations and the promissory note owed to the Evolus Founders of $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note) as of February 12, 2018. See Note 6, *Fair Value Measurements and Short-Term Investments* for more information about the Company's accounting thereof. In addition, the outstanding related party borrowings from ALPHAEON were set-off and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations the Company assumed from ALPHAEON, the fair value of which, as of February 12, 2018, was $55.7 million.

Under the Amended Stock Purchase Agreement, Evolus paid one-time bonuses of $1.6 million to certain current and former employees upon FDA approval of the Product in February 2019, including a one-time bonus of $700,000 payable to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development. The payment is included in research and development expenses in the accompanying condensed statements of operations and comprehensive loss for the three months ended March 31, 2019.

The Company has the right to prepay the promissory note, in whole or in part, at any time and from time to time without penalty. Upon an event of default under the promissory note, all unpaid principal will become immediately due and payable at the option of the holder. An event of default will occur under the terms of the promissory note upon any of the following events: (i) Evolus fails to meet the obligations to make the required payments thereunder, (ii) Evolus makes an assignment for the benefit of creditors, (iii) Evolus commences any bankruptcy proceeding, or (iv) Evolus materially breaches the Amended Stock Purchase Agreement or Tax Indemnity Agreement (which is defined below) and such breach is not cured within 30 days.

In addition, upon a change-of-control of Evolus, all unpaid principal will become immediately due and payable. Under the terms of the promissory note, a change-of-control is defined as (i) the sale of all or substantially all of Evolus' assets, (ii) the exclusive license of the Product or the business related to the Product to a third-party (other than a sublicense under the Daewoong Agreement), or (iii) any merger, consolidation, or acquisition of Evolus, except a merger, consolidation, or acquisition of Evolus in which the holders of capital stock of Evolus immediately prior to such merger, consolidation, or acquisition hold at least 50% of the voting power of the capital stock of Evolus or the surviving entity. Notwithstanding the foregoing, the promissory note expressly provides that neither the IPO or any merger with or acquisition by ALPHAEON or any of its subsidiaries or affiliates constitutes a change-of-control.

In connection with the Amended Stock Purchase Agreement, Evolus entered into a tax indemnity agreement with the Evolus Founders ("Tax Indemnity Agreement") pursuant to which, effective upon Evolus' assumption of the revised payment obligations under the Amended Stock Purchase Agreement, which occurred upon the completion of the IPO, Evolus was obligated to indemnify the Evolus Founders for any tax liability resulting from such assignment of the revised payment obligations from ALPHAEON to Evolus. Under the Amended Stock Purchase Agreement, the payment obligations are contingent and are thus eligible for installment sale reporting under Section 453 of the Internal Revenue Code of 1986, as amended. The entry into the Amended Stock Purchase Agreement would cause the Evolus Founders to be treated for U.S. federal income tax purposes as receiving a distribution from SCH of the right to receive the contingent payments in a transaction in which no gain or loss is recognized such that the Evolus Founders may continue installment sale reporting with respect to the revised payment obligations to the same extent that installment sale reporting was available to SCH with respect to the original payment obligations prior to the execution of the Amended Stock Purchase Agreement. Under the Tax Indemnity Agreement, Evolus was obligated to indemnify the Evolus Founders for any taxes or penalties required to be paid by the Evolus Founders in the event the U.S. Internal Revenue Service or other taxing authority were to determine that Evolus' assumption of the revised payment obligations under the Amended Stock Purchase Agreement rendered continued installment sale reporting unavailable to the Evolus Founders. Any taxes or penalties paid by us on behalf of the Evolus Founders under the Tax Indemnity Agreement will be offset dollar-for-dollar against the promissory note and future royalties that will be payable to the Evolus Founders under the Amended Stock Purchase Agreement.

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Notes to Condensed Financial Statements

Exclusive Distribution and Supply Agreement with Clarion Medical Technologies Inc.

On November 30, 2017, the Company entered into an exclusive distribution and supply agreement (the "Distribution Agreement"), with Clarion Medical Technologies Inc. ("Clarion"). The Distribution Agreement provides terms pursuant to which the Company will exclusively supply the Product to Clarion in Canada. Clarion was previously a wholly-owned subsidiary of ALPHAEON. However, pursuant to previous agreements among ALPHAEON, Clarion, and previous equity holders of Clarion, the previous equity holders of Clarion had the option, and have exercised such option, to unwind ALPHAEON's acquisition of Clarion. As a result, ALPHAEON owes the equity holders of Clarion an unwinding fee of $9.6 million (the "Unwinding Fee"). The Distribution Agreement sets forth that a portion of the proceeds received by the Company from each unit of the Product purchased by Clarion shall be paid directly to the previous equity holders of Clarion, and will reduce, on a dollar-for-dollar basis, the amount of the Unwinding Fee ALPHAEON owes. In addition, ALPHAEON and SCH have agreed with Clarion to pay the unpaid amount of the Unwinding Fee on December 31, 2022, if demanded by the previous equity holders of Clarion.

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 (in thousands):

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets				
Distribution right	20	$ 58,076	$ (484)	$ 57,592
Capitalized software	2	1,190	—	1,190
Intangible assets, net		59,266	(484)	58,782
Indefinite-lived intangible asset				
Goodwill	*	21,208	—	21,208
Total as of March 31, 2019		$ 80,474	$ (484)	$ 79,990

	Weighted-Average Life (Years)	Original Cost	Accumulated Amortization	Net Book Value
Indefinite-lived intangible assets				
IPR&D**	*	$ 56,076	$ —	$ 56,076
Goodwill	*	21,208	—	21,208
Total as of December 31, 2018		$ 77,284	$ —	$ 77,284

* Intangible assets with indefinite lives have an indeterminable average life.
** IPR&D is presented as "intangible asset, net" in the accompanying condensed balance sheets.

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The following table outlines the estimated future amortization expense related to intangible assets held as of March 31, 2019 that are subject to amortization:

Fiscal year	(in thousands)
Remaining in 2019	$ 2,178
2020	2,904
2021	2,904
2022	2,904
2023	2,904
Thereafter	43,798
	$ 57,592

In connection with the acquisition of the Company by SCH in 2013, the Company recorded goodwill of $21.2 million and IPR&D of $56.1 million. The IPR&D recognized represents the license and associated distribution right to develop the Product, the initial term of which will expire in September 2023 and which will be automatically extended for unlimited additional three-year terms provided that the Company meets certain performance requirements. Additionally, pursuant to the Daewoong Agreement, $13.5 million in additional cash consideration is due to Daewoong based upon the Company's successful completion of certain technical and sales milestones. Upon FDA approval of the Product on February 1, 2019, the Company paid Daewoong a $2.0 million milestone payment which increased the cost basis of the IPR&D, and the IPR&D project was completed and reclassified as an definite-lived distribution right intangible asset, which is amortized on a straight-line basis over the estimated useful life of 20 years and is recorded within depreciation and amortization on the accompanying condensed statements of operations and comprehensive loss.

During the three months ended March 31, 2019, the Company capitalized $1.2 million related to costs of computer software developed or obtained for internal use and expects to amortize this software over a two-year period using the straight-line method once placed in service.

Note 5. Oxford Term Loans

On March 15, 2019, the Company entered into a credit facility of up to $100.0 million with Oxford Finance ("Oxford"). Pursuant to the terms of the credit facility the lender extended term loans (the "Term Loans") to the Company that were available in two advances. The first tranche of $75.0 million was funded on the closing date. The second tranche of $25.0 million may be drawn, at the request of the Company, no later than September 30, 2020, upon achieving specified minimum net sales milestones based on a trailing six month basis and no event of default. The credit facility bears an annual interest rate equal to the greater of 9.5%, or the 30-day U.S. Dollar LIBOR rate plus 7.0%. The Company has agreed to pay interest-only on each tranche funded for the first 36 months until May 2022, which will be followed by a 23-month amortization period. Notwithstanding the foregoing, if the Company maintains compliance with the specified minimum net sales covenant and meets other conditions during the initial interest-only period, upon the Company's request, the interest-only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

Upon the earliest to occur of the maturity date, the acceleration of the term loans, or the prepayment of the term loans, the Company will be required to pay to Oxford a final payment of 5.5% of the full principal amount of the term loans funded ("Final Payment"). The Company may elect to prepay all amounts owed prior to the maturity date, provided that a prepayment fee is also paid, which shall be equal to 3.0% of the amount prepaid if the prepayment occurs on or prior to March 15, 2020, 2.0% of the amount prepaid if the prepayment occurs after March 15, 2020 and on or prior to March 15, 2021, or 1.0% of the amount prepaid if the prepayment occurs thereafter ("Prepayment Fee"). If the Term Loans are accelerated following the occurrence of an event of default, the Company will be required to immediately pay to Oxford an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, the Final Payment, the Prepayment Fee, and all other obligations that are due and payable, including payment of Oxford's expenses and interest at the default rate with respect to any past due amounts.

The credit facility is secured by substantially all of the Company's assets. The credit facility includes affirmative and negative covenants applicable to the Company and any subsidiaries it may create in the future. The affirmative covenants include, among others, covenants requiring us to maintain the Company's legal corporate existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and satisfy certain requirements regarding deposit accounts.

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Notes to Condensed Financial Statements

The negative covenants include, among others, restrictions on us transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.

The credit facility also includes events of default, the occurrence and continuation of which could cause interest to be charged at a default interest rate equal to the applicable rate plus 5.0% and Oxford, as collateral agent, with the right to exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including the Company's cash. These events of default include, among other things, any failure by the Company to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, the Company's insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against the Company, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement. As of March 31, 2019, the Company was in compliance with its debt covenants.

At the closing date, the Company incurred $1.1 million and $2.2 million in debt discounts and issuance costs related to the Term Loans, respectively. Debt discounts and issuance costs related to the entire Term Loans have been allocated pro rata between the funded and unfunded portions. Debt discounts and issuance costs allocated to the first tranche of $75.0 million have been presented as a deduction to the debt balance and are accreted to interest expense using the effective interest method. As of March 31, 2019, the borrowings outstanding under the Term Loans were classified as long-term debt in the accompanying condensed financial statements. Debt discounts and issuance costs associated with the unfunded tranche are deferred as assets until the tranche is drawn. The overall effective interest rate was approximately 11.6% as of March 31, 2019.

As of March 31, 2019, the principal amounts of long-term debt maturities during each of the next five fiscal years, and the Final Payment in 2024 which is accreted through interest expense over the life of the Term Loans are as follows (in thousands):

	Principal	Final Payment	Total
2022	$ 26,087	$ —	$ 26,087
2023	39,130	—	39,130
2024	9,783	4,125	13,908
	$ 75,000	$ 4,125	$ 79,125

Note 6. Fair Value Measurements and Short-Term Investments

The Company's financial instruments consist primarily of cash and cash equivalents, short-term available-for-sale securities, accounts payable, accrued expenses, lease liabilities, and long-term debt. The carrying amount of cash and cash equivalents, accounts payable and accrued expenses approximates their fair value because of the short-term maturity of such instruments, which are considered Level 1 assets under the fair value hierarchy.

The Company did not have any short-term investments for the year ended December 31, 2018. As of March 31, 2019, all of the Company's investments had remaining maturities less than 12 months. The following is a summary of the Company's short-term investments, considered available-for-sale, as of March 31, 2019 (in thousands):

	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
Available-for-sale securities				
U.S treasury securities	$ 79,321	$ —	$ (8)	$ 79,313

Unrealized gains or losses on short-term investments are included in accumulated other comprehensive loss. As of March 31, 2019, no investments had been in continuous unrealized loss position for more than 12 months, and the Company had no other-than-temporary impairments on these securities.

Evolus, Inc.

Notes to Condensed Financial Statements

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 (in thousands):

	As of March 31, 2019			
	Fair Value	Level 1	Level 2	Level 3
Available-for-sale securities				
U.S treasury securities	$ 79,313	$ 79,313	$ —	$ —
Liabilities				
Contingent royalty obligation payable to Evolus Founders, a related party	$ 45,900	$ —	$ —	$ 45,900

	As of December 31, 2018			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders, a related party	$ 50,200	$ —	$ —	$ 50,200

The Company did not transfer any assets or liabilities measured at fair value on a recurring basis between levels during the three months ended March 31, 2019.

The Company determines the fair value of the contingent royalty obligation payable to a related party based on Level 3 inputs using a discounted cash flow method. Changes in the fair value of this contingent royalty obligation are determined each period end and recorded in the operating expenses in the accompanying statements of operations and comprehensive loss and in non-current liabilities in the balance sheets. The significant unobservable input assumptions that can significantly change the fair value include (i) timing of regulatory approvals of the Product, (ii) projected and timing of net revenues during the payment period, which will terminate for the quarter following the 10 year anniversary of the first commercial sale of the Product in the United States, (iii) the discount rate, and (iv) the timing of payments. During the three months ended March 31, 2019 and 2018, the Company utilized discount rates of 16.0% and 25.0%, respectively, reflecting changes in the Company's risk profile. Net revenue projections were also updated to reflect changes in the timing of regulatory approval and expected commercialization.

The following table (in thousands) shows a reconciliation of the beginning and ending fair value measurements of the contingent royalty obligation payable to a related party for the three months ended March 31, 2019:

	March 31, 2019
Fair value, beginning of period	$ 50,200
FDA milestone payment	(9,213)
Change in fair value recorded in operating expenses	4,913
Fair value, end of period	$ 45,900

In addition, the Company measures the fair value of the contingent promissory note payable to Evolus Founders at present value based on Level 2 inputs, using a discount rate for similar rated debt securities and based on an estimated date that the Company believes the contingent promissory note will mature. The fair value of the contingent promissory note could be impacted by changes such as: (i) changes in the discount rate assumed, or (ii) a delay in the first commercial sale of the Product in the United States. As of March 31, 2019, the fair value of the promissory note was estimated to be $14.8 million. The carrying amount for the Oxford Term Loans as of March 31, 2019 approximated fair value based on market activity for other debt instruments with similar characteristics and comparable risk, which were considered Level 2 liabilities under the fair value hierarchy. The Company believes the fair value of its operating lease liabilities at March 31, 2019 approximated its carrying value, based on the borrowing rates that were available for loans with similar terms.

Evolus, Inc.

Notes to Condensed Financial Statements

Note 7. Commitments and Contingencies

Operating Leases

The Company leases office facilities under various operating lease agreements. The Company's corporate headquarters is located in Newport Beach, California, in a facility that it subleases under a non-cancelable operating lease for a fixed amount each month. The sublease for this facility expires on January 20, 2020. The Company also leases an office facility in Santa Barbara, California, under a non-cancelable operating lease, the payments of which include a three percent annual rent escalation clause that occurs on each June 1 anniversary. The lease for this facility expires on May 31, 2020.

The Company's lease agreements do not contain any residual value guarantees or material restrictive covenants.

For the three-month period ended March 31, 2019, the components of operating lease expense and other quantitative information were as follows (in thousands, except years and discount rate data):

	Three Months Ended March 31, 2019
Fixed operating lease expense	$ 234
Variable operating lease expense	18
Short-term operating lease expense	21
	$ 273
Weighted-average remaining lease term in years - operating leases	0.9
Weighted-average discount rate	7.0%

Operating lease expenses were included in the general and administration expenses in the accompanying condensed 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 balance sheets.

The following table presents the maturity of the Company's operating lease liabilities as of March 31, 2019, future minimum payments under the operating lease agreements with non-cancelable terms as follows (in thousands):

Remainder of 2019	$ 717
2020	139
Total operating lease payments	856
Less: Imputed interest	(25)
Present value of operating lease liabilities	$ 831

Purchase Commitments

As of March 31, 2019, the Company has entered into commitments to purchase services and products for an aggregate amount of approximately $20.5 million. Certain minimum purchase commitments related to purchase of the Product are described below.

License and Supply Agreement

In connection with the Daewoong Agreement, the Company is obligated to make future milestone payments to Daewoong for certain confidential development and commercial milestones associated with the Product. Upon the FDA approval of the Product on February 1, 2019, the Company paid Daewoong a $2.0 million milestone payment. As of March 31, 2019, Daewoong is eligible to receive contingent milestone payments of up to approximately $11.5 million.

The Daewoong Agreement also includes certain minimum annual purchases 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 its covered territories. These potential minimum purchase obligations were contingent upon the

occurrence of future events, including receipt of governmental approvals and the Company's future market share in various jurisdictions.

Legal Proceedings

The Company, from time to time, is 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. The Company is not subject to any currently pending legal matters or claims that would have a material adverse effect on its accompanying financial position, results of operations or cash flows.

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 it involves 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 March 31, 2019 and December 31, 2018.

Medytox Litigation

The Company, ALPHAEON, SCH and Daewoong are defendants to a lawsuit brought by Medytox, Inc. ("Medytox") alleging, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain and that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture the Product (the "Medytox Litigation"). The Company believes it has meritorious defenses and intends to vigorously defend Medytox's claims. Given the early stage in the Medytox Litigation, the Company is unable to determine the likelihood of success of Medytox's claims against the Company, and an estimate of the possible loss or range of loss cannot be made. While the Company is entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient.

Citizen Petition

In December 2017, Medytox filed a Citizen Petition (the "Citizen Petition") with the FDA. The Citizen Petition seeks to delay approval of the Biologics License Application submitted by the Company to the FDA in May 2017 for the Product until the FDA determines the identity and source of the botulinum strain for the Product and validates the integrity of the data and information in the Biologics License Application. Medytox further requests that the FDA require the source and identity information in the Biologics License Application to include a single nucleotide polymorphism analysis of the whole genome sequence of the botulinum strain for the Product. In connection with the FDA approval of the Product, on February 1, 2019 the Citizen Petition was dismissed.

ITC Case

On January 30, 2019, Allergan, plc and Allergan, Inc. (collectively, "Allergan") and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission (the "ITC"), containing substantially similar allegations to the Medytox Litigation, specifically that the Product is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of the Product is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products* (the "ITC Complaint"). The ITC instituted an investigation as ITC Inv. No. 337-TA-1145. The ITC complaint calls for an investigation by the ITC under Section 337 of the Tariff Act of 1930. The ITC complaint seeks (i) an investigation pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of the Product into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring the Product within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen botulinum toxin bacterial strain, and (vii) exclusion and cease and desist orders. The Company intends to defend itself vigorously in the proceedings. An adverse ruling by the ITC against either us or Daewoong could result in the imposition of an exclusion order which would bar imports of the Product into the United States and a cease and desist order which would bar sales and marketing of the Product within the United Sates either of which would adversely affect our ability to carry out the Company's business and which would have an adverse effect on our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect the Company's business and results of operations.

Evolus, Inc.

Notes to Condensed Financial Statements

Note 8. 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 March 31, 2019, none 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 March 31, 2019, 27,285,363 shares were issued and outstanding.

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 nonstatutory options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's employees, including 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% 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). On November 21, 2018, an additional 1,091,000 were reserved under the evergreen provision of the Plan. As of March 31, 2019, the Company has available an aggregate of 1,283,193 shares of common stock for future issuance under the Plan.

Stock-Based Award Activity and Balances

Options are granted at exercise prices based on the Company's common stock price on the date of grant. The Options and RSU grants generally vest over a 2- to 4-year period. There have been no awards granted with performance conditions and no awards with market conditions for the periods presented. The options generally have a contractual term of 10 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 fair value of RSU grants is determined at the grant date based on the common share price. The Company records stock-based compensation expense net of actual forfeitures when they occur.

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

	Three Months Ended March 31,	
	2019	**2018**
Volatility	59.2%	56.0%
Risk-free interest rate	2.62%	2.40%
Expected life in years	6.17	6.23
Dividend yield rate	—%	—%

Evolus, Inc.

Notes to Condensed Financial Statements

A summary of stock option activity under the Plan for the three months ended March 31, 2019, is presented below:

	Stock Options	Weighted Average Exercise Per Share	Weighted Average Remaining Contractual Terms (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding, December 31, 2018	3,257,801	$ 11.99	9.26	$ 7,119
Granted	822,975	18.09		
Exercised	(20,544)	9.98		
Cancelled/forfeited	(192,978)	12.15		
Outstanding, March 31, 2019	3,867,254	$ 13.29	8.78	$ 37,345
Exercisable, March 31, 2019	438,023	$ 10.15	4.85	$ 5,440

The intrinsic values of outstanding and exercisable options were determined by multiplying the number of shares by the difference in exercise price of the options and the fair value of the common stock as of December 31, 2018 and March 31, 2019.

A summary of the status of the Company's nonvested options as of and changes during the three months ended March 31, 2019, are presented below:

	Stock Options	Weighted-Average Grant Date Fair Value
Outstanding, December 31, 2018	3,257,801	$ 7.32
Granted	822,975	10.38
Vested	(458,567)	6.96
Cancelled/forfeited	(192,978)	8.10
Outstanding, March 31, 2019	3,429,231	$ 8.06

A summary of RSUs activity under the Plan for the three months ended March 31, 2019, is presented below:

	Restricted Stock Units	Weighted Average Grant Date Fair Value
Outstanding, December 31, 2018	271,404	$ 16.53
Granted	3,000	18.33
Forfeited	(17,534)	13.08
Outstanding, March 31, 2019	256,870	$ 16.79

Evolus, Inc.

Notes to Condensed Financial Statements

The following table summarizes stock-based compensation expense (in thousands) arising from the above Plan:

	Three Months Ended March 31,	
	2019	2018
General and administrative	$ 1,744	$ 677
Research and development	254	329
	$ 1,998	$ 1,006

In addition, during the three months ended March 31, 2019, the Company capitalized $17,000 of stock-based compensation expense in capitalized software. Capitalized software is a component of intangible assets and is presented in the accompanying condensed balance sheets. See Note 4, *Goodwill and Intangible Assets* for capitalized software information.

Note 9. Net Loss per Share Attributable to Common Stockholders

The following table sets forth the computation of the Company's basic and diluted net loss per share attributable to common stockholders (in thousands, except share and per share amounts):

	Three Months Ended March 31,	
	2019	2018
Net loss	$ (10,975)	$ (6,162)
Net loss per share, basic and diluted	$ (0.40)	$ (0.30)
Weighted-average shares outstanding used to compute basic and diluted net loss per share	27,330,174	20,226,460

The Company incurred a net loss for the three months ended March 31, 2019 and 2018, accordingly, the Company did not include the following dilutive common equivalent (in thousands) shares because inclusion would be anti-dilutive:

	Three Months Ended March 31,	
	2019	2018
Common stock options	3,867	1,599
Unvested restricted stock units	207	231
	4,074	1,830

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 financial statements and related notes include 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, 2018 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 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 focused on delivering breakthrough products in the self-pay aesthetic market. On February 1, 2019, the U.S. Food and Drug Administration, or FDA, approved our first product Jeuveau™ (prabotulinumtoxinA-xvfs). We are launching Jeuveau™ commercially in the United States this Spring. 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. We believe we will offer physicians 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.

Since our inception in 2012, we have devoted substantially all our efforts and resources to identify and recruit personnel, conduct clinical trials, and gain regulatory approval for Jeuveau™. We have a License and Supply Agreement, or the Daewoong Agreement, with Daewoong Pharmaceuticals Co., Ltd., or Daewoong, a South Korean pharmaceutical manufacturer, pursuant to which Daewoong manufactures and supplies us with Jeuveau™ and granted us an exclusive license to develop, distribute, market and sell the product in the United States, EU, Canada, Australia, Russia, Commonwealth of Independent States, or C.I.S., and South Africa, or the covered territories. Daewoong also granted us a non-exclusive license to do the same in Japan.

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 plan to begin to market the product in Canada in the second half of 2019 through our distribution partner Clarion Medical Technologies, Inc., or Clarion. We also submitted a Marketing Authorization Application, or MAA, to the European Medicines Agency, or EMA, and it was accepted for review in July 2017. In April 2019, the Committee for Medicinal Products for Human Use, or CHMP, adopted a positive opinion, recommending marketing authorization for the product. The CHMP recommendation will be reviewed by the European Commission, which has the authority to approve medicines for the European Union and we anticipate that we will receive approval of our MAA within 90 days of the CHMP opinion.

We have never generated revenue from Jeuveau™ and have never been profitable. As of March 31, 2019, we had an accumulated deficit of $134.0 million. We recorded a net loss and comprehensive loss of $11.0 million and $6.2 million for the three months ended March 31, 2019 and 2018, respectively.

We expect to continue to incur significant expenses and increasing net operating losses for the foreseeable future as we seek to commercialize Jeuveau™ and seek regulatory approvals outside of the United States. In 2019, we expect to incur significant expenses related to building our commercialization infrastructure, including marketing, sales and distribution functions, inventory build prior to commercial launch, initiating a product experience program for Jeuveau™ and training and deploying a specialty sales force and implementing a targeted marketing campaign.

Initial Public Offering

In February 2018, we completed our initial public offering in which we sold 5,047,514 shares of our common stock at a public offering price of $12.00 per share. The net proceeds were approximately $56.3 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

Follow-on Public Offering

In July 2018, we completed a follow-on public offering, or the July 2018 public offering, in which we sold 3,600,000 shares of our common stock, at a public offering price of $20.00 per share. The net proceeds were approximately $67.7 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

Daewoong License and Supply Agreement

In 2013, we entered into the Daewoong Agreement, pursuant to which we have an exclusive distribution license to Jeuveau™ from Daewoong Pharmaceuticals Co., Ltd., or Daewoong, for aesthetic indications in the United States, EU, Canada, Australia, Russia, C.I.S., and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Under the Daewoong Agreement, we are required to make certain minimum annual purchases upon commercialization in order to maintain the exclusivity of the license. 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. In connection with our entry into the Daewoong Agreement, we made an upfront payment to Daewoong of $2.5 million. Upon the FDA approval of Jeuveau™ in February 2019, we paid Daewoong a $2.0 million milestone payment. Under the Daewoong Agreement, as of March 31, 2019, the maximum remaining aggregate amount of future milestone payments that could be owed to Daewoong upon the satisfaction of all milestones is $11.5 million. Daewoong is responsible for all costs related to the manufacturing of Jeuveau™, including costs related to the operation and upkeep of its manufacturing facility, and we are responsible for all costs related to obtaining and maintaining regulatory approvals, including clinical expenses, and commercialization expenses.

Acquisition by ALPHAEON

We were acquired by SCH-AEON, LLC, or SCH, in 2013 and subsequently by ALPHAEON by means of a stock purchase agreement, or the Stock Purchase Agreement, pursuant to which ALPHAEON took on certain payment obligations related to the acquisition. On December 14, 2017, the Stock Purchase Agreement was amended, which we refer to as the Amended Stock Purchase Agreement, and, as a result, effective upon the closing of our initial public offering, we assumed all of ALPHAEON's payment obligations under the acquisition.

Under the Amended Stock Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for Jeuveau™ for the treatment of glabellar lines, which was paid in full in the first quarter of 2019, (ii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™t within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™ outside of the United States, and (iv) a $20.0 million promissory note that will mature on the 2.5 years anniversary of the first commercial sale of Jeuveau™ in the United States. The revised payment obligations set forth in (ii) and (iii) above will terminate in the quarter following the 10 year anniversary of the first commercial sale of Jeuveau™ in the United States. As these revised payment obligations are not perpetual, we do not have the right to terminate any future payments for a one-time lump sum payment. At the closing of our initial public offering, the outstanding related party borrowings from ALPHAEON were set-off and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations we assumed from ALPHAEON, the fair value of which, immediately prior to our initial public offering date or February 12, 2018, was $55.7 million. In addition we made one-time bonuses of $1.6 million to certain current and former employees upon FDA approval of Jeuveau™, including a one-time bonus of $700,000 payable to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development.

Our Relationship with ALPHAEON Corporation

As of March 31, 2019, ALPHAEON owned 56.0% of our outstanding shares of common stock.

Prior to our initial public offering and since our acquisition in 2014 by ALPHAEON, we funded our operations primarily through contributions and related party borrowings from ALPHAEON. For periods prior to the completion of our initial public offering on February 12, 2018, we derived our financial statements by allocating expenses associated with our operations from ALPHAEON's consolidated financial statements in accordance with applicable accounting standards and SEC regulations. Our management believes that the allocations and results are reasonable for all periods presented in our financial statements. However, allocations may not be indicative of the actual expense we would have incurred had we operated as an independent company for the periods presented.

In January 2018, we entered into a services agreement with ALPHAEON, or the services agreement, which became effective in connection with our initial public offering. The services agreement sets forth certain terms between ALPHAEON and us that govern the respective responsibilities and obligations between ALPHAEON and us, as it relates to the services to be

performed between us. The fees charged for any services rendered pursuant to the services agreement are the actual cost incurred by ALPHAEON or us, as the case may be, in providing the services for the relevant period.

In addition, pursuant to the services agreement, upon completion of our initial public offering in 2018, we paid ALPHAEON $5.0 million towards the repayment of our related party borrowings and the remaining related party borrowings then outstanding were forgiven and the amount was re-characterized as a capital contribution of ALPHAEON. As a result, upon the completion of initial public offering, we were no longer indebted to ALPHAEON pursuant to our historical related party borrowings from ALPHAEON.

Results of Operations

Comparison of the Three Months Ended March 31, 2019 and 2018

The following table summarizes our results of operations for the periods indicated (in thousands):

	Three Months Ended March 31,		
	2019	2018	Change
Operating expenses:			
Research and development	$ 2,353	$ 1,678	$ 675
General and administrative	17,519	3,467	14,052
Revaluation of contingent royalty obligation payable to Evolus Founders, a related party	4,913	900	4,013
Depreciation and amortization	484	—	484
Total operating expenses	25,269	6,045	19,224
Loss from operations	(25,269)	(6,045)	(19,224)
Other income (expense):			
Interest income	389	—	389
Interest expense	(618)	(107)	(511)
Loss before income taxes	(25,498)	(6,152)	(19,346)
Income tax (benefit) expense	(14,523)	10	(14,533)
Net loss	$ (10,975)	$ (6,162)	$ (4,813)
Other comprehensive loss:			
Unrealized loss on available-for-sale securities, net of tax	(9)	—	(9)
Comprehensive loss	$ (10,984)	$ (6,162)	$ (4,822)

Research and Development

Research and development expenses increased by $0.7 million to $2.4 million for the three months ended March 31, 2019 from $1.7 million for the three months ended March 31, 2018. The increase was primarily attributable to the one-time bonuses of $1.6 million to certain current and former employees upon FDA approval of Jeuveau™ in February 2019, including a one-time bonus of $0.7 million payable to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development. The increase was partially offset by a decrease in vendor and company personnel costs due to the finalization of the clinical trial activities related to Jeuveau™.

General and Administrative

General and administrative expenses increased by $14.0 million to $17.5 million for the three months ended March 31, 2019 from $3.5 million for the three months ended March 31, 2018. The increase was primarily attributable to higher personnel-related expenses as we build out our corporate and commercial infrastructure, higher accounting and legal expenses primarily related to meeting ongoing public company compliance requirements and other legal matters, as well as higher pre-commercialization expenses in preparation for our product launch. Personnel-related expenses, including stock-based compensation, increased by $5.7 million as general and administrative employees increased to 92 as of March 31, 2019 from 17 as March 31, 2018. We expect that general and administrative expenses will continue to increase due to costs related to the implementation of our commercialization strategy as well as costs related to the ongoing compliance and communication requirements of a public company.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

Effective upon the closing of our initial public offering in February 2018, we assumed all of ALPHAEON's payment obligations under the Stock Purchase Agreement, as amended by the Amended Stock Purchase Agreement, including certain royalty obligation payable to Evolus Founders which is recorded at its fair value as of the end of each reporting period. The change of the fair value is primarily driven by assumptions related to revenue forecasts, discount rate, and timing of cash flows. Such change of the fair value is recorded in operating expenses in each period. During the three months ended March 31, 2019, the charge of $4.9 million related to the revaluation was primarily due to a decrease in the estimated discount rate.

