EVOLUS, INC.

FORM 10-Q
(Quarterly Report)

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Address	520 NEWPORT CENTER DRIVE SUITE 1200 NEWPORT BEACH, CA, 92660
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-Q

(Mark One)

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

For the quarterly period ended June 30, 2025

or

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

For the transition period from _____ to _____

Commission File Number: 001-38381

EVOLUS, INC.

(Exact name of registrant as specified in its charter)

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

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

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

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

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

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

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

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

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

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

As of August 1, 2025, 64,685,419 shares of the registrant's common stock, par value $0.00001, were outstanding.

TABLE OF CONTENTS

Special Note Regarding Forward-Looking Statements

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

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

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

Summary of Risk Factors

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

- We have incurred significant losses since our inception.
- Jeuveau®, Evolysse™ Form and Evolysse™ Smooth face, and any of our future product candidates will face, significant competition and our failure to effectively compete may prevent us from maintaining our market share and expansion.
- Our products may fail to achieve the broad degree of aesthetic practitioner adoption and use or consumer demand necessary for continued commercial success.
- Our products rely on consumer discretionary spending and the purchasing decisions of our customers, both of which are sensitive to global economic conditions, including the imposition of tariffs, or changes in consumer or customer sentiment.

- Our business is subject to trade policy risks, including tariffs and regulatory actions on imports which may have a material adverse impact on our results of operations and financial condition
- We are reliant on Symatese to achieve and maintain regulatory approval for the Evolysse™ product line in the United States. Failure to obtain approval, maintain approval, or obtain approval on our estimated time frame for additional Evolysse™ products would negatively affect our ability to sell these products.
- We may require additional financing to fund our future operations or execute corporate development activities, and a failure to obtain additional capital when so needed on acceptable terms, or at all, could force us to delay, limit, reduce or terminate our operations.
- If we or our counterparties do not comply with the terms of our settlement agreements with Medytox, Inc., or Medytox, we may face litigation or lose our ability to market and sell Jeuveau®, which would materially and adversely affect our ability to carry out our business and our financial condition and ability to continue as a going concern.
- The terms of the Medytox Settlement Agreements (as defined below) will continue to reduce our profitability.
- We rely on our licensing agreements with Daewoong Pharmaceutical Co. Ltd, or Daewoong, and Symatese and any termination or loss of significant rights, including exclusivity, under these agreements would materially and adversely affect our business.
- Our failure to successfully in-license, acquire, develop and market additional product candidates or approved products would impair our ability to grow our business.
- Our ability to market our products is limited to their approved indications, and if we want to expand the indications for which we market our products, we will need to obtain additional regulatory approvals, which will be expensive and may not be granted.
- Third party claims of intellectual property infringement may prevent or delay our commercialization efforts and interrupt our supply of products.
- If we or any of our current or future licensors, including Daewoong and Symatese, are unable to maintain, obtain or protect intellectual property rights related to our products or any of our future product candidates, we may not be able to compete effectively in our market.
- We may need to increase the size of our organization, including our sales and marketing capabilities in order to further market and sell our products and we may experience difficulties in managing this growth.
- We rely on our digital technology and applications and our business and operations would suffer in the event of information system failures or a cybersecurity incident.
- We are subject to extensive government regulation, and we may face delays in or not obtain regulatory approval of our product candidates and our compliance with ongoing regulatory requirements may result in significant additional expense, limit or delay regulatory approval or subject us to penalties if we fail to comply.

Additional Information

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

EVOLUS®, Jeuveau®, Evolux® and Evolysse™ are trademarks of ours that are used in this Quarterly Report on Form 10-Q. Jeuveau® is the trade name in the United States for our approved product with non-proprietary name, prabotulinumtoxinA-xvfs. This product has different trade names outside of the United States, including Nuceiva® in Canada, Europe and Australia, but is referred to throughout this Quarterly Report on Form 10-Q as Jeuveau®. Our injectable HA gel products have different trade names outside of the United States, including Estyme® in Europe, but are referred to throughout this Quarterly Report on Form 10-Q as Evolysse™. This Quarterly Report on Form 10-Q also includes trademarks, trade names and service marks that are the property of other organizations, such as BOTOX® and BOTOX® Cosmetic, which we refer to throughout

this Quarterly Report on Form 10-Q as BOTOX. Solely for convenience, trademarks and trade names referred to in this Quarterly Report on Form 10-Q may appear without the ® and ™ symbols, but those references are not intended to indicate that we will not assert, to the fullest extent under applicable law, our rights, or that the applicable owner will not assert its rights, to these trademarks and trade names. We do not intend our use or display of other companies' trade names or trademarks to imply a relationship with, or endorsement or sponsorship of us by, any other companies.

PART I—FINANCIAL INFORMATION

Item 1. Condensed Consolidated Financial Statements (unaudited)

Evolus, Inc.

Condensed Consolidated Balance Sheets

(in thousands, except par value and share data; Unaudited)

	June 30, 2025	December 31, 2024
ASSETS		
Current assets		
Cash and cash equivalents	$ 61,738	$ 86,952
Accounts receivable, net	47,709	47,682
Inventories	26,457	12,158
Prepaid expenses	4,792	3,349
Other current assets	4,274	1,201
Total current assets	144,970	151,342
Property and equipment, net	3,653	3,222
Operating lease right-of-use assets	7,827	7,185
Intangible assets, net	49,347	48,754
Goodwill	21,208	21,208
Other assets	1,798	858
Total assets	$ 228,803	$ 232,569
LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)		
Current liabilities		
Accounts payable	$ 23,312	$ 9,236
Accrued expenses	27,949	40,791
Current portion of operating lease liabilities	2,392	1,718
Current portion of contingent royalty obligation payable to Evolus Founders	10,097	11,215
Total current liabilities	63,750	62,960
Long-term portion of operating lease liabilities	7,039	6,755
Long-term portion of contingent royalty obligation payable to Evolus Founders	28,489	33,550
Long-term portion of term loan, net of discount and issuance costs	145,475	121,506
Contingent milestone payment	2,681	2,270
Deferred tax liability	21	6
Total liabilities	247,455	227,047
Commitments and contingencies (Note 9)		
Stockholders' equity (deficit)		
Preferred stock, $0.00001 par value; 10,000,000 shares authorized; no shares issued and outstanding as of June 30, 2025 and December 31, 2024, respectively	—	—
Common stock, $0.00001 par value; 100,000,000 shares authorized; 64,638,978 and 63,497,548 shares issued and outstanding as of June 30, 2025 and December 31, 2024, respectively	1	1
Additional paid-in capital	627,379	615,825
Accumulated other comprehensive loss	(599)	(905)
Accumulated deficit	(645,433)	(609,399)
Total stockholders' equity (deficit)	(18,652)	5,522
Total liabilities and stockholders' equity (deficit)	$ 228,803	$ 232,569

See accompanying notes to condensed consolidated financial statements.

Evolus, Inc.

Condensed Consolidated Statements of Operations and Comprehensive Loss

(in thousands, except share and per share data; Unaudited)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Revenue:				
Product revenue, net	$ 68,699	$ 66,222	$ 136,773	$ 125,186
Service revenue	688	687	1,136	1,056
Total net revenues	69,387	66,909	137,909	126,242
Cost of goods sold	24,067	19,841	45,934	38,671
Gross profit	45,320	47,068	91,975	87,571
Operating expenses:				
Selling, general and administrative	56,675	50,152	113,315	95,275
Research and development	1,837	2,350	4,049	4,428
Revaluation of contingent royalty obligation payable to Evolus Founders	(3,914)	1,605	(1,763)	3,183
Depreciation and amortization	932	663	1,756	1,309
Total operating expenses	55,530	54,770	117,357	104,195
Loss from operations	(10,210)	(7,702)	(25,382)	(16,624)
Other income (expense):				
Interest income	479	1,029	1,189	1,546
Interest expense	(7,207)	(4,696)	(11,622)	(9,398)
Other income (expense), net	(151)	62	(94)	107
Loss before income taxes	(17,089)	(11,307)	(35,909)	(24,369)
Income tax expense	(53)	(43)	(125)	(90)
Net loss	$ (17,142)	$ (11,350)	$ (36,034)	$ (24,459)
Other comprehensive income (loss), net of tax:				
Currency translation adjustment	240	(44)	306	(174)
Comprehensive loss	$ (16,902)	$ (11,394)	$ (35,728)	$ (24,633)
Net loss per share, basic and diluted	$ (0.27)	$ (0.18)	$ (0.56)	$ (0.40)
Weighted-average shares outstanding used to compute basic and diluted net loss per share	64,539,291	62,724,604	64,120,287	60,760,958

See accompanying notes to condensed consolidated financial statements.

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

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2023	57,820,621	$ 1	$ 538,716	$ (427)	$ (558,979)	$ (20,689)
Issuance of common stock upon follow-on offering, net of issuance costs	3,554,000	—	46,794	—	—	46,794
Issuance of common stock in connection with the incentive equity plan	899,411	—	487	—	—	487
Stock-based compensation	—	—	5,090	—	—	5,090
Net loss	—	—	—	—	(13,109)	(13,109)
Other comprehensive loss	—	—	—	(130)	—	(130)
Balance at March 31, 2024	**62,274,032**	**$ 1**	**$ 591,087**	**$ (557)**	**$ (572,088)**	**$ 18,443**
Issuance of common stock upon follow-on offering, net of issuance costs	318,100	—	$ 4,169	$ —	$ —	$ 4,169
Issuance of common stock in connection with the incentive equity plan	460,466	—	2,300	—	—	2,300
Stock-based compensation	—	—	5,796	—	—	5,796
Net loss	—	—	—	—	(11,350)	(11,350)
Other comprehensive loss	—	—	—	(44)	—	(44)
Balance at June 30, 2024	**63,052,598**	**$ 1**	**$ 603,352**	**$ (601)**	**$ (583,438)**	**$ 19,314**

	Common Stock		Additional Paid In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
	Shares	Amount				
Balance at December 31, 2024	63,497,548	$ 1	$ 615,825	$ (905)	$ (609,399)	$ 5,522
Issuance of common stock in connection with the incentive equity plan	951,272	—	734	—	—	734
Stock-based compensation	—	—	5,966	—	—	5,966
Net loss	—	—	—	—	(18,892)	(18,892)
Other comprehensive income	—	—	—	66	—	66
Balance at March 31, 2025	**64,448,820**	**$ 1**	**$ 622,525**	**$ (839)**	**$ (628,291)**	**$ (6,604)**
Issuance of common stock in connection with the incentive equity plan	190,158	—	$ 331	$ —	$ —	$ 331
Stock-based compensation	—	—	4,523	—	—	4,523
Net loss	—	—	—	—	(17,142)	(17,142)
Other comprehensive income	—	—	—	240	—	240
Balance at June 30, 2025	**64,638,978**	**$ 1**	**$ 627,379**	**$ (599)**	**$ (645,433)**	**$ (18,652)**

See accompanying notes to condensed consolidated financial statements.

Evolus, Inc.

Condensed Consolidated Statements of Cash Flows

(in thousands; Unaudited)

	Six Months Ended June 30,	
	2025	**2024**
Cash flows from operating activities		
Net loss	$ (36,034)	$ (24,459)
Adjustments to reconcile net loss to net cash used in operating activities:		
Depreciation and amortization	3,301	2,836
Stock-based compensation	10,416	10,863
Provision for bad debts	1,754	770
Amortization of operating lease right-of-use assets	572	301
Amortization of debt discount and issuance costs	610	559
Deferred income taxes	15	2
Revaluation of contingent royalty obligation payable to Evolus Founders	(1,763)	3,183
Other adjustments to operating activities	480	—
Changes in operating assets and liabilities:		
Inventories	(4,291)	3,749
Accounts receivable	(1,781)	(13,390)
Prepaid expenses	(1,443)	193
Accounts payable	3,945	(246)
Accrued expenses	(12,835)	(1,023)
Operating lease liabilities	(256)	(353)
Other operating assets	(3,113)	(70)
Net cash used in operating activities	(40,423)	(17,085)
Cash flows from investing activities		
Purchases of property and equipment	(1,007)	(721)
Additions to capitalized software	(3,121)	(1,330)
Net cash used in investing activities	(4,128)	(2,051)
Cash flows from financing activities		
Payment of contingent royalty obligation to Evolus Founders	(4,416)	(3,607)
Proceeds from issuance and modification of debt instruments	25,000	—
Payments for debt modification fees and costs	(2,610)	—
Proceeds from follow-on offering	—	51,211
Payments for offering costs	—	(248)
Issuance of common stock in connection with incentive equity plan	1,065	2,787
Payment of financing lease obligation	(7)	—
Net cash provided by financing activities	19,032	50,143
Effect of exchange rates on cash and cash equivalents	305	(174)
Net increase (decrease) in cash and cash equivalents	(25,214)	30,833
Cash and cash equivalents, beginning of period	86,952	62,838
Cash and cash equivalents, end of period	$ 61,738	$ 93,671

See accompanying notes to condensed consolidated financial statements.

Evolus, Inc.

Condensed Consolidated Statements of Cash Flows (Continued)

(in thousands; Unaudited)

	Six Months Ended June 30,	
	2025	**2024**
Supplemental disclosure of cash flow information		
Cash paid for interest	$ 7,786	$ 8,838
Cash paid for income taxes	317	164

See accompanying notes to condensed consolidated financial statements.

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

Note 1. Description of Business

Description of Business

Evolus, Inc., ("Evolus" or the "Company") is a global performance beauty company focused on delivering products in the cash-pay aesthetic market. The Company's portfolio includes Jeuveau® (prabotulinumtoxinA-xvfs), 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 and Evolysse™, a collection of injectable hyaluronic acid ("HA") gels. Evolysse™ Form and Evolysse™ Smooth were launched in the United States in April 2025 indicated for wrinkles and folds, such as nasolabial folds, in adults. The Company expects to launch all four Evolysse™ products in Europe in the first quarter of 2026 and anticipates two additional Evolysse™ products to be approved and launched in the United States in 2026 and 2027. The Company is headquartered in Newport Beach, California.

Liquidity and Financial Condition

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

Since inception, the Company has incurred recurring net operating losses and negative cash flows from operating activities. For the three and six months ended June 30, 2025, the Company recorded loss from operations of $10,210 and $25,382, respectively, and a total net loss of $17,142 and $36,034, respectively. The Company used $40,423 of cash from operations during the six months ended June 30, 2025. As of June 30, 2025, the Company had $61,738 in cash and cash equivalents and an accumulated deficit of $645,433.

In March 2024, the Company completed a follow-on offering and issued 3,554,000 shares of its common stock, at a price to the public of $14.07 per share. The Company received net proceeds of $46,794 from the offering, after deducting underwriting discounts and commissions and other offering expenses. In addition, the Company granted the underwriters an option, exercisable for 30 days, to purchase up to 533,100 additional shares of common stock (the "option shares") at the purchase price. In April 2024, the underwriters exercised their option to purchase 318,100 of the allotted option shares. The net proceeds to the Company from the sale of the option shares, after deducting the underwriters' discounts and commissions, was $4,169.

On March 8, 2023, the Company entered into an "at-the-market" sales agreement (the "ATM Sales Agreement") and filed a shelf registration statement on Form S-3 and corresponding prospectus with the Securities and Exchange Commission ("SEC") to permit sales under the ATM Sales Agreement, which registration statement became effective on June 8, 2023. The Company has not sold any shares under the ATM Sales Agreement. See *Note 10. Stockholders' Equity* for additional information.

The Company believes that its current capital resources, which consist of cash and cash equivalents, will be sufficient to fund its operations through at least the next twelve months from the date the accompanying condensed consolidated financial statements are issued based on its expected cash needs. On May 5, 2025, the Company entered into an Amended and Restated Loan Agreement (the "A&R Loan Agreement") with Pharmakon (as defined below), which agreed to make a senior secured term loan to the Company in an aggregate principal amount of up to $250,000 to be funded in three tranches comprised of an initial $150,000 tranche funded upon the execution of the A&R Loan Agreement and two additional tranches of up to $50,000 each, available at the Company's election no later than December 31, 2026.

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

Basis of Presentation

The accompanying interim unaudited condensed consolidated financial statements have been prepared on a consistent basis with the annual financial statements and in accordance with accounting principles generally accepted in the United States of

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

America ("GAAP") and the requirements of the SEC for interim reporting. Pursuant to these SEC rules and regulations, the Company has condensed or omitted certain financial information and disclosures normally included in annual financial statements prepared in accordance with GAAP. In the opinion of management, the interim unaudited condensed consolidated financial statements reflect all adjustments, which include only normal recurring adjustments, considered necessary for a fair statement of the interim periods. The interim results presented herein are not necessarily indicative of the results of operations to be expected for the full year ending December 31, 2025 or for any other interim period or any future year.

The accompanying unaudited condensed consolidated financial statements and related disclosures should be read in conjunction with the consolidated financial statements and notes included in the Company's Annual Report on Form 10-K for the year ended December 31, 2024, as filed with the SEC on March 4, 2025.

Principles of Consolidation

The Company's interim unaudited condensed consolidated financial statements include the Company's accounts and those of the Company's wholly-owned subsidiaries and have been prepared in conformity with GAAP. All intercompany accounts and transactions have been eliminated in consolidation.

Use of Estimates

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

Risks and Uncertainties

The Company is party to an agreement (as amended, the "Daewoong Agreement") with Daewoong Pharmaceutical Co. Ltd. ("Daewoong"), pursuant to which the Company received an exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, the European Union, United Kingdom, members of the European Economic Area, Switzerland, Canada, Australia, New Zealand, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Jeuveau® is manufactured by Daewoong in a facility in South Korea. The Company also has the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than Jeuveau®) in a territory covered by the Daewoong Agreement. The Company relies on Daewoong, its exclusive and sole supplier, to manufacture Jeuveau®. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect the Company's commercialization of Jeuveau®. See *Note 9. Commitments and Contingencies* and *Note 11. Medytox Settlement Agreements* for additional information.

The Company commercially launched Jeuveau® in the United States in May 2019 and in Canada through its distribution partner in October 2019. The Company also began commercially launching Jeuveau® in Europe in 2022 and Australia in 2024 and, as such, has a limited history of sales in those markets. If any previously granted approval to market and sell Jeuveau® is retracted or the Company is denied approval or approval is delayed by regulators in any other jurisdictions, it may have a material adverse impact on the Company's business and its consolidated financial statements.

The Company is party to an agreement with Symatese Aesthetics S.A.S. ("Symatese"), pursuant to which Symatese granted to the Company an exclusive right to commercialize and distribute five injectable HA gel product candidates, including the products referred to as: (i) Form; (ii) Smooth; (iii) Sculpt; (iv) Lips; and (v) Eye (collectively, the "Products") in the United States for use in the aesthetics and dermatological field of use. The Company relies on Symatese, its sole supplier, to manufacture Evolysse™. Any termination or loss of significant rights, including exclusivity, would materially and adversely affect the Company's commercialization of Evolysse™.

The Company is also subject to risks common to companies in the pharmaceutical industry including, but not limited to, dependency on the commercial success of Jeuveau® and Evolysse™, the Company's approved products, significant competition within the medical aesthetics industry, its ability to maintain regulatory approval of Jeuveau® and Evolysse™,

third party litigation and challenges to its intellectual property, uncertainty of broad adoption of its product by aesthetic practitioners and patients, its ability to in-license, acquire or develop additional product candidates and to obtain the necessary approvals for those product candidates, and the need to scale manufacturing capabilities over time.

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

Segment Reporting

The Company has determined that it operates in a single operating and reportable segment. The Company's chief operating decision maker ("CODM") is its Chief Executive Officer who manages operations and reviews the financial information as a single operating segment for the purposes of allocating resources and evaluating its financial performance.

Concentration of Credit Risk

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

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

Cash and Cash Equivalents

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

Inventories and Cost of Goods Sold

Inventories consist of finished goods held for sale and distribution. Cost is determined using the first-in, first-out method. Inventory is measured at the lower of cost or net realizable value based on a number of factors including, but not limited to, damage, expiration, or changes in price level.

For the three and six months ended June 30, 2025, cost of goods sold consisted of inventory cost, amortization of intangible asset relating to distribution right and certain royalties on the sale of the Company's products. The prior year condensed consolidated statement of operations and comprehensive loss has been adjusted to conform to this presentation.

Fair Value of Financial Instruments

The Company follows the authoritative guidance for fair value measurements with respect to assets and liabilities that are measured at fair value on a recurring basis and non-recurring basis. Under the standard, fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in an orderly transaction between market participants in a principal market on the measurement date.

The standard also establishes a hierarchy for inputs used in measuring fair value and consists of the following three-tiered valuation hierarchy for disclosure of fair value measurement:

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

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

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

Property and Equipment

Property and equipment are stated at cost. Depreciation and amortization are recognized over the estimated useful lives of the assets using the straight-line method. The estimated useful lives of depreciable assets are three years for computers, three to five years for equipment, and five years for furniture and marketing fixtures. Leasehold improvements are amortized over the shorter of the estimated useful lives of the improvements or the term of the related lease.

Goodwill

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

Contingent Milestone Payment

Symatese U.S. Agreement

On May 9, 2023, the Company and Symatese, entered into a License, Supply and Distribution Agreement (the "Symatese U.S. Agreement"), pursuant to which Symatese granted to the Company an exclusive right to commercialize and distribute the Evolysse™ products in the United States for use in the aesthetics and dermatological field of use. The Company also has the right of first negotiation to obtain a license from Symatese to commercialize and distribute any new products developed using the same technology as the Evolysse™ collection of injectable HA gels.

As consideration for the rights granted under the Symatese U.S. Agreement, the Company is required to make up to €16,200 in milestone payments to Symatese, including an initial payment of €4,100 within 30 days of execution of the Symatese U.S. Agreement. The additional annual payments of €1,600 in June 2025, €4,100 in June 2026, €3,200 in June 2027, and €3,200 in June 2028 are, in each case, subject to and contingent on three of the Products gaining approval prior to the milestone payment dates. If regulatory approval of three of the Products is not achieved prior to the aforementioned milestone payment dates, then the related milestone payments will be due and payable to Symatese on the date of approval. In June 2023, the Company paid $4,441 as an upfront payment upon the signing of the Symatese U.S. Agreement and has developmental costs, ongoing milestone and royalty payment obligations. As of June 30, 2025, regulatory approval of three of the Products has not been achieved, and no annual milestone payments have been made. The Symatese U.S. Agreement is also subject to minimum purchase requirements and failure to meet such requirements may result in a reduction or termination of the

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

Company's exclusive rights, subject to certain exceptions. Additionally, the Company agreed to a specified cost-sharing agreement with Symatese related to the registration of the Lips and Eye Products with the U.S. Food and Drug Administration ("FDA").

The initial term of the Symatese U.S. Agreement is fifteen (15) years from the first FDA approval of a Product, with automatic renewals for successive five (5)-year terms subject to the terms of the Symatese U.S. Agreement.

Symatese Europe Agreement

On December 20, 2023, the Company entered into a License, Supply and Distribution Agreement (the "Symatese Europe Agreement"), pursuant to which Symatese granted to the Company an exclusive right to commercialize and distribute four injectable HA gel product candidates, which are referred to as: (i) Form; (ii) Smooth; (iii) Sculpt and (iv) Lips in 50 countries in Europe for use in the aesthetics and dermatological fields. The initial agreement is for a term of fifteen (15) years, with automatic year renewal provisions.

In exchange for the rights granted under the Symatese Europe Agreement, the Company issued 610,000 shares of common stock and is required to pay two milestone payments: (i) €1,200 on the second anniversary of certain regulatory approvals, and (ii) €1,900 on the earlier of the third anniversary of certain regulatory approvals or following a year in which the Company achieves €25,000 in revenue in Europe; provided that the payment shall occur no later than December 2029. The Symatese Europe Agreement is also subject to minimum purchase requirements and failure to meet such requirements may result in a reduction or termination of the Company's exclusive rights, subject to certain exceptions.

Upon signing of the Symatese Europe Agreement and issuance of 610,000 shares, the Company recorded $4,429 in in-process research and development expense and $1,476 in intangible assets. The $1,476 in intangible assets represents the value of the nasolabial fold product in Europe which was already approved at the time of signing the Symatese Europe Agreement and is amortized over its estimated useful life of 15 years. The remaining value recorded in in-process research and development expense relates to the distribution rights for the three remaining products that did not yet have regulatory approval as of the execution date.

Intangible Assets

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

A portion of the Symatese Europe Agreement represents the license and distribution right to Evolysse™ in Europe. The definite-lived distribution right intangible asset related to the Evolysse™ nasolabial fold product approved in Europe is amortized on a straight-line basis over the estimated useful life of 15 years.

Pursuant to the Symatese Europe Agreement, the Company is required to pay two milestone payments: (i) €1,200 on the second anniversary of certain regulatory approvals, and (ii) €1,900 on the earlier of the third anniversary of certain regulatory approvals or following a year in which the Company achieves €25,000 in revenue in Europe, provided that the payment shall occur no later than December 2029.

In October 2024, the Company received European Union Medical Device Regulation ("MDR") approval for the remaining three injectable HA gel products. As a result, the two milestone payments have been triggered. The first milestone payment is payable in October 2026, the two-year anniversary of the approval. For the second milestone payment, the Company determined that it is probable the payment will be made no later than December 2029. Upon receiving approval, the Company recorded $1,035 and $1,200 in long-term liabilities for the first and second milestone payments, and $1,035 and $1,200 in intangible assets for the first and second milestone payments. These amounts reflect the application of a discount to account for the time value of money, which adjusts the present value of the liabilities and intangible assets based on the

timing of future payments. The definite-lived distribution right intangible asset related to the Evolysse™ products approved in Europe is amortized on a straight-line basis over the remaining estimated useful life of 14 years and 2 months.

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

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, then further impairment analysis is performed. An impairment loss is measured as the amount by which the carrying amount of the asset or asset groups exceeds the fair value for assets to be held and used or fair value less cost to sell for assets to be disposed of. The Company also reviews the useful lives of its assets periodically to determine whether events and circumstances warrant a revision to the remaining useful life. Changes in the useful life are adjusted prospectively by revising the remaining period over which the asset is amortized. There was no material impairment of long-lived assets for any periods presented.

Leases

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

Operating lease ROU assets and lease liabilities are initially recognized based on the present value of the future minimum lease payments over the lease term at commencement date calculated using the Company's incremental borrowing rate applicable to the underlying asset unless the implicit rate is readily determinable. The incremental borrowing rate, the ROU asset and the lease liability are reevaluated upon a lease modification. Operating lease ROU assets also include any lease payments made at or before lease commencement and any lease incentives received, if any. The Company determines the lease term as the noncancellable period of the lease and may include options to extend or terminate the lease when it is reasonably certain that the Company will exercise such options. The Company's leases do not contain any residual value guarantees. Leases with a term of 12 months or less are not recognized on the condensed consolidated balance sheets. For operating leases, the Company recognized rent expense on a straight-line basis over the lease term. There were no significant finance leases as of June 30, 2025.

Contingent Royalty Obligation Payable to Evolus Founders

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

Payment obligations to the Evolus Founders consist of quarterly royalty payments of a low single digit percentage of net sales of Jeuveau®. The obligations terminate in the second quarter of 2029, which is the 10-year anniversary of the first commercial sale of Jeuveau® in the United States. Under the Amended Stock Purchase Agreement, the Company recorded the fair value of all revised payment obligations owed to the Evolus Founders.

The Company determines the fair value of the contingent royalty obligation payable at each reporting period end based on Level 3 inputs using a discounted cash flows method. Changes in the fair value of the contingent royalty obligation payable

are determined at each reporting period end and recorded in operating expenses in the accompanying condensed consolidated statements of operations and comprehensive loss and as a change to the liability in the condensed consolidated balance sheets.

Long-Term Debt

Long-term debt represents the debt balance with Pharmakon (see *Note 7. Term Loans*), net of discount and issuance costs. Debt issuance costs represent legal, lender and consulting costs or fees associated with debt financing. Debt discounts and issuance costs are amortized into interest expense over the term of the debt.

Foreign Currency Translation

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

Revenue Recognition

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

General

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

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

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

Disaggregation of Revenue

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

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

Gross-to-Net Revenue Adjustments

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

- *Volume-Based Rebates* — Volume-based rebates are contractually offered to certain customers. The rebates payable to each customer are determined based on the contract and quarterly purchase volumes.

- *Consumer Loyalty Program* — The Company's consumer loyalty program allows participating customers to earn rewards for qualifying treatments to their patients (i.e. consumers) using the Company's products and redeem the rewards for the products in the future at no additional cost. The loyalty program represents a customer option that provides a material right and, accordingly, is a performance obligation. When the Company's products are sold to customers, the invoice price is allocated between the product sold and the material right associated with the reward ("Reward") that the customer might redeem in the future. The standalone selling price of the Reward is measured based on estimated average selling price at the time of redemption and the expected redemption rate by customers based on historical sales data. The portion of invoice price allocated to the Reward is initially recorded as deferred revenue. Subsequently, when customers redeem the Reward and the related product is delivered, the deferred revenue is recognized in net revenues at that time.

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

Contract Balances

A contract with a customer states the terms of the sale, including the description, quantity and price of each product purchased. Amounts are recorded as accounts receivable when the Company's right to consideration becomes unconditional. The Company does not have any significant financing components in customer contracts given the expected time between transfer of the promised products and the payment of the associated consideration is less than one year. As of June 30, 2025 and December 31, 2024, all amounts included in accounts receivable, net on the accompanying condensed consolidated balance sheets are related to contracts with customers.

The Company did not have any material contract assets or unbilled receivables as of June 30, 2025 and December 31, 2024. Sales commissions are included in selling, general and administrative expenses when incurred.

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

As of June 30, 2025 and December 31, 2024, the accrued revenue contract liabilities, primarily related to volume-based rebates, consumer loyalty program and co-branded marketing programs, were $8,726 and $14,454, respectively, which were recorded in accrued expenses in the accompanying condensed consolidated balance sheets. For the three and six months ended June 30, 2025, provisions for rebate, consumer loyalty programs and co-branded marketing programs were $10,157 and $20,318, respectively, which were offset by related payments, redemptions and adjustments of $8,726 and $26,046, respectively. For the three and six months ended June 30, 2024, provisions for rebate, consumer loyalty programs and co-branded marketing programs were $9,368 and $17,996, respectively, which were offset by related payments, redemptions and adjustments of $6,335 and $17,288, respectively. The provisions for rebate, consumer loyalty programs and co-branded marketing programs were recorded as adjustments to gross revenues in the accompanying condensed consolidated statements of operations and comprehensive loss for the three and six months ended June 30, 2025 and 2024.

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

During the six months ended June 30, 2025 and 2024, the Company recognized $13,833 and $9,765, respectively, of revenue related to amounts included in contract liabilities at the beginning of the period and did not recognize any revenue related to changes in transaction prices regarding its contracts with customers from previous periods.

Collectability

Accounts receivable are recorded at the net estimated realizable value and do not bear interest. At the time of contract inception or new customer account set-up, the Company performs a collectability assessment of the customer's creditworthiness. The Company assesses the probability that the Company will collect the entitled consideration in exchange for the goods sold, by considering the customer's ability and intention to pay when consideration is due. The Company's expected loss allowance methodology for accounts receivable is developed using historical collection experience, current and future economic and market conditions and periodic evaluation of customers' receivables balances using relevant available information from internal and external sources relating to past events, current conditions, and forecasts. Historical credit loss experience provides the basis for estimation of expected credit losses and are adjusted as necessary using the relevant information available. The Company writes off accounts receivable balances when it is determined that there is no possibility of collection. As of June 30, 2025 and December 31, 2024, allowance for credit losses was $3,532 and $2,714, respectively. For the three and six months ended June 30, 2025, the provision for bad debts was $703 and $1,754, respectively, and the write-offs, net of recoveries were $54 and $936, respectively. For the three and six months ended June 30, 2024, the provision for bad debts was $582 and $770, respectively, and the write-offs, net of recoveries were $302 and $201, respectively.

Practical Expedients

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

Research and Development Expenses

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

Litigation Settlement

In connection with a litigation settlement, $5,000 was paid in the first quarter of 2023 and for the period from September 17, 2022 to September 16, 2032, the Company agreed to pay Medytox, Inc. ("Medytox") a mid-single digit royalty percentage on all net sales of Jeuveau®. The royalty payments are made quarterly and recorded as cost of goods sold in the accompanying condensed consolidated statements of operations and comprehensive loss in the periods the royalties are incurred.

See *Note 11. Medytox Settlement Agreements* for the details of the litigation settlement agreements.

Stock-Based Compensation

The Company recognizes stock-based compensation expense for employees, consultants and members of the Board of Directors based on the fair value on 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 certain subjective assumptions, including the expected volatility of the Company's common stock, expected risk-free interest rate, and the option's expected life. The fair value of the Company's restricted stock units

("RSUs") is based on the fair value of the Company's common stock on the grant date. The Company also evaluates the impact of modifications made to the original terms of equity awards when they occur.

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

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

Income Taxes

The Company applies an estimated annual effective tax rate ("ETR") approach for calculating a tax provision or benefit for interim periods, as required under GAAP. The Company recorded an income tax expense of $53 and $43, for the three months ended June 30, 2025 and 2024, respectively, and an income tax expense of $125 and $90 for the six months ended June 30, 2025 and 2024, respectively. The Company's ETR differs from the U.S. federal statutory tax rate of 21% for the three and six months ended June 30, 2025 and 2024, primarily as a result of the change in the valuation allowance offsetting deferred tax assets.

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

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

The Company monitors changes to the tax laws in the states where it conducts business and files corporate income tax returns. The Company does not expect that changes to state tax laws through June 30, 2025 to materially affect its condensed consolidated financial statements. The Internal Revenue Service reviewed the Company's 2022 tax return during the first quarter of 2025 and accepted it as filed, but did not consider the year examined. Given the fact that the Company has generated net operating losses since inception, the Company's tax returns for all years since inception are open under the statute of limitations for audit.

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 computed based on the treasury stock method and includes the effect from potential issuance of ordinary shares, such as shares issuable pursuant to the exercise of stock options and the vesting of restricted stock units. Because the impact of the options and non-vested RSUs are anti-dilutive during periods of net loss, there was no difference between the weighted-average number of shares used to calculate basic and diluted net loss per common share for the periods presented. Excluded from the dilutive net loss per share

(in thousands, except share and per share data)

computation for the three and six months ended June 30, 2025 and 2024, were stock options of 6,558,707 and 6,325,383, respectively, and non-vested RSUs of 2,931,829 and 3,286,575, respectively, because their inclusion would have been anti-dilutive. Although these securities were anti-dilutive for these periods, they could be dilutive in future periods.

Recently Adopted Accounting Pronouncements and Recently Issued Accounting Pronouncements

Recently Issued Accounting Pronouncements

In December 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-09, *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*. This update enhances annual income tax disclosures by requiring entities to disclose disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. ASU No. 2023-09 is effective for public entities with annual periods beginning after December 15, 2024, with early adoption permitted. The Company will adopt this ASU for the year ending December 31, 2025 and is currently evaluating the impact of this ASU on its consolidated financial statements and related disclosures.

In November 2024, the FASB issued ASU No. 2024-03 *Income Statement - Reporting Comprehensive Income - Expense Disaggregation Disclosures (Subtopic 220-40): Disaggregation of Income Statement Expenses*, which requires disaggregated disclosure of certain costs and expenses on an interim and annual basis. ASU No. 2024-03 is effective for fiscal years beginning after December 15, 2026, and interim periods within fiscal years beginning after December 15, 2027, with early adoption permitted. The disclosure updates are required to be applied prospectively with the option for retrospective application. The Company is currently evaluating the impact of adopting ASU No. 2024-03 on its consolidated financial statements and related disclosures.

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

Note 3. Fair Value Measurements

Assets and Liabilities Measured at Fair Value on a Recurring Basis

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

	As of June 30, 2025			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 38,586	$ —	$ —	$ 38,586

	As of December 31, 2024			
	Fair Value	Level 1	Level 2	Level 3
Liabilities				
Contingent royalty obligation payable to Evolus Founders	$ 44,765	$ —	$ —	$ 44,765

There were no transfers of assets or liabilities measured at fair value on a recurring basis between levels as of June 30, 2025 or December 31, 2024.

The Company determines the fair value of the contingent royalty obligation payable to Evolus Founders based on Level 3 inputs using a discounted cash flows method. The significant unobservable input assumptions that can significantly change the fair value include (i) projected amount and timing of Jeuveau® net revenues of during the payment period, which terminates at the end of the second quarter of 2029, (ii) the discount rate, and (iii) the timing of payments. As of June 30,

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

2025 and December 31, 2024, the Company utilized a discount rate of 13% and 14%, reflecting changes in the Company's market risk premium. Net revenue projections are also updated to reflect changes in the timing of expected sales. Generally, increases (decreases) to the projected net revenues are accompanied by a directionally similar change to the estimated fair value of the contingent royalty obligation, while significant increases (decreases) in the discount rate would result in a significantly lower (higher) fair value measurement, which could materially impact the fair value reported on the unaudited condensed consolidated balance sheet.

The following table provides a reconciliation of the beginning and ending fair value measurement of the contingent royalty obligation payable, which used significant unobservable inputs (Level 3):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Fair value, beginning of period	$ 44,551	$ 44,779	$ 44,765	$ 45,030
Payments	(2,051)	(1,778)	(4,416)	(3,607)
Change in fair value recorded in operating expenses	(3,914)	1,605	(1,763)	3,183
Fair value, end of period	$ 38,586	$ 44,606	$ 38,586	$ 44,606

Other Financial Assets and Liabilities

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

The Company estimates the fair value of long-term debt and operating lease liabilities using the discounted cash flow analysis based on the interest rates for similar rated debt securities (Level 2). As of June 30, 2025 and December 31, 2024, the fair value of long-term debt was $146,694 and $132,078, respectively. The fair value of operating lease liabilities as of June 30, 2025 and December 31, 2024 approximated its carrying value.

Note 4. Goodwill and Intangible Assets

The table below provides the original cost, accumulated amortization and net book value by major intangible asset classification:

	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets			
Distribution rights	$ 62,787	$ (19,190)	$ 43,597
Capitalized software	16,681	(10,931)	5,750
Intangible assets, net	79,468	(30,121)	49,347
Indefinite-lived intangible asset			
Goodwill	21,208	—	21,208
Total as of June 30, 2025	$ 100,676	$ (30,121)	$ 70,555

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

	Original Cost	Accumulated Amortization	Net Book Value
Definite-lived intangible assets			
Distribution rights	$ 62,787	$ (17,580)	$ 45,207
Capitalized software	13,317	(9,770)	3,547
Intangible assets, net	76,104	(27,350)	48,754
Indefinite-lived intangible asset			
Goodwill	21,208	—	21,208
Total as of December 31, 2024	$ 97,312	$ (27,350)	$ 69,962

The following table outlines the estimated future amortization expense related to intangible assets held as of June 30, 2025 that are subject to amortization:

Fiscal year	
Remaining in 2025	$ 3,320
2026	6,540
2027	3,914
2028	3,211
2029	3,211
Thereafter	29,151
	$ 49,347

The Company capitalized $1,483 and $842 for the three months ended June 30, 2025 and 2024, respectively, and $3,363 and $1,477 for the six months ended June 30, 2025 and 2024, respectively, related to costs of computer software developed for internal use. The software is amortized over a two-year period using the straight-line method. The Company recorded total intangible assets amortization expense of $1,495 and $1,158 for the three months ended June 30, 2025 and 2024, respectively, and $2,770 and $2,312 for the six months ended June 30, 2025 and 2024, respectively, within cost of goods sold and depreciation and amortization on the accompanying condensed consolidated statements of operations and comprehensive loss.

As of June 30, 2025 and December 31, 2024, $349 and $176, respectively, are included in “Accounts payable” in the accompanying condensed consolidated balance sheets, representing amounts related to expenditures on computer software developed for internal use. These amounts are excluded from the accompanying condensed consolidated statements of cash flows as they are non-cash investing activities.

Note 5. Accrued Expenses

Accrued expenses as of June 30, 2025 and December 31, 2024 consisted of the following:

	June 30, 2025	December 31, 2024
Accrued revenue contract liabilities	$ 8,726	$ 14,454
Accrued payroll and related benefits	6,522	14,127
Accrued royalties	4,279	4,743
Other accrued expenses[(1)]	8,422	7,467
Accrued expenses	$ 27,949	$ 40,791

(1) No individual item in “Other accrued expenses” exceeds 5% of total current liabilities.

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

Note 6. Property, Plant and Equipment

Property, plant and equipment as of June 30, 2025 and December 31, 2024 consisted of the following:

	June 30, 2025	December 31, 2024
Equipment	$ 540	$ 452
Furniture	838	702
Leasehold improvements	4,209	3,574
Computers	423	317
Marketing fixtures	1,700	1,700
Total property, plant, and equipment	7,710	6,745
Less: accumulated depreciation	(4,057)	(3,523)
Property, plant and equipment, net	$ 3,653	$ 3,222

For the three months ended June 30, 2025, and 2024, depreciation expense was $244 and $269, respectively, and $531 and $524 for the six months ended June 30, 2025, and 2024, respectively.

As of June 30, 2025 and December 31, 2024, $26 and $76, respectively, are included in “Accounts payable” in the accompanying condensed consolidated balance sheets, representing amounts related to purchases of property and equipment. These amounts are excluded from the accompanying condensed consolidated statements of cash flows as they are non-cash investing activities.

Note 7. Term Loans

Prior Pharmakon Term Loans

On December 14, 2021, the Company entered into a loan agreement with BPCR Limited Partnership, BioPharma Credit Investments V (Master) LP, and Biopharma Credit PLC (collectively, “Pharmakon”), which was subsequently amended in December 2022 and May 2023 (as amended, the “Prior Pharmakon Loan Agreement”). Pursuant to the Prior Pharmakon Loan Agreement, Pharmakon made loans to the Company totaling $125,000 (the “Prior Pharmakon Term Loans”). From May 2023 to the modification of the loan in May 2025, the Prior Pharmakon Term Loans accrued interest at a per annum rate equal to the 3-month Secured Overnight Financing Rate (“SOFR”) (subject to a SOFR floor of 1.0%) plus 8.5% per annum.

New Pharmakon Term Loans

On May 5, 2025, the Company entered into the A&R Loan Agreement with Pharmakon, which amended and restated the Prior Pharmakon Loan Agreement in its entirety. Under the A&R Loan Agreement, Pharmakon agreed to make a senior secured term loan to the Company in an aggregate principal amount of up to $250,000 to be funded in three tranches comprised of a $150,000 tranche, which was funded upon the execution of the A&R Loan Agreement, and two additional tranches of up to $50,000 each, available at the Company’s election no later than December 31, 2026 (collectively, the “New Pharmakon Term Loans”). The New Pharmakon Term Loans accrue interest at a per annum rate equal to the 3-month SOFR (subject to a SOFR floor of 3.5%) plus 5.0% per annum. Payments related to the New Pharmakon Term Loans are interest only with a balloon principal payment due on the maturity date, which is May 5, 2030. The initial tranche of $150,000 was released to the Company on May 5, 2025, which includes the $125,000 of principal amount relating to the Prior Pharmakon Term Loans and $25,000 of incremental borrowings. Total proceeds of $23,390 were received by the Company, net of discounts and fees paid to Pharmakon, from the funding of the initial tranche. The second and third tranches, each in the principal amount of up to $50,000 but no less than $25,000, will be advanced at the Company’s election, subject to the terms and conditions of the A&R Loan Agreement including payment of additional consideration of 1% on drawn principal of each tranche, and have a scheduled expiration date of December 31, 2026. The Company has the option to prepay all or any portion of the amounts owed prior to the maturity date, and all prepayments of principal are subject to certain prepayment premium. Additionally, the New Pharmakon Term Loans are subject to customary mandatory prepayments clauses, and all

(in thousands, except share and per share data)

prepayments and repayments of the New Pharmakon Term Loans are subject to an exit consideration premium equal to the amount of any principal repaid multiplied by 2.0%.

This transaction with Pharmakon and the New Pharmakon Term Loans issued under the A&R Loan Agreement are accounted for as a debt modification in accordance with ASC 470-50, *Debt Modifications and Extinguishments*. Upon closing of the first tranche, the Company incurred a total of $5,644 in lender fees and debt modification costs relating to the New Pharmakon Term Loans. These fees and costs have been allocated based on specific identification basis between the funded and unfunded tranches. Direct lender fees of $1,610 allocated to the initial tranche of the New Pharmakon Term Loans have been presented as a deduction to the debt principal balance and amortized into interest expense using the effective interest method. Debt modification costs of $1,000 associated with the unfunded second and third tranches are deferred as an asset and is amortized into interest expense on a straight-line basis until the tranches are drawn upon which the remaining asset balance would be reclassified as a deduction to the principal amount and be amortized using the effective interest method. The remaining debt modification costs of $3,034 allocated to the first tranche were expensed as incurred, which is included in “Interest expense” in the accompanying condensed consolidated statements of operations and comprehensive loss for the three and six months ended June 30, 2025.

The New Pharmakon Term Loans are secured by substantially all of the Company’s assets. The New Pharmakon Term Loans contain customary affirmative and restrictive covenants and representations and warranties. The affirmative covenants include, among others, certain information delivery requirements, obligations to maintain certain insurance, and certain notice requirements. The restrictive covenants include, among others, those that limit or restrict the Company’s ability to incur certain additional indebtedness, consummate certain change in control transactions, or incur any non-permitted lien or other encumbrance on the Company’s assets, without Pharmakon’s prior written consent. The New Pharmakon Term Loans do not contain covenants requiring the Company to maintain a minimum cash threshold or minimum revenues or earnings. As of June 30, 2025, the Company was in compliance with its debt covenants.

As of June 30, 2025, the borrowings outstanding under the New Pharmakon Term Loans were classified as long-term in the accompanying condensed consolidated balance sheets. The overall effective interest rate was approximately 10.42% as of June 30, 2025.