Depreciation and Amortization

Depreciation and amortization was $0.5 million for the three months ended March 31, 2019. This was primarily attributable to amortization of the definite-lived distribution right asset that was reclassified from in-process research and development, or IPR&D, upon FDA approval in February 2019. We incurred no depreciation or amortization during the three months ended March 31, 2018.

Interest Income

Interest income was $0.4 million for the three months ended March 31, 2019. This was primarily attributable to interest income generated from cash equivalents and short-term investments, as well as accretion related to our short-term investments. During the three months ended March 31, 2018, we did not generate any interest income.

Interest Expense

Interest expense increased by $0.5 million to $0.6 million for the three months ended March 31, 2019 from $0.1 million for three months ended March 31, 2018. The increase was primarily attributable to interest incurred from our long-term debt to Oxford Finance, LLC and the contingent promissory note payable to the Evolus Founders.

Provision (Benefit) for Income Taxes

For the three months ended March 31, 2019, we recorded an income tax benefit of $14.5 million, resulting from a partial release of the valuation allowance. Upon the reclassification of the indefinite-lived IPR&D intangible asset to a definite-lived distribution right intangible asset in the first quarter of 2019, the related deferred tax liability became a source of future taxable income in the assessment of the realization of deferred tax assets, and as a result the related valuation allowance was released. For the three months ended March 31, 2018, we did not record significant income tax provision or benefit.

Liquidity and Capital Resources

As of March 31, 2019, we had cash and cash equivalents of $54.4 million, short-term available-for-sale investments of $79.3 million, working capital of $129.7 million, and stockholders' equity of $75.4 million.

We have no revenue, incur operating losses and have an accumulated deficit as a result of ongoing efforts to develop and commercialize Jeuveau™, including providing general and administrative support for these operations. As of March 31, 2019, we had an accumulated deficit of $134.0 million. We had net losses of $11.0 million and $6.2 million for the three months ended March 31, 2019 and 2018, respectively, and we used net cash in operating activities of $19.2 million and $2.2 million for the three months ended March 31, 2019 and 2018, respectively. We anticipate that operating losses and net cash used in operating activities will increase as we commercialize Jeuveau™.

Initial Public Offering

In February 2018, we closed our initial public offering and sold 5,047,514 shares of our common stock at the price of $12.00 per share. The net proceeds were approximately $56.3 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

July 2018 Follow-On Public Offering

In July 2018, we closed a follow-on offering and sold 3,600,000 shares of our common stock at the price of $20.00 per share. The net proceeds were approximately $67.7 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

Loan and Security Agreement

On March 15, 2019, or the closing date, we entered into a loan and security agreement, or the credit facility, with Oxford Finance, LLC, as collateral agent, or Oxford, and the lenders party thereto from time to time, pursuant to which the lender will make term loans available to us of up to $100.0 million. The credit facility provides that the term loans will be funded in two advances. The first tranche of $75.0 million was funded on the closing date, and the second tranche of $25.0 million may be drawn, at our request, no later than September 30, 2020, upon achieving specified minimum net sales milestones and no event of default is occurring. The credit facility bears an annual interest rate equal to the greater of 9.5%, or the 30-day U.S. Dollar LIBOR rate plus 7.0%. We have agreed to pay interest only on each tranche funded pursuant to the credit facility for the first 36 months until May 2022, which will be followed by a 23-month amortization period. Notwithstanding the foregoing, if we maintain compliance with the specified minimum net sales covenant and meet other conditions during the initial interest-only period, upon our request, the interest only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

Upon the earliest to occur of the maturity date, the acceleration of the term loans, or the prepayment of the term loans, we will be required to pay to Oxford a final payment of 5.5% of the full principal amount of the term loans funded, or the final payment. We may elect to prepay all amounts owed prior to the maturity date, provided that a prepayment fee is also paid, which shall be equal to 3.0% of the amount prepaid if the prepayment occurs on or prior to March 15, 2020, 2.0% of the amount prepaid if the prepayment occurs after March 15, 2020 and on or prior to March 15, 2021, or 1.0% of the amount prepaid if the prepayment occurs thereafter, or the Prepayment Fee. If the term loans are accelerated following the occurrence of an event of default, we will be required to immediately pay to Oxford an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, the final payment, the Prepayment Fee, and all other obligations that are due and payable, including payment of Oxford's expenses and interest at the default rate with respect to any past due amounts.

The credit facility is secured by substantially all of our assets. The credit facility includes affirmative and negative covenants applicable to us and any subsidiaries we may create in the future. The affirmative covenants include, among others, covenants requiring us to maintain our legal corporate existence and governmental approvals, deliver certain financial reports, maintain insurance coverage and satisfy certain requirements regarding deposit accounts. The negative covenants include, among others, restrictions on us transferring collateral, incurring additional indebtedness, engaging in mergers or acquisitions, paying dividends or making other distributions, making investments, creating liens, selling assets and suffering a change in control, in each case subject to certain exceptions.

The credit facility also includes events of default, the occurrence and continuation of which could cause interest to be charged at a default interest rate equal to the applicable rate plus 5.0% and Oxford, as collateral agent, with the right to exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including our cash. These events of default include, among other things, any failure by us to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against us, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement.

The credit facility also provides us with the ability, under certain conditions, to obtain up to a $25.0 million revolving line of credit secured by our inventory, accounts receivable and cash proceeds of both. Oxford has the right of first refusal, but not the obligation, to provide such a revolving line of credit. There is no guarantee that such a line would be available to us on terms favorable to us or at all.

Current and Future Capital Requirements

We believe that our current capital resources will be sufficient to fund operations through at least the next twelve months based on our expected cash burn rate from the date of the issuance of this Quarterly Report on Form 10-Q.

Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity or debt financings, entering into licensing or collaboration agreements with partners, grants or other sources of financing. Sufficient funds may not be available to us at all or on attractive terms when needed from these sources. To the extent that we raise additional capital through the future sale of equity or debt, the ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing common stockholders. If we raise additional funds through the issuance of debt securities, these securities could contain covenants that would restrict our operations. We may require additional capital beyond our

currently anticipated amounts. If we are unable to obtain additional funding from these or other sources when needed, it may be necessary to significantly reduce our scope of operations and current rate of spending through reductions in staff and delaying, scaling back, or stopping our research and development or sales and marketing activities.

We have based our projections of operating capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources sooner than we expect. Because of the numerous risks and uncertainties associated with research, development and commercialization of pharmaceutical products, we are unable to estimate the exact amount of our operating capital requirements. Our future funding requirements will depend on many factors, including, but not limited to:

- the number and characteristics of any future product candidates we develop or acquire;
- the timing of any cash milestone payments to Daewoong if we successfully achieve certain predetermined milestones;
- our ability to forecast demand for our products, scale our supply to meet that demand and manage working capital effectively
- the cost of manufacturing our product or any future product candidates and any products we successfully commercialize, including costs associated with building our supply chain;
- 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 building a sales force in anticipation of product commercialization, and the productivity of that sales force and the market acceptance of our products;
- 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 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 patent claims, including ongoing litigation costs related to Jeuveau™ and the outcome of this and any other future patent 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 (in thousands):

	Three Months Ended March 31,	
	2019	**2018**
Net cash (used in) provided by:		
Operating activities	$ (19,200)	$ (2,201)
Investing activities	(80,025)	—
Financing activities	60,430	51,771
Change in cash and cash equivalents	(38,795)	49,570
Cash and cash equivalents, beginning of period	93,162	—
Cash and cash equivalents, end of period	$ 54,367	$ 49,570

Operating Activities

Operating activities used $19.2 million of cash for the three months ended March 31, 2019 which primarily resulted from our net loss of $11.0 million as adjusted for a non-cash income tax benefit of $14.5 million resulting from partial release of the valuation allowance, and certain non-cash charges primarily including stock-based compensation expense of $2.0 million, $4.9 million change in revaluation of our contingent royalty obligation and $0.5 million of depreciation and amortization. The change in net operating assets and liabilities of $1.5 million was primarily driven by timing of an inventory receipt and vendor invoice payments.

Investing Activities

Investing activities used $80.0 million of cash for the three months ended March 31, 2019 primarily resulting from purchases of short-term investments and additions to capitalized software.

Financing Activities

Cash provided by financing activities during the three months ended March 31, 2019 was $60.4 million which primarily resulted from the proceeds of $71.7 million received from our credit facility net of discounts and issuance costs. These net proceeds were partially offset by a $9.2 million payment of contingent royalty obligations to the Evolus Founders and a $2.0 million payment to Daewoong upon FDA approval of Jeuveau™ in February 2019.

Indebtedness

Prior to our initial public offering and since our acquisition by ALPHAEON, ALPHAEON had historically provided us certain services that were not covered under a services agreement, including, without limitation, general and administrative support services and research and development support services. ALPHAEON had allocated a certain percentage of personnel to perform the services that it provided to us based on its good faith estimate of the required services. These allocated costs have historically increased related-party borrowings. As of the completion of our initial public offering on February 12, 2018, we assumed from ALPHAEON the revised payment obligations of $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note). At the same time, we were released of the $140.7 million note obligation for all guaranty and security obligations, and the related party receivable from ALPHAEON of $73.7 million was settled, resulting in a capital contribution of $67.0 million. ALPHAEON's security interest in Evolus' assets was also terminated. After the initial public offering, we no longer rely on ALPHAEON for funding our operations. See Note 3, *Related Party Transactions* for more information.

Loan and Security Agreement

See "—Liquidity and Capital Resources" for a description of our credit facility with Oxford.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet arrangements as defined in the rules and regulations of the SEC. We do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which would have been established for the purpose of facilitating off-balance sheet arrangements or for any other contractually narrow or limited purpose.

Critical Accounting Policies

Management's discussion and analysis of our financial condition and results of operations are based on our financial statements, which have been prepared in accordance with GAAP. The preparation of these 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 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 judgments and estimates 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, 2018, except as described below.

Definitive-Lived Distribution Right Intangible Asset

The IPR&D of $56.1 million recognized in our condensed balance sheet for the year ended December 31, 2018 represented the license and associated distribution rights to develop Jeuveau™. Upon the FDA approval of Jeuveau™ on February 1, 2019, we paid Daewoong a $2.0 million milestone payment which increased the cost basis of the IPR&D, and the IPR&D project was considered completed by us and reclassified as a definite-lived distribution right intangible asset, which is amortized over the period the asset is expected to contribute to our future cash flows. We 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, we concluded it will be amortized on a straight-line basis over the estimated useful life of 20 years. Amortization is recorded within depreciation and amortization on the condensed statements of operations and comprehensive loss.

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 March 31, 2019, 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 March 31, 2019, 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

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 during the quarter ended March 31, 2019 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.

There have been no material developments with respect to the information previously reported in Item 3 “Legal Proceedings” of Part I of our Annual Report on Form 10-K for the year ended December 31, 2018.

Item 1A. Risk Factors.

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 financial statements and the related notes 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 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 product and no commercial sales, which, together with our limited operating history, make 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 and regulatory approval of, and commercial planning for, Jeuveau™, which is currently our only product. We are not profitable and 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 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. To date, we have not generated any revenue from product sales relating to Jeuveau™. We continue to incur significant expenses related to the commercialization of Jeuveau™. We have recorded net losses of $11.0 million, $46.9 million and $4.5 million for the three months ended March 31, 2019, and years ended December 31, 2018 and 2017, respectively, and had an accumulated deficit as of March 31, 2019 of $134.0 million. We expect to continue to incur losses for the foreseeable future, and we anticipate these losses will increase as we begin to commercialize Jeuveau™. Our ability to achieve revenue and profitability is dependent on our ability to successfully market and commercialize 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 our ability to raise capital and continue operations.

We currently depend entirely on the successful commercialization of our only product, Jeuveau™. If we are unable to successfully commercialize Jeuveau™, we may never generate sufficient revenue to continue our business.

We currently have only one product, Jeuveau™, and our business presently depends entirely on our ability to successfully commercialize it in a timely manner. While the product has been approved for sale in the United States and Canada, we have yet to successfully commercialize our product. Our near-term prospects, including our ability to finance our company and generate revenue, as well as our future growth, depend entirely on the successful and timely commercialization of Jeuveau™. The commercial success of Jeuveau™ will depend on a number of factors, including the following:

- our success in educating physicians and consumers about the benefits, administration and use of Jeuveau™;
- the prevalence, duration and severity of potential side effects experienced with Jeuveau™;
- achieving and maintaining compliance with all regulatory requirements applicable to Jeuveau™;
- the ability to raise additional capital on acceptable terms, or at all, if needed, to support the commercial launch of Jeuveau™;
- the acceptance by physicians and consumers of the safety and efficacy of Jeuveau™;
- 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;

- the ability of our current manufacturer and any third parties with whom we may contract to manufacture Jeuveau™ to remain in good standing with regulatory agencies and develop, validate and maintain commercially viable manufacturing processes that are compliant with current Good Manufacturing Practice, or cGMP, requirements; and

- the availability, perceived advantages, relative cost, relative safety 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™.

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 delays or an inability to commercialize Jeuveau™. Further, we may never be able to successfully commercialize Jeuveau™ or any future product candidates. In addition, are in the process of transitioning from a company with a development focus to a company capable of supporting commercial activities. We may not be successful in such transition. 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 rely on the Daewoong Agreement to provide us 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 or commercialization of Jeuveau™.

Pursuant to the Daewoong Agreement, we have secured an exclusive license from Daewoong, a South Korean pharmaceutical manufacturer, to import, distribute, promote, market, develop, offer for sale and otherwise commercialize and exploit Jeuveau™ for aesthetic indications in the United States, EU, Canada, Australia, Russia, C.I.S., and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Daewoong Agreement imposes on us obligations relating to exclusivity, territorial rights, development, commercialization, funding, payment, diligence, sublicensing, intellectual property protection and other matters. We are obligated to conduct development activities, obtain regulatory approval of Jeuveau™, obtain from Daewoong all of our product supply requirements for Jeuveau™ and pay to Daewoong regulatory milestone payments and other cash payments in connection with the net sales of Jeuveau™. In addition, under the Daewoong Agreement, we are required to submit our commercialization plan to a joint steering committee, or JSC, comprised of an equal number of development and commercial representatives from Daewoong and us, for review and input. Although the Daewoong Agreement provides us with final decision-making power regarding the marketing, promotion, sale and/or distribution of Jeuveau™, any disagreement among the JSC would be referred to Daewoong's and our respective senior management for resolution if the JSC is unable to reach a decision within thirty days, which may result in a delay in our ability to implement our commercialization plan or harm our working relationship with Daewoong. After the commercial launch of Jeuveau™, Daewoong may, at its sole option, elect to convert the exclusive license to a non-exclusive license if we fail to achieve minimum annual purchase targets of Jeuveau™ upon commercialization of the product.

The initial term of the Daewoong Agreement will expire on the later of September 30, 2023 or the fifth anniversary of our receipt of marketing approval in any of the aforementioned territories. The Daewoong Agreement will renew for unlimited additional three year terms after the expiration of the initial term, only if we meet certain performance requirements during the initial term or preceding renewal term, as applicable. We or Daewoong may terminate the Daewoong Agreement if the other party breaches any of its duties or obligations and such breach continues without cure for ninety days, or thirty days in the case of a payment breach, or if we declare bankruptcy or assign our business for the benefit of creditors.

If we breach any material obligations, or use the intellectual property licensed to us in an unauthorized manner, we may be required to pay damages to Daewoong and Daewoong may have the right to terminate our license. In addition, if any of the regulatory milestones or other cash payments become due under the terms of the Daewoong Agreement, we may not have sufficient funds available to meet our obligations, which would allow Daewoong to terminate the Daewoong Agreement. Any termination or loss of rights (including exclusivity) under the Daewoong Agreement would materially and adversely affect our ability to commercialize Jeuveau™, which in turn would have a material adverse effect on our business, operating results and prospects. If we were to lose our rights under the Daewoong Agreement, we believe it would be difficult for us to find an alternative supplier of a botulinum toxin type A complex. 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 Daewoong, the demand for Jeuveau™ could be materially and adversely affected. Additionally, if the Daewoong Agreement is terminated, breached or has certain other adverse actions, it may constitute an event of default under our loan and security agreement, or credit facility, with Oxford Finance, LLC, or Oxford. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and

Oxford, as collateral agent, could exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including cash. Any such action could materially and adversely affect our business and results of operations.

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

We depend solely upon Daewoong for the manufacturing of Jeuveau™. 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 entails additional risks, including reliance on Daewoong for regulatory compliance and quality assurance, the possible breach of the Daewoong Agreement by Daewoong, and the possible termination or nonrenewal of the Daewoong Agreement at a time that is costly or inconvenient for us. Our failure, or the failure of Daewoong, 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 Jeuveau™. Our dependence on Daewoong also subjects us to all of the risks related to Daewoong's business, which are all generally beyond our control. Daewoong's ability to perform its obligations under the Daewoong Agreement is dependent on Daewoong's operational and financial health, which could be negatively impacted by several factors, including changes in the economic, political and legislative conditions in South Korea and the broader region in general and the ability of Daewoong to continue to successfully attract customers and compete in its market. Furthermore, Daewoong's recently constructed manufacturing facility is Daewoong's only facility meeting FDA and EMA cGMP requirements. Daewoong's lack of familiarity with, or inability to effectively operate, the facility and produce products of consistent quality, may harm our ability to compete in our market.

Additionally, although we are ultimately responsible for ensuring compliance with regulatory requirements such as cGMPs, we are dependent on Daewoong for day-to-day compliance with cGMP for production of drug substance and finished products. Facilities used by Daewoong to produce the drug substance 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 Jeuveau™ 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 commercialize Jeuveau™.

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

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

Our commercial success depends in part on our avoiding infringement of the proprietary rights of third parties. Competitors in the field of dermatology, aesthetic medicine 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 developing. 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. Presently, we are a defendant in a lawsuit brought by Medytox, Inc., or Medytox, on June 7, 2017 in the Superior Court of the State of California, 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. Medytox claims that as a result of Daewoong's conduct, we entered into the Daewoong Agreement instead of an agreement with Medytox to license Meditoxin.

Daewoong filed a motion to dismiss or stay for forum non conveniens, claiming that the place where the complaint has been filed, in the Superior Court of the State of California, is not the proper place for the trial of the claims in the complaint because, among other reasons, the underlying facts that gave rise to the complaint occurred in South Korea. Daewoong's motion to dismiss was granted by the Superior Court of the State of California on October 12, 2017. As a result, the action filed with the Superior Court of the State of California is stayed pending resolution of the proceedings in South Korea. In October 2017, Medytox initiated a civil lawsuit against Daewoong and its parent company, Daewoong Co. Ltd., in the Seoul Central District Court in Seoul, South Korea, related to the same subject matter in the Medytox litigation and is seeking, among other things, money damages, injunctive relief and destruction of related documents and products. None of us, ALPHAEON or SCH are parties to the litigation in the Seoul Central District Court.

On April 27, 2018, pursuant to a motion to dismiss brought by Daewoong, the Superior Court of the State of California dismissed Medytox's suit against Daewoong, without prejudice, on the basis that Medytox had brought a substantially similar proceeding against Daewoong in South Korea. The proceedings against us, ALPHAEON and SCH remain stayed in the Superior Court of the State of California pending resolution of the proceedings between Medytox and Daewoong in South Korea.

With specific regard to us, Medytox alleges that (i) we have violated California Uniform Trade Secrets Act, Cal. Civ. Code Section 3426 because Daewoong's alleged knowledge of the misappropriation of certain trade secrets of Medytox is imputed to us as a result of our relationship with Daewoong, (ii) we have stolen the BTX strain through our possession of and refusal to return the BTX strain, (iii) we have engaged in unlawful, unfair and fraudulent business acts and practices in violation of California Bus. & Prof. Code Section 17200, including conversion of the BTX strain and misrepresentations to the public regarding the source of the botulinum toxin bacterial strain used to manufacture Jeuveau™, and (iv) the Daewoong Agreement is invalid and in violation of Medytox's rights.

Medytox seeks, among other things, (i) actual, consequential and punitive damages, (ii) a reasonable royalty, as appropriate, (iii) a declaration that the Daewoong Agreement is void and unenforceable and that Medytox is entitled to disgorgement of all property wrongfully and unjustly retained or acquired by the defendants, including unlawfully gained profits, (iv) injunctive relief prohibiting us from using the license under the Daewoong Agreement and distributing Jeuveau™, and (v) attorneys' fees and costs.

Given the early stage in the Medytox Litigation, we are unable to predict the likelihood of success of Medytox's claims against us, ALPHAEON, SCH or Daewoong or to quantify any risk of loss. The Medytox Litigation and any other similar claims, suits, government investigations, and proceedings are inherently uncertain and their results may not be favorable for us. For example, if the Medytox Litigation has a negative outcome for us, ALPHAEON or Daewoong, it could result in us losing access to Jeuveau™ and the manufacturing process and require us to negotiate a new license with Medytox for continued access to Jeuveau™. We may not be able to successfully negotiate such license on terms acceptable to us or at all. If we are unable to license Jeuveau™, we may not be able to find a replacement product, if at all, without expending significant resources and being required to seek additional regulatory approvals, which would be uncertain, time consuming and costly. Regardless of the outcome, such proceedings can have an adverse impact on us because of legal costs, diversion of management resources, and other factors. An adverse ruling against either us or one of the other defendants of any such proceedings could adversely affect our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect our business and results of operations.

On January 30, 2019, Allergan and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission, or the ITC, containing substantially similar allegations to the Medytox Litigation, specifically that Jeuveau™ is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of Jeuveau™ is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products*, or the ITC Complaint. The ITC instituted an investigation as ITC Inv. No. 337-TA-1145. The ITC complaint calls for an investigation by the ITC under Section 337 of the Tariff Act of 1930. The ITC complaint seeks (i) an investigation pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of Jeuveau™ into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring Jeuveau™ within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen BTX Strain, and (vii) exclusion and cease and desist orders. We intend to defend ourselves vigorously in the proceedings. An adverse ruling by the ITC against either us or Daewoong could result in the imposition of an exclusion order which would bar imports of Jeuveau™ into the United States and a cease and desist order which would bar sales and marketing of our sole product Jeuveau™ within the United Sates either of which would adversely affect our ability to carry our out our business and which would have an adverse effect on our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect our business and results of operations. Additionally, in certain cases if there is preliminary or permanent relief granted under the Medytox Litigation or the ITC matter, it may constitute an event of default under our credit facility. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and Oxford, as collateral agent, could exercise remedies against us and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including cash. Any such action could materially and adversely affect our business and results of operations.

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 Jeuveau™ 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.

Borrowings under our credit facility could adversely affect our financial condition and restrict our operating flexibility.

On March 15, 2019, or the closing date, we entered into the credit facility with Oxford, or the lender, pursuant to which the lender will make term loans available to us of up to $100.0 million, or the credit facility. The credit facility provides that the term loans will be funded in two advances. The first tranche of $75.0 million was funded on the closing date, and the second tranche of $25.0 million may be drawn, at our request, no later than September 30, 2020, upon achieving specified minimum net sales milestones and no event of default is occurring. The credit facility bears an annual interest rate equal to the greater

of 9.5%, or the 30-day U.S. Dollar LIBOR rate plus 7.0%. We have agreed to pay interest only on each tranche funded pursuant to the credit facility for the first 36 months until May 2022, which will be followed by a 23-month amortization period. Notwithstanding the foregoing, if we maintain compliance with the specified minimum net sales covenant and meet other conditions during the initial interest-only period, upon our request, the interest only period may be extended by an additional 12 months to a total of 48 months followed by an 11-month amortization period.

The credit facility is secured by substantially all of our assets. The credit facility contains customary affirmative and restrictive covenants and representations and warranties. We are bound by certain affirmative covenants setting forth actions that are required during the term of the credit facility including, without limitation, certain information delivery requirements, obligations to maintain certain insurance, and certain notice requirements. Additionally, we are bound by certain restrictive covenants setting forth actions that are not permitted to be taken during the term of the credit facility without Oxford's prior written consent, including, without limitation, incurring certain additional indebtedness, consummating certain mergers, acquisitions or other business combination transactions, or incurring any non-permitted lien or other encumbrance on our assets.

Interest payments, fees, covenants and restrictions under the credit facility could have important consequences, including the following:

- limiting our ability to obtain additional financing on satisfactory terms to fund our working capital requirements, capital expenditures, potential acquisitions, debt obligations and other general corporate requirements, and making it more difficult for us to satisfy our obligations with respect to any such additional financing;
- increasing our vulnerability to general economic downturns, competition and industry conditions, which could place us at a competitive disadvantage compared to our competitors with no debt obligations or with debt obligations on more favorable terms.
- limiting our ability to pursue acquisition opportunities and to license intellectual property outside specified exceptions.

The occurrence of any one of these events could have an adverse effect on our business, financial condition, operating results or cash flows and ability to satisfy our obligations under the credit facility and any other indebtedness. If new debt is incurred in addition to debt incurred under the credit facility, the related risks that we face would be increased. The terms of the credit facility may restrict our current and future operations, particularly our ability to respond to changes in our business or to take certain actions. The credit facility contains, and the terms of any future indebtedness of ours would likely contain, a number of restrictive covenants that impose significant operating restrictions, including restrictions on our ability to engage in acts that may be in our best long-term interests. The credit facility includes covenants that, among other things and subject to certain exceptions and limits, restrict or otherwise limit our ability to:

- dispose of assets;
- undergo certain business, management, ownership, business and other fundamental changes;
- engage in certain merger, acquisition and consolidation transactions;
- incur additional indebtedness and create liens and other encumbrances;
- make restricted payments, including dividends and other distributions; and
- engage in certain transactions with affiliates.

The credit facility also includes events of default including, among other things, any failure by us to pay principal or interest due under the credit facility, a breach of certain covenants under the credit facility, our insolvency, a material adverse change, the occurrence of any default under certain other indebtedness and one or more judgments against us, the institution of certain temporary or permanent relief in connection with pending litigation, or the breach, termination or other adverse events under the Daewoong Agreement. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and Oxford, as collateral agent, could exercise remedies against including the ability to declare any outstanding debt immediately due and payable. In addition, the credit facility is secured by certain of our existing and hereafter created or acquired assets, including our intellectual property, cash, accounts receivable, equipment, general intangibles, inventory and all of the proceeds and products of the foregoing. If we are unable to pay any amounts due and payable under the credit facility because we do not have sufficient cash on hand or are unable to obtain alternative financing

on acceptable terms, the lenders could initiate a bankruptcy proceeding or proceed against any assets that serve as collateral to secure the credit facility. These restrictions could limit our ability to obtain future financings, make needed capital expenditures, withstand future downturns in the economy or otherwise conduct necessary corporate activities. We may also be prevented from taking advantage of business opportunities that arise because of limitations imposed on us by the restrictive covenants under the credit facility.

We may require additional financing to fund our future operations, 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 of Jeuveau™ initially in the United States, EU and Canada. We expect that we will continue to expend substantial resources for the foreseeable future in order to commercialize Jeuveau™, for the development of any other indications of Jeuveau™, and for the clinical development of any additional product candidates we may choose to pursue.

In the near term, these expenditures will include costs associated with the development and expansion of our sales force and commercialization infrastructure in connection with commercializing Jeuveau™. In the long term, these expenditures will include costs associated with the continued commercialization of Jeuveau™ and any of our future product candidates, 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. In addition, other unanticipated costs may arise. Because the regulatory approval process and commercialization expenditures needed to meet our sales objectives is highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully complete the development and commercialization of Jeuveau™ or any future product candidates. We expect to incur additional costs as we continue to operate as a public company, hire additional personnel and expand our operations.

We anticipate that our existing cash together with the proceeds from the credit facility will be sufficient to fund our operating plan through the initial launch and commercialization of Jeuveau™. We have based these estimates, however, on assumptions that may prove to be wrong, and we could spend our available capital resources much faster than we currently expect or require more capital to fund our operations than we currently expect. For example, we may require additional funds earlier than we currently expect in the event that market acceptance of Jeuveau™ is slower than expected. Our currently anticipated expenditures for the commercialization of Jeuveau™ may exceed existing cash, cash equivalents and investments, and we may need to seek additional debt or equity financing. Additionally, under our credit facility, in order to draw the final $25 million of the facility, we must meet a number of conditions including maintaining compliance with covenants under the credit facility and the achievement of specified net sales targets based on a trailing six month basis. In the event we are unable to reach this net sales milestone, we will not be able to draw the additional $25 million.

We may need to raise additional capital to fund our operations and continue to support both our near and long-term expenditures.

Our future capital requirements depend on many factors, including:

- the cost of commercialization activities for Jeuveau™ or if any other future product candidates are approved for sale, including marketing, sales and distribution costs;
- the scope, progress, results and costs of researching and developing any future product candidates, and conducting preclinical and clinical trials;
- our ability to accurately forecast demand for our products, the ability of our third-party manufacturers to scale production to meet that demand, and our ability to effectively manage our working capital requirements including the purchase of inventory and collection of receivables;
- costs under our third-party manufacturing and supply arrangements for our current and any future product candidates and any products we commercialize;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the terms of and timing of such arrangements;
- the timing of, and the costs involved in, obtaining and maintaining regulatory approvals for any future product candidates;

- the degree and rate of market acceptance of Jeuveau™ or any future approved products;
- the emergence, approval, availability, perceived advantages, relative cost, relative safety and relative efficacy of alternative and competing products, the timing of new product introductions by competitors and other actions by competitors in the marketplace;
- costs of operating as a public company; and
- costs associated with any acquisition or in-license of products and product candidates, technologies or businesses.

If we 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 commercialize 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 the event we are unable to raise sufficient capital to fund our commercialization efforts to achieve specified minimum sales targets under the Daewoong Agreement, we will lose exclusivity of the license that we have been granted under the Daewoong Agreement. In addition, if we are unable to raise additional capital when required or on acceptable terms, we may be required to 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.

Jeuveau™ may fail to achieve the broad degree of physician adoption and use necessary for commercial success.

Jeuveau™ may fail to gain sufficient market acceptance by physicians, consumers and others in the medical aesthetics community. The commercial success of Jeuveau™ and any future product candidates 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 Jeuveau™.

The degree and rate of physician adoption of Jeuveau™ and any future product candidates depend on a number of factors, including:

- the effectiveness, ease of use, and safety of Jeuveau™ and any future product candidates as compared to existing products or treatments;
- physician and consumer willingness to adopt Jeuveau™ to treat glabellar lines or other aesthetic indications we may pursue over products and brands with which consumers and physicians may have more familiarity or recognition or additional approved uses;
- overcoming any biases physicians or consumers may have toward the use, safety and efficacy of existing products or treatments and successful marketing of the benefits of a 900 kDa botulinum toxin type A complex;
- the cost of Jeuveau™ and any future product candidates in relation to alternative products or treatments and willingness to pay for the product or treatment on the part of consumers;
- proper training and administration of Jeuveau™ and any future product candidates by physicians and medical staff;

- consumer satisfaction with the results and administration of Jeuveau™ and any future product candidates and overall treatment experience;
- changes in pricing, promotional, negative sales tactics, promotion of longer-term purchase agreements and bundling efforts by competitors;
- the filing of various lawsuits by competitors with the intent of preventing or delaying our product launches, to distract management's attention from operating our business and to devote significant financial resources to defend such litigation attempts;
- consumer demand for the treatment of glabellar lines or other aesthetic indications that may be approved in the future;
- the willingness of consumers to pay for Jeuveau™ and any future product candidates relative to other discretionary items, especially during economically challenging times;
- the revenue and profitability that Jeuveau™ and any future product candidates may offer a physician as compared to alternative products or treatments;
- the effectiveness of our sales, marketing and distribution efforts and our ability to develop our brand awareness;
- any adverse impact on our brand resulting from key opinion leader relationships with ALPHAEON or SCH, whether or not related to us;
- our ability to compete with our competitors' product bundling offerings as we plan to initially launch Jeuveau™ as a stand-alone product; and
- adverse publicity about our product candidates, competitive products, or the industry as a whole, or favorable publicity about competitive products.

In addition, in its clinical trials, Jeuveau™ was clinically tested with one Jeuveau™ unit compared to one BOTOX unit. 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.

If Jeuveau™ or any future product candidates fail to achieve the broad degree of physician adoption necessary for commercial success, 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.

If there is not sufficient consumer demand for Jeuveau™, our financial results and future prospects will be harmed.

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 success of any sales and marketing programs that we, or any third parties we engage, undertake, and as to which we have limited experience and are still in the process of planning and developing;
- the extent to which physicians recommend Jeuveau™ to their patients;
- the extent to which Jeuveau™ satisfies consumer expectations and overcoming consumer loyalty with existing products and brands;
- our ability to properly train physicians in the use of Jeuveau™ such that their consumers do not experience excessive discomfort during treatment or adverse side effects;
- the cost, safety and effectiveness of Jeuveau™ versus other aesthetic treatments;

- the development and availability of alternative products and treatments that seek to address similar goals;
- consumer sentiment about the benefits and risks of aesthetic procedures generally and Jeuveau™ in particular;
- the success of any direct-to-consumer marketing efforts that we may initiate;
- the ability and ease with which physicians are able to incorporate Jeuveau™ into their practices;
- changes in demographic and social trends; and
- general consumer confidence, which may be impacted by economic and political conditions.

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 will allow 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™.

In addition, we have not pursued regulatory approval of Jeuveau™ for indications other than for the treatment of glabellar lines, which may limit adoption of Jeuveau™. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin product and may be able to market such product for use in a way we cannot. For example, we are aware that one of our competitors, Allergan plc, or Allergan, 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 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™.

Jeuveau™ and any future product candidates will face significant competition and our failure to effectively compete may prevent us from achieving significant market penetration and expansion.

In the near term, we expect to enter into the highly competitive aesthetic neurotoxin market through the commercial launch of Jeuveau™. In the long term, we expect to expand our focus to the broader self-pay healthcare market. While numerous companies are engaged in the development, patenting, manufacture and marketing of aesthetic neurotoxin products competitive with Jeuveau™, Allergan, through its product BOTOX, held approximately 75.0% of the global market share in the aesthetic neurotoxin market by revenue in 2018. Allergan and many of these potential competitors are large, experienced companies that enjoy significant competitive advantages, such as substantially greater financial, research and development, manufacturing, personnel and marketing resources, greater brand recognition, larger sales forces and more experience and expertise in obtaining marketing approvals from the FDA and other regulatory authorities.

These competitors may also try to compete with Jeuveau™ 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 amount of studies and research papers that they could use to compete with us.

Competitors and other parties may also 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 market entry 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. 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 planned strategy to compete 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.

The first use of Jeuveau™ will be in aesthetic medicine. The aesthetic product market, and the facial aesthetic market in particular, is highly competitive and dynamic and is characterized by rapid and substantial technological development and product innovations. We have received regulatory approval of Jeuveau™ for the treatment of glabellar lines. We anticipate that Jeuveau™ will face significant competition from other facial aesthetic products, such as other injectable and topical botulinum toxins and dermal fillers. Jeuveau™ may also compete with unapproved and off-label treatments. In addition, competitors may develop new technologies within the aesthetic market that may be superior in safety and efficacy to Jeuveau™ or offer alternatives to the use of toxins, including surgical and radio frequency techniques. To compete successfully in the aesthetic market, we will have to demonstrate that Jeuveau™ is 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 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, 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.

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 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.

Jeuveau™ is manufactured exclusively in one facility located in South Korea, and we plan to utilize this facility to support commercial production of Jeuveau™. If this facility were damaged or destroyed, or if there occurs a significant disruption in operations at this facility for any reason, our ability to continue to operate our business would be materially harmed.

Daewoong developed the manufacturing process for Jeuveau™ and manufactures Jeuveau™ in a recently constructed facility located in South Korea. If this facility 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, 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 Daewoong's ability to manufacture Jeuveau™ as promptly as we or our customers expect or possibly at all. If we experience delays in achieving our development objectives, or if Daewoong is unable to manufacture Jeuveau™ within a timeframe that meets ours and our customers' expectations, our business, prospects, financial results and reputation could be materially harmed.

If these disruptions exceed coverage provided by Daewoong's insurance policies, Daewoong may be unable to satisfy its obligations to us.

We or the third parties upon whom we depend may be adversely affected by earthquakes or other natural disasters or political unrest and our business continuity and disaster recovery plans may not adequately protect us from a serious disaster or political unrest.

Daewoong, the sole manufacturer of Jeuveau™, manufactures Jeuveau™ in a facility located in South Korea. In addition, the underlying drug substance for Jeuveau™ is also manufactured in a separate facility on the same campus. The risk of extreme weather and earthquakes in the Pacific Rim region is significant due to the proximity of major earthquake fault lines. There is also a level of political unrest or uncertainty in South Korea and the broader region. Natural disasters or political unrest could severely disrupt Daewoong's operations, and have a material adverse effect on our business, results of operations, financial condition and prospects.

If a natural disaster, political unrest, power outage or other event occurred that prevented Daewoong from using all or a significant portion of its manufacturing facility, or prevented us from using all or a significant portion of our headquarters, that damaged critical infrastructure, or that otherwise disrupted operations, it may be difficult or, in certain cases, impossible for us to continue our business for a substantial period of time. In particular, because Daewoong manufactures Jeuveau™ in its facility, in the event of a natural disaster, political unrest, power outage or other event affecting this facility, we would be required to seek additional manufacturing facilities and capabilities that have obtained the necessary approvals required by state, federal or other applicable authorities in order to continue or resume manufacturing activities, which we may not be able to do on commercially reasonable terms if at all. Any disaster recovery and business continuity plans that we and Daewoong 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 Daewoong's lack of disaster recovery and business continuity plans, or the adequacy thereof, which could have a material adverse effect on 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, 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 anticipated 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 have entered into an agreement with ALPHAEON relating to certain rights to the therapeutic indications of Jeuveau™ under the Daewoong Agreement and, as a result, we will not be able to pursue therapeutic indications for Jeuveau™.

On December 18, 2017, we entered into the therapeutic agreement with ALPHAEON, or the therapeutic agreement, relating to certain rights to the therapeutic indications of botulinum toxin products under the Daewoong Agreement. Pursuant to the Daewoong Agreement, we received an option to expand the permitted uses of botulinum toxin products to cover all therapeutic uses in the United States, EU, Canada, Australia, Russia, C.I.S., and South Africa, or the covered territories, and Japan, or the therapeutic option.

However, pursuant to the therapeutic agreement, we agreed not to sell, sub-license or otherwise dispose in whole or in part the therapeutic option or the rights underlying the therapeutic option and hold the therapeutic option and the underlying rights in trust for ALPHAEON. In September 2018, ALPHAEON exercised the right to obtain the therapeutic option to botulinum toxin products and remitted the option exercise price directly to Daewoong.

In addition, under the therapeutic agreement, ALPHAEON has the right to negotiate the entry into an agreement with Daewoong for distribution rights for therapeutic indications of botulinum toxin products that are separate and distinct from the Daewoong Agreement, or the ALPHAEON-Daewoong agreement. We have agreed to ALPHAEON and Daewoong's entry into the ALPHAEON-Daewoong agreement, so long as the terms do not diminish, interfere with or adversely affect our ability to distribute Jeuveau™ for aesthetic indications in the covered territories and Japan under the Daewoong Agreement.

Our entry into the therapeutic agreement eliminates our ability to expand the permitted uses of botulinum toxin products for therapeutic indications .

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, 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.

Physicians may also misuse Jeuveau™ or any future product candidates 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.

Jeuveau™ or any of our future product candidates 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 or result in post-approval regulatory action.

Unforeseen side effects from Jeuveau™ or our future product candidates 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, 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, 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-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 may withdraw their approval of the product;
- regulatory authorities may require a recall of the product or we may voluntarily recall a product;
- regulatory authorities may require the addition of warnings or contraindications in the product labeling, narrowing of the indication in the product label or issuance of field alerts to physicians and pharmacies;
- regulatory authorities may require us to create a medication guide outlining the risks of such side effects for distribution to patients or institute a Risk Evaluation and Mitigation Strategies, or REMS;
- we may be subject to limitations as to how we market or promote the product;
- we may be required to change the way the product is administered or modify the product in some other way;
- regulatory authorities may require additional clinical trials or costly post-marketing testing and surveillance to monitor the safety or efficacy of the product;
- sales of the product may decrease significantly;
- we could be sued and held liable for harm caused to patients; and
- our brand and reputation may suffer.

Any of the above events could prevent us from achieving or maintaining market acceptance of the affected product and could substantially increase the costs of commercializing our products. The demand for Jeuveau™ 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 a substantial amount of our effort will focus 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. Because our internal research and development capabilities are limited, we may be dependent upon pharmaceutical 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 pharmaceutical 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 candidate 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 pharmaceutical 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.

If we are unable to establish sales and marketing capabilities on our own or through third parties, we will be unable to successfully commercialize Jeuveau™ or any other future product candidates or generate product revenue.

We currently have limited marketing capabilities and a limited sales organization. To commercialize Jeuveau™ or any other future product candidates in the United States, EU, Canada and other jurisdictions we may seek to enter, we must build our marketing, sales, distribution, managerial and other capabilities or make arrangements with third parties to perform these services, and we may not be successful in doing so. We plan to market Jeuveau™ in the United States through an internal specialized sales force and outside the United States through distributors, and such marketing efforts will be expensive and time consuming.

We have no prior experience in the marketing, sale and distribution of pharmaceutical products, and there are significant risks involved in building and managing a sales organization, including our ability to hire, 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. We may choose to collaborate with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize Jeuveau™ or any future product candidates. To the extent we commercialize our product candidates by entering into agreements with third-party collaborators, we may have limited or no control over the sales, marketing and distribution activities of these third parties, in which case our future revenues would depend heavily on the success of the efforts of these third parties. If we are not successful in commercializing Jeuveau™ or any future product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we would incur significant additional losses.

We will need to increase the size of our organization, and we may experience difficulties in managing this growth.

As of March 31, 2019, we had 105 employees, all of whom constituted full-time employees. We will need to continue to expand our managerial, operational, finance and other resources to manage our operations, commercialize Jeuveau™ or any other product candidates, and continue our development activities. Our management and personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively execute our growth strategy requires that we:

- manage any of our future clinical trials effectively;
- identify, recruit, retain, incentivize and integrate additional employees;
- 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.

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 employees, independent contractors, consultants, commercial collaborators, principal investigators, vendors and other agents may engage in misconduct or other improper activities, including non-compliance with regulatory standards and requirements.

We are exposed to the risk that our employees, independent contractors, consultants, commercial collaborators, principal investigators, vendors and other agents may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates

applicable regulations, including those laws requiring the reporting of true, complete and accurate information to regulatory agencies, manufacturing standards, and federal and state healthcare laws and regulations. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud, kickbacks, self-dealing and other abusive practices. Although our strategy to focus only on the self-pay market will reduce our risk under the Anti-Kickback Statute, we could face liability under similar state laws that are not limited to products reimbursed by the government or if we obtain regulatory approval for products reimbursed by federal healthcare programs in the future. These laws and regulations may restrict or prohibit a wide range of pricing, discounting, marketing and promotion, sales commission, referrals, customer incentive programs and other business arrangements. Misconduct by these parties could also involve the improper use of individually identifiable information, including, without limitation, information obtained in the course of clinical trials, which could result in regulatory sanctions and serious harm to our reputation. The precautions we take to detect and prevent misconduct may not be effective in controlling unknown or unmanaged risks or losses or in protecting us from governmental investigations or other actions or lawsuits stemming from a failure to be in compliance with such laws or regulations. If any such actions are instituted against us, and we are not successful in defending ourselves or asserting our rights, those actions could have a significant impact on our business, including the imposition of significant civil, criminal and administrative penalties, including, without limitation, damages, fines, disgorgement, imprisonment and the curtailment or restructuring of our operations.

In the future, we may rely on third parties and consultants to conduct all of our preclinical studies and clinical trials. If these third parties or consultants do not successfully carry out their contractual duties or meet expected deadlines, we may be unable to obtain regulatory approval for any future product candidates.

In the future, we may rely on medical institutions, clinical investigators, contract laboratories, collaborative partners and other third parties, such as contract research organizations, or CROs, to conduct clinical trials on our product candidates. The third parties with whom we may contract for execution of any of our future clinical trials may play a significant role in the conduct of these trials and the subsequent collection and analysis of data. However, any of these third parties may not be our employees, and except for contractual duties and obligations, we would have limited ability to control the amount or timing of resources that they devote to any of our future programs. Although we may rely on these third parties to conduct our preclinical studies and clinical trials, we would remain responsible for ensuring that each of our preclinical studies and clinical trials is conducted in accordance with the applicable investigational plan and protocol. Moreover, the FDA and other similar regulatory authorities require us to comply with, among other requirements, good clinical practices, or GCPs, for conducting, monitoring, recording and reporting the results of clinical trials to ensure that the data and results are scientifically credible and accurate, and that the trial subjects are adequately informed of the potential risks of participating in clinical trials. We may also rely on consultants to assist in the execution, including data collection and analysis, of any of our future clinical trials.

In addition, the execution of preclinical studies and clinical trials, and the subsequent compilation and analysis of the data produced, requires coordination among various parties. In order for these functions to be carried out effectively and efficiently, it is imperative that these parties communicate and coordinate with one another. Moreover, these third parties may also have relationships with other commercial entities, some of which may compete with us. If the third parties or consultants conducting our clinical trials do not perform their contractual duties or obligations, experience work stoppages, do not meet expected deadlines, terminate their agreements with us or need to be replaced, or if the quality or accuracy of the clinical data they obtain is compromised due to the failure to adhere to our clinical trial protocols or GCPs, or for any other reason, we may need to conduct additional clinical trials or enter into new arrangements with alternative third parties, which could be difficult, costly or impossible, and our clinical trials may be extended, delayed or terminated or may need to be repeated. If any of the foregoing were to occur, we may not be able to obtain, or may be delayed in obtaining, regulatory approval for and will not be able to, or may be delayed in our efforts to, successfully commercialize any future product candidates being tested in such trials.

We plan to rely on third-party distribution partners for the distribution of our products, product candidates and services, which could delay or limit our ability to generate revenue.

With respect to certain markets for our products, product candidates and services, we plan to retain third-party service providers to perform functions related to the marketing, distribution and sale of Jeuveau™ and any future product candidates. Key aspects of those functions may be out of our direct control, including regulatory compliance, warehousing and inventory management, distribution, contract administration, accounts receivable management and call center management. Any future distribution partners may hold significant control over important aspects of the commercialization of our products, including market identification, regulatory compliance, marketing methods, pricing, composition of sales force and promotional activities.

We may not be able to control the amount and timing of resources that any future third-party distribution partners may devote to our products, or prevent any third-party from pursuing the development of alternative technologies or products that compete with our products, except to the extent our contractual arrangements protect us against such activities. Also, we may not be able to prevent any other third-party from withdrawing its support of our products.

If third-party service providers fail to comply with applicable laws and regulations, fail to meet expected deadlines, encounter natural or other disasters at their facilities or otherwise fail to perform their services to us in a satisfactory or predicted manner, or at all, our ability to deliver product to meet commercial demand could be significantly impaired. In addition, we may use third parties to perform various other services for us relating to sample accountability and regulatory monitoring, including adverse event reporting, safety database management and other product maintenance services. If the quality or accuracy of the data maintained by these service providers is insufficient, our ability to continue to market our products could be jeopardized or we could be subject to regulatory sanctions, and any indemnity we may receive from such third-party service providers could be limited by such provider's ability to pay and otherwise might not be sufficient to cover all losses we may experience.

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

We purchase Jeuveau™ from Daewoong. Pursuant to the Daewoong Agreement, we submit forecasts of anticipated product orders to Daewoong 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 Daewoong to manufacture its own product, Nabota, a botulinum toxin formulation, from this facility for sale in the South Korean market and other markets in which we do not have exclusive rights. If our business significantly expands, our demand for commercial products would increase and Daewoong may be unable to meet our increased demand. In addition, our product will have fixed future expiration dates. If we overestimate our component and material requirements, 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 our component and material requirements, 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.

If and when we expand internationally, our international operations will expose us to risks, and failure to manage these risks may adversely affect our operating results and financial condition.

We expect to have operations both inside and outside the United States. International operations are subject to a number of inherent risks, and our future results could be adversely affected by a number of factors, including:

- requirements or preferences for domestic products or solutions, which could reduce demand for our products;
- differing existing or future regulatory and certification requirements;
- management communication and integration problems resulting from cultural and geographic dispersion;
- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties in enforcing contracts;
- difficulties and costs of staffing and managing non-U.S. operations;
- the uncertainty of protection for intellectual property rights in some countries;
- tariffs and trade barriers, export regulations and other regulatory and contractual limitations on our ability to sell our products;
- multiple, conflicting and changing laws and regulations such as privacy regulations, including General Data Protection Regulation, or GDPR, tax laws, export and import restrictions, employment laws, immigration laws, labor laws, regulatory requirements and other governmental approvals, permits and licenses;
- more stringent data protection standards in some countries;

- greater risk of a failure of foreign employees to comply with both U.S. and foreign laws, including export and antitrust regulations, the U.S. Foreign Corrupt Practices Act, or FCPA, quality assurance and other healthcare regulatory requirements and any trade regulations ensuring fair trade practices;
- 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;
- foreign currency exchange rates and the generally lower average sales prices available in most international markets compared to those in the United States;
- potentially adverse tax consequences, including multiple and possibly overlapping tax structures and difficulties relating to repatriation of cash; and
- political and economic instability, political unrest and terrorism.

These and other factors could harm our ability to gain future revenue and, consequently, materially impact our business, operations results and financial condition.

A perception of a conflict of interest of our indirect physician investors by other physicians or consumers could negatively impact our future product sales or product approvals.

Prior to our initial public offering, we were indirectly funded through investments in our controlling stockholder, ALPHAEON, and its majority stockholder, SCH, in part, by leading physicians in the self-pay healthcare market, or the indirect physician investors. As a result, through ALPHAEON and SCH, these indirect physician investors may have an indirect financial interest in our success (as our successes, if any, will in part be imputed to ALPHAEON and ultimately SCH) and may be more inclined to use, promote or recommend Jeuveau™ to their patients and other physicians. Other physicians may become aware of the indirect and potential financial interest and investments of these indirect physician investors and who realize additional incentives by recommending Jeuveau™ and any of our future product candidates. If these other physicians perceive this to be a significant conflict, the other physicians may be unwilling to purchase Jeuveau™ or any of our future product candidates without obtaining additional third-party evidence of their benefits and efficacy. If consumers perceive these indirect physician investors have a conflict of interest in recommending Jeuveau™ or any of our future product candidates, they may be unwilling to purchase Jeuveau™ or any of our future product candidates and may have a negative view of our brand, which could harm our reputation in the market. If physicians do not recommend Jeuveau™ or any of our future product candidates or consumers choose not to purchase any of our products as a result of these conflicts of interest, it could adversely affect our business.

In addition, ALPHAEON is presently a technology company focused on providing healthcare products and services, including patient financing services, and SCH is presently a holding company with direct and/or indirect interests, as the case may be, in ALPHAEON and various other healthcare related and energy related companies. ALPHAEON and SCH may engage in, acquire or otherwise conduct their business in a manner that partners with or otherwise collaborates with the business of our company, Jeuveau™ and any of our future product candidates. For example, ALPHAEON offers a patient financing service whereby a qualified patient can receive a line of credit for certain approved medical procedures. An aesthetic medical procedure sought by a qualified patient for the treatment of moderate to severe glabellar lines whereby the physician uses Jeuveau™ may be an eligible procedure covered under ALPHAEON's patient financing service. As a result, our indirect physician investors may receive an additional incremental benefit through a patient's use of ALPHAEON's patient financing service and the physician's use of Jeuveau™. If other physicians or consumers perceive this to be a significant conflict, the other physicians or consumers may be unwilling to purchase Jeuveau™ or any of our future product candidates without obtaining additional third-party evidence of their benefits and efficacy, and it may result in a negative view of our brand, which could harm our reputation in the market.

Further, for our two identical double blind, pivotal U.S. Phase III clinical trials of Jeuveau™ (EV-001 and EV-002), one of the twenty clinical investigators was at the time of the pivotal clinical trial an indirect physician investor in our company. For our pivotal double blind, European Phase III study of Jeuveau™ (EVB-003), one of the nineteen clinical investigators was at the time an indirect physician investor in our company. Additionally, in our unblinded, non-pivotal U.S. Phase II clinical trials of Jeuveau™ (EV-004 and EV-006), eight of the twenty-nine clinical investigators are or were at the time of the non-pivotal clinical trial indirect physician investors of our company. In the future, clinical investigators for any of our future pivotal or non-pivotal clinical trials may be indirect physician investors in our company. We believe it is likely that they will be required to report some of these relationships to the FDA or EMA to the extent not already disclosed. The FDA or EMA may conclude that a financial relationship, such as an indirect investment, between us and a clinical investigator has created a

conflict of interest or otherwise affected interpretation of the study. The FDA or EMA may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA or EMA and may ultimately lead to the denial of marketing approval of one or more of our future product candidates. In addition, should our products become eligible for government reimbursement in the future, such indirect investments or other financial relationships with clinical investigators may become subject to additional regulations and disclosure requirements.

If product liability lawsuits are brought against us, we may incur substantial liabilities and may be required to limit commercialization of any future products we develop.

We face an inherent risk of product liability as a result of the commercialization of Jeuveau™ 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. Regardless of the merits or eventual outcome, liability claims may result in:

- decreased demand for Jeuveau™ or any future product candidates or products we 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;
- significant costs to defend the related litigation;
- a diversion of management's time and our resources;
- substantial monetary awards to trial participants or patients;
- regulatory investigations, product recalls, withdrawals or labeling, marketing or promotional restrictions;
- loss of revenue;
- the inability to commercialize any products we develop; and
- a decline in our share price.

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™ 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.

If we fail to attract and keep senior management and key scientific personnel, we may be unable to commercialize Jeuveau™ 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, Lauren Silvernail, our Chief Financial Officer and Executive Vice President, Corporate Development, Rui Avelar, our Chief Medical Officer and Head of R&D and Michael Jafar, our Chief Marketing Officer, 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™ 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 field is intense due to the limited number of individuals who possess the skills and experience required by our industry. We will need to hire additional personnel, including experienced sales representatives, as we expand our clinical development and commercial activities. 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.

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

Our results of operations could be adversely affected by general conditions in the global economy and in the global financial markets. Furthermore, the market for aesthetic medical procedures may be particularly vulnerable to unfavorable economic conditions. We do not expect Jeuveau™ for the treatment of glabellar lines to be reimbursed by any government or third-party payor and, as a result, our product will be wholly-paid for by the consumer. Demand for Jeuveau™ will be tied to discretionary spending levels of our targeted consumer population. A severe or prolonged economic downturn 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™ or any future product candidates. A severe or prolonged economic down turn may also affect our ability to raise additional capital when needed on acceptable terms, if at all. A weak or declining economy could also strain our suppliers, possibly resulting in supply disruption, or cause our customers to delay making payments for our services. 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.

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

Our near-term strategy of focusing exclusively on the self-pay healthcare market may limit our ability to increase sales or achieve profitability. For example, to maintain our business model, we cannot 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™.

We incur significant increased costs as a result of operating as a public company, and our management is required to devote substantial time to new compliance initiatives. We may fail to comply with the rules that apply to public companies, including Section 404 of the Sarbanes-Oxley Act of 2002, as amended, or the Sarbanes-Oxley Act, which could result in sanctions or other penalties that would harm our business.

We incur and expect to incur significant legal, accounting and other expenses as a public company, including costs resulting from public company reporting obligations under the Exchange Act and regulations regarding corporate governance practices. The listing requirements of the Nasdaq Global Market, or Nasdaq, and the rules of the SEC require that we satisfy certain corporate governance requirements. Our management and other personnel devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. Any changes we make to comply with these obligations may not be sufficient to allow us to satisfy our obligations as a public company on a timely basis, or at all. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms.

We are subject to Section 404 of the Sarbanes-Oxley Act, or Section 404, and the related rules of the SEC, which generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. In order to maintain effective internal controls, we will need additional financial personnel, systems and resources. However, for so long as we remain an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, we intend to take advantage of certain exemptions from various reporting

requirements that are applicable to public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b). Once we are no longer an emerging growth company or, if prior to such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. We will remain an emerging growth company until the earliest of: (i) December 31, 2023; (ii) the first fiscal year after our gross annual revenues are $1.07 billion or more; (iii) the date on which we have, during the immediately preceding three-year period, issued more than $1.0 billion in non-convertible debt securities; or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates is $700 million or more as of the end of the second quarter of that fiscal year.

While we have conducted a review of our internal controls for the purpose of providing the reports required by these rules, during the course of our review and testing, we may identify deficiencies and be unable to remediate them before we must provide the required reports. Furthermore, if we have a material weakness in our internal control over financial reporting, we may not detect errors on a timely basis and our financial statements may be materially misstated. We or our independent registered public accounting firm may not be able to conclude on an ongoing basis that we have effective internal control over financial reporting, which could harm our operating results, cause investors to lose confidence in our reported financial information and cause the trading price of our stock to fall. In addition, as a public company we will be required to file accurate and timely quarterly and annual reports with the SEC under the Exchange Act. Any failure to report our financial results on an accurate and timely basis could result in sanctions, lawsuits, delisting of our shares from the Nasdaq Global Market or other adverse consequences that would materially harm our business and reputation.

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 Daewoong's 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 Daewoong 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 Daewoong's facilities pending their use and disposal. We and Daewoong cannot eliminate the risk of contamination, which could cause an interruption of Daewoong'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, storage, handling and disposal of these materials and specified waste products. Although we believe that the safety procedures utilized by Daewoong 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™ 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 do not expect to become profitable in the near future, 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. In addition, we currently do not have a tax sharing arrangement in place with ALPHAEON. 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, 2018, we had $99.8 million of federal NOLs, available to offset our future taxable income, if any. As of December 31, 2018, we had federal research and development credit carryforwards of $1.2 million. These federal NOLs and 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.

U.S. federal income tax reform could adversely affect us.

On December 22, 2017, the Tax Cuts and Jobs Act, or TCJA, was signed into law, significantly reforming the Code. The TCJA, among other things, includes changes to U.S. federal tax rates, imposes significant additional limitations on the deductibility of interest, allows for the expensing of capital expenditures, puts into effect the migration from a "worldwide" system of taxation to a territorial system and modifies or repeals many business deductions and credits. We have evaluated the effect of the TCJA based on our management's current knowledge and assumptions. Notwithstanding the reduction in the corporate income tax rate, the overall impact of the TCJA is uncertain and subject to potential amendments and technical corrections, as well as Internal Revenue Service interpretations and new Treasury regulations. Because of these uncertainties, our business and financial condition could be adversely affected. In addition, it is uncertain if and to what extent various states will conform to the newly enacted federal tax law.

Our business and operations would suffer in the event of computer system failures or breach by hackers.

Despite the implementation of security measures, our internal computer systems, and those of third parties on which we rely, are vulnerable to damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication and electrical failures, cyber-attacks or cyber-intrusions over the internet, attachments to emails, persons inside our organization, or persons with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyber-attacks or cyber-intrusions, including by computer hackers, foreign governments, and cyber-terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. If such an event were to occur and cause interruptions in our operations, it 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. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our product development programs. For example, the loss of clinical trial

data from completed, ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data.

Moreover, if a computer security breach affects our systems or results in the unauthorized release of personally identifiable information, or PII, our reputation could be materially damaged. In addition, such a breach may require notification to governmental agencies, the media or individuals pursuant to various international, federal and state privacy and security laws, if applicable, including the 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, California recently enacted legislation, the California Consumer Privacy Act, that will, among other things, create new individual privacy rights and impose increased obligations on companies handling PII, when it goes into effect on January 1, 2020. We would also be exposed to a risk of loss or 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, cyber-attacks and other related breaches.

Risks Related to Intellectual Property

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 and our current licensor Daewoong 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 Jeuveau™ 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 Daewoong, as the licensor of our only product, and will be reliant on future licensors of any future product candidates, 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 and our future licensors to defend any third-party claims, including Daewoong's defense in connection with the Medytox Litigation, which is defined below. 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. 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. 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 inside 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 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 our future product candidates. 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. Daewoong is also subject to extensive regulation by the FDA and the South Korean regulatory authorities as well as other regulatory authorities. Our failure to comply with all applicable regulatory requirements, or Daewoong'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.

In the event our products receive regulatory approval, we, and our direct and indirect suppliers, including Daewoong, will 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.

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, 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, MAA, or other product approval is not guaranteed, and the approval process is expensive and may take several years. The FDA, 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 FDA, 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, 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;
- 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 any other approved products will be 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 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 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, 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, 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™ 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 Relationship with ALPHAEON

ALPHAEON controls the direction of our business, and the concentrated ownership of our common stock and certain contractual rights of ALPHAEON may prevent you and other stockholders from influencing significant decisions.

As of March 31, 2019, ALPHAEON, which is majority-owned by SCH, owned 56.0% of our outstanding shares of common stock. As long as ALPHAEON beneficially owns a majority of the voting power of our outstanding common stock, it will generally be able to determine the outcome of all corporate actions requiring stockholder approval, including the election and removal of directors. Even if ALPHAEON were to beneficially own less than a majority of the voting power of our outstanding common stock, it may have the ability to influence the outcome of such corporate actions if it owns a significant portion of our common stock. In addition, if SCH chooses to sell some or all of its controlling interest in ALPHAEON, it could result in a change-of-control of ALPHAEON that could result in us being indirectly controlled by an unknown third-party.

As a result, we are a "controlled company" within the meaning of the NASDAQ corporate governance requirements and ALPHAEON has the ability to control the direction of our business and the concentrated ownership of our common stock, and the rights described above will prevent you and other stockholders from influencing significant decisions. In addition, we may take actions that stockholders other than ALPHAEON do not view as beneficial. This voting control 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.

If ALPHAEON sells a controlling interest in our company to a third-party in a private transaction, you may not realize any change-of-control premium on shares of our common stock and we may become subject to the control of a presently unknown third-party.