Term Loan obligations as of June 30, 2025 and December 31, 2024 consisted of the following:

	Principal Balance	Unamortized Debt Financing Costs	Exit Consideration	Balance, Net
New Pharmakon Term Loans	$ 150,000	$ (4,594)	$ 69	$ 145,475
Total long-term portion of term loan as of June 30, 2025	$ 150,000	$ (4,594)	$ 69	$ 145,475

	Principal Balance	Unamortized Debt Financing Costs	Balance, Net
Prior Pharmakon Term Loans	$ 125,000	$ (3,494)	$ 121,506
Total long-term portion of term loan as of December 31, 2024	$ 125,000	$ (3,494)	$ 121,506

Note 8. Operating Leases

The Company maintains an operating lease for its corporate headquarters in Newport Beach, California. On October 16, 2024, the Company entered into an amendment, set to expire January 31, 2030, to lease additional office space for its corporate headquarters. In May 2025, the Company recognized additional ROU assets and lease liabilities in the amount of $1,214. Fixed cash payments under this amendment are estimated to be $1,782 over the term of the lease, and the Company accounted for this lease as an operating lease.

The Company’s lease agreement does not contain any residual value guarantees or material restrictive covenants. The payments associated with the renewal will only be included in the measurement of the lease liability and ROU assets if the

(in thousands, except share and per share data)

exercise of the renewal option is determined to be reasonably certain. The Company considers the timing of the renewal period and other economic factors such as the financial implications of a decision to extend or not to extend a lease in determining if the renewal option is reasonably certain to be exercised.

The components of operating lease expense are as follows:

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Fixed operating lease expense	$ 535	$ 340	$ 1,006	$ 669
Variable operating lease expense	53	35	102	69
Operating lease expense	$ 588	$ 375	$ 1,108	$ 738

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

	June 30, 2025	December 31, 2024
Weighted-average remaining lease term (years)	4.6	5.1
Weighted-average discount rate	9.9 %	9.7 %

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

The following table presents the future minimum payments under operating lease agreements with non-cancelable terms as of June 30, 2025:

Fiscal year	
Remaining in 2025	$ 1,131
2026	2,529
2027	2,617
2028	2,709
2029	2,805
Thereafter	234
Total operating lease payments	12,025
Less: imputed interest	(2,594)
Present value of operating lease liabilities	$ 9,431

Note 9. Commitments and Contingencies

Daewoong Agreement

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

Total inventory payments to Daewoong were $21,786 and $38,849 for the three and six months ended June 30, 2025, respectively, and $18,443 and $26,620 for the three and six months ended June 30, 2024, respectively.

Symatese U.S. Agreement and Symatese Europe Agreement

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

The Symatese U.S. Agreement and the Symatese Europe Agreement include certain minimum purchase requirements, and failure to meet such requirements may result in a reduction or termination of the Company's exclusive rights, subject to certain exceptions. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and the Company's future market share in various jurisdictions.

Pursuant to the Symatese U.S. Agreement, the Company is required to make up to €16,200 in milestone payments to Symatese, including an initial payment of €4,100 within 30 days of execution of the Symatese U.S. Agreement. The additional annual payments of €1,600 in June 2025, €4,100 in June 2026, €3,200 in June 2027, and €3,200 in June 2028 are, in each case, subject to and contingent on three of the Products gaining approval prior to the milestone payment dates. If regulatory approval of three of the Products is not achieved prior to the aforementioned milestone payment dates, then the related milestone payments will be due and payable to Symatese on the date of approval. In June 2023, the Company paid $4,441 as an upfront payment upon the signing of the Symatese U.S. Agreement and has developmental costs, ongoing milestone and royalty payment obligations. As of June 30, 2025, regulatory approval of three of the Products has not been achieved, and no annual milestone payments have been made.

Pursuant to the Symatese Europe Agreement, the Company is required to pay two milestone payments: (i) €1,200 on the second anniversary of certain regulatory approvals, and (ii) €1,900 on the earlier of the third anniversary of certain regulatory approvals or following a year in which the Company achieves €25,000 in revenue in Europe, provided that the payment shall occur no later than December 2029.

In October 2024, the Company received European Union MDR approval for the remaining three injectable HA gel products. As a result, the two milestone payments have been triggered. The first milestone payment is payable on the two-year anniversary of the approval. For the second milestone payment, the Company determined that it is probable the payment will be made no later than December 2029.

Legal Proceedings

Shareholder Derivative Lawsuit

On November 27, 2020 and December 2, 2020, two putative Evolus shareholders filed substantially similar shareholder derivative actions in the U.S. District Court for the Southern District of New York against certain of the Company's officers and directors as defendants. The complaints alleged that Evolus made false and materially misleading statements and failed to disclose material adverse facts related to the Company's acquisition of the right to sell Jeuveau®, the complaint against the Company filed by Allergan, Inc. and Allergan Limited (together, "Allergan") and Medytox in the U.S. International Trade Commission related to Jeuveau® (the "ITC Action"), and risks related to the ITC Action. The complaints assert claims for, among other things, breach of fiduciary duty, waste of corporate assets, unjust enrichment, and violations of Section 14(a) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and for contribution under Sections 10(b) and 21(D) of the Exchange Act. On December 29, 2020, the plaintiffs filed a joint stipulation to consolidate their actions and on February 5, 2021, the court consolidated the action under the caption *In re Evolus, Inc. Derivative Litigation*, No. 1:20-cv-09986-PPG, and adjourned defendants' time to move, answer or otherwise respond to the complaints. On September 20, 2021, the court so-ordered the parties' stipulated stay of the consolidated derivative suit pending the court's decision on the defendants' motion to dismiss the related putative federal securities class action, *In re Evolus Inc. Securities Litigation*, No. 1:20-cv-08647 (PGG) (S.D.N.Y.). The court granted that motion to dismiss on September 26, 2024, and entered final judgment in favor of the defendants on October 18, 2024, which Plaintiffs did not appeal. The derivative suit remains stayed.

Books and Records Demand

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

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

Other Legal Matters

The Company is, from time to time, involved in various litigation matters or regulatory encounters arising in the ordinary course of business that could result in unasserted or asserted claims or litigation. These other matters may raise difficult and complex legal issues and are subject to many uncertainties, including, but not limited to, the facts and circumstances of each particular case or claim, the jurisdiction in which each suit or regulatory encounter is brought, and differences in applicable laws and regulations. Except as set forth above, the Company does not believe that these other matters would have a material adverse effect on its accompanying financial position, results of operations or cash flows. However, the resolution of one or more of the other matters in any reporting period could have a material adverse impact on the Company's financial results for that period.

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because they involve claims that may be made against the Company in the future, but have not yet been made. The Company accrues a liability for such matters when it is probable that future expenditures will be made, and such expenditures can be reasonably estimated. No amounts were accrued as of June 30, 2025 and December 31, 2024.

Note 10. Stockholders' Equity

Preferred Stock

The Company has 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share. As of June 30, 2025 and December 31, 2024, no shares of its preferred stock were issued and outstanding.

Common Stock

The Company has 100,000,000 authorized shares of common stock with a par value of $0.00001 per share. As of June 30, 2025 and December 31, 2024, 64,638,978 and 63,497,548 shares of its common stock were issued and outstanding, respectively.

In March 2024, the Company completed a follow-on offering and issued 3,554,000 shares of its common stock, at a price to the public of $14.07 per share. Refer to *Note 1. Description of Business* for additional details regarding the follow-on offering.

2024 Employee Stock Purchase Plan ("2024 ESPP")

On June 6, 2024, the Company approved the adoption of the 2024 Employee Stock Purchase Plan. The 2024 ESPP provides an opportunity to purchase shares of the Company's common stock at a favorable price and upon favorable terms in consideration of the participating employees' continued services. Eligible employees will be entitled to purchase, by means of payroll deductions, limited amounts of the Company's common stock at a discount during periodic offering periods. There were 579,648 shares initially reserved for issuance under the 2024 ESPP, which shall automatically increase on March 5 of each calendar year, by an amount equal to the lesser of (i) 1.0% of the total number of shares of common stock issued and outstanding on March 4 of the year in which such increase is to occur, (ii) 579,648 shares of common stock, or (iii) such number of shares of common stock as may be established by the Board of Directors. There were no shares issued under the 2024 ESPP during the three and six months ended June 30, 2025.

"At-the-market" Offerings of Common Stock

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

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

2017 Omnibus Incentive Plan

The Company's 2017 Omnibus Incentive Plan (the "Plan") provides for the grant of incentive options to employees of the Company and for the grant of non-statutory options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's officers, directors, consultants and employees. 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 November 21 of each year equal to 4.0% of the total issued and outstanding shares of the Company's common stock as of such anniversary (or such lesser number of shares as may be determined by the Company's Board of Directors). As of June 30, 2025, the Company had an aggregate of 2,125,024 shares of its common stock available for future issuance under the Plan.

2023 Inducement Incentive Plan

In September 2023, the Company's Board of Directors adopted the Company's 2023 Inducement Incentive Plan (the "Inducement Plan") in accordance with Nasdaq Listing Rule 5635(c)(4). The Inducement Plan provides for the grant of equity awards to selected individuals in connection with their commencing employment with the Company as an inducement material to their accepting such employment. The Board of Directors had reserved a total of 2,000,000 shares of common stock for issuance under the Inducement Plan. As of June 30, 2025, the Company had an aggregate of 886,669 shares of its common stock available for future issuance under the Inducement Plan.

Inducement Grants

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

Stock Options

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

The significant assumptions used in the Black-Scholes option-pricing model are as follows:

- *Expected Volatility.* The expected volatility of common stock is estimated based on the historical volatility of the Company's common stock over the most recent period commensurate with the estimated expected term of the stock options.
- *Expected Term.* The expected term represents the period of time in which the options granted are expected to be outstanding. The Company estimates the expected term of options with consideration of vesting date, contractual term, and historical experience. The expected term of "plain vanilla" options is estimated based on the midpoint between the vesting date and the end of the contractual term under the simplified method permitted by the SEC implementation guidance. The weighted-average expected term of the Company's options is approximately six years.
- *Risk-Free Rate.* The risk-free interest rate is selected based upon the implied yields in effect at the time of the option grant of U.S. Treasury zero-coupon issues with a term approximately equal to the expected life of the option being valued.

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

- *Dividends.* The Company does not anticipate paying cash dividends in the foreseeable future. Consequently, the Company uses an expected dividend yield rate of zero.

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Volatility	75.2 %	83.1 %	76.2 %	84.2 %
Risk-free interest rate	4.13 %	4.44 %	4.18 %	4.09 %
Expected life (years)	6.25	6.25	6.20	6.21
Dividend yield rate	— %	— %	— %	— %

A summary of stock option activities for the six months ended June 30, 2025 is presented below:

	Number of Shares	Weighted Average Exercise Per Share	Weighted Average Remaining Contractual Term (Years)	Aggregate Intrinsic Value (in thousands)
Outstanding as of December 31, 2024	6,151,069	$ 10.29	6.16	$ 10,691
Granted	915,811	13.47		
Exercised	(147,705)	7.21		
Cancelled/forfeited	(360,468)	11.93		
Outstanding as of June 30, 2025	6,558,707	$ 10.71	5.95	$ 4,980
Vested and expected to vest as of June 30, 2025	6,558,707	$ 10.71	5.89	$ 4,980
Exercisable as of June 30, 2025	4,164,971	$ 10.05	4.43	$ 4,188

The weighted average grant date fair value per share of stock options granted during the six months ended June 30, 2025 and 2024 was $9.44 and $9.63, respectively. The total intrinsic value of stock options that were exercised during the six months ended June 30, 2025 and 2024 was $717 and $2,385, respectively. The aggregate intrinsic value of outstanding and exercisable options represents the total excess of the fair market value of the Company's common stock over the exercise price of the underlying options.

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

Restricted Stock Units

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

A summary of RSU activities for the six months ended June 30, 2025 is presented below:

	Restricted Stock Units	Weighted Average Grant Date Fair Value Per Share
Outstanding and unvested as of December 31, 2024	3,378,867	$ 10.80
Granted	1,018,086	13.02
Vested	(935,254)	9.84
Forfeited	(272,825)	11.59
Outstanding and unvested as of June 30, 2025	3,188,874	$ 11.72

The total fair value of restricted stock units that vested during the six months ended June 30, 2025 and 2024 was $12,234 and $11,814, respectively.

Performance Restricted Stock Units

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

The Company's Board of Directors grants performance restricted stock units ("PRSUs") to certain executive officers under the Plan with various vesting terms. The PRSU awards vest based on the achievement of certain pre-established performance measures.

A summary of PRSU activities for the six months ended June 30, 2025 is presented below:

	Performance Restricted Stock Units	Weighted Average Grant Date Fair Value Per Share
Outstanding and unvested as of December 31, 2024	395,984	$ 12.12
Granted	353,663	13.58
Vested	(58,471)	10.25
Forfeited	(57,640)	12.65
Outstanding and unvested as of June 30, 2025	633,536	$ 13.06

Included in the table above, certain PRSUs are eligible to receive shares up to 200% of the target amount if target performance conditions are exceeded. If all performance criteria are fully attained, the total shares issuable under outstanding, unvested PRSUs would be 1,153,418.

CEO Performance Award - Market-Based Restricted Stock Units

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

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

The Company used a Monte Carlo simulation to determine the grant date fair value of $3,774 for the market-based awards. Compensation expense is recorded if the service condition is met regardless of whether the market condition is satisfied.

The following table summarizes stock-based compensation expense:

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Selling, general and administrative	$ 4,346	$ 5,552	$ 10,095	$ 10,415
Research and development	142	232	321	448
Total stock-based compensation expense, excluding capitalized stock-based compensation expense	4,488	5,784	10,416	10,863
Capitalized stock-based compensation expense in Intangible assets, net	35	10	73	22
Total stock-based compensation expense	$ 4,523	$ 5,794	$ 10,489	$ 10,885

As of June 30, 2025, there was $48,630 of total unrecognized compensation cost related to unvested shares subject to outstanding service-based stock options and restricted stock units. Unrecognized compensation costs associated with these stock options and restricted stock units are expected to be expensed over a weighted-average period of 2.4 and 2.6 years, respectively. As of June 30, 2025, total unrecognized compensation costs related to unvested shares subject to outstanding performance-based restricted stock units were $3,296 and are expected to be expensed over a weighted-average period of 2.1 years.

Note 11. Medytox Settlement Agreements

Medytox Settlement Agreements

In February 2021, the Company settled the ITC Action and certain related matters by entering into a Settlement and License Agreement with Medytox and Allergan (the "U.S. Settlement Agreement"), and another Settlement and License Agreement with Medytox (the "ROW Settlement Agreement"). The Company refers to the U.S. Settlement Agreement and the ROW Settlement Agreement collectively as the "Medytox Settlement Agreements." From September 17, 2022 to September 16, 2032, the Company has paid and will pay Medytox a quarterly, mid-single digit royalty on net sales of Jeuveau® sold in other Evolus territories pursuant to the Medytox Settlement Agreements.

As of June 30, 2025, the Company accrued $3,577 for royalties under the Medytox Settlement Agreements. As of December 31, 2024, the Company accrued $4,743 for royalties under the Medytox Settlement Agreements.

Note 12. Segment Reporting

The Company conducts business as a single operating and reportable segment, which is the business of performance beauty with focus on delivering products in the cash-pay aesthetic market. The Company's CEO, who is the CODM, reviews financial information on a consolidated basis for allocating and evaluating financial performance. The single reportable segment is further based on the Company's organizational and management structure and other factors.

The key measure of segment profit or loss that the CODM uses to allocate resources and to assess performance is consolidated net income or loss, which is utilized to evaluate the achievements of the Company's business operations. In April 2025 the Company launched Evolysse™ Form and Evolysse™ Smooth in the United States; as such, all segment related information has been recast in connection with the launch of Evolysse™. The table below presents selected financial information of the Company's single reportable segment regularly provided to and reviewed by the CODM and a reconciliation of segment net loss to consolidated net loss as computed under U.S. GAAP:

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

	Three Months Ended June 30,		Six Months Ended June 30,	
	2025	2024	2025	2024
Revenue:				
Jeuveau®	$ 58,968	$ 66,222	$ 127,042	$ 125,186
Evolysse™	9,731	—	9,731	—
Total product revenue, net	68,699	66,222	136,773	125,186
Service revenue	688	687	1,136	1,056
Total net revenues	69,387	66,909	137,909	126,242
Less:				
Cost of goods sold	24,067	19,841	45,934	38,671
Gross profit	45,320	47,068	91,975	87,571
Less:				
Research and development	1,837	2,350	4,049	4,428
Selling, general and administrative	56,675	50,152	113,315	95,275
Depreciation and amortization	932	663	1,756	1,309
Interest income	(479)	(1,029)	(1,189)	(1,546)
Interest expense	7,207	4,696	11,622	9,398
Income tax expense	53	43	125	90
Other segment items[1]	(3,763)	1,543	(1,669)	3,076
Segment net loss	$ (17,142)	$ (11,350)	$ (36,034)	$ (24,459)
Reconciliation of profit and loss (Segment net loss/profit):				
Adjustments and reconciling items	—	—	—	—
Consolidated net loss	$ (17,142)	$ (11,350)	$ (36,034)	$ (24,459)

(1) Other segment items include revaluation of contingent royalty obligation payable to Evolus Founders and Other (income) expense, net.

Information on segment total assets provided to the CODM is consistent with that reported on the accompanying unaudited condensed consolidated balance sheets with particular emphasis on the Company's available liquidity and working capital, including its cash and cash equivalents, accounts receivables, inventory and current liabilities.

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

The following discussion contains management's discussion and analysis of our financial condition and results of operations and should be read together with the unaudited condensed consolidated financial statements and the notes thereto included in Part I, Item 1 of this Quarterly Report on Form 10-Q and in conjunction with our Annual Report on Form 10-K for the year ended December 31, 2024 and other documents previously filed with the SEC. This discussion contains forward-looking statements that reflect our plans, estimates and beliefs and involve numerous risks and uncertainties, including but not limited to those described in Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q. Actual results may differ materially from those contained in any forward-looking statements. You should carefully read "Special Note Regarding Forward-Looking Statements" and Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q.

Overview

We are a global performance beauty company with a customer-centric approach to delivering breakthrough products in the cash-pay aesthetic market. Our current commercial product portfolio includes Jeuveau® (prabotulinumtoxinA-xvfs) and Evolysse™, a collection of injectable hyaluronic acid ("HA") gels. We currently sell Jeuveau® in the United States, Canada, certain European countries and Australia, and, in April 2025, we launched Evolysse™ Form and Evolysse™ Smooth in the United States, which are indicated for wrinkles and folds, such as nasolabial folds, in adults. We expect to launch all four Evolysse™ products in Europe in the first quarter of 2026 and anticipate two additional Evolysse™ products to be approved and launched in the United States in 2026 and 2027.

Our primary market is the cash-pay aesthetic market, which consists of medical products that consumers pay for directly out of pocket. Our customers are aesthetic practitioners who are properly licensed to deliver our products. By avoiding the regulatory burdens that accompany reimbursed products and pursuing an aesthetic-only non-reimbursed product strategy, we create flexibility to deliver a unique value proposition to our customers. We utilize this flexibility to drive customer adoption through programs such as our consumer loyalty program, co-branded marketing programs, promotional events and pricing strategies.

Market Trends and Uncertainties

The global economy, including the financial and credit markets, has recently experienced volatility and disruptions, increases in inflation rates, rising interest rates, new and threatened tariffs, severely diminished liquidity and credit availability, declines in consumer confidence, declines in economic growth, and uncertainty about economic stability. We expect elevated levels of cost inflation and recently enacted tariffs by the U.S. to continue, impacting and potentially continuing to impact consumer discretionary spending for aesthetic medical procedures. Markets experiencing uncertainty could have substantial high rates of inflation. We cannot reasonably estimate the financial impact of increased inflation or recently enacted tariffs by the United States on our financial condition, results of operations or cash flows in the future.

2025 Key Developments

In April 2025, we launched Evolysse™ Form and Evolysse™ Smooth in the United States. Evolysse™ delivered $9.7 million of revenue in the three months ended June 30, 2025.

On May 5, 2025, we entered into an Amended and Restated Loan Agreement (the "A&R Loan Agreement") with Pharmakon (as defined below), which amends and restates the Prior Pharmakon Loan Agreement. Under the A&R Loan Agreement, Pharmakon agreed to make a senior secured term loan to us in an aggregate principal amount of up to $250.0 million to be funded in three tranches, comprised of an initial $150.0 million tranche funded upon the execution of the A&R Loan Agreement and two additional tranches of up to $50.0 million each, available at our election (collectively, the "New Pharmakon Term Loans") with a scheduled expiration date of December 31, 2026.

Results of Operations

Comparison of the Three Months Ended June 30, 2025 and 2024

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

	Three Months Ended June 30,	
(in thousands)	**2025**	**2024**
Revenue:		
Product revenue, net	$ 68,699	$ 66,222
Service revenue	688	687
Total net revenues	69,387	66,909
Cost of goods sold	24,067	19,841
Gross profit	45,320	47,068
Gross profit margin	*65.3 %*	*70.3 %*
Operating expenses:		
Selling, general and administrative	56,675	50,152
Research and development	1,837	2,350
Revaluation of contingent royalty obligation payable to Evolus Founders	(3,914)	1,605
Depreciation and amortization	932	663
Total operating expenses	55,530	54,770
Loss from operations	(10,210)	(7,702)
Other income (expense):		
Non-operating expense, net	(6,728)	(3,667)
Other income (expense), net	(151)	62
Loss before income taxes	(17,089)	(11,307)
Income tax expense	(53)	(43)
Net loss	(17,142)	(11,350)
Currency translation adjustment	240	(44)
Comprehensive loss	$ (16,902)	$ (11,394)

Net Revenues

We currently operate one reportable segment, and our net product revenues are derived from the sales of Jeuveau® and, beginning April 2025, from the sales of Evolysse™. Net revenues consist of gross revenues, net of adjustments primarily relating to customer rebates and rewards associated with consumer loyalty program and co-branded marketing programs. Revenues are recognized when the control of the promised goods is transferred to the customer in an amount that reflects the consideration allocated to the related performance obligations and to which we expect to be entitled in exchange for those products or services.

Net revenues increased by $2.5 million, or 3.7%, to $69.4 million for the three months ended June 30, 2025 from $66.9 million for the three months ended June 30, 2024, due to the launch of Evolysse™ in the United States, partially offset by a decline in revenues from the sales of Jeuveau® in the United States due to softening toxin demand driven by broader macroeconomic factors that resulted in decreased patient demand. Net revenues during the three months ended June 30, 2025 and 2024 contained $0.7 million of service revenue from the sales of Jeuveau® through a distribution partner in Canada. We anticipate our continued sales growth will depend on (i) our ability to grow our customer base and increase purchases by our current customers in the competitive aesthetic market, (ii) the success of the commercial launch of Evolysse™ Form and Evolysse™ Smooth products in the United States, (iii) the success of the commerical launch of Evolysse™ injectable HA gel collection in Europe and (iv) the regulatory approval of the Evolysse™ Sculpt, and Lips products in the United States.