ALPHAEON controls a majority of the voting power of our outstanding common stock. ALPHAEON has the ability, should it choose to do so, to sell some or all of its shares of our common stock in a privately negotiated transaction, which, if sufficient in size, could result in a change-of-control of our company without your approval and without providing for a purchase of your shares.

In addition, ALPHAEON entered into two substantially similar pledge and security agreements whereby ALPHAEON pledged and granted a continuing first priority lien and security interest in and to all of ALPHAEON's right, title and interest in, among other items, securities and all other investment property held by ALPHAEON, including ALPHAEON's entire ownership of our capital stock, or the collateral. The collateral secures the payment and performance of the obligations of ALPHAEON under certain convertible notes issued by ALPHAEON and other related agreements. Upon certain events of default, these secured lenders may take possession, hold, collect, sell, lease, deliver, grant options to purchase or otherwise retain, liquidate or dispose of all or any portion of the collateral, and as such, a change-of-control of our company may result. In addition, upon such events of default, the registration rights granted to ALPHAEON under the stockholder agreement we entered into with ALPHAEON will immediately and automatically be assigned in full to the secured lenders with respect to any registrable securities held by such secured lenders. We have no obligation to maintain ALPHAEON's financial viability and ALPHAEON may not remain current on such obligations.

The ability of ALPHAEON to privately sell its shares of our common stock, with no requirement for a concurrent offer to be made to acquire your shares of our common stock could prevent you from realizing any change-of-control premium on your shares of our common stock that may otherwise accrue to ALPHAEON on its private sale of our common stock. Additionally, if ALPHAEON privately sells its significant equity interest in our company, we may become subject to the control of a presently unknown third-party. Such third-party may have conflicts of interest with those of other stockholders. In addition, if ALPHAEON sells a controlling interest in our company to a third-party, any future indebtedness we have may be subject to acceleration, and our other commercial agreements and relationships could be impacted, all of which may adversely affect our ability to run our business as described herein and may have a material adverse effect on our operating results and financial condition.

We are a "controlled company" within the meaning of the listing requirements of the Nasdaq Marketplace Rules, and, as a result, rely on exemptions from certain corporate governance requirements.

ALPHAEON controls a majority of the voting power of our outstanding common stock. As a result, we are a "controlled company" within the meaning of the Nasdaq Marketplace Rules. Under these rules, a listed company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of our board of directors consist of independent directors;
- the requirement that our nominating and corporate governance committee be comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- the requirement that our compensation committee be comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- the requirement for an annual performance evaluation of our corporate governance and compensation committees.

Presently, we utilize these "controlled company" exemptions to the corporate governance requirements of Nasdaq, and as a result, we do not have our nominating and corporate governance and compensation committees consisting entirely of independent directors. Accordingly, you do not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

Certain of our directors may have actual or potential conflicts of interest because of their ownership of debt and equity securities in ALPHAEON and their positions with ALPHAEON.

Vikram Malik, Simone Blank, Bosun Hau, Kristine Romine, M.D., and Robert Hayman serve on our board of directors. Such directors or entities they are affiliated with currently own and may in the future own shares of common stock or preferred stock of ALPHAEON, debt instruments convertible into equity interests of ALPHAEON, options to purchase shares of common stock or other equity awards of ALPHAEON. These individuals' or entities' holdings of ALPHAEON debt or equity securities, options to purchase shares of ALPHAEON or other equity awards may be significant for some of these persons or entities compared to these persons' or entities' total assets. Additionally, each of Mr. Malik, Mr. Hau and Ms. Blank serve on the board of directors of ALPHAEON and Mr. Malik serves as ALPHAEON's acting President. Their positions at ALPHAEON and the ownership of any ALPHAEON equity or equity awards may create, or may create the appearance of, conflicts of interest when these directors are faced with decisions that could have different implications for ALPHAEON than the decisions have for us.

These decisions include:

- corporate opportunities;
- the impact that operating decisions for our business may have on ALPHAEON's consolidated financial statements;
- the impact that operating or capital decisions (including the incurrence of indebtedness) for our business may have on ALPHAEON's current or future indebtedness or the covenants under that indebtedness;
- the timing and amount of financing efforts, whether they are debt or equity, and the amount of resulting dilution to existing shareholders;
- business combinations involving us;
- our dividend policy;
- management stock ownership; and
- the related party services and agreements between ALPHAEON and us.

Potential conflicts of interest could also arise if we decide to enter into any new commercial arrangements with ALPHAEON or SCH in the future or in connection with ALPHAEON's desire to enter into new commercial arrangements with third parties.

Furthermore, disputes may arise between ALPHAEON and us relating to our past and ongoing relationship, and these potential conflicts of interest may make it more difficult for us to favorably resolve such disputes, including those related to:

- indemnification and other matters arising from our initial public offering;
- the nature, quality and pricing of services ALPHAEON agrees to provide to us;
- sales or other disposal by ALPHAEON of all or a portion of its ownership interest in us; and
- business combinations involving us.

We may not be able to resolve any potential conflicts, and even if we do, the resolution may be less favorable to us than if we were dealing with an unaffiliated party. While we are controlled by ALPHAEON, we may not have the leverage to negotiate amendments to these agreements, if required, on terms as favorable to us as those we would negotiate with an unaffiliated third-party.

ALPHAEON and its directors and officers will have limited liability to us or you for breach of fiduciary duty.

Our certificate of incorporation provides that, subject to any contractual provision to the contrary, ALPHAEON has no obligation to refrain from:

- engaging in the same or similar business activities or lines of business as we do;
- doing business with any of our clients or consumers; or
- employing or otherwise engaging any of our officers or employees.

Our certificate of incorporation provides for the allocation of certain corporate opportunities between us and ALPHAEON. Under these provisions, neither ALPHAEON nor its other affiliates, nor any of their officers, directors, agents stockholders, members, partners, and subsidiaries (other than us), will have any obligation to present to us certain corporate opportunities. ALPHAEON is presently a technology company focused on providing healthcare products and services, including patient financing services. ALPHAEON may engage in other lines of business in the future. For example, a director or officer of our company who also serves as a director, officer or employee of ALPHAEON or any of its other affiliates may present to ALPHAEON certain acquisitions, in-licenses, potential development programs or other opportunities that may be complementary to our business, if he or she was not offered such corporate opportunity in his or her capacity as our director or officer, and, as a result, such opportunities may not be available to us. To the extent attractive corporate opportunities are allocated to ALPHAEON or its other affiliates instead of to us, we may not be able to benefit from these opportunities.

In addition, under our certificate of incorporation, neither ALPHAEON nor any officer or director of ALPHAEON, except as provided in our certificate of incorporation, will be liable to us or to our stockholders for breach of any fiduciary or other duty by reason of any of these activities.

SCH is presently a holding company with direct and/or indirect interests, as the case may be, in ALPHAEON and various other healthcare related and energy related companies. SCH may engage in other lines of business in the future, including engaging, acquiring or otherwise conducting their business in a manner that partners with or otherwise collaborates with the business of our company, Jeuveau™ and any of our future product candidates. While our certificate of incorporation does not provide the same provision with respect to SCH, SCH may be able to exercise voting and investment control over ALPHAEON and effect the allocation of certain corporate opportunities between us and ALPHAEON.

Risks Related to Our Common Stock

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

Our stock price may be volatile. For example, the closing price of our common stock since February 8, 2018, has ranged from a low of $6.85 to a high of $38.49. The stock market in general and the market for earlier-stage pharmaceutical 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:

- announcements of regulatory approval or disapproval of product candidates;
- adverse results from or delays in clinical trials of any of our future product candidates;
- unanticipated safety concerns related to the use of Jeuveau™ or any of our future products;
- any termination or loss of rights under the Daewoong Agreement;
- 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;
- introductions and announcements of new technologies and products by us, any commercialization partners or our competitors, and the timing of these introductions and announcements;
- variations in our financial results or those of companies that are perceived to be similar to us;
- success or failure of competitive products or medical aesthetic products generally;
- 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;
- quarterly variations in our results of operations or those of our competitors;
- 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;
- 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 ALPHAEON or other significant stockholders or our insiders, or the expectation that such sales might occur;
- general economic, industry and market conditions, including the size and growth, if any, of the medical aesthetics market;
- 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, Chief Medical Officer and Chief Marketing 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;
- announcements or actions taken by ALPHAEON as our controlling stockholder, including sales of substantial amounts of our common stock by ALPHAEON;
- 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; and
- other factors described in this "Risk Factors" section.

In addition, the stock market in general, and the market for pharmaceutical 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.

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.

We may be subject to securities litigation, which is expensive and could divert management attention.

The market price of our common stock may be volatile, and in the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We may be the target of this type of litigation in the future. Securities litigation against us could result in substantial costs and divert our management's attention from other business concerns, which could have a material and adverse effect on our business, financial condition, and results of operations.

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.

Certain of our historical financial data is not necessarily representative of the results that we would have achieved as a stand-alone company and may not be a reliable indicator of our future results.

Our historical financial data included in this Quarterly Report on Form 10-Q does not reflect the financial condition, results of operations or cash flows that we would have achieved as a stand-alone company during the periods presented or those we will achieve in the future. This is primarily the result of the following factors:

- our historical financial data reflects expense allocations for certain support functions that are provided on a centralized basis within ALPHAEON, such as expenses for business technology, facilities, legal, finance, human resources and business development, that may be higher or lower than the comparable expenses that we would have actually incurred, or will incur in the future, as a stand-alone company;
- significant increases have and will continue to occur in our cost structure as a result of our being a public company, including costs related to public company reporting, investor relations and compliance with the Sarbanes-Oxley Act; and
- our becoming a commercial company in 2019.

As a result, it may be difficult for investors to compare our future results to historical results or to evaluate our relative performance or trends in our business.

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

As of March 31, 2019, ALPHAEON owned 56.0% of our outstanding shares of common stock. Subject to the restrictions described in the paragraph below, future sales of these shares in the public market will be subject to the volume and other restrictions of Rule 144 under the Securities Act for so long as ALPHAEON is deemed to be our affiliate, unless the shares to be sold are registered with the SEC. The sale by ALPHAEON 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 lock-up agreements referred to 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 could have an adverse effect on 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, from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, 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;
- from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, 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, our certificate of incorporation provides that, from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, we will be 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.

In addition, our certificate of incorporation specifies that the Court of Chancery of the State of Delaware is the sole and exclusive forum for most legal actions involving actions brought against us by stockholders. We believe this provision benefits us by providing increased consistency in the application of Delaware law by chancellors particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, the provision may have the effect of discouraging lawsuits against our directors and officers.

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. 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. 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 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.

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 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.

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 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

Unregistered Sales of Equity Securities

None.

Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures.

Not applicable.

Item 5. Other Information.

None.

Item 6. Exhibits.

EXHIBIT INDEX

Exhibit Number	Exhibit Title	Incorporated by Reference				Filed Herewith (x)
		Form	File No.	Exhibit	Filing Date	
10.1†	Loan and Security Agreement dated as of March 15, 2019, by and between the Company and Oxford Finance, LLC					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*	XBRL Instance Document.					X
101.SCH*	XBRL Taxonomy Extension Schema Document.					X
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document.					X

† Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and would likely cause competitive harm to the registrant if publicly disclosed.

The information in Exhibit 32.1 shall not be deemed "filed" for purposes of Section 18 of the 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.

* In accordance with Rule 402 of Regulation S-T, this interactive data file is deemed not filed or part of this Quarterly Report on Form 10-Q for purposes of Sections 11 or 12 of the Securities Act or Section 18 of the Exchange Act and otherwise is not subject to liability under these sections.

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: May 1, 2019

By: /s/ David Moatazedi

David Moatazedi

President and Chief Executive Officer

(Principal Executive Officer)

Date: May 1, 2019

By: /s/ Lauren Silvernail

Lauren Silvernail

Chief Financial Officer and Executive Vice President, Corporate Development

(Principal Financial Officer)

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [***] INDICATES THAT INFORMATION HAS BEEN REDACTED.

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT (as the same may from time to time be amended, modified, supplemented or restated, this "**Agreement**") dated as of March 15, 2019 (the "**Effective Date**") among OXFORD FINANCE LLC, a Delaware limited liability company with an office located at 133 North Fairfax Street, Alexandria, Virginia 22314 ("**Oxford**"), as collateral agent (in such capacity, "**Collateral Agent**"), the Lenders listed on Schedule 1.1 hereof or otherwise a party hereto from time to time including Oxford in its capacity as a Lender (each a "**Lender**" and collectively, the "**Lenders**"), and EVOLUS, INC., a Delaware corporation with offices located at 520 Newport Center Drive, Suite 1200, Newport Beach CA 92660 ("**Borrower**"), provides the terms on which the Lenders shall lend to Borrower and Borrower shall repay the Lenders. The parties agree as follows:

1. ACCOUNTING AND OTHER TERMS

1.1 Accounting terms not defined in this Agreement shall be construed in accordance with GAAP. Calculations and determinations must be made in accordance with GAAP. Capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in Section 13. All other terms contained in this Agreement, unless otherwise indicated, shall have the meaning provided by the Code to the extent such terms are defined therein. All references to "**Dollars**" or "**$**" are United States Dollars, unless otherwise noted.

2. LOANS AND TERMS OF PAYMENT

2.1 Promise to Pay. Borrower hereby unconditionally promises to pay each Lender, the outstanding principal amount of all Term Loans advanced to Borrower by such Lender and accrued and unpaid interest thereon and any other amounts due hereunder as and when due in accordance with this Agreement.

2.2 Term Loans.

(a) Availability. (1) Subject to the terms and conditions of this Agreement, including Agent's receipt of evidence of FDA approval of Jeuveau (DWP-450) in glabellar lines, receipt and sufficiency of which hereby is acknowledged, the Lenders agree, severally and not jointly, to make term loans to Borrower on the Effective Date in an aggregate amount of Seventy-Five Million Dollars ($75,000,000.00) according to each Lender's Term A Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term A Loan**", and collectively as the "**Term A Loans**"). After repayment, no Term A Loan may be re-borrowed.

(i) Subject to the terms and conditions of this Agreement, the Lenders agree, severally and not jointly, during the Second Draw Period, to make term loans to Borrower in an aggregate amount equal to Twenty-Five Million Dollars ($25,000,000.00) according to each Lender's Term B Loan Commitment as set forth on Schedule 1.1 hereto (such term loans are hereinafter referred to singly as a "**Term B Loan**", and collectively as the "**Term B Loans**"; each Term A Loan or Term B Loan is hereinafter referred to singly as a "**Term Loan**" and the Term A Loans and the Term B Loans are hereinafter referred to collectively as the "**Term Loans**"). After repayment, no Term B Loan may be re-borrowed.

(b) Repayment. Borrower shall make monthly payments of interest only commencing on the first (1st) Payment Date following the Funding Date of each Term Loan, and continuing on the Payment Date of each successive month thereafter through and including the Payment Date immediately preceding the Amortization Date. Borrower agrees to pay, on the Funding Date of each Term Loan, any initial partial monthly interest payment otherwise due for the period between the Funding Date of such Term Loan and the first Payment Date thereof. Commencing on the Amortization Date, and continuing on the Payment Date of each month thereafter, Borrower shall make consecutive equal monthly payments of principal, together with applicable interest, in arrears, to each Lender, as calculated by Collateral Agent (which calculations shall be deemed correct absent manifest error) based upon: (1) the amount of such Lender's Term Loan, (2) the effective rate of interest, as determined in Section 2.3(a), and (3) a repayment schedule equal to (x) twenty-three (23) months, if the Amortization Date is May 1, 2022, or (y) eleven (11) months, if the Amortization Date is May 1, 2023. All unpaid principal and accrued and unpaid interest with respect to each Term

Loan is due and payable in full on the Maturity Date. Each Term Loan may only be prepaid in accordance with Sections 2.2(c) and 2.2(d).

(c) Mandatory Prepayments. If the Term Loans are accelerated following the occurrence of an Event of Default, Borrower shall immediately pay to Lenders, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of: (i) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (ii) the Final Payment, (iii) the Prepayment Fee, plus (iv) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts. Notwithstanding (but without duplication with) the foregoing, on the Maturity Date, if the Final Payment had not previously been paid in full in connection with the prepayment of the Term Loans in full, Borrower shall pay to Collateral Agent, for payment to each Lender in accordance with its respective Pro Rata Share, the Final Payment in respect of the Term Loan(s).

(d) Permitted Prepayment of Term Loans. Borrower shall have the option, at any time, to prepay all, but not less than all, of the Term Loans advanced by the Lenders under this Agreement, provided Borrower (i) provides written notice to Collateral Agent of its election to prepay the Term Loans at least five (5) Business Days prior to such prepayment, and (ii) pays to the Lenders on the date of such prepayment, payable to each Lender in accordance with its respective Pro Rata Share, an amount equal to the sum of (A) all outstanding principal of the Term Loans plus accrued and unpaid interest thereon through the prepayment date, (B) the Final Payment, (C) the Prepayment Fee, plus (D) all other Obligations that are due and payable, including Lenders' Expenses and interest at the Default Rate with respect to any past due amounts.

2.3 Payment of Interest on the Credit Extensions.

(a) Interest Rate. Subject to Section 2.3(b), the principal amount outstanding under the Term Loans shall accrue interest at a floating per annum rate equal to the Basic Rate, determined by Collateral Agent on the Funding Date of the applicable Term Loan, which interest shall be payable monthly in arrears in accordance with Sections 2.2(b) and 2.3(e). Interest shall accrue on each Term Loan commencing on, and including, the Funding Date of such Term Loan, and shall accrue on the principal amount outstanding under such Term Loan through and including the day on which such Term Loan is paid in full.

(b) Default Rate. Immediately upon the occurrence and during the continuance of an Event of Default, Obligations shall accrue interest at a floating per annum rate equal to the rate that is otherwise applicable thereto plus five percentage points (5.00%) (the "**Default Rate**"). Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Collateral Agent.

(c) 360-Day Year. Interest shall be computed on the basis of a three hundred sixty (360) day year, and the actual number of days elapsed.

(d) Debit of Accounts. Collateral Agent and each Lender may debit (or ACH) any deposit accounts, maintained by Borrower or any of its Subsidiaries, including the Designated Deposit Account, for principal and interest payments or any other amounts Borrower owes the Lenders under the Loan Documents when due. Any such debits (or ACH activity) shall not constitute a set-off.

(e) Payments. Except as otherwise expressly provided herein, all payments by Borrower under the Loan Documents shall be made to the respective Lender to which such payments are owed, at such Lender's office in immediately available funds on the date specified herein. Unless otherwise provided, interest is payable monthly on the Payment Date of each month. Payments of principal and/or interest received after 2:00 pm Eastern time are considered received at the opening of business on the next Business Day. When a payment is due on a day that is not a Business Day, the payment is due the next Business Day and additional interest shall continue to accrue until such interest is paid. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest, 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.

2.4 Secured Promissory Notes. The Term Loans shall be evidenced by a Secured Promissory Note or Notes in the form attached as Exhibit D hereto (each a "**Secured Promissory Note**"), and shall be repayable as set forth in this Agreement. Borrower irrevocably authorizes each Lender to make or cause to be made, on or about the Funding Date of any Term Loan or at the time of receipt of any payment of principal on such Lender's Secured Promissory Note, an appropriate notation on such Lender's Secured Promissory Note Record reflecting the making of such Term Loan or (as the case may be) the receipt of such payment. Subject to Section 12.1(b), the outstanding amount of each Term Loan set forth on such Lender's Secured Promissory Note Record shall be prima facie evidence of the principal amount thereof owing and unpaid to such Lender, but the failure to record, or any error in so recording, any such amount on such Lender's Secured Promissory Note Record shall not limit or otherwise affect the obligations of Borrower under any Secured Promissory Note or any other Loan Document to make payments of principal of or interest on any Secured Promissory Note when due. Upon receipt of an affidavit of an officer of a Lender as to the loss, theft, destruction, or mutilation of its Secured Promissory Note**,** Borrower shall issue, in lieu thereof, a replacement Secured Promissory Note in the same principal amount thereof and of like tenor.

2.5 Fees. Borrower shall pay to Collateral Agent:

(a) Good Faith Deposit. An amount of Seventy-Five Thousand Dollars ($75,000.00) has been received by Collateral Agent as a good faith deposit from Borrower, which amount shall be applied towards the facility fee due under Section 2.5(b) hereof on the Effective Date. For the sake of clarity, Borrower shall be responsible for the entire amount of the facility fee payable pursuant to Section 2.5(b) hereof and the Lenders' Expenses payable under Section 2.5(f).

(b) Facility Fee. A fully earned, non-refundable facility fee of One Million Dollars ($1,000,000.00) payable on the Effective Date.

(c) Final Payment. The Final Payment, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares.

(d) Prepayment Fee. The Prepayment Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares.

(e) Unused Fee. The Unused Fee, when due hereunder, to be shared between the Lenders in accordance with their respective Pro Rata Shares.

(f) Lenders' Expenses. All Lenders' Expenses (including reasonable documented attorneys' fees and expenses for documentation and negotiation of this Agreement) incurred through and after the Effective Date, when due.

2.6 Withholding.

(a) Payments received by the Lenders from Borrower hereunder will be made free and clear of and without deduction for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges imposed by any governmental authority (including any interest, additions to tax or penalties applicable thereto) ("**Taxes**"). Specifically, however, if at any time any Governmental Authority, applicable law, regulation or international agreement requires Borrower to make any withholding or deduction from any such payment or other sum payable hereunder to the Lenders, Borrower hereby covenants and agrees that the amount due from Borrower with respect to such payment or other sum payable hereunder will be increased to the extent necessary to ensure that, after the making of such required withholding or deduction, each Lender receives a net sum equal to the sum which it would have received had no withholding or deduction been required and Borrower shall pay the full amount withheld or deducted to the relevant Governmental Authority; provided, however, that Borrower shall not be required to pay Lender any additional amounts with respect to any Taxes withheld or deducted from any amount payable hereunder that are (i) imposed pursuant to FATCA; or (ii) imposed as a result of a Lender doing business principally in a jurisdiction outside the United States imposing such Tax (other than connections arising solely from (and that would not have existed but for) Lender having executed, delivered, become a party to, performed its obligations under,

received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced this Agreement). Borrower will, upon request, furnish the Lenders with proof reasonably satisfactory to the Lenders indicating that Borrower has made such withholding payment; provided, however, that Borrower need not make any withholding payment if the amount or validity of such withholding payment is contested in good faith by appropriate and timely proceedings and as to which payment in full is bonded or reserved against by Borrower. The agreements and obligations of Borrower contained in this Section 2.6 shall survive the termination of this Agreement. The Lender shall deliver to the Borrower on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), executed copies of the applicable Internal Revenue Service Form W-9 or W-8, together with all required attachments, certifying the status of such Lender, such other documentation as prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Lender (or a transferee) is subject to withholding or information reporting requirements, and any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax. The Borrower shall not be required to pay additional amounts to the extent attributable to the Lender's failure to provide the appropriate Internal Revenue Service Form and such other information or documentation reasonably requested by the Borrower.

(b) Each Lender agrees that, upon the occurrence of any event giving rise to the operation of Section 2.6(a) with respect to such Lender, it will, if reasonably requested by the Borrower, use commercially reasonable efforts (subject to legal and regulatory restrictions) to mitigate the effect of any such event, including by designating a different lending office for funding or booking its Term Loans hereunder or assigning its rights and obligations hereunder to another of its offices, branches or affiliates and by completing and delivering or filing any tax related forms that would reduce or eliminate any amounts to be deducted or withheld or paid by Borrower; provided that such efforts are made at Borrower's sole expense and on terms that, in the reasonable judgment of such Lender, cause such Lender and its lending office to suffer no material adverse economic, legal or regulatory effect, and provided further that nothing in this Section 2.6(b) shall affect or postpone any of the Obligations of Borrower or the rights of such Lender pursuant to Section 2.6(a).

3. CONDITIONS OF LOANS

3.1 Conditions Precedent to Initial Credit Extension. Each Lender's obligation to make a Term A Loan is subject to the condition precedent that Collateral Agent and each Lender shall consent to or shall have received, in form and substance satisfactory to Collateral Agent and each Lender, such documents, and completion of such other matters, as Collateral Agent and each Lender may reasonably deem necessary or appropriate, including, without limitation:

(a) original Loan Documents, each duly executed by Borrower and each Subsidiary, as applicable;

(b) duly executed original Control Agreements with respect to any Collateral Accounts maintained by Borrower or any of its Subsidiaries;

(c) duly executed original Secured Promissory Notes in favor of each Lender according to its Term A Loan Commitment Percentage;

(d) [reserved];

(e) the Operating Documents and good standing certificates of Borrower and its Subsidiaries certified by the Secretary of State (or equivalent agency) of Borrower's and such Subsidiaries' jurisdiction of organization or formation and each jurisdiction in which Borrower and each Subsidiary is qualified to conduct business, each as of a date no earlier than thirty (30) days prior to the Effective Date**;**

(f) a completed Perfection Certificate for Borrower and each of its Subsidiaries;

(g) the Annual Projections, for the current calendar year, receipt of which hereby is acknowledged;

(h) duly executed original officer's certificate for Borrower and each Subsidiary that is a party to the Loan Documents, in a form acceptable to Collateral Agent and the Lenders;

(i) certified copies, dated as of date no earlier than thirty (30) days prior to the Effective Date, of financing statement searches, as Collateral Agent shall request, accompanied by written evidence (including any UCC termination statements) that the Liens indicated in any such financing statements either constitute Permitted Liens or have been or, in connection with the initial Credit Extension, will be terminated or released;

(j) a duly executed legal opinion of counsel to Borrower dated as of the Effective Date;

(k) evidence satisfactory to Collateral Agent and the Lenders that the insurance policies required by Section 6.5 hereof are in full force and effect, together with appropriate evidence showing loss payable and/or additional insured clauses or endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders; and

(l) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.2 Conditions Precedent to all Credit Extensions. The obligation of each Lender to make each Credit Extension, including the initial Credit Extension, is subject to the satisfaction of the following conditions precedent:

(a) receipt by Collateral Agent of an executed Disbursement Letter in the form of Exhibit B attached hereto;

(b) the representations and warranties in Section 5 hereof shall be true, accurate and complete in all material respects on the date of the Disbursement Letter and on the Funding Date of each Credit Extension; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date, and no Event of Default shall have occurred and be continuing or result from the Credit Extension. Each Credit Extension is Borrower's representation and warranty on that date that the representations and warranties in Section 5 hereof are true, accurate and complete in all material respects; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date;

(c) in such Lender's sole, reasonable discretion, there has not been any Material Adverse Change;

(d) to the extent not delivered at the Effective Date, duly executed original Secured Promissory Notes, in number, form and content reasonably acceptable to each Lender, and in favor of each Lender according to its Commitment Percentage, with respect to each Credit Extension made by such Lender after the Effective Date; and

(e) payment of the fees and Lenders' Expenses then due as specified in Section 2.5 hereof.

3.3 Conditions Subsequent to all Credit Extensions.

(a) Borrower shall deliver to the Collateral Agent, within thirty (30) days of the Effective Date (or such later date as the Collateral Agent may agree in its sole discretion), a landlord's consent executed in favor of Collateral Agent in respect of the following locations: (a) 520 Newport Center Drive, Suite 1200, Newport Beach CA 92660 and (b) 1027 Garden Street, Santa Barbara, CA; and

(b) Borrower shall deliver to the Collateral Agent, within thirty (30) days of the Effective Date (or such later date as the Collateral Agent may agree in its sole discretion), a bailee waiver executed in favor of Collateral Agent from Cardinal Health 105, Inc.; and

(c) Borrower shall deliver to the Collateral Agent, within ten (10) Business Days of the Effective Date (or such later date as the Collateral Agent may agree in its sole discretion), endorsements in favor of Collateral Agent, for the ratable benefit of the Lenders, with respect to the insurance policies required by Section 3.1 hereof.

3.4 Covenant to Deliver. Borrower agrees to deliver to Collateral Agent and the Lenders each item required to be delivered to Collateral Agent under this Agreement as a condition precedent to any Credit Extension as specified in Sections 3.1 and 3.2, and to deliver to Collateral Agent each item required to be delivered to Collateral Agent under this Agreement as specified in Sections 3.3. Borrower expressly agrees that a Credit Extension made prior to the receipt by Collateral Agent or any Lender of any such item shall not constitute a waiver by Collateral Agent or any Lender of Borrower's obligation to deliver such item, and any such Credit Extension in the absence of a required item shall be made in each Lender's reasonable discretion.

3.5 Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of a Term Loan set forth in this Agreement, to obtain a Term Loan (other than the Term A Loan), Borrower shall notify the Lenders (which notice shall be irrevocable) by electronic mail, facsimile, or telephone by 2:00 pm Eastern time three (3) Business Days prior to the date the Term Loan is to be made. Together with any such electronic, facsimile or telephonic notification, Borrower shall deliver to the Lenders by electronic mail or facsimile a completed Disbursement Letter executed by a Responsible Officer or his or her designee. The Lenders may rely on any telephone notice given by a person whom a Lender reasonably believes is a Responsible Officer or designee. On the Funding Date, each Lender shall credit and/or transfer (as applicable) to the Designated Deposit Account, an amount equal to its Term Loan Commitment.

4. CREATION OF SECURITY INTEREST

4.1 Grant of Security Interest. Borrower hereby grants Collateral Agent, for the ratable benefit of the Lenders, to secure the payment and performance in full of all of the Obligations, a continuing security interest in, and pledges to Collateral Agent, for the ratable benefit of the Lenders, the Collateral, wherever located, whether now owned or hereafter acquired or arising, and all proceeds and products thereof. Borrower represents, warrants, and covenants that the security interest granted herein is and shall at all times continue to be a first priority perfected security interest in the Collateral, subject only to Permitted Liens. If Borrower shall acquire a commercial tort claim (as defined in the Code), in an amount equal to or greater than Two Hundred Fifty Thousand Dollars ($250,000.00), Borrower shall promptly notify Collateral Agent in writing, of the general details thereof (and further details as may be reasonably required by Collateral Agent) and grant to Collateral Agent, for the ratable benefit of the Lenders, in such writing a security interest therein and in the proceeds thereof, all upon the terms of this Agreement, with such writing to be in form and substance reasonably satisfactory to Collateral Agent.

Collateral Agent's Lien in the Collateral shall continue until the Obligations (other than inchoate indemnity obligations) are repaid in full in cash. Upon payment in full in cash of the Obligations (other than inchoate indemnity obligations) and at such time as the Lenders' obligation to make Credit Extensions has terminated, Collateral Agent shall, at the sole cost and expense of Borrower, release its Liens in the Collateral and all rights therein shall revert to Borrower.

Upon any sale, lease, transfer or other disposition of any item of Collateral of the Borrower or Guarantor permitted by, and in accordance with, the terms of the Loan Documents, or upon the effectiveness of any consent to the release of the security interest granted hereby in any Collateral pursuant to this Agreement, or upon the release of the Borrower or any Guarantor from its Obligations under this Agreement or the applicable Guaranty, if any, in accordance with the terms of the Loan Documents, the Collateral Agent will, at such Borrower's or Guarantor's sole cost and expense, execute and deliver to such Borrower or Guarantor such documents as such Borrower or Guarantor shall reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted hereby; provided, however, that such Borrower or Guarantor shall have delivered to the Collateral Agent, no

less than five (5) Business Days prior to the date of the proposed release, a written request for release describing the item of Collateral, together with a form of release for execution by the Collateral Agent, and such other information as Collateral Agent may reasonably request.

4.2 Authorization to File Financing Statements. Borrower hereby authorizes Collateral Agent to file financing statements or take any other action required to perfect Collateral Agent's security interests in the Collateral, without notice to Borrower, with all appropriate jurisdictions to perfect or protect Collateral Agent's interest or rights under the Loan Documents, including a notice that any disposition of the Collateral, except to the extent permitted by the terms of this Agreement, by Borrower, or any other Person, shall be deemed to violate the rights of Collateral Agent under the Code.

4.3 Pledge of Collateral. Borrower hereby pledges, assigns and grants to Collateral Agent, for the ratable benefit of the Lenders, a security interest in all the Shares, together with all proceeds and substitutions thereof, all cash, stock and other moneys and property paid thereon, all rights to subscribe for securities declared or granted in connection therewith, and all other cash and noncash proceeds of the foregoing, as security for the performance of the Obligations. Within thirty (30) days of the certification of any Shares, such Shares will be delivered to Collateral Agent, accompanied by an instrument of assignment duly executed in blank by Borrower. To the extent required by the terms and conditions governing the Shares, Borrower shall cause the books of each entity whose Shares are part of the Collateral and any transfer agent to reflect the pledge of the Shares. Upon the occurrence and during the continuance of an Event of Default hereunder, Collateral Agent may effect the transfer of any securities included in the Collateral (including but not limited to the Shares) into the name of Collateral Agent and to the extent permitted by applicable law, cause new (as applicable) certificates representing such securities to be issued in the name of Collateral Agent or its transferee. Borrower will execute and deliver such documents, and take or cause to be taken such actions, as Collateral Agent may reasonably request to perfect or continue the perfection of Collateral Agent's security interest in the Shares. Unless an Event of Default shall have occurred and be continuing, Borrower shall be entitled to exercise any voting rights with respect to the Shares and to give consents, waivers and ratifications in respect thereof, provided that no vote shall be cast or consent, waiver or ratification given or action taken which would be inconsistent with any of the terms of this Agreement or which would constitute or create any violation of any of such terms. All such rights to vote and give consents, waivers and ratifications shall terminate upon the occurrence and continuance of an Event of Default. Collateral Agent reserves the right to take any such action as Collateral Agent determines in its sole reasonable discretion to perfect the security interest over the Shares constituting Collateral in any relevant jurisdiction.

5. REPRESENTATIONS AND WARRANTIES

Borrower represents and warrants to Collateral Agent and the Lenders as follows:

5.1 Due Organization, Authorization: Power and Authority. Borrower and each of its Subsidiaries is duly existing and in good standing as a Registered Organization in its jurisdictions of organization or formation and Borrower and each of its Subsidiaries is qualified and licensed to do business and is in good standing in any jurisdiction in which the conduct of its businesses or its ownership of property requires that it be qualified except where the failure to do so could not reasonably be expected to have a Material Adverse Change. In connection with this Agreement, as of the Effective Date, Borrower and each of its Subsidiaries has delivered to Collateral Agent a completed perfection certificate signed by an officer of Borrower or such Subsidiary (each a "**Perfection Certificate**" and collectively, the "**Perfection Certificates**"). Borrower represents and warrants that (a) Borrower and each of its Subsidiaries' exact legal name is that which is indicated on its respective Perfection Certificate and on the signature page of each Loan Document to which it is a party; (b) Borrower and each of its Subsidiaries is an organization of the type and is organized in the jurisdiction set forth on its respective Perfection Certificate; (c) each Perfection Certificate accurately sets forth each of Borrower's and its Subsidiaries' organizational identification number or accurately states that Borrower or such Subsidiary has none; (d) each Perfection Certificate accurately sets forth Borrower's and each of its Subsidiaries' place of business, or, if more than one, its chief executive office as well as Borrower's and each of its Subsidiaries' mailing address (if different than its chief executive office); (e) Borrower and each of its Subsidiaries (and each of its respective predecessors) have not, in the past five (5) years, changed its jurisdiction of organization, organizational structure or type, or any organizational number assigned by its jurisdiction; and (f) all other information set forth on the Perfection Certificates pertaining to Borrower and each of its Subsidiaries, is accurate and complete in all material respects (it

being understood and agreed that Borrower and each of its Subsidiaries may from time to time update certain information in the Perfection Certificates (including the information set forth in clause (d) above) after the Effective Date to the extent permitted by one or more specific provisions in this Agreement); such updated Perfection Certificates subject to the review and approval of Collateral Agent. If Borrower or any of its Subsidiaries is not now a Registered Organization but later becomes one, Borrower shall notify Collateral Agent of such occurrence and provide Collateral Agent with such Person's organizational identification number within fifteen (15) days of receiving such organizational identification number.

The execution, delivery and performance by Borrower and each of its Subsidiaries of the Loan Documents to which it is a party have been duly authorized, and do not (i) conflict with any of Borrower's or such Subsidiaries' Operating Documents, (ii) contravene, conflict with, constitute a default under or violate any Requirement of Law applicable thereto, (iii) contravene, conflict or violate any applicable order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which Borrower or such Subsidiary, or any of their property or assets may be bound or affected, (iv) require any action by, filing, registration, or qualification with, or Governmental Approval from, any Governmental Authority (except such Governmental Approvals which have already been obtained and are in full force and effect or are being obtained pursuant to Section 6.1(b)), or (v) constitute an event of default under any agreement by which Borrower or any of such Subsidiaries, or their respective properties, is bound; except with respect to any conflict, violation or contravention referred to in clauses (ii), (iii) and (v) and any failure to make filings, registrations or approval referred to in clause (iv) that could not reasonably be expected to have a Material Adverse Change. Neither Borrower nor any of its Subsidiaries is in default under any agreement to which it is a party or by which it or any of its assets is bound in which such default could reasonably be expected to have a Material Adverse Change.

5.2 Collateral.

(a) Borrower and each of its Subsidiaries have good title to, have rights in, and the power to transfer each item of the Collateral upon which it purports to grant a Lien under the Loan Documents, free and clear of any and all Liens except Permitted Liens. Neither Borrower nor any of its Subsidiaries have any Collateral Accounts other than those described in the Perfection Certificates delivered to Collateral Agent in connection herewith with respect to which Borrower or such Subsidiary has given Collateral Agent notice and taken such actions as are necessary to give Collateral Agent a perfected security interest therein within the time periods required pursuant to this Agreement.

(b) On the Effective Date, and except as disclosed on the Perfection Certificate (i) the Collateral is not in the possession of any third party bailee (such as a warehouse), and (ii) no such third party bailee possesses components of the Collateral, in each case, in excess of Five Hundred Thousand Dollars ($500,000.00). None of the components of the Collateral shall be maintained at locations other than as disclosed in the Perfection Certificates on the Effective Date or as permitted pursuant to Section 6.11.

(c) All Inventory is in all material respects of good and marketable quality, free from material defects.

(d) Borrower and each of its Subsidiaries is the sole owner of the Intellectual Property each respectively purports to own, free and clear of all Liens other than Permitted Liens. (i) Each of Borrower's and its Subsidiaries' Patents is valid and enforceable and no part of Borrower's or its Subsidiaries' Intellectual Property has been judged invalid or unenforceable, in whole or in part, and (ii) to the best of Borrower's knowledge, no claim has been made that any part of the Intellectual Property or any practice by Borrower or its Subsidiaries violates the rights of any third party except to the extent such claim could not reasonably be expected to have a Material Adverse Change. Except as noted on the Perfection Certificates, or as disclosed in Borrower's filings with the Securities and Exchange Commission, neither Borrower nor any of its Subsidiaries is a party to, nor is bound by, any material license or other material agreement with respect to which Borrower or such Subsidiary is the licensee that (i) prohibits or otherwise restricts Borrower or its Subsidiaries from granting a security interest in Borrower's or such Subsidiaries' interest in such material license or material agreement or any other property, or (ii) for which a default under or termination of could interfere with Collateral Agent's or any Lender's right to sell any Collateral. Borrower shall provide written notice to Collateral Agent and each Lender within ten (10) days of Borrower or any of its Subsidiaries entering into or

becoming bound by any material license or agreement with respect to which Borrower or any Subsidiary is the licensee (other than over-the-counter software that is commercially available to the public).

5.3 Litigation. Except as disclosed (i) on the Perfection Certificates, or (ii) in accordance with Section 6.9 hereof, there are no actions, suits, investigations, or proceedings pending or, to the knowledge of the Responsible Officers, threatened in writing by or against Borrower or any of its Subsidiaries which could reasonably be expected to result in damages to Borrower or any of its Subsidiaries of more than Five Hundred Thousand Dollars ($500,000.00).

5.4 No Material Deterioration in Financial Condition; Financial Statements. All consolidated financial statements for Borrower and its Subsidiaries, delivered to Collateral Agent fairly present, in conformity with GAAP, in all material respects the consolidated financial condition of Borrower and its Subsidiaries, and the consolidated results of operations of Borrower and its Subsidiaries. There has not been any material deterioration in the consolidated financial condition of Borrower and its Subsidiaries since the date of the most recent financial statements submitted to any Lender that has had or could reasonably be expected to have a Material Adverse Change.

5.5 Solvency. Borrower, and Borrower and its Subsidiaries, taken as a whole, is Solvent.

5.6 Regulatory Compliance. Neither Borrower nor any of its Subsidiaries is an "investment company" or a company "controlled" by an "investment company" under the Investment Company Act of 1940, as amended. Neither Borrower nor any of its Subsidiaries is engaged as one of its important activities in extending credit for margin stock (under Regulations X, T and U of the Federal Reserve Board of Governors). Borrower and each of its Subsidiaries has complied in all material respects with the Federal Fair Labor Standards Act, except to the extent any failure of such compliance could not reasonably be expected to have a Material Adverse Change. Neither Borrower nor any of its Subsidiaries is a "holding company" or an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" as each term is defined and used in the Public Utility Holding Company Act of 2005. Neither Borrower nor any of its Subsidiaries has violated any Requirement of Law which could reasonably be expected to have a Material Adverse Change. Neither Borrower's nor any of its Subsidiaries' properties or assets has been used by Borrower or such Subsidiary or, to Borrower's knowledge, by previous Persons, in disposing, producing, storing, treating, or transporting any hazardous substance other than in material compliance with applicable laws. Except to the extent the obtaining of which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, Borrower and each of its Subsidiaries has obtained all consents, approvals and authorizations of, made all filings with, and given all notices to, all Governmental Authorities that are necessary to continue their respective businesses as currently conducted.

None of Borrower, any of its Subsidiaries, or any of Borrower's or its Subsidiaries' controlled Affiliates or any of their respective agents acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement is (i) in violation of any Anti-Terrorism Law, (ii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law, or (iii) is a Blocked Person. None of Borrower, any of its Subsidiaries, or to the knowledge of Borrower and any of their controlled Affiliates or agents, acting or benefiting in any capacity in connection with the transactions contemplated by this Agreement, (x) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, or (y) deals in, or otherwise engages in any transaction relating to, any property or interest in property blocked pursuant to Executive Order No. 13224, any similar executive order or other Anti-Terrorism Law.

5.7 Investments. Neither Borrower nor any of its Subsidiaries owns any stock, shares, partnership interests or other equity securities except for Permitted Investments.

5.8 Tax Returns and Payments; Pension Contributions. Borrower and each of its Subsidiaries has timely filed all required material tax returns and reports, and Borrower and each of its Subsidiaries, has timely paid all federal, and all material foreign, state, and local taxes, assessments, deposits and contributions owed by Borrower and such Subsidiaries, in all jurisdictions in which Borrower or any such Subsidiary is subject to taxes, including the United States, unless (a) such taxes are being contested in accordance with the following sentence or (b) in the case of foreign,

state or local taxes, if such foreign, state or local taxes, assessments, deposits and contributions do not, individually or in the aggregate, exceed One Hundred Thousand Dollars ($100,000.00). Borrower and each of its Subsidiaries, may defer payment of any contested taxes, provided that Borrower or such Subsidiary, (a) in good faith contests its obligation to pay the taxes by appropriate proceedings promptly and diligently instituted and conducted, (b) notifies Collateral Agent in writing of the commencement of, and any material development in, the proceedings, and (c) posts bonds or takes any other steps required to prevent the Governmental Authority levying such contested taxes from obtaining a Lien upon any of the Collateral that is other than a "Permitted Lien." Neither Borrower nor any of its Subsidiaries is aware of any claims or adjustments proposed for any of Borrower's or such Subsidiaries', prior tax years which could result in additional taxes in excess of One Hundred Thousand Dollars ($100,000.00) becoming due and payable by Borrower or its Subsidiaries. Borrower and each of its Subsidiaries have made (or properly accrued on their respective balance sheets) the minimum required funding amounts to each present pension, profit sharing and funded deferred compensation plans in accordance with their terms, and neither Borrower nor any of its Subsidiaries have, withdrawn from participation in, and have not permitted partial or complete termination of, or permitted the occurrence of any other event with respect to, any such plan which could reasonably be expected to result in any material liability of Borrower or its Subsidiaries (other than liability for payment of benefits to plan participants in the ordinary course), including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority other than with respect to premiums required to be paid to such Governmental Authority under applicable law..

5.9 Use of Proceeds. Borrower shall use the proceeds of the Credit Extensions for any purpose permitted under this Agreement (including as working capital and to fund its general business requirements in accordance with the provisions of this Agreement), and not for personal, family, household or agricultural purposes.

5.10 Shares. Borrower has full power and authority to create a first lien on the Shares and no disability or contractual obligation exists that would prohibit Borrower from pledging the Shares pursuant to this Agreement. To Borrower's knowledge, there are no subscriptions, warrants, rights of first refusal or other restrictions on transfer relative to, or options exercisable with respect to the Shares. The Shares have been duly authorized and validly issued, and are fully paid and non-assessable. To Borrower's knowledge, the Shares are not the subject of any present or threatened suit, action, arbitration, administrative or other proceeding, and Borrower knows of no reasonable grounds for the institution of any such proceedings.

5.11 Full Disclosure. No written representation, warranty or other statement of Borrower or any of its Subsidiaries in any certificate or written statement given to Collateral Agent or any Lender, as of the date such representation, warranty, or other statement was made, taken together with all such written certificates and written statements given to Collateral Agent or any Lender, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained in the certificates or statements not materially misleading in light of the circumstances under which such statements were made (after giving effect to all supplements and updates thereto) (it being recognized that the projections and forecasts provided by Borrower in good faith and based upon reasonable assumptions are not viewed as facts and that actual results during the period or periods covered by such projections and forecasts may differ from the projected or forecasted results).

5.12 Definition of "**Knowledge.**" For purposes of the Loan Documents, whenever a representation or warranty is made to Borrower's knowledge or awareness, to the "best of" Borrower's knowledge, or with a similar qualification, knowledge or awareness means the actual knowledge, after reasonable investigation, of the Responsible Officers.

6. AFFIRMATIVE COVENANTS

Borrower shall, and shall cause each of its Subsidiaries to, do all of the following:

6.1 Government Compliance.

(a) Maintain its and all its Subsidiaries' legal existence and good standing in their respective jurisdictions of organization and maintain qualification in each jurisdiction in which the failure to so qualify could

reasonably be expected to have a Material Adverse Change. Comply with all laws, ordinances and regulations to which Borrower or any of its Subsidiaries is subject, the noncompliance with which could reasonably be expected to have a Material Adverse Change.

(b) Obtain and keep in full force and effect, all of the Governmental Approvals necessary for (i) the performance by Borrower and its Subsidiaries of their respective businesses and obligations under the Loan Documents, except if the failure to comply therewith could not reasonably be expected to have, individually or in the aggregate, a Material Adverse Change; and (ii) the grant of a security interest to Collateral Agent for the ratable benefit of the Lenders, in all of the Collateral.

6.2 Financial Statements, Reports, Certificates.

(a) Deliver to Collateral Agent:

(i) no later than forty-five (45) days after the last day of each of the first three (3) fiscal quarters, and no later than ninety (90) days after the last day of the fourth (4^{th}) fiscal quarter, a company prepared consolidated balance sheet, income statement and cash flow statement covering the consolidated operations of Borrower and its Subsidiaries for such fiscal quarter certified by a Responsible Officer and in a form reasonably acceptable to Collateral Agent;

(ii) no later than ninety (90) days after the last day of Borrower's fiscal year, audited consolidated financial statements prepared under GAAP, consistently applied, together with an unqualified opinion (other than with respect to going concern so long as no Event of Default has occurred and is continuing) on the financial statements from Ernst & Young LLP or another independent certified public accounting firm acceptable to Collateral Agent in its reasonable discretion;

(iii) no later than January 31 of each of Borrower's fiscal years, Borrower's annual budget for the entire current fiscal year as approved by Borrower's Board of Directors, which such annual budget shall be set forth in quarterly format (such annual budget as originally delivered to Collateral Agent and the Lenders are referred to herein as the "**Annual Projections**"; provided that, any revisions of the Annual Projections approved by Borrower's Board of Directors shall be delivered to Collateral Agent and the Lenders no later than ten (10) days after such approval);

(iv) within five (5) days of delivery, copies of all statements, reports and notices made available to Borrower's security holders or holders of Subordinated Debt;

(v) within five (5) days of filing, all reports on Form 10-K, 10-Q and 8-K filed with the Securities and Exchange Commission,

(vi) prompt notice of any material amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries, together with any copies reflecting such amendments or changes with respect thereto;

(vii) prompt notice of any event that could reasonably be expected to materially and adversely affect the value of the Intellectual Property;

(viii) no later than thirty (30) days after the last day of each month, except to the extent delivered pursuant to the applicable Control Agreement(s), copies of the month-end account statements for each Collateral Account maintained by Borrower or its Subsidiaries, which statements may be provided to Collateral Agent and each Lender by Borrower or directly from the applicable institution(s); and

(ix) other information as reasonably requested by Collateral Agent or any Lender.

Notwithstanding the foregoing, documents required to be delivered pursuant to the terms hereof (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which Borrower posts such documents, or provides a link thereto, on Borrower's website on the internet at Borrower's website address.

(b) Concurrently with the delivery of the financial statements specified in Sections 6.2(a)(i) and 6.2(a)(ii) above, deliver to Collateral Agent, a duly completed Compliance Certificate and updated Perfection Certificate(s), signed by a Responsible Officer.

(c) Keep proper books of record and account in accordance with GAAP in all material respects, in which full, true and correct entries shall be made of all dealings and transactions in relation to its business and activities. Borrower shall, and shall cause each of its Subsidiaries to, allow, at the sole cost of Borrower, Collateral Agent or any Lender, during regular business hours upon reasonable prior notice (provided that no notice shall be required when an Event of Default has occurred and is continuing), to visit and inspect any of its properties, to examine and make abstracts or copies from any of its books and records, and to conduct a collateral audit and analysis of its operations and the Collateral. Such audits shall be conducted no more often than twice every year unless (and more frequently if) an Event of Default has occurred and is continuing.

6.3 Inventory; Returns. Keep all Inventory in good and marketable condition, free from material defects. Returns and allowances between Borrower, or any of its Subsidiaries, and their respective Account Debtors shall follow Borrower's, or such Subsidiary's, customary practices as they exist at the Effective Date. Borrower must promptly notify Collateral Agent and the Lenders of all returns, recoveries, disputes and claims that involve more than two percent (2.00%) of Net Sales, individually or in the aggregate, in any calendar quarter.

6.4 Taxes; Pensions. Timely file and require each of its Subsidiaries to timely file, all material required tax returns and reports and timely pay, and require each of its Subsidiaries to timely file, all foreign and federal, and all material state, and local taxes, assessments, deposits and contributions owed by Borrower or its Subsidiaries, except for deferred payment of any taxes contested pursuant to the terms of Section 5.8 hereof, and shall deliver to Lenders, on demand, appropriate certificates attesting to such payments (or contested payments), and pay (or properly accrue on their respective balance sheets) the minimum required funding amounts to each present pension, profit sharing and deferred compensation plans in accordance with the terms of such plans.

6.5 Insurance. Keep Borrower's and its Subsidiaries' business and the Collateral insured for risks and in amounts standard for companies in Borrower's and its Subsidiaries' industry and location and as Collateral Agent may reasonably request. Insurance policies shall be in a form, with companies, and in amounts that are reasonably satisfactory to Collateral Agent and Lenders. All property policies shall have a lender's loss payable endorsement showing Collateral Agent as lender loss payee, and all liability policies shall show, or have endorsements showing, Collateral Agent, as additional insured. The Collateral Agent shall be named as lender loss payee and/or additional insured with respect to any such insurance providing coverage in respect of any Collateral, and each provider of any such insurance shall agree, by endorsement upon the policy or policies issued by it or by independent instruments furnished to the Collateral Agent, that it will give the Collateral Agent thirty (30) days prior written notice before any such policy or policies shall be materially altered or canceled. At Collateral Agent's request, Borrower shall deliver certified copies of policies and evidence of all premium payments. Notwithstanding the foregoing, (a) so long as no Event of Default has occurred and is continuing, Borrower shall have the option of applying the proceeds of any casualty policy up to Three Hundred Thousand Dollars ($300,000.00) with respect to any loss, but not exceeding Five Hundred Thousand Dollars ($500,000.00), in the aggregate for all losses under all casualty policies in any one year, toward the replacement or repair of destroyed or damaged property; provided that any such replaced or repaired property (i) shall be of equal or like value as the replaced or repaired Collateral and (ii) shall be deemed Collateral in which Collateral Agent has been granted a first priority security interest, and (b) after the occurrence and during the continuance of an Event of Default, all proceeds payable under such casualty policy shall, at the option of Collateral Agent, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations; provided however, that notwithstanding clauses (a) and (b), and unless an Event of Default has occurred and is continuing, Borrower shall be permitted to use the entire proceeds of any casualty policy with respect to any loss involving Inventory for the purposes of reinvesting in Inventory if such reinvestment is completed within ninety (90) days from the date of receipt of the

proceeds of such casualty policy or if Borrower enters into any contractual arrangement regarding the same within the said ninety (90) day period and the same is completed within one hundred twenty (120) days from the date of entry into such contractual arrangement; provided further that, in all other events, the proceeds payable under any policy shall, at Collateral Agent's option, be payable to Collateral Agent, for the ratable benefit of the Lenders, on account of the Obligations. If Borrower or any of its Subsidiaries fails to obtain insurance as required under this Section 6.5 or to pay any amount or furnish any required proof of payment to third persons, Collateral Agent and/or any Lender may make, at Borrower's expense, all or part of such payment or obtain such insurance policies required in this Section 6.5, and take any action under the policies Collateral Agent or such Lender deems prudent.

6.6 Operating Accounts.

(a) Maintain all of Borrower's and its domestic Subsidiaries' Collateral Accounts in accounts which are subject to a Control Agreement in favor of Collateral Agent.

(b) Borrower shall provide Collateral Agent five (5) days' prior written notice before Borrower or any of its Subsidiaries establishes any Collateral Account at or with any Person other than those in effect as of the Effective Date. In addition, for each Collateral Account that Borrower or any of its Subsidiaries, at any time maintains, Borrower or such Subsidiary shall cause the applicable bank or financial institution at or with which such Collateral Account is maintained to execute and deliver a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect Collateral Agent's Lien in such Collateral Account in accordance with the terms hereunder prior to the establishment of such Collateral Account, which Control Agreement may not be terminated without prior written consent of Collateral Agent. The provisions of the previous sentence shall not apply to the Excluded Accounts.

(c) Neither Borrower nor any of its Subsidiaries shall maintain any Collateral Accounts except Collateral Accounts maintained in accordance with Sections 6.6(a) and (b).

6.7 Protection of Intellectual Property Rights. Borrower and each of its Subsidiaries shall: (a) use commercially reasonable efforts to protect, defend and maintain the validity and enforceability of its Intellectual Property that is material to Borrower's business; (b) promptly advise Collateral Agent in writing of material infringement by a third party of its Intellectual Property; and (c) not allow any Intellectual Property material to Borrower's business to be abandoned, forfeited or dedicated to the public without Collateral Agent's prior written consent. If Borrower or any of its Subsidiaries obtains any owned patent, registered trademark or servicemark, registered copyright, then Borrower or such Subsidiary shall provide written notice thereof to Collateral Agent in the updated Perfection Certificate delivered after such event, and shall execute such intellectual property security agreements and other documents and take such other actions as Collateral Agent shall reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in such Intellectual Property. Notwithstanding the foregoing, unless previously disclosed in the quarterly updates to the Perfection Certificate delivered pursuant to Section 6.2(b), if Borrower or any of its Subsidiaries applies for registration of (and/or registers) any copyrights in the United States Copyright Office, Borrower or such Subsidiary shall: (x) notify the Collateral Agent within ten (10) days before making such application together with a copy of the application to be filed with the United States Copyright Office (excluding exhibits thereto); (y) execute an intellectual property security agreement and such other documents and take such other actions as Collateral Agent may reasonably request in its good faith business judgment to perfect and maintain a first priority perfected security interest in favor of Collateral Agent, for the ratable benefit of the Lenders, in the copyrights intended to be registered with the United States Copyright Office; and (z) record such intellectual property security agreement with the United States Copyright Office.

6.8 Litigation Cooperation. Commencing on the Effective Date and continuing through the termination of this Agreement, make available to Collateral Agent and the Lenders, Borrower and each of Borrower's officers, employees and agents and Borrower's Books, to the extent that Collateral Agent or any Lender may reasonably deem them necessary to prosecute or defend any third-party suit or proceeding instituted by or against Collateral Agent or any Lender with respect to any Collateral or relating to Borrower, all subject to the indemnification and expense reimbursement provisions set forth in Section 12.2.

6.9 Notices of Litigation and Default. Borrower will give prompt written notice to Collateral Agent and the Lenders of any litigation or governmental proceedings pending or threatened (in writing) against Borrower or any of its Subsidiaries, which could reasonably be expected to result in damages to Borrower or any of its Subsidiaries of Five Hundred Thousand Dollars ($500,000.00) or more or which could reasonably be expected to have a Material Adverse Change. Without limiting or contradicting any other more specific provision of this Agreement, promptly (and in any event within three (3) Business Days) upon (i) Borrower becoming aware of the existence of any Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default, Borrower shall give written notice to Collateral Agent and the Lenders of such occurrence, which such notice shall include a reasonably detailed description of such Event of Default or event which, with the giving of notice or passage of time, or both, would constitute an Event of Default; and (ii) any material developments in any of the litigation disclosed in the Perfection Certificate delivered to Collateral Agent as of the Effective Date, but no less frequently than quarterly, Borrower shall give written notice to Collateral Agent and the Lenders of such material developments, with at least the same level of detail as presented in the Perfection Certificate delivered to Collateral Agent as of the Effective Date.

6.10 Minimum Net Sales. In the event Borrower receives the Term B Loan, Borrower shall at all times thereafter, through the Maturity Date, maintain minimum trailing [***] ([***]) month Net Sales of at least [***] Dollars ($[***]), to be tested on a quarterly basis as of the last day of each fiscal quarter of Borrower.

6.11 Landlord Waivers; Bailee Waivers. In the event that Borrower or any of its Subsidiaries, after the Effective Date, adds any new offices or business locations, and (x) such new location is Borrower's new chief executive office or (y) the Collateral at any such new location is valued at or in excess of Five Hundred Thousand Dollars ($500,000.00) in the aggregate, then such bailee or landlord, as applicable, shall execute and deliver a bailee waiver or landlord waiver, as applicable, in form and substance reasonably satisfactory to Collateral Agent within thirty (30) days (or such later date as the Collateral Agent may agree in its sole discretion) of the addition of any new offices or business locations, or any such storage with or delivery to any such bailee, as the case may be.

6.12 Creation/Acquisition of Subsidiaries. In the event Borrower, or any of its Subsidiaries creates or acquires any Subsidiary, Borrower shall provide prior written notice to Collateral Agent and each Lender of the creation or acquisition of such new Subsidiary and take all such action as may be reasonably required by Collateral Agent or any Lender to cause each such Subsidiary to become a co-Borrower hereunder or to guarantee the Obligations of Borrower under the Loan Documents and, in each case, grant a continuing pledge and security interest in and to the assets of such Subsidiary (substantially as described on Exhibit A hereto); and Borrower (or its Subsidiary, as applicable) shall grant and pledge to Collateral Agent, for the ratable benefit of the Lenders, a perfected security interest in the Shares.

6.13 Further Assurances.

(a) Execute any further instruments and take further action as Collateral Agent or any Lender reasonably requests to perfect or continue Collateral Agent's Lien in the Collateral or to effect the purposes of this Agreement.

(b) Deliver to Collateral Agent and Lenders, within ten (10) Business Days after the same are sent or received, copies of all material correspondence, reports, documents and other filings with any Governmental Authority that could reasonably be expected to have a Material Adverse Change.

7. NEGATIVE COVENANTS

Borrower shall not, and shall not permit any of its Subsidiaries to, do any of the following without the prior written consent of the Required Lenders:

7.1 Dispositions. Convey, sell, lease, transfer, assign, or otherwise dispose of (collectively, "**Transfer**"), or permit any of its Subsidiaries to Transfer, all or any part of its business or property, except for Transfers (a) of Inventory in the ordinary course of business (which shall include, for the avoidance of doubt, any Transfers of Inventory

pursuant to a distribution and/or license agreement with a third party to the extent the same is otherwise permitted under this Agreement); (b) of worn out or obsolete Equipment; (c) in connection with Permitted Liens, Permitted Investments and Permitted Licenses and (d) other Transfers of assets for fair market value in an amount not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate in any calendar year.

7.2 Changes in Business, Management, Ownership, or Business Locations. (a) Engage in or permit any of its Subsidiaries to engage in any business other than the businesses engaged in by Borrower as of the Effective Date or reasonably related thereto; (b) liquidate or dissolve (except as permitted under Section 7.3); or (c) (i) any Key Person shall cease to be actively engaged in the management of Borrower unless written notice thereof is provided to Collateral Agent within ten (10) days from the date of such change, or (ii) enter into any transaction or series of related transactions in which the stockholders of Borrower who were not stockholders immediately prior to the first such transaction own more than forty nine percent (49%) of the voting stock of Borrower immediately after giving effect to such transaction or related series of such transactions. Borrower shall not, without at least thirty (30) days' prior written notice to Collateral Agent: (A) add any new offices or business locations, including warehouses (unless such new offices or business locations (i) contain less than Five Hundred Thousand Dollars ($500,000.00) in assets or property of Borrower or any of its Subsidiaries and (ii) are not Borrower's or its Subsidiaries' chief executive office); (B) change its jurisdiction of organization, (C) change its organizational structure or type, (D) change its legal name, or (E) change any organizational number (if any) assigned by its jurisdiction of organization.

7.3 Mergers or Acquisitions. Merge or consolidate, or permit any of its Subsidiaries to merge or consolidate, with any other Person, or acquire, or permit any of its Subsidiaries to acquire, all or substantially all of the capital stock, shares or property of another Person, except (i) in connection with a Permitted Acquisition, (ii) in connection with a Transfer permitted by Section 7.1 and (iii) that a Subsidiary may merge or consolidate into another Subsidiary (provided such surviving Subsidiary that is a co-Borrower or has provided a secured Guaranty of Borrower's Obligations hereunder shall either remain a "co Borrower" hereunder or provide a secured Guaranty of Borrower's Obligations hereunder) or with (or into) Borrower, provided Borrower is the surviving legal entity, and as long as no Event of Default is occurring prior thereto or arises as a result therefrom.