Cost of Goods Sold

Cost of goods sold, primarily consists of inventory cost, amortization of intangible asset relating to distribution right and certain royalties. Cost of goods sold increased by $4.3 million, or 21.7%, to $24.1 million for the three months ended June 30, 2025 from $19.8 million for the three months ended June 30, 2024 primarily due to product mix between Jeuveau® and Evolysse™. We anticipate that our cost of goods sold will fluctuate in line with changes in revenues.

Gross Profit Margin

Our gross profit margin was 65.3% and 70.3% for the three months ended June 30, 2025 and 2024, respectively. We anticipate our gross profit margin will fluctuate as we implement various incentive programs that may affect the average selling price of our products and as we expand internationally.

Selling, General and Administrative

Selling, general and administrative expenses increased by $6.5 million, or 13.0%, to $56.7 million for the three months ended June 30, 2025 from $50.2 million for the three months ended June 30, 2024, primarily due to higher personnel costs related to our commercial activities and training for the launch of Evolysse™. Selling, general and administrative expenses may fluctuate in the future primarily due to potential changes in marketing strategies and international launches of our products.

Research and Development

Research and development expenses decreased by $0.6 million, or 25.5%, to $1.8 million for the three months ended June 30, 2025 from $2.4 million for the three months ended June 30, 2024. The decrease was primarily attributable to our clinical operations and research and development expenses related to Evolysse™ incurred in the three months ended June 30, 2024. We expect our research and development expenses to increase if and when we develop further product candidates and as we pursue regulatory approvals in other jurisdictions for our current products.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

The change in the fair value of the contingent royalty obligation payable to the founders of Evolus, or Evolus Founders is recorded in operating expenses in each reporting period. During the three months ended June 30, 2025 and 2024, we recognized an unrealized gain of $3.9 million and an unrealized loss of $1.6 million, respectively. Changes to the fair value of contingent royalty obligation payable to Evolus Founders are driven by changes in management assumptions relating to revenue forecasts, the discount rate used and the timing of cash flows.

Depreciation and Amortization

Depreciation and amortization increased by $0.2 million, or 30.2%, to $0.9 million for the three months ended June 30, 2025 from $0.7 million for the three months ended June 30, 2024, primarily due to an increase in amortization of internal use software and leasehold improvements.

Non-Operating Expense, net

Non-operating expense, net, increased by $3.0 million, or 81.8%, to $6.7 million for the three months ended June 30, 2025 from $3.7 million for the three months ended June 30, 2024, primarily due to interest expense of our term loans with Pharmakon. Interest on the term loans with Pharmakon is based on a variable interest rate, which we expect will continue to fluctuate with the market. See "—Liquidity and Capital Resources—The Pharmakon Term Loans" for further information.

Income Tax Expense

There was minimal income tax expense in each of the three months ended June 30, 2025 and 2024.

Comparison of the Six Months Ended June 30, 2025 and 2024

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

(in thousands)	Six Months Ended June 30, 2025	2024
Revenue:		
Product revenue, net	$ 136,773	$ 125,186
Service revenue	1,136	1,056
Total net revenues	137,909	126,242
Cost of goods sold	45,934	38,671
Gross profit	91,975	87,571
Gross profit margin	*66.7 %*	*69.4 %*
Operating expenses:		
Selling, general and administrative	113,315	95,275
Research and development	4,049	4,428
Revaluation of contingent royalty obligation payable to Evolus Founders	(1,763)	3,183
Depreciation and amortization	1,756	1,309
Total operating expenses	117,357	104,195
Loss from operations	(25,382)	(16,624)
Other income (expense):		
Non-operating expense, net	(10,433)	(7,852)
Other income (expense), net	(94)	107
Loss before income taxes	(35,909)	(24,369)
Income tax expense	(125)	(90)
Net loss	(36,034)	(24,459)
Currency translation adjustment	306	(174)
Comprehensive loss	$ (35,728)	$ (24,633)

Net Revenues

Net revenues consist of gross revenues net of adjustments primarily relating to customer rebates and rewards associated with consumer loyalty program and co-branded marketing programs. Revenues are recognized when control of the promised goods is transferred to the customer in an amount that reflects the consideration allocated to the related performance obligations and to which we expect to be entitled in exchange for those products or services.

Net revenues increased by $11.7 million, or 9.2%, to $137.9 million for the six months ended June 30, 2025 from $126.2 million for the six months ended June 30, 2024, due to the launch of Evolysse™ in the United States, partially offset by a decline in revenues from the sales of Jeuveau® in the United States. Net revenues during the six months ended June 30, 2025 and 2024 contained $1.1 million of service revenue from the sales of Jeuveau® through a distribution partner in Canada. We anticipate our continued sales growth will depend on (i) our ability to grow our customer base and increase purchases by our current customers in the competitive aesthetic market, (ii) the success of the commercial launch of Evolysse™ Form and Evolysse™ Smooth products in the United States, (iii) the success of the commercial launch of Evolysse™ injectable HA gel collection in Europe and (iv) the regulatory approval for the Evolysse™ Sculpt, and Lips products in the United States.

Cost of Goods Sold

Cost of goods sold, primarily consisted of the cost of inventory, amortization of intangible asset relating to distribution right and certain royalties. Cost of goods sold increased by $7.2 million, or 18.6%, to $45.9 million for the six months ended June 30, 2025 from $38.7 million for the six months ended June 30, 2024 primarily due to product mix between Jeuveau® and Evolysse™. We anticipate that our cost of goods sold will fluctuate in line with changes in revenues.

Gross Profit Margin

Our gross profit margin was 66.7% and 69.4% for the six months ended June 30, 2025 and 2024, respectively. We anticipate our gross profit margin will fluctuate as we implement various incentive programs that may affect the average selling price of our products and as we expand internationally.

Selling, General and Administrative

Selling, general and administrative expenses increased by $18.0 million, or 18.9%, to $113.3 million for the six months ended June 30, 2025 from $95.3 million for the six months ended June 30, 2024, primarily due to higher personnel costs relating to our commercial activities and training for the launch of Evolysse™. Selling, general and administrative expenses may fluctuate in the future primarily due to potential changes in marketing strategies and international launches of our products.

Research and Development

Research and development expenses decreased by $0.4 million, or 8.6%, to $4.0 million for the six months ended June 30, 2025 from $4.4 million for the six months ended June 30, 2024. The decrease was primarily attributable to our clinical operations and research and development expenses related to Evolysse™ incurred in the six months ended June 30, 2024. We expect our research and development expenses to increase if and when we develop further product candidates and as we pursue regulatory approvals in other jurisdictions for our current products.

Revaluation of Contingent Royalty Obligation Payable to Evolus Founders

The change in the fair value of the contingent royalty obligation payable to the Evolus Founders is recorded in operating expenses in each reporting period. During the six months ended June 30, 2025 and 2024, we recognized an unrealized gain of $1.8 million and an unrealized loss of $3.2 million, respectively. Changes to the fair value of contingent royalty obligation payable to Evolus Founders are driven by changes in management assumptions relating to revenue forecasts, the discount rate used and the timing of cash flows.

Depreciation and Amortization

Depreciation and amortization increased by $0.5 million, or 38.2%, to $1.8 million for the six months ended June 30, 2025 from $1.3 million for the six months ended June 30, 2024, primarily due to an increase in amortization of internal use software and leasehold improvements.

Non-Operating Expense, net

Non-operating expense, net, increased by $2.5 million, or 31.8%, to $10.4 million for the six months ended June 30, 2025 from $7.9 million for the six months ended June 30, 2024, primarily due to interest expense of our term loans with Pharmakon. Interest on the term loans with Pharmakon is based on a variable interest rate, which we expect will continue to fluctuate with the market. See "—Liquidity and Capital Resources—The Pharmakon Term Loans" for further information.

Income Tax Expense

There was minimal income tax expense in each of the six months ended June 30, 2025 and 2024.

Liquidity and Capital Resources

As of June 30, 2025 we had cash and cash equivalents of $61.7 million, positive working capital of $81.2 million and stockholders' deficit of $18.7 million.

Since inception, we have incurred recurring net operating losses and have an accumulated deficit of $645.4 million as of June 30, 2025 as a result of ongoing efforts to develop and commercialize our products, including providing selling, general and administrative support for our operations. We had net loss of $36.0 million and $24.5 million in the six months ended June 30, 2025 and 2024, respectively. We had a loss from operations of $25.4 million and $16.6 million in the six months ended June 30, 2025 and 2024, respectively. We used net cash of $40.4 million and $17.1 million in operating activities in the six months ended June 30, 2025 and 2024, respectively. We expect to continue to incur significant expenses for the foreseeable future as we increase marketing efforts for our products in the U.S., Europe, and Australia, prepare for commercial launch of the Evolysse™ Form, Smooth, Sculpt and Lips injectable HA gels product line in Europe, and pursue regulatory approvals in other jurisdictions for Jeuveau® and Evolysse™ products.

Follow-On Offering

In March 2024, we completed a follow-on offering and issued 3,554,000 shares of our common stock, at a price to the public of $14.07 per share. We received net proceeds of $46.8 million from the offering, after deducting underwriting discounts and commissions and other offering expenses. In addition, we granted the underwriters an option, exercisable for 30 days, to purchase up to 533,100 additional shares of common stock (the "option shares") at the purchase price, which the underwriters exercised in April 2024 with respect to 318,100 of the allotted option shares. The net proceeds to us from the sale of the option shares, after deducting the underwriters' discounts and commissions, was $4.2 million.

"At-the-market" Offerings of Common Stock

On March 8, 2023, we entered into an "at-the-market" sales agreement (the "ATM Sales Agreement") and filed a shelf registration statement on Form S-3 and corresponding prospectus with the SEC to permit sales under the ATM Sales Agreement, which registration statement became effective on June 8, 2023. We have not sold any shares under the ATM Sales Agreement. See *Note 10. Stockholders' Equity* in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1 of this quarterly report for additional information.

The Pharmakon Term Loans

On December 14, 2021, we entered into a loan agreement with BPCR Limited Partnership, BioPharma Credit Investments V (Master) LP, and Biopharma Credit PLC (collectively, "Pharmakon"), which was subsequently amended in December 2022 and May 2023 (as amended, the "Prior Pharmakon Loan Agreement"). Pursuant to the terms of the Prior Pharmakon Loan Agreement, Pharmakon made loans to us totaling $125,000 (the "Prior Pharmakon Term Loans"). The Prior Pharmakon Term Loans loan bore an annual interest rate equal to the 3-month secured overnight financing rate ("SOFR") (subject to a SOFR floor of 1.0%) plus 8.5% per annum.

On May 5, 2025, we entered into the A&R Loan Agreement with Pharmakon, which amends and restates the Prior Pharmakon Loan Agreement. Under the A&R Loan Agreement, Pharmakon agreed to make a senior secured term loan to us in an aggregate principal amount of up to $250.0 million to be funded in three tranches, comprised of an initial $150.0 million tranche funded upon the execution of the A&R Loan Agreement and two additional tranches of up to $50.0 million each, available at our election (collectively, the "New Pharmakon Term Loans"). The initial tranche of $150.0 million was released on May 5, 2025, which includes the $125.0 million of principal amount borrowed relating to the Prior Pharmakon Term Loans and $25.0 million of incremental borrowings. Total proceeds of $23.4 million were received by us, net of discounts and fees paid to the lender, from the funding of the initial tranche. The New Pharmakon Term Loans accrue interest at a per annum rate equal to the 3-month SOFR (subject to a SOFR floor of 3.5%) plus 5.0% per annum. See *Note 7. Term Loans* in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1 of this quarterly report for additional information.

Contingent Royalties to Evolus Founders

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

As of June 30, 2025, we recorded an aggregate balance of $38.6 million on our condensed consolidated balance sheet for the future royalty payment obligation to the Evolus Founders.

Litigation Settlement

In February 2021, we settled litigation claims related to a complaint against us filed by Allergan, Inc. and Allergan Limited (together, "Allergan") and Medytox, Inc. ("Medytox") in the U.S. International Trade Commission related to Jeuveau® (the "ITC Action") and certain related matters by entering into a Settlement and License Agreement with Medytox and Allergan, which we refer to as the U.S. Settlement Agreement, and another Settlement and License Agreement with Medytox, which we refer to as the ROW Settlement Agreement. We refer to the U.S. Settlement Agreement and the ROW Settlement Agreement collectively as the Medytox Settlement Agreements. From September 17, 2022 to September 16, 2032, we have paid and will pay to Medytox a quarterly, mid-single digit royalty on net sales of Jeuveau® sold in other Evolus territories.

Daewoong Agreement

Our agreement (as amended, the "Daewoong Agreement") with Daewoong Pharmaceutical Co. Ltd. ("Daewoong") provides us with an exclusive distribution license to Jeuveau® from Daewoong for aesthetic indications in the United States, the European Union, United Kingdom, members of the European Economic Area, Switzerland, Canada, Australia, New Zealand, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Daewoong Agreement includes certain minimum annual purchases we are required to make in order to maintain the exclusivity of the license. We may, however, meet these minimum purchase obligations by achieving certain market share in our licensed territories. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions.

Symatese U.S. Agreement

Our agreement (the "Symatese U.S. Agreement") with Symatese Aesthetics S.A.S ("Symatese") provides us with an exclusive right to commercialize and distribute the five injectable HA gel product candidates, Form, Smooth, Sculpt, Lips and Eye in the United States for use in the aesthetics and dermatological field of use. We also have the right of first negotiation to obtain a license from Symatese to commercialize and distribute any new products developed using the same technology as the Evolysse™ collection of injectable HA gels. The Symatese U.S. Agreement includes certain milestone payments, development cost-sharing arrangements, and minimum annual purchases we are required to make in order to maintain the exclusivity of the license. We may, however, meet these minimum purchase obligations by achieving certain market share in our licensed territory. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share.

Symatese Europe Agreement

Our agreement (the "Symatese Europe Agreement") with Symatese provides us with an exclusive right to commercialize and distribute four injectable HA gel product candidates, Form, Smooth, Sculpt and Lips in 50 countries in Europe for use in the aesthetics and dermatological fields. The Symatese Europe Agreement includes certain milestone payments and minimum annual purchases we are required to make in order to maintain the exclusivity of the license. We may, however, meet these minimum purchase obligations by achieving certain market share in our licensed territory. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share.

Operating Leases

Our corporate headquarters in Newport Beach, California is under a non-cancelable operating lease, which expires on January 31, 2030 with an option to extend the term for an additional 60 months. Lease payments increase based on an annual rent escalation clause that occurs on February 1st of each year under the lease term.

Current and Future Capital Requirements

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

We have based our projections of capital requirements on assumptions that may prove to be incorrect and we may use all our available capital resources, which consist of cash and cash equivalents and cash generated from operations, sooner than we expect. Our cash requirements depend on numerous factors, including but not limited to, the impact of any potential disruptions to our supply chain, inflation or other economic conditions, uncertainty regarding the stability of certain financial institutions, and other long-term commitments and contingencies. Because of the numerous risks and uncertainties associated with research, development and commercialization of our products, we are unable to estimate the exact amount of our operating capital requirements, including our requirements beyond the next twelve months. In such case, we may be required to raise additional capital to fund future operations through the incurrence of debt, the entry into licensing or collaboration agreements with partners, sale of equity securities, grants or other sources of financing. However, there can be no assurance such financing or other alternatives will be available to us on acceptable terms, or at all. The global economy, including the financial and credit markets, has recently experienced significant volatility and disruptions, including severely diminished liquidity and credit availability and elevated interest rates. These conditions may adversely impact our ability to raise additional capital on acceptable terms, or at all.

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

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

Cash Flows

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

	Six Months Ended June 30,	
(in millions)	2025	2024
Net cash provided by (used in):		
Operating activities	$ (40.4)	$ (17.1)
Investing activities	(4.1)	(2.1)
Financing activities	19.0	50.1
Effect of exchange rates on cash and cash equivalents	0.3	(0.2)
Net increase (decrease) in cash and cash equivalents	(25.2)	30.8
Cash and cash equivalents, beginning of period	87.0	62.8
Cash and cash equivalents, end of period	$ 61.7	$ 93.7

Operating Activities

For the six months ended June 30, 2025, operating activities used $40.4 million of cash, which primarily resulted from our net loss of $36.0 million. Net operating assets and liabilities changed by $19.8 million, primarily driven by timing of cash collections from customers, cash payments to vendors and the timing of inventory purchases from our suppliers. Operating activities also include adjustments for certain non-cash charges including $10.4 million of stock-based compensation expense, $1.8 million of unrealized gain relating to the revaluation of our contingent royalty obligation payable to Evolus Founders, $1.8 million of provision for bad debts and $3.3 million of depreciation and amortization.

For the six months ended June 30, 2024, operating activities used $17.1 million of cash, which primarily resulted from our net loss of $24.5 million. Net operating assets and liabilities changed by $11.1 million, primarily driven by improved collections from customers, cash payments to vendors and the timing of inventory purchases from our supplier. Operating activities also include adjustments for certain non-cash charges including $10.9 million of stock-based compensation expense, $3.2 million of unrealized loss relating to the revaluation of our contingent royalty obligation payable to Evolus Founders, $0.8 million of provision for bad debts and $2.8 million of depreciation and amortization.

Investing Activities

Cash used in investing activities was $4.1 million for the six months ended June 30, 2025 compared to $2.1 million for the six months ended June 30, 2024, primarily driven by an increase in expenditures relating to capitalized software.

Financing Activities

Cash provided by financing activities was $19.0 million for the six months ended June 30, 2025 compared to $50.1 million for the six months ended June 30, 2024, primarily driven by $25.0 million of proceeds from the modification of our long-term debt, partially offset by $4.4 million of payments relating to contingent royalty obligation to Evolus Founders and $2.6 million in payments for debt modification fees. For the six months ended June 30, 2024, cash provided by financing activities was mostly due to $51.2 million of proceeds from a follow-on equity offering.

Indebtedness

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

Material Cash Requirements

Our material cash requirements from known contractual and other obligations, including commitments for capital expenditures, primarily consist of (i) principal and interest payments related to our New Pharmakon Term Loans (future interest payments on our outstanding New Pharmakon Term Loans total approximately $68.3 million, with $14.1 million due within twelve months), (ii) quarterly royalty payments to the Evolus Founders based on a low single digit percentage of net sales of Jeuveau® (these obligations terminate in the quarter after the 10-year anniversary of the first commercial sale of Jeuveau® in the United States), (iii) quarterly royalty payments to Medytox based on a low single digit royalty on net sales of Jeuveau® sold in the United States and other Evolus territories (during the period from September 17, 2022 to September 16, 2032), (iv) minimum purchase obligations under the Daewoong Agreement, (v) €12.1 million of milestone payments under the Symatese U.S. Agreement, subject to FDA approval of three Evolysse™ products, consisting of €1.6 million due on the date of FDA approval, €4.1 million in June 2026, €3.2 million in June 2027, and €3.2 million in June 2028, in each case subject to and contingent on three of the injectable HA gel products gaining approval prior to the milestone payment date, (vi) €3.1 million of milestone payments under the Symatese Europe Agreement consisting of: €1.2 million on the second anniversary of certain regulatory approvals and €1.9 million on the earlier of the third anniversary of certain regulatory approvals or following a year in which we achieves €25.0 million in revenue in Europe for the injectable HA gel products, (vii) minimum purchase and royalty obligations for the injectable HA gel products, and (viii) obligations under operating leases related to our office space which are described in more detail in *Note 8. Operating Leases* in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q. During the six months ended June 30, 2025, there were no material changes to these obligations as reported in our Annual Report on Form 10-K for the year ended December 31, 2024, except as described above with respect to the New Pharmakon Term Loans.

Critical Accounting Policies and Estimates

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

There have been no material changes to our critical accounting policies and estimates as discussed in our Annual Report on Form 10-K filed for the year ended December 31, 2024.

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-Recently Adopted Accounting Pronouncements and Recently Issued Accounting Pronouncements* in the Notes to the Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q.

Item 3. Quantitative and Qualitative Disclosure About Market Risk.

We are exposed to market risk in the ordinary course of our business. Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates and foreign currency exchange rates.

For financial market risks related to changes in interest rates and foreign currency exchange rates, reference is made to the "*Management's Discussion and Analysis of Financial Condition and Results of Operations-Quantitative and Qualitative Disclosures About Market Risk*" section in our Annual Report on Form 10-K filed for the year ended December 31, 2024 and to the notes to the consolidated financial statements included therein. As of the date of this report, there were no material changes in our financial market risks from the risks disclosed in our Annual Report on Form 10-K filed for the year ended December 31, 2024.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

As of June 30, 2025, our management, with the participation of our Chief Executive Officer, who serve as our principal executive officer and principal financial officer, 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, as appropriate, to allow timely decisions regarding required disclosures. Based on this evaluation, our Chief Executive Officer concluded that, as of June 30, 2025, our disclosure controls and procedures were effective at a reasonable assurance level.

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

Changes in Internal Control over Financial Reporting

During the three months ended June 30, 2025, there were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred with respect to the quarter ended June 30, 2025 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Part II—Other Information

Item 1. Legal Proceedings

See “Legal Proceedings” in *Note 9. Commitments and Contingencies* for information regarding legal proceedings.

Item 1A. Risk Factors

The risks and uncertainties discussed below update, supersede and replace the risks and uncertainties previously disclosed in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2024, which was filed with the SEC on March 4, 2025 and previously disclosed in Part II, Item 1A of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2025, which was filed with the SEC on May 7, 2025. We do not believe any of the changes constitute material changes from the risk factors previously disclosed in such prior Annual Report on Form 10-K or Quarterly Report on Form 10-Q.

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

Risks Related to Our Business and Strategy

We have incurred significant losses since our inception.

We are a global performance beauty company with a history of significant losses. To date, we have invested substantially all of our efforts and financial resources in the clinical development, regulatory approval, and commercial launch of Jeuveau® and Evolysse™. We began generating revenue in May 2019 and have incurred losses in each year since our inception in 2012. 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 of profitability. We recorded net loss of $36.0 million for the six months ended June 30, 2025, and we recorded a net losses of $50.4 million and $61.7 million for the years ended December 31, 2024 and 2023, respectively. We had an accumulated deficit of $645.4 million as of June 30, 2025. Our ability to achieve profitability is dependent on our ability to successfully market and sell our commercial products. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our prior losses, combined with expected future losses, may adversely affect the market price of our common stock and, if needed, our ability to raise capital to continue operations.

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

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

These competitors may also try to compete with our aesthetic products on price both directly, through rebates and promotional programs to high volume customers and coupons to consumers, and indirectly, through attractive product bundling with complimentary products, such as injectable HA gels that offer convenience and an effectively lower price compared to the total price of purchasing each product separately. These companies may also seek to compete based on their longer operating history. Larger companies may be better capitalized than us and, accordingly, are able to offer greater customer loyalty benefits to encourage repeat use of their products and finance a sustained global advertising campaign to

compete with our commercialization efforts at launch. A number of our larger competitors also have access to a significant number of studies and publications that they could use to compete with us.