7.4 Indebtedness. Create, incur, assume, or be liable for any Indebtedness, or permit any Subsidiary to do so, other than Permitted Indebtedness.

7.5 Encumbrance. Create, incur, allow, or suffer any Lien on any of its property, or assign or convey any right to receive income, including the sale of any Accounts (except in connection with any Permitted Revolving Line), or permit any of its Subsidiaries to do so, except for Permitted Liens, or permit any Collateral not to be subject to the first priority security interest granted herein (except for Permitted Liens that are permitted by the terms of this Agreement to have priority over Collateral Agent's Lien), or enter into any agreement, document, instrument or other arrangement (except with or in favor of Collateral Agent, for the ratable benefit of the Lenders) with any Person which directly or indirectly prohibits or has the effect of prohibiting Borrower, or any of its Subsidiaries, from assigning, mortgaging, pledging, granting a security interest in or upon, or encumbering any of Borrower's or such Subsidiary's Intellectual Property, except as is otherwise permitted in Section 7.1 hereof and the definition of "**Permitted Liens**" herein.

7.6 Maintenance of Collateral Accounts. Maintain any Collateral Account except pursuant to the terms of Section 6.6 hereof.

7.7 Distributions; Investments. (a) Pay any dividends (other than dividends payable solely in capital stock) or make any distribution or payment in respect of or redeem, retire or purchase any capital stock (other than repurchases pursuant to the terms of employee stock purchase plans, employee restricted stock agreements, stockholder rights plans, director or consultant stock option plans, or similar plans, provided such repurchases do not exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate per fiscal year) or (b) directly or indirectly make any Investment other than Permitted Investments, or permit any of its Subsidiaries to do so.

7.8 Transactions with Affiliates. Directly or indirectly enter into or permit any material transaction with any Affiliate of Borrower or any of its Subsidiaries, except for (a) transactions pursuant to agreements, instruments

or arrangements set forth on Schedule 7.8 attached hereto, (b) transactions that are in the ordinary course of Borrower's or such Subsidiary's business, upon fair and reasonable terms that are no less favorable to Borrower or such Subsidiary than would be obtained in an arm's length transaction with a non-affiliated Person, (c) Subordinated Debt or equity investments by Borrower's investors in Borrower or its Subsidiaries, (d) transactions between Borrower and its Subsidiaries that are Guarantors, (e) payments permitted under Section 7.7 and payments pursuant to transactions permitted under Section 7.3, (f) employment, consulting, severance and other service or benefit related arrangements between the Borrower and its Subsidiaries and their respective officers and employees in the ordinary course of business and transactions pursuant to stock option and other equity award plans and employee benefit plans and arrangements in the ordinary course of business, (g) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, officers, employees and consultants in ordinary course of business and (h) compensation and benefit arrangements (including the granting of options or other equity compensation arrangements) and any indemnification arrangements with employees, officers, directors or consultants approved by, or pursuant to, any plan approved by the Board of Directors of Borrower in the ordinary course of business and consistent with past practices.

7.9 Subordinated Debt. (a) Make or permit any payment on any Subordinated Debt, except under the terms of the subordination, intercreditor, or other similar agreement to which such Subordinated Debt is subject, or (b) amend any provision in any document relating to the Subordinated Debt which would increase the amount thereof or adversely affect the subordination thereof to Obligations owed to the Lenders.

7.10 Compliance. (a) Become an "investment company" or a company controlled by an "investment company", under the Investment Company Act of 1940, as amended, or undertake as one of its important activities extending credit to purchase or carry margin stock (as defined in Regulation U of the Board of Governors of the Federal Reserve System), or use the proceeds of any Credit Extension for that purpose; (b) fail to meet the minimum funding requirements of ERISA, permit a Reportable Event (for which the requirement to report has not been waived) or non-exempt Prohibited Transaction, as defined in ERISA, to occur; (c) fail to comply with the Federal Fair Labor Standards Act or violate any other law or regulation; in each case of (b) or (c), if the violation could reasonably be expected to have a Material Adverse Change; or (d) withdraw or permit any Subsidiary to withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any present pension, profit sharing and deferred compensation plan which could reasonably be expected to result in any liability of Borrower or any of its Subsidiaries, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Authority.

7.11 Compliance with Anti-Terrorism Laws. Collateral Agent hereby notifies Borrower and each of its Subsidiaries that pursuant to the requirements of Anti-Terrorism Laws, and Collateral Agent's policies and practices, Collateral Agent is required to obtain, verify and record certain information and documentation that identifies Borrower and each of its Subsidiaries and their principals, which information includes the name and address of Borrower and each of its Subsidiaries and their principals and such other information that will allow Collateral Agent to identify such party in accordance with Anti-Terrorism Laws. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries permit any controlled Affiliate to, directly or indirectly, knowingly enter into any documents, instruments, agreements or contracts with any Person listed on the OFAC Lists. Borrower and each of its Subsidiaries shall, immediately notify Collateral Agent if Borrower or such Subsidiary has knowledge that Borrower or any Subsidiary or controlled Affiliates of Borrower, is listed on the OFAC Lists or (a) is convicted on, (b) pleads nolo contendere to, (c) is indicted on, or (d) is arraigned and held over on charges involving money laundering or predicate crimes to money laundering. Neither Borrower nor any of its Subsidiaries shall, nor shall Borrower or any of its Subsidiaries, permit any controlled Affiliate to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including, without limitation, the making or receiving of any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 or any similar executive order or other Anti-Terrorism Law, or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in Executive Order No. 13224 or other Anti-Terrorism Law.

7.12 Limitation on Assets at Foreign Subsidiaries. Borrower shall not permit any Foreign Subsidiary to maintain cash or other assets of a value in excess of Two Hundred Fifty Thousand Dollars ($250,000.00) at any time.

8. EVENTS OF DEFAULT

Any one of the following shall constitute an event of default (an "**Event of Default**") under this Agreement:

8.1 Payment Default. Borrower fails to (a) make any payment of principal or interest on any Credit Extension on its due date, or (b) pay any other Obligations within three (3) Business Days after such Obligations are due and payable (which three (3) Business Day grace period shall not apply to payments due on the Maturity Date or the date of acceleration pursuant to Section 9.1 (a) hereof). During the cure period, the failure to cure the payment default is not an Event of Default (but no Credit Extension will be made during the cure period);

8.2 Covenant Default.

(a) Borrower or any of its Subsidiaries fails or neglects to perform any obligation in Sections 6.2 (Financial Statements, Reports, Certificates), 6.4 (Taxes), 6.5 (Insurance), 6.6 (Operating Accounts), 6.7 (Protection of Intellectual Property Rights), 6.9 (Notice of Litigation and Default), 6.10 (Minimum Net Sales), 6.11 (Landlord Waivers; Bailee Waivers), 6.12 (Creation/Acquisition of Subsidiaries) or 6.13 (Further Assurances) or Borrower violates any covenant in Section 7; or

(b) Borrower, or any of its Subsidiaries, fails or neglects to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents, and as to any default (other than those specified in this Section 8) under such other term, provision, condition, covenant or agreement that can be cured, has failed to cure the default within ten (10) days after the occurrence thereof; provided, however, that if the default cannot by its nature be cured within the ten (10) day period or cannot after diligent attempts by Borrower be cured within such ten (10) day period, and such default is likely to be cured within a reasonable time, then Borrower shall have an additional period (which shall not in any case exceed thirty (30) days) to attempt to cure such default, and within such reasonable time period the failure to cure the default shall not be deemed an Event of Default (but no Credit Extensions shall be made during such cure period). Grace periods provided under this Section shall not apply, among other things, to financial covenants or any other covenants set forth in subsection (a) above;

8.3 Material Adverse Change. A Material Adverse Change occurs;

8.4 Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of Borrower or any of its Subsidiaries or of any entity under control of Borrower or its Subsidiaries on deposit with any Lender or any Lender's Affiliate or any bank or other institution at which Borrower or any of its Subsidiaries maintains a Collateral Account, or (ii) a notice of lien, levy, or assessment is filed against Borrower or any of its Subsidiaries or their respective assets by any government agency, and the same under subclauses (i) and (ii) hereof are not, within ten (10) days after the occurrence thereof, discharged or stayed (whether through the posting of a bond or otherwise); provided, however, no Credit Extensions shall be made during any ten (10) day cure period; and

(b) (i) any material portion of Borrower's or any of its Subsidiaries' assets is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) except in connection with (x) the Pending Litigation and subject of Section 8.14 below or (y) the Daewoong License and subject of Section 8.15(a) below, any court order enjoins, restrains, or prevents Borrower or any of its Subsidiaries from conducting any material part of its business;

8.5 Insolvency. (a) Borrower or any of its Subsidiaries is or becomes Insolvent; (b) Borrower or any of its Subsidiaries begins an Insolvency Proceeding; or (c) an Insolvency Proceeding is begun against Borrower or any of its Subsidiaries and not dismissed or stayed within forty-five (45) days (but no Credit Extensions shall be made while Borrower or any Subsidiary is Insolvent and/or until any Insolvency Proceeding is dismissed);

8.6 Other Agreements. There is a default in any agreement to which Borrower or any of its Subsidiaries is a party with a third party or parties resulting in a right by such third party or parties, whether or not exercised, to accelerate the maturity of any Indebtedness in an amount in excess of Five Hundred Thousand Dollars ($500,000.00) or that could reasonably be expected to have a Material Adverse Change; provided, however, that the Event of Default under this Section 8.6 caused by the occurrence of a breach or default under such other agreement shall be cured or waived for purposes of this Agreement upon Collateral Agent receiving written notice from the party asserting such breach or default of such cure or waiver of the breach or default under such other agreement, if at the time of such cure or waiver under such other agreement (x) Collateral Agent has not declared an Event of Default under this Agreement and/or exercised any rights with respect thereto; (y) any such cure or waiver does not result in an Event of Default under any other provision of this Agreement or any Loan Document; and (z) in connection with any such cure or waiver under such other agreement, the terms of any agreement with such third party are not modified or amended in any manner which could in the good faith business judgment of Collateral Agent be materially less advantageous to Borrower or any Guarantor;

8.7 Judgments. One or more judgments, orders, or decrees for the payment of money in an amount, individually or in the aggregate, of at least Five Hundred Thousand Dollars ($500,000.00) (not covered by independent third-party insurance as to which liability has been accepted by such insurance carrier) shall be rendered against Borrower or any of its Subsidiaries and shall remain unsatisfied, unvacated, or unstayed for a period of twenty (20) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree);

8.8 Misrepresentations. Borrower or any of its Subsidiaries or any Person acting for Borrower or any of its Subsidiaries makes any representation, warranty, or other statement now or later in this Agreement, any Loan Document or in any writing delivered to Collateral Agent and/or Lenders or to induce Collateral Agent and/or the Lenders to enter this Agreement or any Loan Document, and such representation, warranty, or other statement is incorrect in any material respect when made;

8.9 Subordinated Debt. A default or breach occurs under any agreement between Borrower or any of its Subsidiaries and any creditor of Borrower or any of its Subsidiaries that signed a subordination, intercreditor, or other similar agreement with Collateral Agent or the Lenders, or any creditor that has signed such an agreement with Collateral Agent or the Lenders breaches any terms of such agreement;

8.10 Guaranty. (a) Any Guaranty terminates or ceases for any reason to be in full force and effect; (b) any Guarantor does not perform any obligation or covenant under any Guaranty; (c) any circumstance described in Sections 8.3, 8.4, 8.5, 8.7, or 8.8 occurs with respect to any Guarantor, or (d) the liquidation, winding up, or termination of existence of any Guarantor;

8.11 Governmental Approvals. Any Governmental Approval shall have been revoked, rescinded, suspended, modified in an adverse manner, or not renewed in the ordinary course for a full term *and* such revocation, rescission, suspension, modification or non-renewal has resulted in or could reasonably be expected to result in a Material Adverse Change;

8.12 Lien Priority. Any Lien created hereunder or by any other Loan Document shall at any time fail to constitute a valid and perfected Lien on any of the Collateral purported to be secured thereby, subject to no prior or equal Lien, other than Permitted Liens which are permitted to have priority in accordance with the terms of this Agreement.

8.13 Delisting. The shares of common stock of Borrower are delisted from NASDAQ Global Market because of failure to comply with continued listing standards thereof or due to a voluntary delisting which results in such shares not being listed on any other nationally recognized stock exchange in the United States having listing standards at least as restrictive as the NASDAQ Global Market.

8.14 Pending Litigation. Borrower is temporarily (for [***] ([***]) days or more) or permanently enjoined from conducting all or any material part of its business as a result directly or indirectly of an injunction or a final non-

appealable judgment, order or decree in connection with the Pending Litigation (including but not limited to Pending Litigation directed at Daewoong), and such injunction or judgment, order or decree shall remain unsatisfied, unvacated, or unstayed for a period of twenty (20) days after the entry thereof (provided that no Credit Extensions will be made prior to the satisfaction, vacation, or stay of such judgment, order or decree).

8.15 Daewoong License. (a) The Daewoong License, or any material portion thereof, is terminated, materially breached by Daewoong (subject to applicable cure periods under the Daewoong License), or invalidated by any tribunal of competent jurisdiction; (b) Daewoong disclaims liability to Borrower under the indemnity provision contained in the Daewoong License, or Daewoong otherwise fails to indemnify, defend and hold harmless Borrower in accordance with the terms and conditions of the Daewoong License, and, as a result thereof, Borrower incurs fees, costs or other expenses that result in a Material Adverse Change; or (c) Borrower's access to the supply of the Jeuveau (DWP-450), is disrupted, interfered with or terminated, whether temporarily or permanently, such that Borrower is unable to carry out all or a material portion of its business.

9. RIGHTS AND REMEDIES

9.1 Rights and Remedies.

(a) Upon the occurrence and during the continuance of an Event of Default, Collateral Agent may, and at the written direction of Required Lenders shall, without notice or demand, do any or all of the following: (i) deliver notice of the Event of Default to Borrower, (ii) by notice to Borrower declare all Obligations immediately due and payable (but if an Event of Default described in Section 8.5 occurs all Obligations shall be immediately due and payable without any action by Collateral Agent or the Lenders) or (iii) by notice to Borrower suspend or terminate the obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders (but if an Event of Default described in Section 8.5 occurs all obligations, if any, of the Lenders to advance money or extend credit for Borrower's benefit under this Agreement or under any other agreement between Borrower and Collateral Agent and/or the Lenders shall be immediately terminated without any action by Collateral Agent or the Lenders).

(b) Without limiting the rights of Collateral Agent and the Lenders set forth in Section 9.1(a) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right at the written direction of the Required Lenders**,** without notice or demand, to do any or all of the following:

(i) foreclose upon and/or sell or otherwise liquidate, the Collateral;

(ii) apply to the Obligations any (a) balances and deposits of Borrower that Collateral Agent or any Lender holds or controls, or (b) any amount held or controlled by Collateral Agent or any Lender owing to or for the credit or the account of Borrower; and/or

(iii) commence and prosecute an Insolvency Proceeding or consent to Borrower commencing any Insolvency Proceeding.

(c) Without limiting the rights of Collateral Agent and the Lenders set forth in Sections 9.1(a) and (b) above, upon the occurrence and during the continuance of an Event of Default, Collateral Agent shall have the right, without notice or demand, to do any or all of the following:

(i) settle or adjust disputes and claims directly with Account Debtors for amounts on terms and in any order that Collateral Agent considers advisable, notify any Person owing Borrower money of Collateral Agent's security interest in such funds, and verify the amount of such account;

(ii) make any payments and do any acts it considers necessary or reasonable to protect the Collateral and/or its security interest in the Collateral. Borrower shall assemble the Collateral if Collateral Agent requests and make it available in a location as Collateral Agent reasonably designates. Collateral Agent may enter premises where the Collateral is located, take and maintain possession of any part of the Collateral, and pay, purchase,

contest, or compromise any Lien which appears to be prior or superior to its security interest and pay all expenses incurred. Borrower grants Collateral Agent a license to enter and occupy any of its premises, without charge, to exercise any of Collateral Agent's rights or remedies;

(iii) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, and/or advertise for sale, the Collateral. Collateral Agent is hereby granted a non-exclusive, royalty-free license or other right to use, without charge, Borrower's and each of its Subsidiaries' labels, patents, copyrights, mask works, rights of use of any name, trade secrets, trade names, trademarks, service marks, and advertising matter, or any similar property as it pertains to the Collateral, in completing production of, advertising for sale, and selling any Collateral and, in connection with Collateral Agent's exercise of its rights under this Section 9.1, Borrower's and each of its Subsidiaries' rights under all licenses and all franchise agreements inure to Collateral Agent, for the benefit of the Lenders;

(iv) place a "hold" on any account maintained with Collateral Agent or the Lenders and/or deliver a notice of exclusive control, any entitlement order, or other directions or instructions pursuant to any Control Agreement or similar agreements providing control of any Collateral;

(v) demand and receive possession of Borrower's Books;

(vi) appoint a receiver to seize, manage and realize any of the Collateral, and such receiver shall have any right and authority as any competent court will grant or authorize in accordance with any applicable law, including any power or authority to manage the business of Borrower or any of its Subsidiaries; and

(vii) subject to clauses 9.1(a) and (b), exercise all rights and remedies available to Collateral Agent and each Lender under the Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Notwithstanding any provision of this Section 9.1 to the contrary, upon the occurrence of any Event of Default, Collateral Agent shall have the right to exercise any and all remedies referenced in this Section 9.1 without the written consent of Required Lenders following the occurrence of an Exigent Circumstance. As used in the immediately preceding sentence, "**Exigent Circumstance**" means any event or circumstance that, in the reasonable judgment of Collateral Agent, imminently threatens the ability of Collateral Agent to realize upon all or any material portion of the Collateral, such as, without limitation, fraudulent removal, concealment, or abscondment thereof, destruction or material waste thereof, or failure of Borrower or any of its Subsidiaries after reasonable demand to maintain or reinstate adequate casualty insurance coverage, or which, in the judgment of Collateral Agent, could reasonably be expected to result in a material diminution in value of the Collateral.

9.2 Power of Attorney. Borrower hereby irrevocably appoints Collateral Agent as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's or any of its Subsidiaries' name on any checks or other forms of payment or security; (b) sign Borrower's or any of its Subsidiaries' name on any invoice or bill of lading for any Account or drafts against Account Debtors; (c) settle and adjust disputes and claims about the Accounts directly with Account Debtors, for amounts and on terms Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's insurance policies; (e) pay, contest or settle any Lien, charge, encumbrance, security interest, and adverse claim in or to the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same; and (f) transfer the Collateral into the name of Collateral Agent or a third party as the Code or any applicable law permits. Borrower hereby appoints Collateral Agent as its lawful attorney-in-fact to sign Borrower's or any of its Subsidiaries' name on any documents necessary to perfect or continue the perfection of Collateral Agent's security interest in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than inchoate indemnity obligations) have been satisfied in full and Collateral Agent and the Lenders are under no further obligation to make Credit Extensions hereunder. Collateral Agent's foregoing appointment as Borrower's or any of its Subsidiaries' attorney in fact, and all of Collateral Agent's rights and powers, coupled with an interest, are irrevocable until all Obligations (other than inchoate indemnity obligations) have been fully repaid and performed and Collateral Agent's and the Lenders' obligation to provide Credit Extensions terminates.

9.3 Protective Payments. If Borrower or any of its Subsidiaries fail to obtain the insurance called for by Section 6.5 or fails to pay any premium thereon or fails to pay any other amount which Borrower or any of its Subsidiaries is obligated to pay under this Agreement or any other Loan Document, Collateral Agent may obtain such insurance or make such payment, and all amounts so paid by Collateral Agent are Lenders' Expenses and immediately due and payable, bearing interest at the Default Rate, and secured by the Collateral. Collateral Agent will make reasonable efforts to provide Borrower with notice of Collateral Agent obtaining such insurance or making such payment at the time it is obtained or paid or within a reasonable time thereafter. No such payments by Collateral Agent are deemed an agreement to make similar payments in the future or Collateral Agent's waiver of any Event of Default.

9.4 Application of Payments and Proceeds. Notwithstanding anything to the contrary contained in this Agreement, upon the occurrence and during the continuance of an Event of Default, (a) Borrower irrevocably waives the right to direct the application of any and all payments at any time or times thereafter received by Collateral Agent from or on behalf of Borrower or any of its Subsidiaries of all or any part of the Obligations, and, as between Borrower on the one hand and Collateral Agent and Lenders on the other, Collateral Agent shall have the continuing and exclusive right to apply and to reapply any and all payments received against the Obligations in such manner as Collateral Agent may deem advisable notwithstanding any previous application by Collateral Agent, and (b) the proceeds of any sale of, or other realization upon all or any part of the Collateral shall be applied: first, to the Lenders' Expenses; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the United States Bankruptcy Code, would have accrued on such amounts); third, to the principal amount of the Obligations outstanding; and fourth, to any other indebtedness or obligations of Borrower owing to Collateral Agent or any Lender under the Loan Documents. Any balance remaining shall be delivered to Borrower or to whoever may be lawfully entitled to receive such balance or as a court of competent jurisdiction may direct. In carrying out the foregoing, (x) amounts received shall be applied in the numerical order provided until exhausted prior to the application to the next succeeding category, and (y) each of the Persons entitled to receive a payment in any particular category shall receive an amount equal to its pro rata share of amounts available to be applied pursuant thereto for such category. Any reference in this Agreement to an allocation between or sharing by the Lenders of any right, interest or obligation "ratably," "proportionally" or in similar terms shall refer to Pro Rata Share unless expressly provided otherwise. Collateral Agent, or if applicable, each Lender, shall promptly remit to the other Lenders such sums as may be necessary to ensure the ratable repayment of each Lender's portion of any Term Loan and the ratable distribution of interest, fees and reimbursements paid or made by Borrower. Notwithstanding the foregoing, a Lender receiving a scheduled payment shall not be responsible for determining whether the other Lenders also received their scheduled payment on such date; provided, however, if it is later determined that a Lender received more than its ratable share of scheduled payments made on any date or dates, then such Lender shall remit to Collateral Agent or other Lenders such sums as may be necessary to ensure the ratable payment of such scheduled payments, as instructed by Collateral Agent. If any payment or distribution of any kind or character, whether in cash, properties or securities, shall be received by a Lender in excess of its ratable share, then the portion of such payment or distribution in excess of such Lender's ratable share shall be received by such Lender in trust for and shall be promptly paid over to the other Lender for application to the payments of amounts due on the other Lenders' claims. To the extent any payment for the account of Borrower is required to be returned as a voidable transfer or otherwise, the Lenders shall contribute to one another as is necessary to ensure that such return of payment is on a pro rata basis. If any Lender shall obtain possession of any Collateral, it shall hold such Collateral for itself and as agent and bailee for Collateral Agent and other Lenders for purposes of perfecting Collateral Agent's security interest therein.

9.5 Liability for Collateral. So long as Collateral Agent and the Lenders comply with reasonable banking practices regarding the safekeeping of the Collateral in the possession or under the control of Collateral Agent and the Lenders, Collateral Agent and the Lenders shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; (c) any diminution in the value of the Collateral; or (d) any act or default of any carrier, warehouseman, bailee, or other Person. Subject to the foregoing, Borrower bears all risk of loss, damage or destruction of the Collateral.

9.6 No Waiver; Remedies Cumulative. Failure by Collateral Agent or any Lender, at any time or times, to require strict performance by Borrower of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by Collateral Agent and the

Required Lenders and then is only effective for the specific instance and purpose for which it is given. The rights and remedies of Collateral Agent and the Lenders under this Agreement and the other Loan Documents are cumulative. Collateral Agent and the Lenders have all rights and remedies provided under the Code, any applicable law, by law, or in equity. The exercise by Collateral Agent or any Lender of one right or remedy is not an election, and Collateral Agent's or any Lender's waiver of any Event of Default is not a continuing waiver. Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

9.7 Demand Waiver. Borrower waives, to the fullest extent permitted by law, 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 Collateral Agent or any Lender on which Borrower or any Subsidiary is liable.

10. NOTICES

All notices, consents, requests, approvals, demands, or other communication (collectively, "**Communication**") by any party to this Agreement or any other Loan Document must be in writing and shall be deemed to have been validly served, given, or delivered: (a) upon the earlier of actual receipt and three (3) Business Days after deposit in the U.S. mail, first class, registered or certified mail return receipt requested, with proper postage prepaid; (b) upon transmission, when sent by facsimile transmission or email; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; or (d) when delivered, if hand delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address indicated below. Any of Collateral Agent, Lender or Borrower may change its mailing address, facsimile number or email address by giving the other party written notice thereof in accordance with the terms of this Section 10.

If to Borrower:	EVOLUS, INC. 520 Newport Center Drive, Suite 1200 Newport Beach CA 92660 Attn: Lauren Silvernail, CFO Fax: [BORROWER FAX] Email: [BORROWER EMAIL]
with a copy (which shall not constitute notice) to:	ROPES & GRAY 1211 Avenue of the Americas New York, New York 10036-8704 Attn: Sunil Savkar Fax: (646) 728-1533 Email: Sunil.Savkar@ropesgray.com
If to Collateral Agent:	OXFORD FINANCE LLC 133 North Fairfax Street Alexandria, Virginia 22314 Attention: Legal Department Fax: (703) 519-5225 Email: LegalDepartment@oxfordfinance.com
with a copy (which shall not constitute notice) to:	Barnes & Thornburg LLP 655 W. Broadway, Suite 900 San Diego, California 92101 Attn: Troy Zander Email: troy.zander@btlaw.com

11. CHOICE OF LAW, VENUE AND JURY TRIAL WAIVER, AND JUDICIAL REFERENCE

California law governs the Loan Documents without regard to principles of conflicts of law. Borrower, Collateral Agent and each Lender each submit to the exclusive jurisdiction of the State and Federal courts in Santa

Clara County, California; provided, however, that nothing in this Agreement shall be deemed to operate to preclude Collateral Agent or any Lender from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Obligations, or to enforce a judgment or other court order in favor of Collateral Agent or any Lender. Borrower expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and Borrower hereby waives any objection that it may have based upon lack of personal jurisdiction, improper venue, or forum non conveniens and hereby consents to the granting of such legal or equitable relief as is deemed appropriate by such court. Borrower hereby waives personal service of the summons, complaints, and other process issued in such action or suit and agrees that service of such summons, complaints, and other process may be made by registered or certified mail addressed to Borrower at the address set forth in, or subsequently provided by Borrower in accordance with, Section 10 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of Borrower's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER, COLLATERAL AGENT AND EACH LENDER EACH WAIVE THEIR RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY CONTEMPLATED TRANSACTION, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR EACH PARTY TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

WITHOUT INTENDING IN ANY WAY TO LIMIT THE PARTIES' AGREEMENT TO WAIVE THEIR RESPECTIVE RIGHT TO A TRIAL BY JURY, if the above waiver of the right to a trial by jury is not enforceable, the parties hereto agree that any and all disputes or controversies of any nature between them arising at any time shall be decided by a reference to a private judge, mutually selected by the parties (or, if they cannot agree, by the Presiding Judge of the Santa Clara County, California Superior Court) appointed in accordance with California Code of Civil Procedure Section 638 (or pursuant to comparable provisions of federal law if the dispute falls within the exclusive jurisdiction of the federal courts), sitting without a jury, in Santa Clara County, California; and the parties hereby submit to the jurisdiction of such court. The reference proceedings shall be conducted pursuant to and in accordance with the provisions of California Code of Civil Procedure §§ 638 through 645.1, inclusive. The private judge shall have the power, among others, to grant provisional relief, including without limitation, entering temporary restraining orders, issuing preliminary and permanent injunctions and appointing receivers. All such proceedings shall be closed to the public and confidential and all records relating thereto shall be permanently sealed. If during the course of any dispute, a party desires to seek provisional relief, but a judge has not been appointed at that point pursuant to the judicial reference procedures, then such party may apply to the Santa Clara County, California Superior Court for such relief. The proceeding before the private judge shall be conducted in the same manner as it would be before a court under the rules of evidence applicable to judicial proceedings. The parties shall be entitled to discovery which shall be conducted in the same manner as it would be before a court under the rules of discovery applicable to judicial proceedings. The private judge shall oversee discovery and may enforce all discovery rules and orders applicable to judicial proceedings in the same manner as a trial court judge. The parties agree that the selected or appointed private judge shall have the power to decide all issues in the action or proceeding, whether of fact or of law, and shall report a statement of decision thereon pursuant to California Code of Civil Procedure § 644(a). Nothing in this paragraph shall limit the right of any party at any time to exercise self-help remedies, foreclose against collateral, or obtain provisional remedies. The private judge shall also determine all issues relating to the applicability, interpretation, and enforceability of this paragraph.

12. GENERAL PROVISIONS

12.1 Successors and Assigns.

(a) This Agreement binds and is for the benefit of the successors and permitted assigns of each party. Borrower may not transfer, pledge or assign this Agreement or any rights or obligations under it without Collateral Agent's and each Lender's prior written consent (which may be granted or withheld in Collateral Agent's and each Lender's discretion, subject to Section 12.6). The Lenders have the right, without the consent of or notice to Borrower, to sell, transfer, assign, pledge, negotiate, or grant participation in **(any** such sale, transfer, assignment, negotiation**,** or

grant of a participation, a **"Lender Transfer")** all or any part of, or any interest in, the Lenders' obligations, rights, and benefits under this Agreement and the other Loan Documents; *provided*, *however*, that any such Lender Transfer (other than a transfer, pledge, sale or assignment to an Eligible Assignee) of its obligations, rights, and benefits under this Agreement and the other Loan Documents shall require the prior written consent of the Required Lenders (such approved assignee, an "**Approved Lender**")**.** Borrower and Collateral Agent shall be entitled to continue to deal solely and directly with such Lender in connection with the interests so assigned until Collateral Agent shall have received and accepted an effective assignment agreement in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee or Approved Lender as Collateral Agent reasonably shall require. Notwithstanding anything to the contrary contained herein, so long as no Event of Default has occurred and is continuing, no Lender Transfer (other than a Lender Transfer in connection with (x) assignments by a Lender due to a forced divestiture at the request of any regulatory agency; or (y) upon the occurrence of a default, event of default or similar occurrence with respect to a Lender's own financing or securitization transactions) shall be permitted, without Borrower's consent, to any Person which is an Affiliate or Subsidiary of Borrower, a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent.

(b) Collateral Agent shall maintain a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(c) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations, or is otherwise required thereunder. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

12.2 Indemnification. Borrower agrees to indemnify, defend and hold Collateral Agent and the Lenders and their respective directors, officers, employees, agents, attorneys, or any other Person affiliated with or representing Collateral Agent or the Lenders (each, an "**Indemnified Person**") harmless against: (a) all obligations, demands, claims, and liabilities (collectively, "**Claims**") asserted by any other party in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents; and (b) all losses or Lenders' Expenses incurred, or paid by Indemnified Person in connection with; related to; following; or arising from, out of or under, the transactions contemplated by the Loan Documents between Collateral Agent, and/or the Lenders and Borrower (including reasonable and documented attorneys' fees and expenses), except for Claims and/or losses directly caused by such Indemnified Person's gross negligence or willful misconduct. Borrower hereby further indemnifies, defends and holds each Indemnified Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable and documented fees and disbursements of one counsel for each such Indemnified Person) in connection with any investigative, response, remedial, administrative or judicial matter or proceeding, whether or not such Indemnified Person shall be designated a party thereto and including any such proceeding initiated by or on behalf of Borrower, and the reasonable expenses of investigation by engineers, environmental consultants and similar technical personnel and any commission, fee or compensation claimed by any broker (other than any broker retained by Collateral Agent or Lenders) asserting any right to payment for the transactions contemplated hereby which may be imposed on, incurred by or asserted against such Indemnified Person as a result of or in connection with the transactions contemplated

hereby and the use or intended use of the proceeds of the loan proceeds except for liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements directly caused by such Indemnified Person's gross negligence or willful misconduct. This paragraph shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc., arising from a non-Tax claim.