In the long term, we expect to expand our focus to the broader cash-pay healthcare market. Competitors and other parties may seek to impact regulatory approval of our future product applications through the filing of citizen petitions or other similar documents, which could require costly and time-consuming responses to the regulatory agencies. Larger competitors could seek to prevent or delay our commercialization efforts via costly litigation which can be lengthy and expensive and serve to distract our management team's attention. We could face competition from other sources as well, including academic institutions, governmental agencies and public and private research institutions. In addition, we are aware of other companies also developing and/or marketing products in one or more of our target markets, including competing injectable botulinum toxin type A formulations that are currently in Phase III clinical development in North America for the treatment of glabellar lines. For example, Revance Therapeutics, Inc. obtained approval for an injectable botulinum toxin type A neurotoxin on September 8, 2022, called "Daxxify" and Hugel, Inc. obtained approval for its injectable botulinum toxin type A neurotoxin on February 29, 2024. Additionally, both Galderma S.A. and Medytox have submitted a Biologics License Application ("BLA") to the U.S. Food and Drug Administration ("FDA") for an injectable botulinum toxin type A neurotoxin. With the approval of Revance Therapeutic's and Hugel's BLAs and the potential approval of additional BLAs, we expect the competition in the U.S. injectable botulinum toxin market to further increase. We would face similar risks with respect to any future product candidates that we may seek to develop or commercialize in the broader cash-pay healthcare market. Successful competitors in that market have the ability to effectively discover, obtain patents, develop, test and obtain regulatory approvals for products, as well as the ability to effectively commercialize, market and promote approved products, including communicating the effectiveness, safety and value of products to actual and prospective customers and medical staff.

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

In addition, competitors may develop new technologies within the medical aesthetic market that may be superior in safety and efficacy to our products or offer alternatives to the use of toxins or injectable HA gels, including surgical and radio frequency techniques. To compete successfully in the medical aesthetic market, we will have to demonstrate that our products are at least as safe and effective as current products sold by our competitors. Our products also compete with other medical aesthetic products or non-urgent aesthetic services. For example, consumers have recently prioritized spending on weight loss drugs or other beauty products which may impact the amount of discretionary income they have to spend on our products. Competition in the medical aesthetic market could result in price-cutting and reduced profit margins, any of which would harm our business, financial condition and results of operations.

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

Our commercial opportunity could also be reduced or eliminated if our competitors develop and commercialize products that are safer, are more effective, have fewer or less severe side effects, are more convenient or are less expensive than Jeuveau®, Evolysse™ 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®, Evolysse™ and any future product candidates and attracting practitioner and consumer demand.

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

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

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

In addition, in its clinical trials, Jeuveau® was clinically tested and compared to BOTOX, both of which contain a 900 kDa complex. We believe that aesthetic practitioners' 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 an aesthetic practitioner's practice may not be as seamless as we anticipate.

With respect to consumer demand, the treatment with our products 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 our products for aesthetic indications may be influenced by a number of factors, including the cost, efficacy, safety, perception, marketing programs for, and aesthetic practitioner recommendations of our products versus competitive products or procedures. Moreover, consumer demand may fluctuate over time as a result of consumer sentiment about the benefits and risks of aesthetic procedures generally and our products in particular, changes in demographics and social trends, rising inflation and general consumer confidence and consumer discretionary spending, which may be impacted by economic and political conditions.

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

Our products rely on consumer discretionary spending and the purchasing decisions of our customers, both of which are sensitive to difficult to predict global economic conditions, including the imposition of tariffs, or changes in consumer or customer sentiment.

Because we do not expect our products to be reimbursed by any government or third-party payor, our products will continue to be paid for directly by the consumer. As a result, demand for our products from our customers who utilize our products for treatments of consumers is accordingly tied to the discretionary spending levels of our targeted consumer population. We do not maintain long-term purchase commitments with most of our customers, instead, our sales depend on short-term purchasing decisions for our products made by our customers in response to consumer demand, aesthetics trends, our competitor's sales tactics, inventory management, seasonality, and other factors affecting consumer and customer purchasing behavior. Additionally, our customers' businesses are susceptible to economic conditions that may tighten their liquidity resulting in changes in their purchasing behavior or delays in payments for our products, each of which could have an adverse effect on our business. As a result, it is difficult to forecast demand for our products and our revenues in a given period are subject to volatility based on any of these factors.

Recent macroeconomic events, including inflationary pressures and threatened and imposed tariffs have negatively impacted consumer sentiment, resulted in decreased procedural volume for cash-pay medical aesthetics treatments, especially in the United States, and have impacted our customer's liquidity and purchasing behaviors. If these or similar conditions persist or worsen, our business, financial condition, and results of operations could be materially harmed.

In addition, our business strategy was developed based on a number of important assumptions about the cash-pay healthcare market. For example, we believe that the number of cash-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 our products or any of our future product candidates could differ materially from our projections if our assumptions are incorrect.

Our business is subject to trade policy risks, including tariffs and regulatory actions on imports which may have a material adverse impact on our results of operations and financial condition

The current tariff environment is dynamic and uncertain, as the U.S. government has imposed, modified and paused tariffs multiple times since the beginning of 2025. Changes to tariffs and other trade restrictions can be announced at any time with little or no notice.

Changes in trade policies, including increased or proposed tariffs in the United States or retaliatory tariffs in response to such have caused an increase in our cost of goods related to our products. For example, we source our Evolysse™ products from France, and these products were subject to a 10% tariff in the second quarter of 2025 and as a result of a recent U.S. trade deal with the European Union these products will be subject to a 15% tariff. In addition, while pharmaceutical products, like Jeuveau®, are currently exempt from retaliatory tariffs, the U.S. Department of Commerce has initiated an investigation under Section 232 of the Trade Expansion Act of 1962, as amended, to determine the effects of importing pharmaceuticals and pharmaceutical ingredients on national security. This investigation may lead to the imposition of significant tariffs on pharmaceutical imports, such as Jeuveau®. All of these current and threatened tariffs are subject to implementation or change with little notice. Although we have been proactively managing inventory flows into the United States to protect against such tariffs, there can be no assurance that we will be able to do so in the future. If tariffs impact global supply chains, have a negative impact on consumer sentiment or cause a significant increase in our costs and we are unable to successfully make up for these increased costs, our revenues could be harmed, which would have an adverse effect on our business.

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

The FDA and European regulatory processes for medical devices such as Evolysse™ are complex, time-consuming and subject to numerous inherent risks. Before future products within the Evolysse™ collection can be marketed in the United States, Symatese must obtain regulatory approval for the injectable HA gels. Regulators must determine that a proposed device is safe and effective for its intended use based, in part, on extensive data, including, but not limited to, technical, pre-clinical, clinical trial, manufacturing and labeling data. In addition, modifications to products that are approved by regulatory agencies generally require approval.

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

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

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

We have utilized substantial amounts of cash since our inception in order to conduct clinical development to support regulatory approval and launch our products in multiple markets. We expect that we will continue to expend substantial resources for the foreseeable future in order to continue to market and sell our products and for the continued clinical development of Evolysse™ products and any additional product candidates we may choose to pursue. While we believe that we currently have adequate capital resources, which consist of cash and cash equivalents and cash generated from operations, to operate our business until our business generates profits and positive cash flow, this belief is based upon certain financial

assumptions including net revenue, gross margin, working capital and expense assumptions. If these assumptions are incorrect, or if we experience other risks or uncertainties set forth in this Quarterly Report on Form 10-Q, we may require additional capital to operate our business.

We expect to expend resources furthering the development and continuation of our marketing programs and commercialization infrastructure in connection with commercializing our products within and outside of the United States. We have also agreed to reimburse Symatese for certain clinical trial expenses related to the Evolysse™ Lip and Eye products in the United States and for certain regulatory filing fees in Europe. In the long term, our expenditures will include costs associated with the commercialization of our products, research and development, approval and commercialization of products and any of our future product candidates, including continued development of the Evolysse™ collection of injectable HA gels, such as research and development, conducting preclinical studies and clinical trials and manufacturing and supplying as well as marketing and selling the products approved for sale and any products approved for sale in the future. Because the commercialization expenditures needed to meet our sales objectives are highly uncertain, we cannot reasonably estimate the actual amounts necessary to successfully market and sell our products. We may in the future, also, acquire other companies or products which may be costly and which may require additional capital to operate. In addition, other unanticipated costs may arise. Accordingly, our actual cash needs may exceed our expectations.

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

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

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

Effective February 18, 2021, we entered into the Medytox Settlement Agreements, under which we obtained (i) a license to commercialize, manufacture and to have manufactured for us certain products identified in the Medytox Settlement Agreements, including Jeuveau®, in the United States and other territories where we license Jeuveau®, (ii) the dismissal of outstanding litigation and related remedies, which we refer to together with any claims (including claims brought in Korean courts) with a common nexus of fact as the Medytox Actions, and (iii) releases of claims against us for the Medytox Actions. Under the agreement, we remain obligated to pay to Medytox a mid-single digit royalty percentage on net sales of Jeuveau® in the United States and all territories we have licensed outside the United States until September 16, 2032. In addition, under

the Medytox Settlement Agreements we made certain representations and warranties and agreed to certain customary positive and negative covenants.

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

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

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

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

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

The funds in our operating accounts are held in banks or other financial institutions. Our cash held in non-interest bearing and interest-bearing accounts exceeds applicable Federal Deposit Insurance Corporation insurance limits. Bank failures, events involving limited liquidity, defaults, non-performance or other adverse developments occur with respect to the banks or other financial institutions that hold our funds, or that affect financial institutions or the financial services industry generally, or concerns or rumors about any events of these kinds or other similar risks may lead to widespread demands for customer withdrawals and liquidity constraints that may result in market-wide liquidity problems, which could adversely impact our liquidity.

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

Our ability to market our products is limited to their indicated uses, and if we want to expand the indications for which we market our products, we will need to obtain additional regulatory approvals, which will be expensive and may not be granted.

Each of our approved products have specific approved indications for use. The terms of the approvals for each of our products restrict our ability to market or advertise those products for other indications, which could limit aesthetic practitioner and consumer adoption. Under the Federal Food Drug and Cosmetic Act, we may generally only market products for approved indications. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin and dermal filler 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, AbbVie, has obtained and plans to obtain additional indications for its neurotoxin and dermal filler products within medical aesthetics and, therefore, is able to market its product across a greater number of

indications than Jeuveau® and Evolysse™. If we are unable to obtain approval for indications in addition to our approved indications, our marketing efforts for Jeuveau® and Evolysse™ will be severely limited. As a result, we may not generate aesthetic practitioner and consumer demand or approval our products.

We rely on our digital technology and applications and our business and operations could suffer in the event of information system failures or a cybersecurity incident.

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

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

Despite the implementation of security measures, our internal computer systems, including our information systems, and those of third parties on which we rely, are vulnerable to disruption or damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication and electrical failures, cybersecurity incidents, insider threats, persons who access our information systems in an unauthorized manner, or inadvertent misconfiguration of our systems. The risk of a security incident or system disruption, particularly through cybersecurity incidents, including by computer hackers, foreign governments and cybercriminals, has generally increased as the number, intensity and sophistication of attempted attacks, including through the use of emerging technologies, such as artificial intelligence, and intrusions from around the world have increased. While none of the cybersecurity incidents that we have experienced to date have had a material adverse impact on our business, financial condition or operations, future interruptions in our operations caused by such an event could result in a material disruption of our current or future product development programs. The costs to us to mitigate network security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant, and while we have implemented security measures to protect our data security and information systems, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service, government files or penalties and other harm to our business and our competitive position. Interruptions in our operations caused by such an event could also result in a material disruption in our relationship with our customers. For example, if our Evolus Practice App were rendered inoperable, we would have to process orders by telephone or otherwise which may result in slower processing times and harm to our reputation. Our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cybersecurity incidents and other related security incidents.

Failure to comply with confidentiality and data privacy obligations could have a material adverse effect on our business.

As part of our normal operations, we collect, process, transmit and, where appropriate, retain certain sensitive and confidential employee and customer information, including credit card information. As a result, we are subject to various international, federal and state privacy and security laws, including the General Data Protection Regulation, or GDPR, the HIPPA, as amended by HITECH, 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 personally identifiable information, or PII. For example, the California Consumer Privacy Act, among other things, has created new individual privacy rights and imposes increased obligations on companies handling PII. We also rely on third parties to host or otherwise process some of the data we collect, process and store. In some instances, these third parties have experienced failures to protect data privacy. If we or these third parties experience a security incident that affects our information systems or results in the unauthorized access to financial information, PII, customer information or data, including credit card transaction data or other sensitive information, our reputation could be materially damaged. Our failure,

or the failure of third parties, to protect PII or other sensitive information or our failure to comply with such data privacy and security laws, could expose us to litigation and potential liability, which could materially adversely affect our business, results of operations and financial condition.

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 FDA has licensed multiple biosimilar products under the BCPI Act.

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

If we are found to have improperly promoted off-label uses, or if customers 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 regulated products, such as Jeuveau® and Evolysse™. 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. Customers could use our products on their patients in a manner that is inconsistent with the approved label, potentially including for the treatment of other aesthetic or therapeutic indications. Additionally, we maintain relationships with social media and celebrity influencers as part of our marketing strategy. Our use of social media and influencers for promotion and marketing of our products may increase the risk that such materials could contain problematic product or marketing claims in violation of applicable FDA regulations. For example, in recent years, the FDA has issued multiple untitled letters related to false or misleading promotion by influencers and/or using social media. Although we contract with and monitor our influencers' posts on social media, they may fail to comply with our content-related requirements.

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

Customers may also misuse Jeuveau®, Evolysse™, or any future product we offer or use improper techniques, potentially leading to adverse results, side effects or injury, which may lead to product liability claims. If Jeuveau®, Evolysse™, or any future product we offer 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®, Evolysse™, or any future product we offer for indications other than those cleared by the FDA may not

effectively treat such conditions, which could harm our reputation in the marketplace among customers and consumers. Any of these events could harm our business and results of operations and cause our stock price to decline.

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

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

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

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

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

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

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

Although most of our effort is focused on the commercialization of Jeuveau® and Evolysse™, a key element of our long-term

strategy is to in-license, acquire, develop, market and commercialize a portfolio of products to serve the cash-pay aesthetic market. Our competitors are currently able to bundle multiple aesthetic products to provide a more comprehensive offering than we can. Because our internal research and development capabilities are limited, we may be dependent upon pharmaceutical and other companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify and select promising aesthetic product candidates and products, negotiate licensing or acquisition agreements with their current owners and finance these arrangements.

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

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

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

As of June 30, 2025, we had 394 employees, all of whom were full-time employees. Our management and personnel, systems and facilities currently in place may not be adequate to support future growth. Our need to effectively execute our growth strategy requires that we identify, recruit, retain, incentivize and integrate any additional employees to effectively manage any future clinical trials, manage our internal development efforts effectively while carrying out our contractual obligations to third parties, and continue to improve our operational, financial and management controls, reporting systems and procedures.

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

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

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

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

Our international operations will also subject us to risks related to multiple, conflicting and changing laws and regulations such as privacy regulations, including the GDPR, tax laws, export and import restrictions, employment laws, immigration

laws, labor laws, regulatory requirements and other governmental approvals, permits and licenses. Additionally, we will face heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements. These and other factors could harm our ability to gain future revenue and, consequently, materially impact our business, operating results and financial condition.

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

Exchange rate fluctuations may affect the costs that we incur in our operations. The exchange rates between these currencies and the U.S. dollar in recent years have fluctuated significantly and may continue to do so in the future. A depreciation of these currencies against the U.S. dollar will decrease the U.S. dollar equivalent of the amounts derived from foreign operations reported in our consolidated financial statements, and an appreciation of these currencies will result in a corresponding increase in such amounts. The cost of certain items, such as raw materials, manufacturing, employee salaries and transportation and freight, required by our operations may be affected by changes in the value of the relevant currencies. To the extent that we are required to pay for goods or services in foreign currencies, such as under our Symatese U.S. Agreement and Symatese Europe Agreement, which has payments denominated in euros, the appreciation of such currencies against the U.S. dollar will tend to negatively affect our business. There can be no assurance that foreign currency fluctuations will not have a material adverse effect on our business, financial condition and results of operations.

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

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

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

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

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

For example, under the Daewoong Agreement our rights to market and sell Jeuveau® are limited to cosmetic indications and under the Symatese U.S. Agreement and Symatese Europe Agreement our rights are limited to aesthetic and dermatologic uses. Daewoong has subsequently licensed the rights to the therapeutic indications for Jeuveau® to a third party. As a result, we do not have the ability to expand the permitted uses of our products for therapeutic indications. Jeuveau® is the only U.S. neurotoxin without a therapeutic indication, although other companies may seek to develop a similar product in the future. We believe pursuing an aesthetic-only non-reimbursed product strategy allows for meaningful strategic advantages in the United States, including pricing and marketing flexibility. However, customers 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® or Evolysse™, whether they pursue an aesthetic-only non-reimbursed product strategy or not, may nonetheless try to compete with Jeuveau® or Evolysse™ 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® or Evolysse™.

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

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

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

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

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

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

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

We have incurred substantial losses during our history and we may never achieve profitability. We have generated taxable losses and unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards, or NOLs, and other pre-change tax attributes,

such as research tax credits, and Section 163(j) interest expense carryforwards, to offset its post-change income may be limited. As of December 31, 2024, we had $315.2 million of federal NOLs, $38.9 million of foreign NOLs, and $232.0 million of state NOLs available to offset our future taxable income, if any. Additionally, we had federal and California research and development credit carryforwards of $2.9 million each, as well as $34.7 million in federal Section 163(j) interest expense carryforwards as of December 31, 2024. These tax attributes, such as NOLs, and research and development tax credit carryforwards are set to 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, which could restrict our ability to utilize our pre-change NOLs, research and development credit, and Section 163(j) interest expense carryforwards for offsetting U.S. federal taxable income, potentially leading to increased future tax liability. In addition, there may be periods during which the use of tax attributes is suspended or otherwise limited, which could accelerate or permanently increase taxes owed.

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

The New Pharmakon Term Loans have, and any additional debt we subsequently incur may have, a variable rate of interest. Higher interest rates could increase debt service requirements on our current variable rate indebtedness (even though the amount borrowed remains the same) and on any debt we subsequently incur, and could reduce funds available for operations, future business opportunities or other purposes and materially and adversely affect our profitability, cash flows and results of operations.

Risks Related to Our Relationship with Our Licensors

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

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

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

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

In addition, our reliance on Daewoong and Symatese entails additional risks, including reliance on our partners for regulatory compliance and quality assurance, the possible breach of either the Daewoong Agreement by Daewoong or the Symatese U.S. Agreement and Symatese Europe Agreement by Symatese, and the possible termination or nonrenewal of either agreement at a time that is costly or inconvenient for us. Our failure, or the failure of our partners, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of our products. Our dependence on our partners also subjects us to all of the risks related to our partner’s business, which are all generally beyond our control. Our partners’ ability to

perform their obligations under their respective agreements is dependent on their operational and financial health, which could be negatively impacted by several factors, including changes in the economic, political and legislative conditions in their home countries and the broader region in general and the ability of our partners to continue to successfully attract customers and compete in its market.

Additionally, we are dependent on our licensors for day-to-day compliance with cGMP for production of our products. Facilities used by our licensors to produce the drug substance, devices and materials or finished products for commercial sale must pass inspection and be approved by the FDA and other relevant regulatory authorities. If the safety of our products is compromised due to a failure to adhere to applicable laws or for other reasons, we may not be able to successfully commercialize our product and we may be held liable for injuries sustained as a result. In addition, the manufacturing facilities of certain of our suppliers are located outside of the United States. This may give rise to difficulties in importing our product into the United States or other countries as a result of, among other things, regulatory agency approval requirements, taxes, tariffs, local import requirements such as import duties or inspections, incomplete or inaccurate import documentation or defective packaging. Any of these factors could adversely impact our ability to effectively market and sell our products.

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

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

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

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

Risks Related to Intellectual Property

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

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

Jeuveau®. As the technology, medical device and pharmaceutical industries expand and more patents are issued, the risk increases that our product candidates may be subject to claims of infringement of the patent rights of third parties.

Third parties may assert that we or any of our current or future licensors, including Daewoong or Symatese, 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 our products 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 our products 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 our products 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 our products 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 our products and any of our future product candidates or by any of our current or future licensors for operational upkeep and manufacturing of our products. For example, prior to entering into the Medytox Settlement Agreements, we were a defendant in a lawsuit brought by Medytox in the Superior Court of the State of California, or the Medytox Litigation, and a respondent in an action filed by Allergan and Medytox in the ITC Action, each alleging, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain, or the BTX strain, that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture Jeuveau® (which Medytox claims is similar to its biopharmaceutical drug, Meditoxin) using the BTX strain, and that Daewoong thereby interfered with Medytox's plan to license Meditoxin to us, or the Medytox Litigation. Both the Medytox Litigation and ITC Action diverted the attention of our senior management and were costly, in terms of legal costs and the ultimate payments and royalties to be paid under the Medytox Settlement Agreements.

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

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

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

We and our current licensors, Daewoong and Symatese, currently rely upon a combination of trademarks, trade secret protection, confidentiality agreements and proprietary know-how. Botulinum toxin cannot be patented, as it is produced by *Clostridium botulinum*, a gram-positive, rod-shaped, anaerobic, spore-forming, motile bacterium with the ability to produce

the neurotoxin botulinum. Only the manufacturing process for botulinum toxin can be patented, for which Daewoong has obtained a U.S. patent. Our trade secrets and other confidential proprietary information and those of our licensors could be disclosed or competitors could otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. Further, the laws of some foreign countries do not protect proprietary rights to the same extent or in the same manner as the laws of the United States. As a result, we or any of our current or future licensors may encounter significant problems in protecting and defending our or their intellectual property both in the United States and internationally. If we or any of our current or future licensors are unable to prevent material disclosure of the non-patented intellectual property related to our products to third parties, we may not be able to establish or maintain a competitive advantage in our market, which could adversely affect our business.

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

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

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

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

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

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

Most of our competitors are larger than we are and have substantially greater resources. They are, therefore, likely to be able to sustain the costs of complex patent litigation longer than we could. Accordingly, despite our efforts, we may not be able to prevent third parties from infringing upon or misappropriating our intellectual property. In addition, the uncertainties associated with litigation could compromise our ability to raise the funds necessary to continue our clinical trials, continue our internal research programs, or in-license needed technology or other product candidates.

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

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

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

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

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

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

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

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

We employ individuals who were previously employed at other pharmaceutical or medical aesthetic companies. We may be subject to claims that we or our employees, consultants or independent contractors have inadvertently or otherwise used or disclosed confidential information of our employees' former employers or other third parties. We may also be subject to claims that former employers or other third parties have an ownership interest in our patents. Litigation may be necessary to defend against these claims. We may not be successful in defending these claims, and even if we are successful, litigation could result in substantial cost and be a distraction to our management and other employees. Any litigation or the threat

thereof may adversely affect our ability to hire employees. A loss of key personnel or their work product could diminish or prevent our ability to commercialize product candidates, which could have an adverse effect on our business, results of operations and financial condition.