12.3 Time of Essence. Time is of the essence for the performance of all Obligations in this Agreement.

12.4 Severability of Provisions. Each provision of this Agreement is severable from every other provision in determining the enforceability of any provision.

12.5 Correction of Loan Documents. Collateral Agent and the Lenders may correct patent errors and fill in any blanks in this Agreement and the other Loan Documents consistent with the agreement of the parties**.**

12.6 Amendments in Writing; Integration. (1) No amendment, modification, termination or waiver of any provision of this Agreement or any other Loan Document, no approval or consent thereunder, or any consent to any departure by Borrower or any of its Subsidiaries therefrom, shall in any event be effective unless the same shall be in writing and signed by Borrower, Collateral Agent and the Required Lenders provided that:

(i) no such amendment, waiver or other modification that would have the effect of increasing or reducing a Lender's Term Loan Commitment or Commitment Percentage shall be effective as to such Lender without such Lender's written consent;

(ii) no such amendment, waiver or modification that would affect the rights and duties of Collateral Agent shall be effective without Collateral Agent's written consent or signature;

(iii) no such amendment, waiver or other modification shall, unless signed by all the Lenders directly affected thereby, (A) reduce the principal of, rate of interest on or any fees with respect to any Term Loan or forgive any principal, interest (other than default interest) or fees (other than late charges) with respect to any Term Loan (B) postpone the date fixed for, or waive, any payment of principal of any Term Loan or of interest on any Term Loan (other than default interest) or any fees provided for hereunder (other than late charges or for any termination of any commitment); (C) change the definition of the term "**Required Lenders**" or the percentage of Lenders which shall be required for the Lenders to take any action hereunder; (D) release all or substantially all of any material portion of the Collateral, authorize Borrower to sell or otherwise dispose of all or substantially all or any material portion of the Collateral or release any Guarantor of all or any portion of the Obligations or its guaranty obligations with respect thereto, except, in each case with respect to this clause (D), as otherwise may be expressly permitted under this Agreement or the other Loan Documents (including in connection with any disposition permitted hereunder); (E) amend, waive or otherwise modify this Section 12.6 or the definitions of the terms used in this Section 12.6 insofar as the definitions affect the substance of this Section 12.6; (F) consent to the assignment, delegation or other transfer by Borrower of any of its rights and obligations under any Loan Document or release Borrower of its payment obligations under any Loan Document, except, in each case with respect to this clause (F), pursuant to a merger or consolidation permitted pursuant to this Agreement; (G) amend any of the provisions of Section 9.4 or amend any of the definitions of Pro Rata Share, Term Loan Commitment, Commitment Percentage or that provide for the Lenders to receive their Pro Rata Shares of any fees, payments, setoffs or proceeds of Collateral hereunder; (H) subordinate the Liens granted in favor of Collateral Agent securing the Obligations; or (I) amend any of the provisions of Section 12.10. It is hereby understood and agreed that all Lenders shall be deemed directly affected by an amendment, waiver or other modification of the type described in the preceding clauses (C), (D), (E), (F), (G) and (H) of the preceding sentence;

(iv) the provisions of the foregoing clauses (i), (ii) and (iii) are subject to the provisions of any interlender or agency agreement among the Lenders and Collateral Agent pursuant to which any Lender may agree to give its consent in connection with any amendment, waiver or modification of the Loan Documents only in the event of the unanimous agreement of all Lenders.

(b) Other than as expressly provided for in Section 12.6(a)(i)-(iii), Collateral Agent may, if requested by the Required Lenders, from time to time designate covenants in this Agreement less restrictive by notification to a representative of Borrower.

(c) This Agreement and the Loan Documents represent the entire agreement about this subject matter and supersede prior negotiations or agreements. All prior agreements, understandings, representations, warranties, and negotiations between the parties about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

12.7 Counterparts. This Agreement 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 Agreement.

12.8 Survival. All covenants, representations and warranties made in this Agreement continue in full force and effect until this Agreement has terminated pursuant to its terms and all Obligations (other than inchoate indemnity obligations and any other obligations which, by their terms, are to survive the termination of this Agreement) have been satisfied. The obligation of Borrower in Section 12.2 to indemnify each Lender and Collateral Agent, as well as the confidentiality provisions in Section 12.9 below, shall survive until the statute of limitations with respect to such claim or cause of action shall have run.

12.9 Confidentiality. In handling any confidential information of Borrower, the Lenders and Collateral Agent shall exercise the same degree of care that it exercises for their own proprietary information, but disclosure of information may be made: (a) subject to the terms and conditions of this Agreement, to the Lenders' and Collateral Agent's Subsidiaries or Affiliates, or in connection with a Lender's own financing or securitization transactions and upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; (b) to prospective transferees (other than those identified in (a) above) or purchasers of any interest in the Credit Extensions (provided, however, the Lenders and Collateral Agent shall, except upon the occurrence and during the continuance of an Event of Default, obtain such prospective transferee's or purchaser's agreement to the terms of this provision or to similar confidentiality terms); (c) as required by law, regulation, subpoena, or other order; (d) to Lenders' or Collateral Agent's regulators or as otherwise required in connection with an examination or audit; (e) as Collateral Agent reasonably considers appropriate in exercising remedies under the Loan Documents; and (f) to third party service providers of the Lenders and/or Collateral Agent so long as such service providers have executed a confidentiality agreement with the Lenders and Collateral Agent with terms no less restrictive than those contained herein. Confidential information does not include information that either: (i) is in the public domain or in the Lenders' and/or Collateral Agent's possession when disclosed to the Lenders and/or Collateral Agent, or becomes part of the public domain after disclosure to the Lenders and/or Collateral Agent; or (ii) is disclosed to the Lenders and/or Collateral Agent by a third party, if the Lenders and/or Collateral Agent does not know that the third party is prohibited from disclosing the information. Subject to the foregoing provisions of this Section 12.9, Collateral Agent and the Lenders may use confidential information for the development of client databases, and market analysis. The provisions of the immediately preceding sentence shall survive the termination of this Agreement. The agreements provided under this Section 12.9 supersede all prior agreements, understanding, representations, warranties, and negotiations between the parties about the subject matter of this Section 12.9.

12.10 Right of Set Off. Borrower hereby grants to Collateral Agent and to each Lender, a lien, security interest and right of set off as security for all Obligations to Collateral Agent and each Lender hereunder, whether now existing or hereafter arising upon and against all deposits, credits, collateral and property, now or hereafter in the possession, custody, safekeeping or control of Collateral Agent or the Lenders or any entity under the control of Collateral Agent or the Lenders (including a Collateral Agent affiliate) or in transit to any of them. At any time after the occurrence and during the continuance of an Event of Default, without demand or notice, Collateral Agent or the Lenders may set off the same or any part thereof and apply the same to any liability or obligation of Borrower even though unmatured and regardless of the adequacy of any other collateral securing the Obligations. ANY AND ALL RIGHTS TO REQUIRE COLLATERAL AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES THE OBLIGATIONS, PRIOR TO EXERCISING ITS RIGHT OF SETOFF WITH RESPECT TO SUCH DEPOSITS, CREDITS OR OTHER PROPERTY OF BORROWER ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

12.11 Cooperation of Borrower. If necessary, Borrower agrees to (i) execute any documents (including new Secured Promissory Notes) reasonably required to effectuate and acknowledge each assignment of a Term Loan Commitment or Loan to an assignee in accordance with Section 12.1, (ii) make Borrower's management available to meet with Collateral Agent and prospective participants and assignees of Term Loan Commitments or Credit Extensions (which meetings shall be conducted no more often than twice every twelve months unless an Event of Default has occurred and is continuing), and (iii) assist Collateral Agent or the Lenders in the preparation of information relating to the financial affairs of Borrower as any prospective participant or assignee of a Term Loan Commitment or Term Loan reasonably may request. Subject to the provisions of Section 12.9, Borrower authorizes each Lender to disclose to any prospective participant or assignee of a Term Loan Commitment, any and all information in such Lender's possession concerning Borrower and its financial affairs which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement, or which has been delivered to such Lender by or on behalf of Borrower in connection with such Lender's credit evaluation of Borrower prior to entering into this Agreement.

13. DEFINITIONS

13.1 Definitions. As used in this Agreement, the following terms have the following meanings:

"**Account**" is any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes, without limitation, all accounts receivable and other sums owing to Borrower.

"**Account Debtor**" is any "account debtor" as defined in the Code with such additions to such term as may hereafter be made.

"**Affiliate**" of any Person is a Person that owns or controls directly or indirectly the Person, any Person that controls or is controlled by or is under common control with the Person, and each of that Person's senior executive officers, directors, partners and, for any Person that is a limited liability company, that Person's managers and members.

"**Agreement**" is defined in the preamble hereof.

"**Amortization Date**" is, May 1, 2022; provided that, if the Term B Loan is made and Borrower is in compliance at all times during the Initial Interest Only Period with the Minimum Net Sales covenant set forth in Section 6.10 as evidenced by the most recently delivered Compliance Certificate, then the Amortization Date shall be May 1, 2023.

"**Annual Projections**" is defined in Section 6.2(a).

"**Anti-Terrorism Laws**" are any laws relating to terrorism or money laundering, including Executive Order No. 13224 (effective September 24, 2001), the USA PATRIOT Act, the laws comprising or implementing the Bank Secrecy Act, and the laws administered by OFAC.

"**Approved Fund**" is any (i) investment company, fund, trust, securitization vehicle or conduit that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business or (ii) any Person (other than a natural person) which temporarily warehouses loans for any Lender or any entity described in the preceding clause (i) and that, with respect to each of the preceding clauses (i) and (ii), is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) a Person (other than a natural person) or an Affiliate of a Person (other than a natural person) that administers or manages a Lender.

"**Approved Lender**" is defined in Section 12.1.

"**Basic Rate**" is the per annum rate of interest (based on a year of three hundred sixty (360) days) equal to the sum of (I) the greater of (a) the thirty (30) day U.S. LIBOR rate reported in The Wall Street Journal on the last Business Day of the month that immediately precedes the month in which the interest will accrue, and (b) two and one-half percent (2.50%), *plus* (II) seven percent (7.00%). Notwithstanding the foregoing, the Basic Rate shall not be less than nine and one-half percent (9.50%). If The Wall Street Journal (or another nationally recognized rate reporting source acceptable to Collateral Agent) no longer reports the U.S. LIBOR Rate or if such interest rate no longer exists or if The Wall Street Journal no longer publishes the U.S. LIBOR Rate or ceases to exist, Collateral Agent may in good faith select a replacement interest rate or replacement publication, as the case may be.

"**Blocked Person**" is any Person: (a) listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (b) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224, (c) a Person with which any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law, (d) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224, or (e) a Person that is named a "specially designated national" or "blocked person" on the most current list published by OFAC or other similar list.

"**Board of Directors**" shall mean the Borrower's board of directors, and/or any applicable committee thereof

"**Borrower**" is defined in the preamble hereof.

"**Borrower's Books**" are Borrower's or any of its Subsidiaries' books and records including ledgers, federal, and state tax returns, records regarding Borrower's or its Subsidiaries' assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

"**Business Day**" is any day that is not a Saturday, Sunday or a day on which Collateral Agent is closed.

"**Cash Equivalents**" are (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency or any State thereof having maturities of not more than one (1) year from the date of acquisition; (b) commercial paper maturing no more than one (1) year after its creation and having the highest rating from either Standard & Poor's Ratings Group or Moody's Investors Service, Inc.; (c) certificates of deposit maturing no more than one (1) year after issue provided that the account in which any such certificate of deposit is maintained is subject to a Control Agreement in favor of Collateral Agent; and (d) marketable short-term money market and similar funds having a rating of at least P-2 or A-2 from either Moody's or SP, respectively (or, if at any time neither Standard & Poor's Ratings Group nor Moody's Investors Service, Inc. shall be rating such obligations, an equivalent rating from another nationally recognized statistical rating agency selected by the Borrower). For the avoidance of doubt, the direct purchase by Borrower or any of its Subsidiaries of any Auction Rate Securities, or purchasing participations in, or entering into any type of swap or other derivative transaction, or otherwise holding or engaging in any ownership interest in any type of Auction Rate Security by Borrower or any of its Subsidiaries shall be conclusively determined by the Lenders as an ineligible Cash Equivalent, and any such transaction shall expressly violate each other provision of this Agreement governing Permitted Investments. Notwithstanding the foregoing, Cash Equivalents does not include and Borrower, and each of its Subsidiaries, are prohibited from purchasing, purchasing participations in, entering into any type of swap or other equivalent derivative transaction, or otherwise holding or engaging in any ownership interest in any type of debt instrument, including, without limitation, any corporate or municipal bonds with a long-term nominal maturity for which the interest rate is reset through a dutch auction and more commonly referred to as an auction rate security (each, an "**Auction Rate Security**").

"**Claims**" are defined in Section 12.2.

"**Code**" is the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of California; provided, that, to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, or priority of, or remedies with respect to, Collateral Agent's Lien on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of California, the term "Code" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority, or remedies and for purposes of definitions relating to such provisions.

"**Collateral**" is any and all properties, rights and assets of Borrower described on Exhibit A.

"**Collateral Account**" is any Deposit Account, Securities Account, or Commodity Account, maintained by Borrower or any domestic Subsidiary at any time, but excluding any Excluded Account.

"**Collateral Agent**" is, Oxford, not in its individual capacity, but solely in its capacity as agent on behalf of and for the benefit of the Lenders.

"**Commitment Percentage**" is set forth in Schedule 1.1, as amended from time to time.

"**Commodity Account**" is any "commodity account" as defined in the Code with such additions to such term as may hereafter be made.

"**Communication**" is defined in Section 10.

"**Compliance Certificate**" is that certain certificate in the form attached hereto as Exhibit C.

"**Contingent Obligation**" is, for any Person, any direct or indirect liability, contingent or not, of that Person for (a) any indebtedness, lease, dividend, letter of credit or other obligation of another such as an obligation directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse by that Person, or for which that Person is directly or indirectly liable; (b) any obligations for undrawn letters of credit for the account of that Person; and (c) all obligations from any interest rate, currency or commodity swap agreement, interest rate cap or collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; but "Contingent Obligation" does not include endorsements in the ordinary course of business. The amount of a Contingent Obligation is the stated or determined amount of the primary obligation for which the Contingent Obligation is made or, if not determinable, the maximum reasonably anticipated liability for it determined by the Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" is any control agreement entered into among the depository institution at which Borrower or any of its Subsidiaries maintains a Deposit Account or the securities intermediary or commodity intermediary at which Borrower or any of its Subsidiaries maintains a Securities Account or a Commodity Account, Borrower and such Subsidiary, and Collateral Agent pursuant to which Collateral Agent obtains control (within the meaning of the Code) for the benefit of the Lenders over such Deposit Account, Securities Account, or Commodity Account.

"**Copyrights**" are any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished.

"**Credit Extension**" is any Term Loan or any other extension of credit by Collateral Agent or Lenders for Borrower's benefit.

"**Daewoong**" is Daewoong Pharmaceuticals Co., Ltd.

"**Daewoong License**" is that certain License & Supply Agreement between Daewoong and Borrower, dated as of September 30, 2013 (as amended from time to time through the Effective Date).

"**Default Rate**" is defined in Section 2.3(b).

"**Deposit Account**" is any "deposit account" as defined in the Code with such additions to such term as may hereafter be made.

"**Designated Deposit Account**" is Borrower's deposit account, account number 1453627271, maintained with Bank of America, as such account may be updated by the Borrower by providing no less than ten (10) days' prior written notice to the Collateral Agent.

"**Disbursement Letter**" is that certain form attached hereto as Exhibit B

"**Dollars**," "**dollars**" and "$" each mean lawful money of the United States.

"**Effective Date**" is defined in the preamble of this Agreement.

"**Eligible Assignee**" is (i) a Lender, (ii) an Affiliate of a Lender, (iii) an Approved Fund and (iv) any commercial bank, savings and loan association or savings bank or any other entity which is an "accredited investor" (as defined in Regulation D under the Securities Act of 1933, as amended) and which extends credit or buys loans as one of its businesses, including insurance companies, mutual funds, lease financing companies and commercial finance companies, in each case, which either (A) has a rating of BBB or higher from Standard & Poor's Rating Group and a rating of Baa2 or higher from Moody's Investors Service, Inc. at the date that it becomes a Lender or (B) has total assets in excess of Five Billion Dollars ($5,000,000,000.00), and in each case of clauses (i) through (iv), which, through its applicable lending office, is capable of lending to Borrower without the imposition of any withholding or similar taxes; provided that notwithstanding the foregoing, "Eligible Assignee" shall not include, unless an Event of Default has occurred and is continuing, (i) Borrower or any of Borrower's Affiliates or Subsidiaries or (ii) a direct competitor of Borrower or a vulture hedge fund, each as determined by Collateral Agent. Notwithstanding the foregoing, (x) in connection with assignments by a Lender due to a forced divestiture at the request of any regulatory agency, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party and (y) in connection with a Lender's own financing or securitization transactions, the restrictions set forth herein shall not apply and Eligible Assignee shall mean any Person or party providing such financing or formed to undertake such securitization transaction and any transferee of such Person or party upon the occurrence of a default, event of default or similar occurrence with respect to such financing or securitization transaction; provided that no such sale, transfer, pledge or assignment under this clause (y) shall release such Lender from any of its obligations hereunder or substitute any such Person or party for such Lender as a party hereto until Collateral Agent shall have received and accepted an effective assignment agreement from such Person or party in form satisfactory to Collateral Agent executed, delivered and fully completed by the applicable parties thereto, and shall have received such other information regarding such Eligible Assignee as Collateral Agent reasonably shall require.

"**Equipment**" is all "equipment" as defined in the Code with such additions to such term as may hereafter be made, and includes without limitation all machinery, fixtures, goods, vehicles (including motor vehicles and trailers), and any interest in any of the foregoing.

"**ERISA**" is the Employee Retirement Income Security Act of 1974, as amended, and its regulations.

"**Event of Default**" is defined in Section 8.

"**Excluded Accounts**" are deposit accounts exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for the benefit of Borrower's, or any of its Subsidiaries', employees and identified to Collateral Agent by Borrower as such in the Perfection Certificates; so long as the total deposits in any such account does not exceed Fifty Thousand Dollars ($50,000.00) individually or One Hundred Thousand Dollars ($100,000.00) in all such accounts in the aggregate.

"**Existing Indebtedness**" is the unsecured indebtedness of Borrower to J. Christopher Marmo, as Contributors' Representative, in the original principal amount of Twenty Million Dollars ($20,000,000.00).

"**Final Payment**" is a payment (in addition to and not a substitution for the regular monthly payments of principal plus accrued interest) due on the earliest to occur of (a) the Maturity Date, or (b) the acceleration of any Term Loan, or (c) the prepayment of a Term Loan pursuant to Section 2.2(c) or (d), equal to the original principal amount of such Term Loan multiplied by the Final Payment Percentage, payable to Lenders in accordance with their respective Pro Rata Shares.

"**Final Payment Percentage**" is five and one-half percent (5.50%).

"**Foreign Subsidiary**" is a Subsidiary that is not an entity organized under the laws of the United States or any territory thereof.

"**Funding Date**" is any date on which a Credit Extension is made to or on account of Borrower which shall be a Business Day.

"**GAAP**" is generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other Person as may be approved by a significant segment of the accounting profession in the United States, which are applicable to the circumstances as of the date of determination; provided, however, that if Borrower notifies Collateral Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Effective Date in GAAP or in the application thereof on the operation of such provision (or if Collateral Agent notifies Borrower that Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith.

"**General Intangibles**" are all "general intangibles" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation, all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work, whether published or unpublished, any patents, trademarks, service marks and, to the extent permitted under applicable law, any applications therefor, whether registered or not, any trade secret rights, including any rights to unpatented inventions, payment intangibles, royalties, contract rights, goodwill, franchise agreements, purchase orders, customer lists, route lists, telephone numbers, domain names, claims, income and other tax refunds, security and other deposits, options to purchase or sell real or personal property, rights in all litigation presently or hereafter pending (whether in contract, tort or otherwise), insurance policies (including without limitation key man, property damage, and business interruption insurance), payments of insurance and rights to payment of any kind.

"**Governmental Approval**" is any consent, authorization, approval, order, license, franchise, permit, certificate, accreditation, registration, filing or notice, of, issued by, from or to, or other act by or in respect of, any Governmental Authority.

"**Governmental Authority**" is any nation or government, any state or other political subdivision thereof, any agency, authority, instrumentality, regulatory body, 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.

"**Gross Sales**" is units sold multiplied by list price for such units.

"**Guarantor**" is any Person providing a Guaranty in favor of Collateral Agent.

"**Guaranty**" is any guarantee of all or any part of the Obligations, as the same may from time to time be amended, restated, modified or otherwise supplemented.

"**Indebtedness**" is (a) indebtedness for borrowed money or the deferred price of property or services (except any earn-out obligations until such obligation is reflected as a liability on the balance sheet (excluding any footnotes thereto) of such Person in accordance with GAAP and is not paid within 30 days after becoming due and payable), such as reimbursement and other obligations for surety bonds and letters of credit, (b) obligations evidenced by notes, bonds, debentures or similar instruments, (c) capital lease obligations, and (d) Contingent Obligations.

"**Indemnified Person**" is defined in Section 12.2.

"**Initial Interest-Only Period**" is the period from the Effective Date through May 1, 2022.

"**Insolvency Proceeding**" is any proceeding by or against any Person under the United States Bankruptcy Code, or any other bankruptcy or insolvency law, including assignments for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other relief.

"**Insolvent**" means not Solvent.

"**Intellectual Property**" means all of Borrower's or any Subsidiary's right, title and interest in and to the following:

(a) its Copyrights, Trademarks and Patents;

(b) any and all trade secrets and trade secret rights, including, without limitation, any rights to unpatented inventions, know-how, operating manuals;

(c) any and all source code;

(d) any and all design rights which may be available to Borrower;

(e) any and all claims for damages by way of past, present and future infringement of any of the foregoing, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the Intellectual Property rights identified above; and

(f) all amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents.

"**Inventory**" is all "inventory" as defined in the Code in effect on the date hereof with such additions to such term as may hereafter be made, and includes without limitation all merchandise, raw materials, parts, supplies, packing and shipping materials, work in process and finished products, including without limitation such inventory as is temporarily out of any Person's custody or possession or in transit and including any returned goods and any documents of title representing any of the above.

"**Investment**" is any beneficial ownership interest in any Person (including stock, partnership interest or other securities), and any loan, advance or capital contribution to any Person.

"**IP Agreement**" is that certain Intellectual Property Security Agreement entered into by and between Borrower and Collateral Agent dated as of the Effective Date, as such may be amended from time to time.

"**Key Person**" is each of Borrower's (i) President and Chief Executive Officer, who is David Moatazedi as of the Effective Date, (ii) Chief Financial Officer and Executive Vice President, Corporate Development, who is Lauren Silvernail as of the Effective Date and (iii) Chief Medical Officer and Head of Research and Development, who is Rui Avelar as of the Effective Date.

"**Lender**" is any one of the Lenders.

"**Lenders**" are the Persons identified on Schedule 1.1 hereto and each assignee that becomes a party to this Agreement pursuant to Section 12.1.

"**Lenders' Expenses**" are all audit fees and expenses, costs, and expenses (including reasonable and documented attorneys' fees and expenses, as well as appraisal fees, fees incurred on account of lien searches, inspection fees, and filing fees) for preparing, amending, negotiating, administering, defending and enforcing the Loan Documents (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings) or otherwise incurred by Collateral Agent and/or the Lenders in connection with the Loan Documents.

"**Lien**" is a claim, mortgage, deed of trust, levy, charge, pledge, security interest, or other encumbrance of any kind, whether voluntarily incurred or arising by operation of law or otherwise against any property; provided that in no event shall an operating lease in and of itself be deemed a Lien.

"**Loan Documents**" are, collectively, this Agreement, the Perfection Certificates, each Compliance Certificate, each Disbursement Letter, [the Post Closing Letter,] the IP Agreement, any subordination agreements, any note, or notes or guaranties executed by Borrower or any other Person, and any other present or future agreement entered into by Borrower, any Guarantor or any other Person for the benefit of the Lenders and Collateral Agent in connection with, and any amendment or joinder to, this Agreement; all as amended, restated, or otherwise modified.

"**Material Adverse Change**" is (a) a material impairment in the perfection or priority of Collateral Agent's Lien in the Collateral or in the value of such Collateral; (b) a material adverse change in the business, operations or condition (financial or otherwise) or prospects of Borrower or any Subsidiary; or (c) a material impairment of the prospect of repayment of any portion of the Obligations.

"**Maturity Date**" is March 1, 2024.

"**Net Sales**" means Gross Sales less Pricing Discounts.

"**Net Sales Event**" is the initial achievement by Borrower, as of the last day of any fiscal month, of trailing [***] ([***]) months' Net Sales of at least [***] Dollars ($[***]); determined by Collateral Agent, based upon its reasonable discretion, based upon written evidence provided by Borrower, and satisfactory, to Collateral Agent.

"**Obligations**" are all of Borrower's obligations to pay when due any debts, principal, interest, Lenders' Expenses, the Prepayment Fee, the Final Payment, the Unused Fee and other amounts Borrower owes the Lenders now or later, in connection with, related to, following, or arising from, out of or under, this Agreement or, the other Loan Documents, or otherwise, and including interest accruing after Insolvency Proceedings begin (whether or not allowed) and debts, liabilities, or obligations of Borrower assigned to the Lenders and/or Collateral Agent, and the performance of Borrower's duties under the Loan Documents.

"**OFAC**" is the U.S. Department of Treasury Office of Foreign Assets Control.

"**OFAC Lists**" are, collectively, the Specially Designated Nationals and Blocked Persons List maintained by OFAC pursuant to Executive Order No. 13224, 66 Fed. Reg. 49079 (Sept. 25, 2001) and/or any other list of terrorists or other restricted Persons maintained pursuant to any of the rules and regulations of OFAC or pursuant to any other applicable Executive Orders.

"**Operating Documents**" are, for any Person, such Person's formation documents, and, (a) if such Person is a corporation, its bylaws, (b) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (c) if such Person is a partnership, its partnership agreement (or similar agreement), each of the foregoing with all current amendments or modifications thereto.

"**Patents**" means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

"**Payment Date**" is the first (1st) calendar day of each calendar month, commencing on May 1, 2019.

"**Pending Litigation**" is the litigation described in the Perfection Certificate delivered by Borrower as of the Effective Date, and such other litigation pending or threatened as of the Effective Date, or any other material litigation disclosed by Borrower to the Securities and Exchange Commission, and any litigation arising out of or related thereto.

"**Perfection Certificate**" and "**Perfection Certificates**" is defined in Section 5.1.

"**Permitted Acquisition**" is any transaction or series of related transactions resulting in the acquisition by Borrower or any Subsidiary, whether by purchase, merger or otherwise, of all or substantially all of the assets of, all of the equity interests of, or a business line or unit or a division of, any Person, provided that:

(a) immediately prior to, and after giving effect thereto, no Event of Default shall have occurred and be continuing or would result therefrom;

(b) all transactions in connection therewith shall be consummated, in all material respects, in accordance with applicable law;

(c) cash consideration for the Permitted Acquisitions shall not exceed (i) One Million Dollars ($1,000,000.00) in any fiscal year and (ii) Five Million Dollars ($5,000,000.00) in the aggregate over the term of this Agreement; and non-cash acquisition consideration for the Permitted Acquisitions shall consist solely of equity interests of Borrower and be subject to the limitation on changes of ownership of Borrower set forth in Section 7.2;

(d) in the case of the purchase or other acquisition of equity interests, all of the equity interests acquired or otherwise issued by such Person or any newly formed Subsidiary in connection with such acquisition shall be wholly owned by Borrower;

(e) Borrower shall have delivered to the Collateral Agent and Lenders at least fifteen (15) Business Days (or such shorter period as may be acceptable to Collateral Agent and Lenders) prior to such proposed acquisition (i) a copy of the purchase agreement related to the proposed acquisition (and any related documents reasonably requested by the Collateral Agent and Lenders), (ii) a general description of the acquired assets or acquired business line or unit or division and the competitive position of such business line or unit or division within the industry, (iii) the sources and uses of funds to finance the proposed acquisition and (iv) to the extent available, quarterly and annual audited financial statements of the Person whose equity interests or assets are being acquired for the twelve (12) month period immediately prior to such proposed acquisition;

(f) such Permitted Acquisition shall only comprise a business, or those assets of a business, in substantially the same business or lines of business in which Borrower and its Subsidiaries are engaged; and

(g) such Permitted Acquisition shall be non-hostile and shall have been approved by the target's board of directors.

Notwithstanding anything to the contrary contained herein, in order for any acquisition of equity interests or assets of another Person to constitute a "Permitted Acquisition", Borrower must comply with all of the following:

(A) concurrent with the closing of such Permitted Acquisition, Borrower (or the applicable Subsidiary) making such Permitted Acquisition and the target shall have executed such documents and taken such actions as may be required under Section 6.12;

(B) Borrower (or the applicable Subsidiary) shall have delivered to Collateral Agent and Lenders, in form and substance satisfactory to the Collateral Agent and Lenders and sufficiently in advance (and in any case no later than ten (10) Business Days prior to such Permitted Acquisition), such other financial information, financial analysis, documentation or other information relating to such Permitted Acquisition and the pro forma certifications required by clause (C) below, in each case, as Collateral Agent and Lenders shall reasonably request; and

(C) on or prior to the date of such Permitted Acquisition, the Collateral Agent and Lenders shall have received, in form and substance reasonably satisfactory to the Collateral Agent and Lenders, a certificate of a Responsible Officer certifying compliance with the requirements contained in this definition of "Permitted Acquisitions" and with the other terms of the Loan Documents (before and after giving effect to such Permitted Acquisition).

"**Permitted Indebtedness**" is:

(a) Borrower's Indebtedness to the Lenders and Collateral Agent under this Agreement and the other Loan Documents;

(b) Indebtedness existing on the Effective Date and disclosed on the Perfection Certificate(s);

(c) Subordinated Debt;

(d) unsecured Indebtedness to trade creditors incurred in the ordinary course of business;

(e) Indebtedness consisting of capitalized lease obligations and purchase money Indebtedness, in each case incurred by Borrower or any of its Subsidiaries to finance the acquisition, repair, improvement or construction of fixed or capital assets of such person, provided that (i) the aggregate outstanding principal amount of all such Indebtedness does not exceed One Million Dollars ($1,000,000.00) at any time and (ii) the principal amount of such Indebtedness does not exceed the lower of the cost or fair market value of the property so acquired or built or of such repairs or improvements financed with such Indebtedness (each measured at the time of such acquisition, repair, improvement or construction is made);

(f) Indebtedness incurred as a result of endorsing negotiable instruments received in the ordinary course of Borrower's business;

(g) the Existing Indebtedness (and any refinancings thereof, provided that the principal amount thereof is not increased or the terms thereof are not modified to impose materially more burdensome terms upon Borrower, and the holder thereof agrees to a subordination agreement in form and content reasonably acceptable to, and in favor or, Collateral Agent;

(h) Guarantees by any of Borrower's Subsidiaries in respect of Indebtedness of Borrower otherwise permitted hereunder;

(i) Indebtedness in respect of any cash management services, corporate credit cards, netting services, automatic clearinghouse arrangements, overdraft protections, employee credit card programs and other cash management and similar arrangements in the ordinary course of business and any guarantees thereof; not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate at any time during the term of this Agreement;

(j) Indebtedness consisting of obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by Borrower or any of its Subsidiaries, in each case in the ordinary course of business; not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate at any time during the term of this Agreement;

(k) Indebtedness incurred by the Borrower or any of its Subsidiaries in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business or consistent with past practice; not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate at any time during the term of this Agreement;

(l) Indebtedness consisting of the Permitted Revolving Line and any refinancings thereof; and

(m) unsecured Indebtedness in an amount not to exceed One Million Dollars ($1,000,000.00) in the aggregate at all times during the term of this Agreement.

"**Permitted Investments**" are:

(a) Investments disclosed on the Perfection Certificate(s) and existing on the Effective Date;

(b) (i) Investments consisting of cash and Cash Equivalents, and (ii) Investments permitted by Borrower's investment policy, as amended from time to time, provided that such investment policy has been approved by Borrower's Board of Directors (for the avoidance of doubt, which may be solely its audit committee) and provided to the Collateral Agent;

(c) Investments consisting of the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of Borrower;

(d) Investments consisting of deposit accounts in which Collateral Agent has a perfected security interest;

(e) Investments in connection with Transfers permitted by Section 7.1;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee loans and advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower or its Subsidiaries pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors; not to exceed One Million Dollars ($1,000,000.00) in the aggregate for (i) and (ii) in any fiscal year;

(g) Investments (including debt obligations) received in connection with the bankruptcy or reorganization of customers or suppliers and in settlement of delinquent obligations of, and other disputes with, customers or suppliers arising in the ordinary course of business;

(h) Investments consisting of notes receivable of, or prepaid royalties and other credit extensions, to customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this paragraph (h) shall not apply to Investments of Borrower in any Subsidiary;

(i) Investments in joint ventures or strategic alliances in the ordinary course of Borrower's business (including in connection with distribution arrangements), provided that any cash Investments in all such joint ventures and strategic alliances by Borrower shall not exceed One Million Dollars ($1,000,000.00) in the aggregate in any fiscal year;

(j) Investments in unfinanced capital expenditures in connection with transactions not prohibit hereunder, in the ordinary course of business, and approved by Borrower's Board of Directors; not to exceed Five Hundred Thousand Dollars ($500,000.00) in the aggregate at any time;

(k) Investments by Borrower in Subsidiaries and Investments by Subsidiaries in other Subsidiaries or Borrower; provided that Investments by Borrower or any Guarantor in any non-Guarantor shall not exceed in the aggregate Two Hundred Fifty Thousand Dollars ($250,000.00) in the aggregate at any time;

(l) Investments in connection with any license and/or distribution arrangement permitted under Section 7.1 and Section 7.8; and

(m) Investments consisting of Permitted Acquisitions.

"**Permitted Licenses**" are (A) licenses of over-the-counter software that is commercially available to the public, and (B) non-exclusive and exclusive licenses for the use of the Intellectual Property of Borrower or any of its Subsidiaries entered into in the ordinary course of business, provided, that, with respect to each such license described in clause (B), (i) no Event of Default has occurred or is continuing at the time of such license; (ii) the license constitutes an arms-length transaction, the terms of which, on their face, do not provide for a sale or assignment of any Intellectual Property and do not restrict the ability of Borrower or any of its Subsidiaries, as applicable, to pledge, grant a security interest in or lien on, or assign or otherwise Transfer any Intellectual Property; (iii) in the case of any exclusive license, (x) Borrower delivers ten (10) days' prior written notice and a brief summary of the terms of the proposed license to Collateral Agent and the Lenders and delivers to Collateral Agent and the Lenders copies of the final executed licensing documents in connection with the exclusive license promptly upon consummation thereof, and (y) any such license could not result in a legal transfer of title of the licensed property but may be exclusive in respects other than territory and may be exclusive as to territory only as to discrete geographical areas outside of the United States; and (iv) all upfront payments, royalties, milestone payments or other proceeds arising from the licensing agreement that are payable to Borrower or any of its Subsidiaries are paid to a Collateral Account.

"**Permitted Liens**" are:

(a) Liens existing on the Effective Date and disclosed on the Perfection Certificates and arising under this Agreement and the other Loan Documents;

(b) Liens for taxes, fees, assessments or other government charges or levies, either (i) not due and payable or (ii) being contested in good faith and for which Borrower maintains adequate reserves on its Books, provided that no notice of any such Lien has been filed or recorded under the Internal Revenue Code of 1986, as amended, and the Treasury Regulations adopted thereunder;

(c) liens securing Indebtedness permitted under clause (e) of the definition of "**Permitted Indebtedness**," provided that (i) such liens exist prior to the acquisition of, or attach substantially simultaneous with, or within twenty (20) days after the, acquisition, lease, repair, improvement or construction of, such property financed or leased by such Indebtedness and (ii) such liens do not extend to any property of Borrower other than the property (and proceeds thereof) acquired, leased or built, or the improvements or repairs, financed by such Indebtedness;

(d) Liens of carriers, warehousemen, landlords (contractual or otherwise), suppliers, or other Persons that are possessory in nature arising in the ordinary course of business so long as such Liens secure liabilities in the aggregate amount not to exceed One Hundred Thousand Dollars ($100,000.00), and which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings which proceedings have the effect of preventing the forfeiture or sale of the property subject thereto;

(e) Liens to secure payment of workers' compensation, employment insurance, old-age pensions, social security and other like obligations incurred in the ordinary course of business (other than Liens imposed by ERISA);

(f) Liens incurred in the extension, renewal or refinancing of the indebtedness secured by Liens described in (a) through (c), but any extension, renewal or replacement Lien must be limited to the property encumbered by the existing Lien and the principal amount of the indebtedness may not increase;

(g) leases or subleases of real property granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), and leases, subleases, non-exclusive licenses or sublicenses of personal property (other than Intellectual Property) granted in the ordinary course of Borrower's business (or, if referring to another Person, in the ordinary course of such Person's business), if the leases, subleases, licenses and sublicenses do not prohibit granting Collateral Agent or any Lender a security interest therein;

(h) banker's liens, rights of setoff and Liens in favor of financial institutions incurred in the ordinary course of business arising in connection with Borrower's deposit accounts or securities accounts held at such institutions solely to secure payment of fees and similar costs and expenses and provided such accounts are maintained in compliance with Section 6.6 hereof;

(i) Liens arising from judgments, decrees or attachments in circumstances not constituting an Event of Default under Section 8.4 or 8.7;

(j) Liens to secure repayment of the Permitted Revolving Line;

(k) Liens consisting of Permitted Licenses;

(l) Liens in favor of customs (including any customs brokerage firms) and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business; in an aggregate amount not to exceed One Hundred Thousand Dollars ($100,000.00);

(m) other Liens in an aggregate amount not to exceed Five Hundred Thousand Dollars ($500,000.00).

"**Permitted Revolving Line**" means a revolving line of credit in the principal amount not to exceed Twenty Five Million Dollars ($25,000,000.00), secured by Borrower's accounts receivable and inventory and the cash proceeds of both; provided that (i) Borrower shall have achieved trailing [***] ([***]) month Net Sales of at least [***] Dollars ($[***]); (ii) Oxford, in its capacity as a Lender, shall have the right of first refusal (but not the obligation) to provide Borrower the Permitted Revolving Line; and (iii) in the event Oxford, in its capacity as a Lender, does not provide Borrower the Permitted Revolving Line, then the lender providing the same shall execute in favor of Collateral Agent an intercreditor agreement in form and content acceptable to Collateral Agent in its sole discretion.

"**Person**" is any individual, sole proprietorship, partnership, limited liability company, joint venture, company, trust, unincorporated organization, association, corporation, institution, public benefit corporation, firm, joint stock company, estate, entity or government agency.

["**Post Closing Letter**" is that certain Post Closing Letter dated as of the Effective Date by and between Collateral Agent and Borrower.]

"**Prepayment Fee**" is, with respect to any Term Loan subject to prepayment prior to the Maturity Date, whether by mandatory or voluntary prepayment, acceleration or otherwise, an additional fee payable to the Lenders in amount equal to:

(i) for a prepayment made on or after the Effective Date through and including the first anniversary thereof, three percent (3.00%) of the principal amount of such Term Loan prepaid;

(ii) for a prepayment made after the first anniversary of the Effective Date through and including the second anniversary of the Effective Date, two percent (2.00%) of the principal amount of the Term Loans prepaid; and

(iii) for a prepayment made after the second anniversary of the Effective Date and prior to the Maturity Date, one percent (1.00%) of the principal amount of the Term Loans prepaid.

"**Pricing Discounts**" represent off-invoice pricing (excluding possible GAAP reserves for returns and marketing programs).

"**Pro Rata Share**" is, as of any date of determination, with respect to each Lender, a percentage (expressed as a decimal, rounded to the ninth decimal place) determined by dividing the outstanding principal amount of Term Loans held by such Lender by the aggregate outstanding principal amount of all Term Loans.

"**Registered Organization**" is any "registered organization" as defined in the Code with such additions to such term as may hereafter be made.

"**Required Lenders**" means (i) for so long as all of the Persons that are Lenders on the Effective Date (each an "**Original Lender**") have not assigned or transferred any of their interests in their Term Loan, Lenders holding one hundred percent (100%) of the aggregate outstanding principal balance of the Term Loan, or (ii) at any time from and after any Original Lender has assigned or transferred any interest in its Term Loan, Lenders holding at least sixty six percent (66%) of the aggregate outstanding principal balance of the Term Loan and, in respect of this clause (ii), (A) each Original Lender that has not assigned or transferred any portion of its Term Loan, (B) each assignee or transferee of an Original Lender's interest in the Term Loan, but only to the extent that such assignee or transferee is an Affiliate or Approved Fund of such Original Lender, and (C) any Person providing financing to any Person described in clauses (A) and (B) above; provided, however, that this clause (C) shall only apply upon the occurrence of a default, event of default or similar occurrence with respect to such financing.

"**Requirement of Law**" is any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"**Responsible Officer**" is any of the President, Chief Executive Officer, or Chief Financial Officer of Borrower acting in such capacity.

"**Second Draw Period**" is the period commencing on the date of the occurrence of the Net Sales Event and ending on the earliest of (i) sixty (60) days from the date of occurrence of the Net Sales Event, (ii) September 30, 2020 and (iii) the occurrence of an Event of Default; provided, however, that the Second Draw Period shall not commence if on the date of the occurrence of the Net Sales Event an Event of Default has occurred and is continuing.

"**Secured Promissory Note**" is defined in Section 2.4.

"**Secured Promissory Note Record**" is a record maintained by each Lender with respect to the outstanding Obligations owed by Borrower to Lender and credits made thereto.

"**Securities Account**" is any "securities account" as defined in the Code with such additions to such term as may hereafter be made.

"**Shares**" is one hundred percent (100%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or Borrower's Subsidiary, in any Subsidiary; provided that, in the event Borrower, demonstrates to Collateral Agent's reasonable satisfaction, that a pledge of more than sixty five percent (65%) of the Shares of such Subsidiary which is a Foreign Subsidiary, creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code, "Shares" shall mean sixty five percent (65%) of the issued and outstanding capital stock, membership units or other securities owned or held of record by Borrower or its Subsidiary in such Foreign Subsidiary.

"**Solvent**" is, with respect to any Person: the fair salable value of such Person's consolidated assets (including goodwill minus disposition costs) exceeds the fair value of such Person's liabilities; such Person is not left with unreasonably small capital after the transactions in this Agreement; and such Person is able to pay its debts (including trade debts) as they mature.

"**Subordinated Debt**" is indebtedness incurred by Borrower or any of its Subsidiaries subordinated to all Indebtedness of Borrower and/or its Subsidiaries to the Lenders (pursuant to a subordination, intercreditor, or other similar agreement in form and substance reasonably satisfactory to Collateral Agent and the Lenders entered into between Collateral Agent, Borrower, and/or any of its Subsidiaries, and the other creditor), on terms reasonably acceptable to Collateral Agent and the Lenders.

"**Subsidiary**" is, with respect to any Person, any Person of which more than fifty percent (50%) of the voting stock or other equity interests (in the case of Persons other than corporations) is owned or controlled, directly or indirectly, by such Person or through one or more intermediaries.

"**Term Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term A Loan**" is defined in Section 2.2(a)(i) hereof.

"**Term B Loan**" is defined in Section 2.2(a)(ii) hereof.

"**Term Loan Commitment**" is, for any Lender, the obligation of such Lender to make a Term Loan, up to the principal amount shown on Schedule 1.1**.** "**Term Loan Commitments**" means the aggregate amount of such commitments of all Lenders.

"**Trademarks**" means any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks.

"**Transfer**" is defined in Section 7.1.

"**Unused Fee**" is a payment (in addition to and not a substitution for any other fee or payment due hereunder) in the amount of Two Hundred Fifty Thousand Dollars ($250,000.00), due immediately upon expiration of the Second Draw Period, in the event Borrower achieves the Net Sales Event but does not request the Term B Loan, such fee payable to Lenders in accordance with their respective Pro Rata Shares.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

BORROWER:

EVOLUS, INC.

By /s/ David Moatazedi
Name: David Moatazedi
Title: President and Chief Executive Officer

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By /s/ Colette H. Featherly
Name: Colette H. Featherly
Title: Senior Vice President

SCHEDULE 1.1

Lenders and Commitments

Term A Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$75,000,000.00	100.00%
TOTAL	**$75,000,000.00**	**100.00%**

Term B Loans

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$25,000,000.00	100.00%
TOTAL	**$25,000,000.00**	**100.00%**

Aggregate (all Term Loans)

Lender	Term Loan Commitment	Commitment Percentage
OXFORD FINANCE LLC	$100,000,000.00	100.00%
TOTAL	**$100,000,000.00**	**100.00%**

EXHIBIT A

Description of Collateral

The Collateral consists of all of Borrower's right, title and interest in and to the following personal property:

All goods, Accounts (including health care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including all Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) more than sixty-five percent (65%) of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty-five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; and (ii) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral;" (iii) any Excluded Account; and (iv) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law.

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

EXHIBIT B

Form of Disbursement Letter

[see attached]

DISBURSEMENT LETTER

March 15, 2019

The undersigned, being the duly elected and acting President and Chief Executive Officer of EVOLUS, INC., a Delaware corporation with offices located at 520 Newport Center Drive, Suite 1200, Newport Beach CA 92660 ("**Borrower**"), does hereby certify to **OXFORD FINANCE LLC** ("**Oxford**" and "**Lender**"), as collateral agent (the "**Collateral Agent**") in connection with that certain Loan and Security Agreement dated as of March 15, 2019, by and among Borrower, Collateral Agent and the Lenders from time to time party thereto (the "**Loan Agreement**"; with other capitalized terms used below having the meanings ascribed thereto in the Loan Agreement) that:

1. The representations and warranties made by Borrower in Section 5 of the Loan Agreement and in the other Loan Documents are true and correct in all material respects as of the date hereof, provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

2. No event or condition has occurred that would constitute an Event of Default under the Loan Agreement or any other Loan Document.

3. Borrower is in compliance with the covenants and requirements contained in Sections 4, 6 and 7 of the Loan Agreement.

4. All conditions referred to in Section 3 of the Loan Agreement to the making of the Loan to be made on or about the date hereof have been satisfied or waived by Collateral Agent.

5. No Material Adverse Change has occurred.

6. The undersigned is a Responsible Officer.

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7. The proceeds of the Term A Loan shall be disbursed as follows:

Loan Amount	$75,000,000.00
Plus:	
--Deposit Received	$75,000.00
Less:	
--Facility Fee	($1,000,000.000)
--Interim Interest	($_____)
--Lender's Legal Fees	($_____)*
TOTAL TERM A LOAN NET PROCEEDS FROM OXFORD	**$_____**

8. The Term A Loan shall amortize in accordance with the Amortization Table attached hereto.

9. The aggregate net proceeds of the Term Loans shall be transferred to the Designated Deposit Account as follows:

Account Name:	EVOLUS, INC.
Bank Name:	Bank of America
Bank Address:	3428 Via Mercato Carlsbad, CA 75379
Account Number:	
ABA Number:	

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Dated as of the date first set forth above.

BORROWER:

EVOLUS, INC.

By__
Name:__
Title:__

COLLATERAL AGENT AND LENDER:

OXFORD FINANCE LLC

By__
Name:__
Title:__

AMORTIZATION TABLE
(Term A Loan)

[see attached]

EXHIBIT C

Compliance Certificate

TO: OXFORD FINANCE LLC, as Collateral Agent and Lender

FROM: EVOLUS, INC.

The undersigned authorized officer ("**Officer**") of EVOLUS, INC. ("**Borrower**"), hereby certifies that in accordance with the terms and conditions of the Loan and Security Agreement by and among Borrower, Collateral Agent, and the Lenders from time to time party thereto (the "**Loan Agreement**;" capitalized terms used but not otherwise defined herein shall have the meanings given them in the Loan Agreement),

(a) Borrower is in complete compliance for the period ending _____ with all required covenants except as noted below;

(b) There are no Events of Default, except as noted below;

(c) Except as noted below, all representations and warranties of Borrower stated in the Loan Documents are true and correct in all material respects on this date and for the period described in (a), above; provided, however, that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and provided, further that those representations and warranties expressly referring to a specific date shall be true, accurate and complete in all material respects as of such date.

(d) Borrower, and each of Borrower's Subsidiaries, has timely filed all required tax returns and reports, Borrower, and each of Borrower's Subsidiaries, has timely paid all foreign, federal, state, and local taxes, assessments, deposits and contributions owed by Borrower, or Subsidiary, except as otherwise permitted pursuant to the terms of Section 5.8 of the Loan Agreement;

(e) No Liens have been levied or claims made against Borrower or any of its Subsidiaries relating to unpaid employee payroll or benefits of which Borrower has not previously provided written notification to Collateral Agent and the Lenders.

Attached are the required documents, if any, supporting our certification(s). The Officer, on behalf of Borrower, further certifies that the attached financial statements are prepared in accordance with Generally Accepted Accounting Principles (GAAP) and are consistently applied from one period to the next except as explained in an accompanying letter or footnotes and except, in the case of unaudited financial statements, for the absence of footnotes and subject to year-end audit adjustments as to the interim financial statements.

Please indicate compliance status since the last Compliance Certificate by circling Yes, No, or N/A under "Complies" column.

	Reporting Covenant	Requirement	Actual	Complies		
1)	Financial statements	Quarterly within (i) 45 days (1st 3 fiscal quarters) and (ii) 90 days (4th fiscal quarter)		Yes	No	N/A
2)	Annual (CPA Audited) statements	Within 90 days after FYE		Yes	No	N/A
3)	Annual Financial Projections/Budget (prepared on a monthly basis)	Annually (within 30 days of FYE), and when revised		Yes	No	N/A
4)	8-K, 10-K and 10-Q Filings	Within 5 days of filing		Yes	No	N/A
5)	Compliance Certificate	Quarterly within 45 days		Yes	No	N/A
6)	IP Report	When required		Yes	No	N/A
7)	Total amount of Borrower's cash and cash equivalents at the last day of the measurement period		$_____			
8)	Total amount of Borrower's Subsidiaries' cash and cash equivalents at the last day of the measurement period		$_____			

Deposit and Securities Accounts
(Please list all accounts; attach separate sheet if additional space needed)

	Institution Name	Account Number	New Account?		Account Control Agreement in place?	
1)			Yes	No	Yes	No
2)			Yes	No	Yes	No
3)			Yes	No	Yes	No
4)			Yes	No	Yes	No

Financial Covenants (from and after Term B Loan advance through Maturity)

	Covenant	Requirement	Actual	Compliance	
1)	Minimum trailing 6 month Net Sales (quarterly)	At least $[***]	$	Yes	No

Other Matters

1)	Have there been any changes in executive management since the last Compliance Certificate?	Yes	No
2)	Have there been any transfers/sales/disposals/retirement of Collateral or IP prohibited by the Loan Agreement?	Yes	No
3)	Have there been any new or pending claims or causes of action against Borrower that could reasonably be expected to result in damages of more than Five Hundred Thousand Dollars ($500,000.00)?	Yes	No
4)	Have there been any amendments of or other changes to the Operating Documents of Borrower or any of its Subsidiaries? If yes, provide copies of any such amendments or changes with this Compliance Certificate.	Yes	No

Exceptions

Please explain any exceptions with respect to the certification above: (If no exceptions exist, state "No exceptions." Attach separate sheet if additional space needed.)

EVOLUS, INC.

By _____
Name: _____
Title: _____

Date:

LENDER USE ONLY

Received by:_____ Date: ___

Verified by: _____ Date: ___

Compliance Status: Yes No

EXHIBIT D

Form of Secured Promissory Note

[see attached]

SECURED PROMISSORY NOTE
(TERM A LOAN)

$_____ Dated: March __, 2019

FOR VALUE RECEIVED, the undersigned, EVOLUS, INC., a Delaware corporation with offices located at 520 Newport Center Drive, Suite 1200, Newport Beach CA 92660 ("**Borrower**") HEREBY PROMISES TO PAY to OXFORD FINANCE LLC ("**Lender**") the principal amount of [_____] MILLION DOLLARS ($_____) or such lesser amount as shall equal the outstanding principal balance of the Term A Loan made to Borrower by Lender, plus interest on the aggregate unpaid principal amount of such Term A Loan, at the rates and in accordance with the terms of the Loan and Security Agreement dated March __, 2019 by and among Borrower, Lender, Oxford Finance LLC, as Collateral Agent, and the other Lenders from time to time party thereto (as amended, restated, supplemented or otherwise modified from time to time, the "**Loan Agreement**"). If not sooner paid, the entire principal amount and all accrued and unpaid interest hereunder shall be due and payable on the Maturity Date as set forth in the Loan Agreement. Any capitalized term not otherwise defined herein shall have the meaning attributed to such term in the Loan Agreement.

Principal, interest and all other amounts due with respect to the Term A Loan, are payable in lawful money of the United States of America to Lender as set forth in the Loan Agreement and this Secured Promissory Note (this "**Note**"). The principal amount of this Note and the interest rate applicable thereto, and all payments made with respect thereto, shall be recorded by Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Note.

The Loan Agreement, among other things, (a) provides for the making of a secured Term A Loan by Lender to Borrower, and (b) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events.

This Note may not be prepaid except as set forth in Section 2.2 (c) and Section 2.2(d) of the Loan Agreement.

This Note and the obligation of Borrower to repay the unpaid principal amount of the Term A Loan, interest on the Term A Loan and all other amounts due Lender under the Loan Agreement is secured under the Loan Agreement.

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 Note are hereby waived.

Borrower shall pay all reasonable fees and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred by Lender in the enforcement or attempt to enforce any of Borrower's obligations hereunder not performed when due.

This Note shall be governed by, and construed and interpreted in accordance with, the internal laws of the State of California.

The ownership of an interest in this Note shall be registered on a record of ownership maintained by Lender or its agent. Notwithstanding anything else in this Note to the contrary, the right to the principal of, and stated interest on, this 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 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 Note on the part of any other person or entity.

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IN WITNESS WHEREOF, Borrower has caused this Note to be duly executed by one of its officers thereunto duly authorized on the date hereof.

BORROWER:

EVOLUS, INC.

By_____
Name:_____
Title:_____

LOAN INTEREST RATE AND PAYMENTS OF PRINCIPAL

Date	Principal Amount	Interest Rate	Scheduled Payment Amount	Notation By

CORPORATE BORROWING CERTIFICATE

BORROWER: EVOLUS, INC. **DATE**: March __, 2019
Lender: OXFORD FINANCE LLC, as Collateral Agent and Lender

I hereby certify as follows, as of the date set forth above:

1. I am the Secretary, Assistant Secretary or other officer of Borrower. My title is as set forth below.

2. Borrower's exact legal name is set forth above. Borrower is a corporation existing under the laws of the State of Delaware.

3. Attached hereto as Exhibit A and Exhibit B, respectively, are true, correct and complete copies of (i) Borrower's Certificate of Incorporation (including amendments), as filed with the Secretary of State of the state in which Borrower is incorporated as set forth in paragraph 2 above; and (ii) Borrower's Bylaws. Neither such Certificate of Incorporation nor such Bylaws have been amended, annulled, rescinded, revoked or supplemented, and such Certificate of Incorporation and such Bylaws remain in full force and effect as of the date hereof.

4. The following resolutions were duly and validly adopted by Borrower's Board of Directors at a duly held meeting of such directors (or pursuant to a unanimous written consent or other authorized corporate action). Such resolutions are in full force and effect as of the date hereof and have not been in any way modified, repealed, rescinded, amended or revoked, and the Lenders may rely on them until each Lender receives written notice of revocation from Borrower.

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RESOLVED, that **any one** of the following officers or employees of Borrower, whose names, titles and signatures are below, may act on behalf of Borrower:

Name	Title	Signature	Authorized to Add or Remove Signatories
_____	_____	_____	☐
_____	_____	_____	☐
_____	_____	_____	☐
_____	_____	_____	☐

RESOLVED FURTHER, that **any one** of the persons designated above with a checked box beside his or her name may, from time to time, add or remove any individuals to and from the above list of persons authorized to act on behalf of Borrower.

RESOLVED FURTHER, that such individuals may, on behalf of Borrower:

Borrow Money. Borrow money from the Lenders.
Execute Loan Documents. Execute any loan documents any Lender requires.
Grant Security. Grant Collateral Agent a security interest in any of Borrower's assets.
Negotiate Items. Negotiate or discount all drafts, trade acceptances, promissory notes, or other indebtedness in which Borrower has an interest and receive cash or otherwise use the proceeds.
Further Acts. Designate other individuals to request advances, pay fees and costs and execute other documents or agreements (including documents or agreement that waive Borrower's right to a jury trial) they believe to be necessary to effectuate such resolutions.

RESOLVED FURTHER, that all acts authorized by the above resolutions and any prior acts relating thereto are ratified.

[*Balance of Page Intentionally Left Blank*]

5. The persons listed above are Borrower's officers or employees with their titles and signatures shown next to their names.

By:__

Name:__

Title:__

**** If the Secretary, Assistant Secretary or other certifying officer executing above is designated by the resolutions set forth in paragraph 4 as one of the authorized signing officers, this Certificate must also be signed by a second authorized officer or director of Borrower.*

I, the _____ of Borrower, hereby certify as to paragraphs 1 through 5 above, as
[print title]
of the date set forth above.

By:__

Name:__

Title:__

[*Signature Page to Corporate Borrowing Certificate*]

EXHIBIT A

Certificate of Incorporation (including amendments)

[see attached]

EXHIBIT B

Bylaws

[see attached]

DEBTOR: EVOLUS, INC.
SECURED PARTY: OXFORD FINANCE LLC, as Collateral Agent

EXHIBIT A TO UCC FINANCING STATEMENT

Description of Collateral

The Collateral consists of all of Debtor's right, title and interest in and to the following personal property:

All goods, Accounts (including health care receivables), Equipment, Inventory, contract rights or rights to payment of money, leases, license agreements, franchise agreements, General Intangibles (including all Intellectual Property), commercial tort claims, documents, instruments (including any promissory notes), chattel paper (whether tangible or electronic), cash, deposit accounts and other Collateral Accounts, all certificates of deposit, fixtures, letters of credit rights (whether or not the letter of credit is evidenced by a writing), securities, and all other investment property, supporting obligations, and financial assets, whether now owned or hereafter acquired, wherever located; and

All Borrower's Books relating to the foregoing, and any and all claims, rights and interests in any of the above and all substitutions for, additions, attachments, accessories, accessions and improvements to and replacements, products, proceeds and insurance proceeds of any or all of the foregoing.

Notwithstanding the foregoing, the Collateral does not include (i) more than sixty-five percent (65%) of the total combined voting power of all classes of stock entitled to vote the shares of capital stock (the "Shares") of any Foreign Subsidiary, if Borrower demonstrates to Collateral Agent's reasonable satisfaction that a pledge of more than sixty-five percent (65%) of the Shares of such Subsidiary creates a present and existing adverse tax consequence to Borrower under the U.S. Internal Revenue Code; and (ii) any license or contract, in each case if the granting of a Lien in such license or contract is prohibited by or would constitute a default under the agreement governing such license or contract (but (A) only to the extent such prohibition is enforceable under applicable law and (B) other than to the extent that any such term would be rendered ineffective pursuant to Sections 9-406, 9-408 or 9-409 (or any other Section) of Division 9 of the Code); provided that upon the termination, lapsing or expiration of any such prohibition, such license or contract, as applicable, shall automatically be subject to the security interest granted in favor of Collateral Agent hereunder and become part of the "Collateral;" (iii) any Excluded Account; and (iv) any intent-to-use trademark application prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent, if any, that, and solely during the period, if any, in which the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law.

Pursuant to the terms of a certain negative pledge arrangement with Collateral Agent and the Lenders, Borrower has agreed not to encumber any of its Intellectual Property.

Capitalized terms used but not defined herein have the meanings ascribed in the Uniform Commercial Code in effect in the State of California as in effect from time to time (the "Code") or, if not defined in the Code, then in the Loan and Security Agreement by and between Debtor, Secured Party and the other Lenders party thereto (as modified, amended and/or restated from time to time).

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SCHEDULE 7.8

Transactions with Affiliates

1. Services Agreement between the Borrower and ALPHAEON Corporation, dated on or around January 2018 with respect to completion of the initial public offering of the Borrower.

2. Separation Agreement, dated as of August 17, 2018 by and among the Borrower, ALPHAEON Corporation and J. Christopher Marmo Ph.D.

3. Distribution Agreement with Clarion Medical Technologies, dated as of November 30, 2017, for an exclusive distribution and supply of DWP-450 in Canada.

4. Therapeutic Option Letter Agreement between the Borrower and ALPHAEON Corporation, dated as of December 18, 2017, where certain rights to the therapeutic indications of DWP-450 under the Daewoong Agreement were transferred by the Borrower to ALPHAEON Corporation.

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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

   (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: May 1, 2019

/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, Lauren Silvernail, 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(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) 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) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

   (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: May 1, 2019

/s/ Lauren Silvernail

Lauren Silvernail
Chief Financial Officer and Executive Vice President, Corporate Development
(Principal Financial Officer)

Exhibit 32.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER 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, the Quarterly Report on Form 10-Q of Evolus, Inc. for the quarter ended March 31, 2019 fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Evolus, Inc.

Date: May 1, 2019

By: /s/ David Moatazedi

David Moatazedi

President and Chief Executive Officer

(Principal Executive Officer)

Date: May 1, 2019

By: /s/ Lauren Silvernail

Lauren Silvernail

Chief Financial Officer and Executive Vice President, Corporate Development

(Principal Financial Officer)