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

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

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

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

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

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

Risks Related to Government Regulation

Our business and products are subject to extensive government regulation.

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

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

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

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

The research, testing, manufacturing, labeling, approval, selling, import, export, marketing and distribution of drug and biologic products, such as our neurotoxin product, and medical devices, such as our injectable HA gel product candidates, 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 aesthetic practitioners;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;
- commence criminal investigations and prosecutions;
- impose injunctions;
- impose other civil or criminal penalties;
- suspend any ongoing clinical trials;
- delay or refuse to approve pending applications or supplements to approved applications filed by us;
- refuse to permit drugs or active ingredients to be imported or exported;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require us to initiate a product recall.

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

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

- a product candidate may not be deemed safe, effective, pure or potent;

- the data from preclinical studies and clinical trials may not be deemed sufficient;
- the FDA or other regulatory authorities might not approve our third-party manufacturers' processes or facilities;
- deficiencies in the formulation, quality control, labeling, or specifications of a product candidate or in response to citizen petitions or similar documents filed in connection with the product candidate;
- general requirements intended to address risks associated with a class of drugs, such as a new REMS requirement for neurotoxins, injectable HA gels or other aesthetic products;
- the enactment of new laws or promulgation of new regulations that change the approval requirements; or
- the FDA or other regulatory authorities may change their approval policies or adopt new regulations.

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

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

Jeuveau® and Evolysse™ and any other regulated products we may offer in the future are subject to continual regulatory review by the FDA, the EMA and other similar regulatory authorities.

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

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

If we fail to obtain regulatory approvals in foreign jurisdictions for our products 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.

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

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

While we do not expect that our products 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. Additionally, the ability of the FDA to review and approve new products can be affected by a variety of factors, including government budget and funding levels, the ability to hire and retain key personnel, the ability to accept the payment of user fees, statutory, regulatory and policy changes and other events that may otherwise affect the FDA's ability to perform routine functions. For example, the current administration has stated its intention to focus on decreasing government spending and has made significant staffing reductions in the federal government. Any funding or staffing reductions at the FDA could impact the FDA's ability to review and approve new products, which could make it more difficult and expensive to obtain approval of our products and/or bring our products to market.

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.

Additionally, in its June 2024 decision in *Loper Bright Enterprises v. Raimondo*, or Loper, the U.S. Supreme Court overturned the longstanding Chevron doctrine, under which courts were required to give deference to regulatory agencies' reasonable interpretations of ambiguous federal statutes. The Loper decision could result in additional legal challenges to regulations and guidance issued by federal agencies applicable to our current or future operations, including those issued by the FDA and CMS. Further, the Loper decision may result in increased regulatory uncertainty, inconsistent judicial interpretations and other impacts to the agency rulemaking process. We cannot predict which additional measures may be adopted or the impact of current and additional measures on the marketing, pricing and demand for our products, which could have a material adverse effect on our business, financial condition and results of operations.

Risks Related to Our Common Stock

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

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

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

Our stock price is volatile. For example, the closing price of our common stock during the six months ended June 30, 2025 has ranged from a low of $9.10 to a high of $15.04. The stock market in general and the market for earlier stage pharmaceutical and medical aesthetic companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price for our common stock may be influenced by many factors, some of which are beyond our control, including:

- changes in financial estimates or guidance, including our ability to meet our future revenue and operating profit or loss estimates or guidance;

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

- other factors described in this “Risk Factors” section.

In addition, the stock market in general, and the market for pharmaceutical, biotechnology and medical aesthetics companies in particular, have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may affect the market price of our common stock, regardless of our actual operating performance. In the past, following periods of volatility in the overall market and the market prices of a particular company’s securities, securities class action litigation has often been instituted against that company. We may become the target of this type of litigation in the future. Securities litigation, if instituted against us, could result in substantial costs and divert our management’s attention and resources from our business.

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

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

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 2023 Inducement Incentive Plan and may file future registration statements covering shares of our common stock for future issuance under any future plans. Upon effectiveness of such registration statements, any shares subsequently issued under such plans will be eligible for sale in the public market, except to the extent that they are restricted by the contractual arrangements discussed above and subject to compliance with Rule 144 in the case of our affiliates. We have also filed a registration statement on Form S-3 covering the offering and sale from time to time of shares of our common stock and certain other securities, which we used to complete our March 2024 follow-on offering as well as to register the sale of shares of our common stock pursuant to our ATM Program. Sales of a large number of the shares issued under these plans in the public market, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

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

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

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

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

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

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

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

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

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

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

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

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

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

General Risk Factors

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

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

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

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

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

We have never paid cash dividends on our common stock and do not anticipate paying cash dividends on our common stock in the foreseeable future, and the payment of dividends is also restricted under our credit facility. The payment of dividends

on our common stock will depend on our earnings, financial condition and other business and economic factors affecting us at such time as our Board of Directors may consider relevant. If we do not pay dividends, capital appreciation, if any, of our common stock will be your sole source of gain for the foreseeable future.

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

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

In addition, changing laws, regulations and standards relating to corporate governance and public disclosure are creating uncertainty for public companies, increasing legal and financial compliance costs and making some activities more time consuming. These laws, regulations and standards are subject to varying interpretations, in many cases due to their lack of specificity, and, as a result, their application in practice may evolve over time as new guidance is provided by regulatory and governing bodies. This could result in continuing uncertainty regarding compliance matters and higher costs necessitated by ongoing revisions to disclosure and governance practices. We intend to invest resources to comply with evolving laws, regulations and standards, and this investment may result in increased selling, general and administrative expenses and a diversion of our management's time and attention from revenue-generating activities to compliance activities. If our efforts to comply with new laws, regulations and standards differ from the activities intended by regulatory or governing bodies due to ambiguities related to their application and practice, regulatory authorities may initiate legal proceedings against us and our business may be adversely affected.

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

None.

Item 3. Defaults Upon Senior Securities

Not applicable.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

None.

Item 6. Exhibits

EXHIBIT INDEX

Exhibit Number	Exhibit Title	Incorporated by Reference				Filed Herewith (x)
		Form	File No.	Exhibit	Filing Date	
3.1	Amended and Restated Certificate of Incorporation	8-K	001-38381	3.1	2/12/18	
3.2	Certificate of Amendment to Amended and Restated Certificate of Incorporation, dated June 12, 2023	8-K	001-38381	3.1	6/14/23	
3.3	Amended and Restated Bylaws	8-K	001-38381	3.2	2/12/18	
10.1†	Amended and Restated Loan Agreement, dated as of May 5, 2025, by and among Evolus, Inc. (as Borrower and a Credit Party), BioPharma Credit PLC (as Collateral Agent), BPCR Limited Partnership (as a Lender), and BioPharma Credit Investments V (Master) LP (as a Lender).					X
31.1	Certification of Principal Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
31.2	Certification of Principal Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended.					X
32.1#	Certification of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.					X
101.INS	Inline XBRL Instance Document.					X
101.SCH	Inline XBRL Taxonomy Extension Schema Document.					X
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.					X
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.					X
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.					X
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.					X
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)					

† Portions of this exhibit have been omitted pursuant to Rule 601(b)(10) of Regulation S-K. The omitted information is not material and is the type that the Company treats as private or confidential.

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

Table of Contents

SIGNATURES

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

Evolus, Inc.

Date: August 5, 2025

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

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS EXHIBIT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) WOULD BE COMPETITIVELY HARMFUL IF PUBLICLY DISCLOSED. SUCH EXCLUDED INFORMATION HAS BEEN MARKED WITH "[***]".

AMENDED AND RESTATED LOAN AGREEMENT

Dated as of May 5, 2025

among

EVOLUS, INC.

(as ***Borrower***, and a ***Credit Party***),

THE OTHER GUARANTORS SIGNATORY HERETO OR OTHERWISE PARTY HERETO FROM TIME TO TIME

(as additional ***Credit Parties***),

BIOPHARMA CREDIT PLC

(as ***Collateral Agent***),

BPCR LIMITED PARTNERSHIP

(as a ***Lender***)

and

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP

(as a ***Lender***)

Table of Contents

Page

AMENDED AND RESTATED LOAN AGREEMENT

THIS AMENDED AND RESTATED LOAN AGREEMENT (this "**Agreement**"), dated as of May 5, 2025 (the "**Effective Date**") by and among EVOLUS, INC., a Delaware corporation (as "**Borrower**" and a Credit Party), the other Guarantors signatory hereto or otherwise party hereto from time to time, as additional Credit Parties, BIOPHARMA CREDIT PLC, a public limited company incorporated under the laws of England and Wales with company number 10443190 (as the "**Collateral Agent**"), BPCR LIMITED PARTNERSHIP, a limited partnership established under the laws of England and Wales with registration number LP020944 (as a "**Lender**"), and BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP, a Cayman Islands exempted limited partnership acting by its general partner, BioPharma Credit Investments V GP LLC (as a "**Lender**"), provides the terms on which each Lender shall make, and Borrower shall repay, the Credit Extensions (as hereinafter defined). This Agreement amends and restates in its entirety, and replaces, the terms of (and obligations outstanding under) that certain Loan Agreement, dated as of December 14, 2021 (the "**Prior Effective Date**"), among Borrower, the Collateral Agent and Lenders, and amended as of April 5, 2022, December 5, 2022, and May 9, 2023 (collectively, the "**Prior Loan Agreement**"). The parties hereto agree that the Prior Loan Agreement is hereby superseded and replaced in its entirety by this Agreement and the Prior Loan Agreement has no further force or effect, and the parties hereto agree as follows:

1 ACCOUNTING AND OTHER TERMS

Except as otherwise expressly provided herein, all accounting terms not otherwise defined in this Agreement shall have the meanings assigned to them in conformity with Applicable Accounting Standards. Calculations and determinations must be made following Applicable Accounting Standards. If at any time any change in Applicable Accounting Standards would affect the computation of any financial requirement set forth in any Loan Document (including for purposes of measuring compliance with any provision of Section 6), and either Borrower or the Collateral Agent shall so request, the Collateral Agent and Borrower shall negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in Applicable Accounting Standards; provided, that, until so amended, (x) such requirement shall continue to be computed in accordance with Applicable Accounting Standards prior to such change therein and (y) all financial statements, Compliance Certificates and similar documents provided, delivered or submitted hereunder shall be provided, delivered or submitted together with a reconciliation between the calculations and amounts set forth therein before and after giving effect to such change in Applicable Accounting Standards. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts referred to herein, including in Section 5 and Section 6 shall be made, without giving effect to any (a) election under ASC 825-10 (or any other Financial Accounting Standards Board Accounting Standards Codification ("ASC") or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of any Credit Party or any Subsidiary of any Credit Party at "fair value" and (b) any treatment of Indebtedness in respect of convertible debt instruments under ASC 470-20 (or any other ASC or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof. Notwithstanding anything to the contrary above or in the definition of "Capital Lease Obligations", all obligations of any Person that are or would have been treated as operating leases for purposes of Applicable Accounting Standards prior to the effectiveness of ASC 842 shall continue to be accounted for as operating leases for all purposes hereunder or under any other Loan Documents (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Leases. 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.

For purposes of determining compliance with Section 6 with respect to the amount of any Indebtedness in a currency other than Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of currency exchange occurring after the time such Indebtedness is incurred, made or acquired (so long as such Indebtedness, at the time incurred, made or acquired, was permitted hereunder).

For purposes of determining compliance with Section 6 with respect to the amount of any Investment, the amount of any Investment shall be the original cost of such Investment *plus* the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

The Collateral Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Collateral Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto, in each case, in a manner adverse to Borrower. The Collateral Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Term SOFR or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other Person for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

2 LOANS AND TERMS OF PAYMENT

2.1. Promise to Pay.

Borrower hereby unconditionally promises to pay each Lender the outstanding principal amount of the 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. Subject to the terms and conditions of this Agreement (including Sections 3.1, 3.2, 3.3, 3.4, 3.5 and 3.6):

(i) Each Lender severally agrees to make a term loan to Borrower on the Tranche A Closing Date in an original principal amount equal to such Lender's Tranche A Commitment (individually or collectively, as the context dictates, the "**Tranche A Loan**");

(ii) At Borrower's election pursuant to Section 3.6, each Lender severally agrees to make on the Tranche B Closing Date one term loan to Borrower in an original principal amount equal to such Lender's Applicable Percentage of the Tranche B Loan Amount (individually or collectively, as the context dictates, the "**Tranche B Loan**"); and

(iii) At Borrower's election pursuant to Section 3.6, each Lender severally agrees to make on the Tranche C Closing Date one term loan to Borrower in an original principal amount equal to such Lender's Applicable Percentage of the Tranche C Loan Amount (individually or collectively, as the context dictates, the "**Tranche C Loan**").

(iv) After repayment or prepayment (in whole or in part), no Term Loan (or any portion thereof) may be re-borrowed.

(b) Repayment.

(i) The Term Loans, including all unpaid principal thereunder (and, for the avoidance of doubt, all accrued and unpaid interest, all due and unpaid Lender Expenses and any and all

other outstanding amounts payable under the Loan Documents), is due and payable in full on the Term Loan Maturity Date.

(ii) The Term Loans may be prepaid only in accordance with Section 2.2(c), except as provided in Section 8.1.

(c) Prepayment of Term Loans.

(i) Borrower shall have the option, at any time after the Tranche A Closing Date, to prepay, in whole or in part (in amounts of not less than $20,000,000), outstanding principal amounts under the Term Loans advanced by Lenders under this Agreement; provided that (A) Borrower provides written notice to the Collateral Agent of its election (which shall be irrevocable unless the Collateral Agent otherwise consents in writing) to prepay all or the applicable portion of the Term Loans, which notice shall include the amount of the outstanding aggregate principal amount of the Term Loan Notes to be prepaid at least five (5) Business Days prior to such prepayment, and (B) the prepayment of such principal amount shall be accompanied by any and all accrued and unpaid interest thereon through the date of prepayment and any and all amounts payable in connection with such prepayment pursuant to Section 2.2(e) and Section 2.2(f) (as applicable) and, in the case of a prepayment in whole, any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents (including pursuant to Sections 2.4 and Section 2.7). The Collateral Agent will promptly notify each Lender of its receipt of such notice, and the amount of such Lender's Applicable Percentage of such prepayment. Notwithstanding anything in this Section 2.2(c)(i) to the contrary, Borrower may rescind any notice of prepayment under this Section 2.2(c)(i) if such prepayment would have resulted from a refinancing of the Term Loans or other contingent transaction, which refinancing or transaction shall not be consummated or shall otherwise be delayed (in which case, a new notice shall be required to be sent in connection with any subsequent prepayment).

(ii) Upon a Change in Control, Borrower shall promptly, and in any event no later than ten (10) days after the consummation of such Change in Control, notify the Collateral Agent in writing of the occurrence of a Change in Control, which notice shall include reasonable detail as to the nature, timing and other circumstances of such Change in Control (such notice, a "**Change in Control Notice**"). Borrower shall prepay in full all of the Term Loans advanced by Lenders under this Agreement, no later than ten (10) Business Days after the consummation of such Change in Control, in an amount equal to the sum of (A) all unpaid principal and any and all accrued and unpaid interest with respect to the Term Loans (such interest to be calculated based on Term SOFR for the Interest Period during which such Change in Control is consummated), and (B) any and all amounts payable with respect to the prepayment under this Section 2.2(c)(ii) pursuant to Section 2.2(e) and Section 2.2(f) (as applicable), together with any and all other amounts payable or accrued and not yet paid under this Agreement and the other Loan Documents (including pursuant to Section 2.4 and Section 2.7). The Collateral Agent will promptly notify each Lender of its receipt of the Change in Control Notice, and the amount of such Lender's Applicable Percentage of such prepayment.

(d) Prepayment Application. Any prepayment of the Term Loans pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a) (together with the accompanying Exit Consideration and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f) as applicable) shall be paid to Lenders in accordance with their respective Applicable Percentages for application to the Obligations in the following order: (i) first, to due and unpaid Lender Expenses; (ii) second, to due and unpaid Additional Consideration; (iii) third, to accrued and unpaid interest at the Default Rate incurred pursuant to Section 2.3(b), with respect to past due amounts, if any; (iv) fourth, without duplication of amounts paid pursuant to clause (iii) above, to accrued and unpaid interest at the Term Loan Rate; (v) fifth, to the Prepayment Premium; (vi) sixth, to the Exit Consideration, if applicable; (vii) seventh, to the outstanding principal amount of the Term Loans being prepaid; and (viii) eighth, to any remaining amounts then due and payable under this Agreement and the other Loan Documents.

(e) Exit Consideration.

(i) Any prepayment or repayment of the Tranche A Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), or (C) pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Exit Consideration.

(ii) Any prepayment or repayment of the Tranche B Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), or (C) pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Exit Consideration.

(iii) Any prepayment or repayment of the Tranche C Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), or (C) pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), shall, in any such case, be accompanied by payment of an amount equal to the Tranche C Exit Consideration.

(f) Prepayment Premium.

(i) Any prepayment of the Tranche A Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche A Prepayment Premium.

(ii) Any prepayment of the Tranche B Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche B Prepayment Premium.

(iii) Any prepayment of the Tranche C Loan by Borrower (A) pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii), or (B) as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall, in any such case, be accompanied by payment of an amount equal to the Tranche C Prepayment Premium.

For the avoidance of doubt, no Prepayment Premium shall be due and owing for any payment of principal of the Term Loans made on the Term Loan Maturity Date.

(g) Any Exit Consideration or Prepayment Premium payable as a result of any prepayment of the Term Loans pursuant to Section 2.2(c)(i) or Section 2.2(c)(ii) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), shall be presumed to be the liquidated damages sustained by each applicable Lender as the result of the early redemption and repayment of such Term Loan Notes and Borrower agrees that it is reasonable under the circumstances currently existing. BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE REQUIREMENTS OF LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF ANY EXIT CONSIDERATION OR PREPAYMENT PREMIUM IN CONNECTION WITH ANY SUCH PREPAYMENT OR ACCELERATION OR OTHERWISE. Borrower expressly agrees that (to the fullest extent it may lawfully do so) that: (i) each Exit Consideration and Prepayment Premium is reasonable and is the product of an arm's-length transaction among sophisticated business people, ably represented by counsel; (ii) each Exit Consideration and Prepayment Premium shall be payable notwithstanding the then-prevailing market rates at the time payment thereof is made; (iii) there has been a course of conduct among Lenders and Borrower giving specific consideration in this transaction for such agreement to pay each Exit Consideration and Prepayment Premium; and (iv) Borrower shall be estopped hereafter from claiming differently than as agreed to in this Section 2.2(g) and Section 8.6. Borrower expressly acknowledges that its agreement to pay the Exit Consideration and Prepayment Premium, as the case may be, to applicable Lenders as herein described is a material inducement to such Lenders to make any Credit Extension. Without affecting any of any Lender's rights or remedies hereunder or in respect hereof, if Borrower fails to pay the applicable Exit Consideration or Prepayment Premium when due, then the amount thereof shall thereafter bear interest until paid in full at the Default Rate.

2.3. Payment of Interest on the Term Loans.

(a) Interest Rate.

(i) Subject to Section 2.3(b) below, the principal amount outstanding under each Term Loan shall accrue interest at a per annum rate equal to Term SOFR for the Interest Period therefor *plus* the Applicable Margin (the "**Term Loan Rate**"), which interest shall be payable quarterly in arrears in accordance with this Section 2.3.

(ii) Interest shall accrue on each Term Loan commencing on, and including, the day on which such Term Loan is made, and shall accrue on such Term Loan, or any portion thereof, through and including the day on which such Term Loan or such portion is paid.

(iii) Interest is due and payable quarterly on each Interest Date, as calculated by the Collateral Agent (which calculations shall be deemed correct absent manifest error), commencing on the Interest Date occurring from and after the Tranche A Closing Date; provided, however, that if any such date is not a Business Day, the applicable interest shall be due and payable on the Business Day immediately preceding such date.

(b) Default Rate. In the event Borrower fails to pay any of the Obligations when due or upon the commencement and during the continuance of an Insolvency Proceeding of Borrower or upon the occurrence and during the continuance of any other Event of Default, the Lenders shall have the right to declare, by notice to Borrower delivered by any Lender or the Collateral Agent (in either case on behalf of all Lenders), that any and all past due Obligations shall accrue interest, immediately upon having become past due (and without any other notice or demand by any Lender or the Collateral Agent for payment thereof), at a rate *per annum* which is three percentage points (3.00%) above the rate that is otherwise applicable thereto (the "**Default Rate**"), and such interest shall be payable entirely in cash on demand of any Lender or the Collateral Agent. Payment or acceptance of the increased interest rate provided in this Section 2.3(b) is not a permitted alternative to timely payment of any Obligations and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of the Collateral Agent or any Lender.

(c) 360-Day Year. Interest payable under each Term Loan shall be computed on the basis of a year of 360 days and the actual number of days elapsed.

(d) Payments. Except as otherwise expressly provided herein, all Term Loan payments and any other payments hereunder by (or on behalf of) Borrower shall be made on the date specified herein to such bank account of each applicable Lender as such Lender (or the Collateral Agent) shall have designated in a written notice to Borrower delivered on or before the Tranche A Closing Date (which such notice may be updated by such Lender (or the Collateral Agent) by written notice to the Borrower from time to time after the Tranche A Closing Date). Except as otherwise expressly provided herein, interest is payable quarterly on each Interest Date. Payments of principal or interest received after 11:00 a.m. (New York City time) on such date are considered received at the opening of business on the next Business Day and additional fees or interest, as applicable, shall continue to accrue until paid. When any payment is due on a day that is not a Business Day, such payment is due on the immediately preceding Business Day. All payments to be made by Borrower hereunder or under any other Loan Document, including payments of principal and interest made hereunder and pursuant to any other Loan Document, and all fees, expenses, indemnities and reimbursements, shall be made without set-off, recoupment or counterclaim, in lawful money of the United States and in immediately available funds. Any payments of principal or interest required to be paid under Section 2.2(b) or Section 2.3 hereof with respect to a Term Loan shall not be considered a prepayment hereunder unless so designated in writing by Borrower in accordance with Section 2.2(c)(i).

(e) Conforming Changes. In connection with the use or administration of Term SOFR, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Collateral Agent will promptly notify Borrower and Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

(f) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the

Collateral Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a quarterly basis.

(ii) Conforming Changes. In connection with the implementation and administration of a Benchmark Replacement, the Collateral Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Collateral Agent will promptly notify Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Collateral Agent will notify Borrower of (x) the removal or reinstatement of any tenor of a Benchmark pursuant to sub-clause (iv) below and (y) the commencement of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Collateral Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.3(f), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.3(f).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Collateral Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to sub-clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Collateral Agent may modify the definition of "Interest Period" (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

2.4. Expenses. Borrower shall pay to or reimburse (or pay directly on behalf of) the Collateral Agent and, as applicable, each Lender, all of such Person's reasonable and documented Lender Expenses incurred through and after the Prior Effective Date, promptly after receipt of a written demand therefor by such Lender or the Collateral Agent (with, in the case of any Lender, a copy of such demand to the Collateral Agent), setting forth in reasonable detail such Person's Lender Expenses.

2.5. Requirements of Law; Increased Costs. In the event that any applicable Change in Law:

(a) Does or shall subject any Lender to any Tax of any kind whatsoever with respect to this Agreement or the Term Loans (except, in each case, Indemnified Taxes, Taxes described in clauses (b), (c) and (d) of the definition of Excluded Taxes, and Connection Income Taxes);

(b) Does or shall impose, modify or hold applicable any reserve, capital requirement, special deposit, compulsory loan, insurance charge or similar requirements against assets held by, or deposits or other liabilities in or for the account of, advances or loans by, or other credit extended by, or any other acquisition of funds by, any Lender; or

(c) Does or shall impose on any Lender any other condition (other than Taxes); and the result of any of the foregoing is to increase the cost to such Lender (as determined by such Lender in good faith using calculation methods customary in the industry) of making, renewing or maintaining the Term Loans or to reduce any amount receivable in respect thereof or to reduce the rate of return on the capital of such Lender or any Person controlling such Lender,

(d) then, in any such case, Borrower shall promptly pay to the applicable Lender, within thirty (30) days of its receipt of the certificate described below, any additional amounts necessary to compensate such Lender for such additional cost or reduced amounts receivable or rate of return as reasonably determined by such Lender with respect to this Agreement or the Term Loans made hereunder; provided, that amounts shall only be payable by Borrower to such Lender under this Section 2.5 so long as it is such Lender's general policy and practice to demand compensation of its other borrowers in similar circumstances under comparable provisions of other financing agreements and, upon the request of Borrower , such Lender (or the Collateral Agent on its behalf) provides a certificate to such effect to Borrower (with a copy of such certificate to the Collateral Agent, if applicable). If any Lender becomes entitled to claim any additional amounts pursuant to this Section 2.5, it shall promptly notify Borrower in writing of the event by reason of which it has become so entitled (with a copy of such notice to the Collateral Agent), and a certificate as to any additional amounts payable pursuant to the foregoing sentence containing the calculation thereof in reasonable detail submitted by such Lender to Borrower (with a copy of such certificate to the Collateral Agent) shall be conclusive in the absence of manifest error. The provisions hereof shall survive the termination of this Agreement and the payment of the outstanding Term Loans and all other Obligations. Failure or delay on the part of any Lender to demand compensation for any increased costs or reduction in amounts received or receivable or reduction in return on capital under this Section 2.5 shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be under any obligation to compensate such Lender under this Section 2.5 with respect to increased costs or reductions with respect to any period prior to the date that is 180 days prior to the date of the delivery of the notice required pursuant to the foregoing provisions of this paragraph; provided, further, that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof.

2.6. Taxes; Withholding, Etc.

(a) All sums payable by any Credit Party hereunder and under the other Loan Documents shall (except to the extent required by Requirements of Law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by any Governmental Authority. In addition, Borrower agrees to pay, and shall indemnify and hold each Lender harmless from, Other Taxes, and as soon as practicable after the date of paying such sum, Borrower shall furnish to each Lender (as applicable, with a copy to the Collateral Agent) the original or a certified copy of a receipt evidencing payment thereof or other evidence reasonably satisfactory to such Lender.

(b) If any Credit Party or any other Person is required by Requirements of Law to make any deduction or withholding on account of any Tax (as determined in the good faith discretion of an applicable Credit Party or other applicable withholding agent) from any sum paid or payable by any Credit Party to any Lender under any of the Loan Documents: (i) Borrower shall notify such Lender in writing (with a copy to the Collateral Agent) of any such requirement or any change in any such requirement promptly after Borrower becomes aware of it; (ii) Borrower shall make any such withholding or deduction; (iii) Borrower shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Credit Party) for its own account or (if that liability is imposed on such Lender, as the case may be) on behalf of and in the name of such Lender in accordance with Requirements of Law; (iv) if the Tax is an Indemnified Tax, the sum payable by such Credit Party in respect of which the relevant deduction, withholding or payment of Indemnified Tax is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment (including any deductions for Indemnified Taxes applicable to additional sums payable under this Section 2.6(b)), such Lender receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment of Indemnified Tax been required or made; and (v) as soon as practicable after paying any sum from which it is required by Requirements of Law to make any deduction or withholding, Borrower shall deliver to such Lender (with a copy to the Collateral Agent) evidence reasonably satisfactory to such Lender of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other Governmental Authority.

(c) The Credit Parties shall jointly and severally indemnify each Lender for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable

under this Section 2.6(c)) paid by such Lender and any liability (including any reasonable expenses) arising therefrom or with respect thereto whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Any indemnification payment pursuant to this Section 2.6(c) shall be made to the applicable Lender within ten (10) days from written demand therefor.

(d) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to Borrower, at the time or times reasonably requested by Borrower, such properly completed and executed documentation reasonably requested by Borrower as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, such Lender, if reasonably requested by Borrower, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower as will enable Borrower to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.6(d)(i), (ii) or (iv) below) shall not be required if in such Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender. For avoidance of doubt, for the purposes of this Section 2.6(d), the term "Lender" shall include each applicable assignee. Without limiting the generality of the foregoing:

(i) If any Lender is organized under the laws of the United States, such Lender shall deliver, and shall cause each applicable assignee thereof to deliver, to Borrower two (2) executed copies of Internal Revenue Service ("**IRS**") Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(ii) If any Lender is a Foreign Lender, such Lender shall deliver, and shall cause each applicable assignee thereof to deliver, to Borrower, on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement, and at such other times as may be necessary in the determination of Borrower (in the reasonable exercise of its discretion), whichever of the following is applicable:

(1) in the case that such Lender is a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document (including any original issue discount), a properly completed and duly executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, a properly completed and duly executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) a completed and duly executed copy of IRS Form W-8ECI;

(3) in the case that such Foreign Lender is claiming an exemption from U.S. federal withholding Tax pursuant to the "portfolio interest exemption" under Section 881(c) of the IRC, it shall provide Borrower with the applicable executed IRS Form W-8BEN-E or IRS Form W-8BEN, as applicable, or

(4) to the extent that such Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by a withholding statement and IRS Form W-8ECI, IRS Form W-8BEN-E (or W-8BEN, as applicable), IRS Form W-9 or other certification documents from each beneficial owner, as applicable.

(iii) If any Lender is a Foreign Lender it shall, to the extent it is legally entitled to do so, deliver to Borrower (in such number of copies as shall be requested by the recipient) on or prior to the date on which it becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of Borrower), executed copies of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit Borrower to determine the withholding or deduction required to be made.

(iv) If a payment made to any Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), such Lender shall deliver to Borrower at the time or times prescribed by law and at such time or times reasonably requested by Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by Borrower as may be necessary for Borrower to comply with their obligations under FATCA and to determine that Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(e) If any party hereto determines, in its discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.6 (including by the payment of additional amounts pursuant to this Section 2.6), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, under this Section 2.6 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this clause (e) in the event that such indemnified party is required to repay such refund to such Governmental Authority and the requirement to repay such refund to such Governmental Authority is not due to the indemnified party's failure to timely provide complete and accurate Internal Revenue Service forms and other documentation required pursuant to Section 2.6(d) or Section 2.8. Notwithstanding anything to the contrary in this clause (e), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this clause (e) if the payment of such amount would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such tax had never been paid. This clause (e) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(f) Tax Status of Borrower. Borrower is currently treated as a corporation for U.S. federal income tax purposes. Borrower shall not take any affirmative action (including not making any election under Section 301.7701-3(c) of the Treasury Regulations (or any successor provision) by way of filing an IRS Form 8832) to change its U.S. entity tax classification without the prior written consent of the Required Lenders.

(g) Tax Reporting Assistance. Borrower shall use best efforts to assist any Lender (i) in the computation of accruals with respect to any "original issue discount" or "market discount" arising with respect to the Term Loans for U.S. federal income tax purposes, and (ii) with its compliance with any associated tax reporting or filing requirements of such Lender or its partners, members or beneficial owners.

2.7. Additional Consideration. As additional consideration for the obligation of each Lender to fund its Applicable Percentage of the Term Loans and the funding of its Applicable Percentage of the Term Loans pursuant to Section 2.2(a) and Section 3.6:

(a) on the Tranche A Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Applicable Percentage of the Tranche A Loan Amount, *multiplied by* (ii) 0.01 (each such product, the "**Tranche A Additional Consideration**");

(b) on the Tranche B Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Applicable Percentage of the Tranche B Loan Amount, *multiplied by* (ii) 0.01 (each such product, the "**Tranche B Additional Consideration**"); and

(c) on the Tranche C Closing Date, Borrower shall pay to each Lender an amount equal to the product of (i) the sum of such Lender's Applicable Percentage of the Tranche C Loan Amount, *multiplied by* (ii) 0.01 (each such product, the "**Tranche C Additional Consideration**").

Any and all Additional Consideration shall be fully earned when paid and shall not be refundable for any reason whatsoever and shall be treated as original issue discount for U.S. federal income tax purposes. The Additional Consideration payable hereunder shall be deducted, as applicable, from the proceeds of the Tranche A Loan (with respect to the Tranche A Additional Consideration), the Tranche B Loan (with respect to the Tranche B Additional Consideration) and the Tranche C Loan (with respect to the Tranche C Additional Consideration) to be advanced to Borrower pursuant to Section 3.6.

2.8. Note Register; Term Loan Notes.

(a) Note Register. Borrower will maintain at all times at its principal executive office a register that identifies each beneficial owner that is entitled to a payment of principal and stated interest on each Term Loan (the "**Note Register**"), including the names and addresses thereof, and provides for the registration and transfer of Term Loan Notes so that each Term Loan is at all times in "registered form" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any other relevant or successor provisions of the IRC or such regulations). Each Term Loan: (i) shall, pursuant to this clause (a), be registered as to both principal and any stated interest with Borrower or its agent, and (ii) may be transferred or exchanged by any Lender only by surrender of the old instrument at the principal executive office of Borrower (or at the place of payment named in the Term Loan Note, if any), accompanied, if so required by Borrower in the case of a Lender Transfer, by a written instrument of transfer in form reasonably satisfactory to Borrower duly executed by the holder thereof or by such holder's attorney duly authorized in writing, and Borrower will execute and deliver in exchange therefor a new Term Loan Note or Term Loan Notes, in such denomination(s) as may be requested by such holder, of like tenor and in the same aggregate outstanding principal amount as the aggregate outstanding principal amount of the Term Loan Note(s) so surrendered. Any Term Loan Note issued in exchange for any other Term Loan Note or upon transfer thereof shall carry the rights to unpaid interest and interest to accrue that were carried by the Term Loan Note so exchanged or transferred, and neither gain nor loss of interest shall result from any such transfer or exchange. Any transfer tax or governmental charge relating to such transaction shall be paid by the holder requesting the exchange. The entries in the Note Register shall be conclusive and binding for all purposes, including as to the outstanding principal amount of the Term Loan Note and the payment of interest, principal and other sums due hereunder absent manifest error and Borrower, Lenders and any of their respective agents may treat the Person in whose name any Term Loan Note is registered as the sole and exclusive record and beneficial holder and owner of such Term Loan Note for all purposes whatsoever.

(b) Term Loan Notes. Each Lender shall issue to Borrower, and Borrower shall execute and deliver to each Lender to evidence such Lender's Term Loan, (i) on the Tranche A Closing Date, a Tranche A Note, (ii) on the Tranche B Closing Date, a Tranche B Note and (iii) on the Tranche C Closing Date, a Tranche C Note. All amounts due under the Term Loan Notes shall be repayable as set forth in this Agreement and interest shall accrue on the principal amount of the Term Loans represented by the Term Loan Notes, in each case, in accordance with the terms of this Agreement. All Term Loan Notes shall rank for all purposes *pari passu* with each other.

3 CONDITIONS OF TERM LOANS

3.1. Conditions Precedent to Tranche A Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche A Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent's and each Lender's receipt:

(i) on the Effective Date, of copies of the Loan Agreement, the Disclosure Letter, the Perfection Certificate for Borrower and its Subsidiaries and the Advance Request Form, in each case (x) dated as of the Effective Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form and substance reasonably satisfactory to the Collateral Agent; and

(ii) on the Tranche A Closing Date, of copies of the other Loan Documents (including the schedules thereto), including the Tranche A Notes executed by Borrower and the Collateral Documents (but excluding any Control Agreements, Collateral Access Agreements and any other Loan Document described in Schedule 5.14 of the Disclosure Letter to be delivered after the Tranche A Closing Date) and, if and to the extent any update thereto is necessary between the Prior Effective Date and the Tranche A Closing Date, an updated Disclosure Letter or Perfection Certificate (provided, that in no event may the Disclosure Letter or the Perfection Certificate be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)), in each case (x) dated as of the Tranche A Closing Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form and substance reasonably satisfactory to the Collateral Agent;

(b) the Collateral Agent's receipt of (i) true, correct and complete copies of the Operating Documents of each of Borrower and the Credit Parties, and (ii) a Secretary's Certificate, dated the Tranche A Closing Date, certifying that the foregoing copies are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent);

(c) the Collateral Agent's receipt of a good standing certificate for each Credit Party (where applicable in the subject jurisdiction), certified (where available) by the Secretary of State (or the equivalent thereof) of the jurisdiction of incorporation, formation or organization of such Person as of a date no earlier than thirty (30) days prior to the Tranche A Closing Date;

(d) the Collateral Agent's receipt of a Secretary's Certificate in relation to each Credit Party, dated the Tranche A Closing Date, certifying that (i) attached as Exhibit A to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing and ratifying the execution, delivery, and performance by such Credit Party of the Loan Documents to which it is a party, (ii) the name(s) and title(s) of the officers of such Credit Party authorized to execute the Loan Documents to which such Credit Party is a party on behalf of such Credit Party together with a sample of the true signature(s) of such Credit Party(s), and (iii) that the Collateral Agent and each Lender may conclusively rely on such certificate with respect to the authority of such officers unless and until such Credit Party shall have delivered to the Collateral Agent a further certificate canceling or amending such prior certificate;

(e) each Credit Party shall have obtained all Governmental Approvals, if any, and all consents or approvals of other Persons, including the approval or consent of the equityholders of Borrower, if any, in each case that are necessary in connection with the transactions contemplated by the Loan Documents, and each of the foregoing shall be in full force and effect and in form and substance reasonably satisfactory to the Collateral Agent;

(f) the Collateral Agent's receipt on the Tranche A Closing Date of opinions of O'Melveny & Myers LLP, counsel to the Credit Parties, in form and substance reasonably satisfactory to the Collateral Agent;

(g) (i) subject to Section 5.14, the Collateral Agent's receipt on the Tranche A Closing Date of (i) evidence that any products liability and general liability insurance policies maintained regarding any Collateral are in full force and effect and (ii) appropriate evidence showing the Collateral Agent, for the benefit of Lenders and the other Secured Parties, having been named as additional insured or loss payee, as applicable (such evidence to be in form and substance reasonably satisfactory to the Collateral Agent) with respect to any products liability and general liability insurance policies maintained in the United States regarding any Collateral;

(h) the Collateral Agent's receipt prior to the Effective Date of all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money

laundering rules and regulations, including the U.S.A. Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**Patriot Act**");

(i) concurrent with the funding of the Tranche A Loan, payment of Lender Expenses then due as specified in Section 2.4 hereof for which Borrower has received an invoice at least one (1) Business Day prior, and payment of the Additional Consideration in accordance with Section 2.7, which such payments shall be deducted from the proceeds of the Tranche A Loan;

(j) RESERVED; and

(k) the Collateral Agent's receipt of a certificate, dated the Tranche A Closing Date and signed by a Responsible Officer of Borrower, confirming: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter; (ii) satisfaction of the conditions precedent set forth in this Section 3.1 and in Section 3.4, Section 3.5 and Section 3.6 (such certificate to be in form and substance reasonably satisfactory to the Collateral Agent); and (iii) that the organizational structure and capital structure of Borrower and each of its Subsidiaries is as described on Schedule 4.15 of the Disclosure Letter as at the Tranche A Closing Date.

3.2. Conditions Precedent to Tranche B Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche B Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent's and each Lender's receipt, on the Tranche B Closing Date, of the Tranche B Note executed by Borrower, and, if and to the extent any update thereto is necessary between the Tranche A Closing Date and the Tranche B Closing Date, an updated Disclosure Letter or Perfection Certificate (provided, that in no event may the Disclosure Letter or the Perfection Certificate be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)), in each case (x) dated as of the Tranche B Closing Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form consistent with the Disclosure Letter and Perfection Certificate, as applicable, previously delivered to the Collateral Agent and each Lender pursuant to Section 3.1(a);

(b) the Collateral Agent's receipt of a Secretary's Certificate in relation to each Credit Party, dated the Tranche B Closing Date, certifying (i) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing the Tranche B Loan or, alternatively, (ii) that the Borrowing Resolutions adopted as of the Tranche A Closing Date authorizing the Term Loans and previously delivered to the Collateral Agent pursuant to Section 3.1(d) have not been modified and remain in full and effect;

(c) concurrent with the funding of the Tranche B Loan, payment of Lender Expenses then due as specified in Section 2.4 hereof and for which an invoice has been received by Borrower at least one (1) Business Day prior;

(d) no prepayment of the principal amount of the Tranche A Loan has been made, in whole or in part pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche A Loan pursuant to Section 8.1(a); and

(e) the Collateral Agent's receipt of a certificate, dated the Tranche B Closing Date and signed by a Responsible Officer of Borrower, confirming: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter delivered in accordance with Section 3.1(a)(i); and (ii) satisfaction of the conditions precedent set forth in this Section 3.2 and in Section 3.4, Section 3.5 and Section 3.6 (such certificate to be in form consistent with the certificate previously delivered to the Collateral Agent pursuant to Section 3.1(k)).

3.3. Conditions Precedent to Tranche C Loan. Each Lender's obligation to advance its Applicable Percentage of the Tranche C Loan Amount is subject to the satisfaction (or waiver in accordance with Section 11.5 hereof) of the following conditions:

(a) the Collateral Agent's and each Lender's receipt, on the Tranche C Closing Date, of the Tranche C Note executed by Borrower, and, if and to the extent any update thereto is necessary between the Tranche B Closing Date and the Tranche C Closing Date, an updated Disclosure Letter or Perfection Certificate (provided,

that in no event may the Disclosure Letter or the Perfection Certificate be updated in a manner that would reflect or evidence a Default or Event of Default (with or without such update)), in each case (x) dated as of the Tranche C Closing Date, (y) executed (where applicable) and delivered by each applicable Credit Party, and (z) in form consistent with the Disclosure Letter and Perfection Certificate, as applicable, previously delivered to the Collateral Agent and each Lender pursuant to Section 3.1(a);

(b) the Collateral Agent's receipt of a Secretary's Certificate in relation to each Credit Party, dated the Tranche C Closing Date, certifying (i) that attached as Exhibit A to such certificate is a true, correct, and complete copy of the Borrowing Resolutions then in full force and effect authorizing the Tranche C Loan or, alternatively, (ii) that the Borrowing Resolutions adopted as of the Tranche A Closing Date authorizing the Term Loans and previously delivered to the Collateral Agent pursuant to Section 3.1(d) have not been modified and remain in full and effect;

(c) concurrent with the funding of the Tranche C Loan, payment of Lender Expenses then due as specified in Section 2.4 hereof and for which an invoice has been received by Borrower at least one (1) Business Day prior;

(d) no prepayment of the principal amount of the Tranche A Loan or any portion of the Tranche B Loan has been made, in whole or in part pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche A Loan or the Tranche B Loan pursuant to Section 8.1(a); and

(e) the Collateral Agent's receipt of a certificate, dated the Tranche C Closing Date and signed by a Responsible Officer of Borrower, confirming: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, except as set forth on Schedule 4.7 of the Disclosure Letter delivered in accordance with Section 3.1(a)(i); and (ii) satisfaction of the conditions precedent set forth in this Section 3.3 and in Section 3.4, Section 3.5 and Section 3.6 (such certificate to be in form consistent with the certificate previously delivered to the Collateral Agent pursuant to Section 3.1(k)).

3.4. Additional Conditions Precedent to Term Loans. The obligation of each Lender to advance its Applicable Percentage of each Term Loan is subject to the following additional conditions precedent:

(a) the representations and warranties made by the Credit Parties in Section 4 of this Agreement and in the other Loan Documents are true and correct in all material respects on the applicable Closing Date, unless any such representation or warranty is stated to relate to a specific earlier date, in which case such representation or warranty shall be true and correct in all material respects as of such earlier date (it being understood that any representation or warranty that is qualified as to "materiality," "Material Adverse Change," or similar language shall be true and correct in all respects (as so qualified), in each case, on the applicable Closing Date (both with and without giving effect to the Term Loans) or as of such earlier date, as applicable); and

(b) there shall not have occurred (i) any Material Adverse Change or (ii) any Default or Event of Default.

3.5. Covenant to Deliver. The Credit Parties agree to deliver to the Collateral Agent or each Lender, as applicable, each item required to be delivered to Collateral Agent or each Lender, as applicable, under this Agreement as a condition precedent to any Credit Extension; provided, however, that any such items set forth on Schedule 5.14 of the Disclosure Letter shall be delivered to the Collateral Agent within the time period prescribed therefor on such schedule. The Credit Parties expressly agree that a Credit Extension made prior to the receipt by the Collateral Agent or any Lender, as applicable, of any such item shall not constitute a waiver by the Collateral Agent or any Lender of the Credit Parties' obligation to deliver such item, and the making of any Credit Extension in the absence of any such item required to have been delivered by the date of such Credit Extension shall be in the applicable Lender's sole discretion.

3.6. Procedures for Borrowing. Subject to the prior satisfaction of all other applicable conditions to the making of each Term Loan set forth in this Agreement, to obtain the Term Loans, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile a completed Advance Request Form for the Term Loans executed by a Responsible Officer of Borrower (which notice shall be irrevocable on and after the date on which such notice is given and Borrower shall be bound to make a borrowing in accordance therewith), in which case each Lender agrees to advance an amount equal to its Applicable Percentage of the applicable Term Loan Amount to Borrower on the applicable Closing Date, by wire transfer of same day funds in Dollars, to such account(s) in the United States as may be designated in writing to the Collateral Agent by Borrower at least two (2) Business Days prior to such Closing Date; provided, however, that, with respect to the Tranche B Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile, at its option should it wish to obtain

the Tranche B Loan, such completed Advance Request Form for the Tranche B Loan no later than December 31, 2026; provided, further, that, with respect to the Tranche C Loan, Borrower shall deliver to the Collateral Agent and Lenders by electronic mail or facsimile, at its option should it wish to obtain the Tranche C Loan, such completed Advance Request Form for the Tranche C Loan no later than December 31, 2026.

4 REPRESENTATIONS AND WARRANTIES

In order to induce each Lender and the Collateral Agent to enter into this Agreement and for each Lender to make the Credit Extensions to be made on the applicable Closing Date, each Credit Party, jointly and severally with each other Credit Party, represents and warrants to each Lender and the Collateral Agent that the following statements are true and correct as of the Effective Date and on the applicable Closing Date on which each Term Loan is made (both with and without giving effect to the Term Loans):

4.1. Due Organization, Existence, Power and Authority. Borrower and each of its Subsidiaries (a) is duly incorporated, organized or formed, and validly existing and, where applicable, in good standing under the laws of its jurisdiction of incorporation, organization or formation identified on Schedule 4.15 of the Disclosure Letter, (b) has all requisite power and authority to (i) own, lease, license and operate its assets and properties and to carry on its business as currently conducted and (ii) execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder and otherwise carry out the transactions contemplated thereby, (c) is duly qualified and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease, license or operation of assets or properties or the conduct of its business requires such qualification, and (d) has all requisite Governmental Approvals to operate its business as currently conducted; except in each case referred to clauses (a) (other than with respect to Borrower and any other Credit Party), (b)(i), (c) or (d) above, to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.2. Equity Interests. All of the outstanding Equity Interests in each Subsidiary of Borrower, the Equity Interests in which are required to be pledged pursuant to the Collateral Documents, have been duly authorized and validly issued, are (where required by Requirements of Law to be) fully paid and, in the case of Equity Interests representing corporate interests, are non-assessable and, on the applicable Closing Date, all such Equity Interests owned directly by Borrower or any other Credit Party are owned free and clear of all Liens except for Permitted Liens. Schedule 4.2 of the Disclosure Letter identifies each Person, the Equity Interests in which are required to be pledged on the applicable Closing Date pursuant to the Collateral Documents.

4.3. Authorization; No Conflict. Except as set forth on Schedule 4.3 of the Disclosure Letter, the execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party, and the consummation of the transactions contemplated thereby, (a) have been duly authorized by all necessary corporate or other organizational action and (b) do not and will not (i) contravene the terms of any of such Person's Operating Documents, (ii) conflict with or result in any breach or contravention of, or require any payment to be made under (A) any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or affecting such Person or the assets or properties of such Person or any of its Subsidiaries or (B) any order, writ, judgment, injunction, decree, determination or award of any Governmental Authority by which such Person or any of its properties or assets are subject, (iii) result in the creation of any Lien (other than under the Loan Documents) or (iv) violate any Requirements of Law, except, in the cases of clauses (b)(ii) and (b)(iv) above, to the extent that such conflict, breach, contravention, payment or violation could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.4. Government Consents; Third Party Consents. Except as set forth on Schedule 4.4 of the Disclosure Letter, no Governmental Approval or other approval, consent, exemption or authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person in respect of any Current Company IP Agreement or other Material Contract is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Credit Party of this Agreement or any other Loan Document, or for the consummation of the transactions contemplated hereby or thereby, (b) the grant by any Credit Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the priority thereof) or (d) the exercise by the Collateral Agent or any Lender of its rights under the Loan Documents or its remedies in respect of the Collateral pursuant to the Collateral Documents, except in each case of clause (a) through (d) above, for (i) filings necessary to perfect the Liens on the Collateral granted by the Credit Parties to the Collateral Agent for the benefit of Lenders and the other Secured Parties, (ii) the approvals, consents, exemptions, authorizations, actions, notices and filings which have been duly obtained, taken, given or made and are in full force and effect, (iii) filings under state or federal securities laws and (iv) those

approvals, consents, exemptions, authorizations or other actions, notices or filings, the failure of which to obtain or make could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.5. Binding Obligation. This Agreement has been duly executed and delivered by Borrower and each other Credit Party that is a party hereto and each other Loan Document has been duly executed and delivered by each Credit Party that is a party thereto, and in each case constitutes a legal, valid and binding obligation of Borrower or such Credit Party (as applicable), enforceable against Borrower or such Credit Party (as applicable) in accordance with its respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general principles of equity.

4.6. Collateral. In connection with this Agreement, Borrower has delivered to the Collateral Agent a completed certificate signed by a Responsible Officer of Borrower (the "**Perfection Certificate**"). Each Credit Party, jointly and severally, represents and warrants to the Collateral Agent and each Lender that:

(a) (i) except as expressly permitted in accordance with Section 6.2(a), its exact legal name is that indicated on the Perfection Certificate most recently delivered in accordance with the terms hereof and on the signature page thereof; (ii) except as expressly permitted in accordance with Section 6.2(a), it is an organization of the type and is organized in the jurisdiction set forth in the Perfection Certificate most recently delivered in accordance with the terms hereof; (iii) except as expressly permitted in accordance with Section 6.2(a), the Perfection Certificate most recently delivered in accordance with the terms hereof accurately sets forth its organizational identification number or accurately states that it has none; (iv) the Perfection Certificate most recently delivered in accordance with the terms hereof accurately sets forth as of the applicable Closing Date its place of business, or, if more than one, its chief executive office as well as its mailing address (if different than its chief executive office); (v) except as expressly permitted in accordance with Section 6.2(a), it (and each of its predecessors) has not, in the five (5) years prior to the applicable Closing Date, changed its jurisdiction of formation, organizational structure or type, or any organizational number assigned by its jurisdiction; and (vi) all other information set forth on the Perfection Certificate most recently delivered in accordance with the terms hereof pertaining to it and each of its Subsidiaries is accurate and complete in all material respects as of the applicable Closing Date. If any Credit Party is not now a Registered Organization but later becomes one, it shall promptly notify the Collateral Agent of such occurrence and provide the Collateral Agent with such Credit Party's organizational identification number.

(b) (i) it has good and valid title to, has the rights it purports to have in, and subject to Permitted Subsidiary Distribution Restrictions, Permitted Negative Pledges and the occurrence of the applicable Closing Date, the power to transfer each item of the Collateral upon which it purports to grant a Lien under any Collateral Document, free and clear of any and all Liens except Permitted Liens and except for such minor irregularities or defects in title as could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change and (ii) it has no deposit accounts maintained at a bank or other depository or financial institution which are not Excluded Accounts other than the deposit accounts described in the Perfection Certificate most recently delivered to the Collateral Agent in connection herewith.

(c) a true, correct and complete list of each pending, registered or issued Patent, Copyright and Trademark that, individually or together with any other such Patents, Copyrights or Trademarks, is material to the business of Borrower and its Subsidiaries, taken as a whole, relating to the research, development, manufacture, production, use (by any Credit Party or its Subsidiaries), commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale, distribution or sale of the Product in the Territory, and is owned or co-owned by, or exclusively or, if material to such activities, non-exclusively licensed to, any Credit Party or any of its Subsidiaries (collectively, the "**Current Company IP**"), including its name/title, current owner or co-owners (including ownership interest), registration, patent or application number, and registration or application date, in each jurisdiction where issued or filed in the Territory, is set forth on Schedule 4.6(c) of the Disclosure Letter. Except as set forth on Schedule 4.6(c) of the Disclosure Letter and except as would not reasonably be expected to result in a Material Adverse Change: (i)(A) each item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries is valid, subsisting and enforceable (or will be enforceable, upon issuance) and no item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries has in any respect lapsed or expired, been cancelled, held unpatentable or invalidated, or become abandoned or unenforceable (other than through the lapse, expiration or abandonment of Current Company IP in the exercise of the Borrower's normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application), and, to the Knowledge of Borrower, no circumstance or grounds exist that would invalidate or reduce, in whole or in part, the validity, enforceability, subsistence or scope of any such Current Company IP, or the ownership or use of such Current Company IP, by any Credit Party or any of its Subsidiaries, and (B) no written notice has been received by a Credit Party or any of its Subsidiaries challenging the validity, patentability, enforceability, inventorship or

ownership, or relating to any lapse, expiration, invalidation, cancellation, abandonment or unenforceability, of any item of Current Company IP owned or co-owned by a Credit Party or any of its Subsidiaries (other than from patent and trademark offices through the Borrower's normal prosecution practices); and (ii) to the Knowledge of Borrower, (A) each item of Current Company IP that is licensed from another Person is valid, subsisting and enforceable and no item of Current Company IP that is licensed by a Credit Party or any of its Subsidiaries has in any respect lapsed or expired, been cancelled, held unpatentable or invalidated, or become abandoned or unenforceable (other than through the lapse, expiration or abandonment of such Current Company IP in the exercise of the licensor's normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application), and (B) no written notice has been received challenging the validity, patentability, enforceability, inventorship or ownership, or relating to any lapse, expiration, invalidation, cancellation, abandonment or unenforceability, of any item of Current Company IP that is licensed by a Credit Party or any of its Subsidiaries (other than from patent and trademark offices through the licensor's normal prosecution practices). Each Credit Party or any of its Subsidiaries possesses valid title to the Current Company IP for which it is listed as the owner or co-owner, as applicable, on Schedule 4.6(c) of the Disclosure Letter except as would not reasonably be expected to result in a Material Adverse Change. There are no Liens on any Current Company IP other than Permitted Liens. Except as set forth on Schedule 4.6(c) of the Disclosure Letter and except as would not reasonably be expected to result in a Material Adverse Change, (x) each Person who has or has had any rights in or to owned Current Company IP or any trade secrets owned by any Credit Party or any of its Subsidiaries, including each inventor named on the Patents within such owned Current Company IP filed by any Credit Party or any of its Subsidiaries has executed an agreement assigning his, her or its entire right, title and interest in and to such owned Current Company IP and such trade secrets, and the inventions, improvements, ideas, discoveries, writings, works of authorship, information and other intellectual property embodied, described or claimed therein, to the stated owner thereof, and (y) to the Knowledge of Borrower, no such Person has any contractual or other obligation that would preclude or conflict with such assignment or the exploitation of Product in the Territory or entitle such Person to ongoing payments. Except as set forth on Schedule 4.6(c) of the Disclosure Letter, to the Knowledge of Borrower, there are no issued or published patents, patent applications, articles or prior art references which could reasonably be expected to materially adversely affect the exploitation of Product in the Territory.

(d) There are no maintenance, annuity or renewal fees that are currently overdue beyond their allotted grace period for any of the Current Company IP which is owned by or licensed to any Credit Party or any of its Subsidiaries, nor have any applications or registrations therefor lapsed or become abandoned, been cancelled or expired (other than through the abandonment, cancellation or expiry of Current Company IP in the exercise of the Borrower's normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application), in each case, except as would not reasonably be expected to result in a Material Adverse Change.

(e) There are no unpaid fees, royalties or indemnification payments under any Current Company IP Agreement that have become due, or are reasonably expected to become due or overdue except as would not reasonably be expected to result in a Material Adverse Change. Each Current Company IP Agreement is in full force and effect and, to the Knowledge of Borrower, is legal, valid, binding, and enforceable in accordance with its respective terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability. Neither Borrower nor any of its Subsidiaries, as applicable, is in material breach of or material default under any Current Company IP Agreement to which it is a party or may otherwise be bound, and to the Knowledge of Borrower, no circumstances or grounds exist that would give rise to a claim of material breach or right of rescission, termination, non-renewal, revision, or amendment of any of the Current Company IP Agreements, including the execution, delivery and performance of this Agreement and the other Loan Documents.

(f) Except as noted on Schedule 4.6(f) of the Disclosure Letter, no payments by any Credit Party or any of its Subsidiaries are due to any other Person in respect of the Current Company IP, other than pursuant to the Current Company IP Agreements and those fees payable to patent offices in connection with the prosecution and maintenance of the Current Company IP and associated attorney fees.

(g) Except as noted on Schedule 4.6(g) of the Disclosure Letter, no Credit Party is a party to, nor is it bound by, any Excluded License or Restricted License.

(h) No Credit Party or any of its Subsidiaries has undertaken or omitted to undertake any acts, and, to the Knowledge of Borrower, no circumstance or grounds exist that would invalidate or reduce, in whole or in part, the enforceability or scope of (i) the Current Company IP in any manner that could reasonably be expected to materially adversely affect the exploitation of Product in the Territory, or (ii) in the case of Current Company IP owned or co-owned by or exclusively or non-exclusively licensed to any Credit Party or any of its Subsidiaries, other than with respect to Permitted Licenses and except as set forth on Schedule 4.6(h) of the

Disclosure Letter, a Credit Party's or Subsidiary's entitlement to own or license and exploit such Current Company IP in any manner.

(i) Except as set forth on Schedule 4.6(i) of the Disclosure Letter, to the Knowledge of Borrower, there is no product or other technology of any third party that could reasonably be expected to infringe a Patent within the Current Company IP.

(j) In each case where a material issued Patent within the Current Company IP is owned or co-owned by any Credit Party or its Subsidiaries by assignment, the assignment has been duly recorded with the U.S. Patent and Trademark Office.

(k) There are no pending or, to the Knowledge of Borrower, threatened (in writing) claims against Borrower or any of its Subsidiaries alleging (i) that any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale, distribution or sale of Product in the Territory infringes or violates (or in the past infringed or violated), or form a reasonable basis for a claim of infringement or violation of, any of the rights of any third parties in or to any Intellectual Property ("**Third Party IP**") or constitutes a misappropriation (or in the past constituted a misappropriation) of any Third Party IP, or (ii) that any Current Company IP is invalid, unpatentable or unenforceable.

(l) The manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory has not in the past and does not and, to the Knowledge of Borrower, will not, (i) infringed or infringe or violated or violate, or formed or form a reasonable basis for a claim of infringement or violation of, any of the rights of any third parties in or to any Third Party IP or (ii) constituted or constitute a misappropriation of any Third Party IP.

(m) Except as set forth on Schedule 4.6(m) of the Disclosure Letter, there are no settlements, covenants not to sue, consents, judgments, orders or similar obligations which: (i) restrict the rights of any Credit Party or any of its Subsidiaries to use any Intellectual Property relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer for sale, distribution or sale of Product in the Territory (in order to accommodate any Third Party IP or otherwise), or (ii) permit any third parties to use any Company IP owned or co-owned by, or exclusively licensed to, any Credit Party or any of its Subsidiaries.

(n) Except as set forth on Schedule 4.6(n) of the Disclosure Letter and except as would not reasonably be expected to result in a Material Adverse Change, to the Knowledge of Borrower, (i) there is no, nor has there been any, infringement or violation by any Person of any of the Company IP or the rights therein, and (ii) there is no, nor has there been any, misappropriation by any Person of any of the Company IP or the subject matter thereof.

(o) Each Credit Party and each of its Subsidiaries has taken all commercially reasonable measures customary in the life sciences industry, to protect the confidentiality and value of all trade secrets owned by such Credit Party or any of its Subsidiaries or used or held for use by such Credit Party or any of its Subsidiaries, in each case relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory. Any disclosure by a Credit Party or any of its Subsidiaries of any such trade secrets to any third party has been pursuant to the terms of a written agreement with such third party, and no Credit Party or any of its Subsidiaries has suffered any material data breach or other incident that has resulted in any loss, unauthorized access, use, disclosure or modification of any such trade secrets.

(p) Except as set forth on Schedule 4.6(p) of the Disclosure Letter and except as would not reasonably be expected to result in a Material Adverse Change, to the Knowledge of Borrower, Product made, used or sold under the Patents within the Current Company IP has been marked with the proper patent notice.

(q) Except as set forth on Schedule 4.6(q) of the Disclosure Letter, to the Knowledge of Borrower, at the time of any shipment of Product occurring prior to the applicable Closing Date, the units thereof so shipped complied in all material respects with their relevant specifications and were developed and manufactured in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices, and FDA Good Laboratory Practices.

(r) The Collateral Documents create in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a valid and continuing and, upon the making of the filings and the taking of

the actions required under the terms of the Loan Documents (except to the extent not required to be perfected pursuant to the terms of the Loan Documents), perfected Lien on and security interest in the Collateral (in each case, solely to the extent perfection is available under applicable Law through the making of such filings and taking of such actions), securing the payment of the Obligations, and having priority over all other Liens on and security interests in the Collateral (except Permitted Liens).

4.7. Adverse Proceedings, Compliance with Laws and Settlement Agreements. Except as set forth on Schedule 4.7 of the Disclosure Letter, there are no Adverse Proceedings pending or, to the Knowledge of Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries (including involving allegations of sexual harassment or misconduct by any officer of Borrower or any of its Subsidiaries) that, if adversely determined, either individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. Except as set forth on Schedule 4.7 of the Disclosure Letter, neither Borrower nor any of its Subsidiaries: (a) is in violation of any Requirements of Law (including Environmental Laws), excluding any Requirement of Law which is being contested in good faith by appropriate proceedings that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change; or (b) is subject to or in default with respect to any final judgments, orders, writs, injunctions, settlement agreements, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. Each of Borrower and its Subsidiaries (and, to Borrower's Knowledge, each other party thereto) is in compliance with the terms of all settlement agreements.

4.8. Exchange Act Documents; Financial Statements; Financial Condition; No Material Adverse Change; Books and Records.

(a) The Exchange Act Documents filed by Borrower with the SEC since December 31, 2020, when they were filed with the SEC, conformed in all material respects to the requirements of the Exchange Act, and as of the time they were filed with the SEC, none of such documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements therein (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature), in the light of the circumstances under which they were made, not misleading; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein).

(b) The financial statements (including the related notes thereto) of Borrower and its Subsidiaries included in the Exchange Act Documents present fairly in all material respects the consolidated financial condition of Borrower and such Subsidiaries and their consolidated results of operations as of the dates indicated and the results of their operations and the changes in their cash flows for the periods specified; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein). Such financial statements have been prepared in conformity with Applicable Accounting Standards applied on a consistent basis throughout the periods covered thereby, except as otherwise disclosed therein and, in the case of unaudited, interim financial statements, subject to normal year-end audit adjustments and the exclusion of certain footnotes, and any supporting schedules included in the Exchange Act Documents present fairly in all material respects the information required to be stated therein.

(c) Since December 31, 2024, there has not occurred any (i) material deterioration in the consolidated financial condition of Borrower and its Subsidiaries or (ii) change or event that has had or could reasonably be expected to have, either alone or in conjunction with any other change(s), event(s) or failure(s), a Material Adverse Change.

(d) The Books of Borrower and each of its Subsidiaries in existence immediately prior to the Effective Date contain full, true and correct entries of all dealings and transactions in relation to its business and activities in conformity in all material respects with Applicable Accounting Standards and Requirements of Law.

4.9. Solvency. Each Credit Party and its Subsidiaries, on a consolidated basis, are Solvent. Without limiting the generality of the foregoing, there has been no proposal made or resolution adopted by any competent corporate body for the dissolution or liquidation of any Credit Party, nor do any circumstances exist which may result in the dissolution or liquidation of any Credit Party.

4.10. Payment of Taxes. All U.S. federal, state, local and foreign income and other Tax returns and reports (or extensions thereof) of each Credit Party and each of its Subsidiaries required to be filed by any of them have been timely filed and are correct in all respects, and all Taxes which are due and payable by any Credit Party or any of its Subsidiaries and all material assessments, fees and other governmental charges upon any Credit Party or any of its Subsidiaries and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable, except (i) where the amount of the Tax at issue does not exceed [***] or (ii) where the validity or amount thereof is being contested in good faith by appropriate proceedings; provided that (a) the applicable Credit Party has set aside on its books adequate reserves therefor in conformity with Applicable Accounting Standards and (b) the failure to pay such Taxes, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change. There is no proposed Tax assessment against any Credit Party or any of its Subsidiaries that would, if made, result in a Material Adverse Change.

4.11. Environmental Matters. Neither Borrower nor any of its Subsidiaries nor any of their respective Facilities or operations is subject to any outstanding written order, consent decree or settlement agreement with any Person relating to any Environmental Law, any Environmental Claim, or any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. There are and, to the Knowledge of Borrower, have been, no conditions, occurrences, or Hazardous Materials Activities that would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. To the Knowledge of Borrower, no predecessor of Borrower or any of its Subsidiaries has filed any notice under any Environmental Law indicating past or present treatment of Hazardous Materials at any Facility, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change (but, for the avoidance of doubt, Borrower has not undertaken any investigation of or made any inquiries to, or relating to, any of its or its Subsidiaries' predecessors), and neither Borrower's nor any of its Subsidiaries' operations involves the generation, transportation, treatment, storage or disposal of hazardous waste, as defined under 40 C.F.R. Parts 260 270 or any state or foreign equivalent, which would reasonably be expected to form the basis of an Environmental Claim against Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change. No event or condition has occurred or is occurring with respect to any Credit Party relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity that, individually or in the aggregate, has resulted in, or could reasonably be expected to result in, a Material Adverse Change.

4.12. Material Contracts. After giving effect to the consummation of the transactions contemplated by this Agreement, except as described on Schedule 4.12 of the Disclosure Letter, each Material Contract is a valid and binding obligation of the applicable Credit Party and, to the Knowledge of Borrower, each other party thereto, and is in full force and effect, and neither the applicable Credit Party nor, to the Knowledge of Borrower, any other party thereto is in material breach thereof or default thereunder, except where such breach or default (which default has not been cured or waived) could not reasonably be expected to give rise to any cancellation, termination, loss of significant contractual rights or acceleration right of the applicable counterparty thereto or result in the invalidation thereof. No Credit Party or any of its Subsidiaries has received any written notice from any party to any Material Contract asserting or, to the Knowledge of Borrower threatening to assert, circumstances that could reasonably be expected to result in the cancellation, termination, loss of significant contractual rights or invalidation of any Material Contract (or any provision thereof) or the acceleration of such Credit Party's or Subsidiary's obligations thereunder. The Therapeutic Option Letter Agreement, dated December 18, 2017, by and between ALPHAEON Corporation and Evolus, Inc. is effectively treated by all parties thereto as having been terminated and of no further force and effect and there are no services being performed and required to be performed in the future pursuant to the Services Agreement, dated as of January 23, 2018, by and between ALPHAEON Corporation and Evolus, Inc., except, in each case, indemnification obligations or other customary obligations that expressly survive the termination of such agreement.

4.13. Regulatory Compliance. No Credit Party is or is required to be registered as, or is a company "controlled" by, an "investment company" as defined in, or is subject to regulation under, the Investment Company Act of 1940. Each Credit Party has complied in all material respects with the Federal Fair Labor Standards Act (and any foreign equivalent). Except as could not, either individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, each Plan is in compliance with the applicable provisions of ERISA, the IRC and other U.S. federal or state or foreign Requirements of Law, respectively. (i) No ERISA Event has occurred or is reasonably expected to occur; (ii) neither any Credit Party nor any ERISA Affiliate has incurred, or reasonably expects to incur, any liability (and no event has occurred which, with the giving of notice under Section 4219 of

ERISA, would result in such liability) under Section 4201 *et seq*. of ERISA with respect to a Multiemployer Plan; and (iii) neither any Credit Party nor any ERISA Affiliate has engaged in a transaction that would be subject to Section 4069 or 4212(c) of ERISA, except, with respect to each of clauses (i), (ii) and (iii) above, as could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Change.

4.14. Margin Stock. No Credit Party is engaged principally, or as one of its important activities, in extending credit for the purpose of, whether immediate or ultimate, of purchasing or carrying Margin Stock. No Credit Party owns any Margin Stock. No Credit Party or any of its Subsidiaries has taken or permitted to be taken any action that might cause any Loan Document to violate Regulation T, U or X of the Federal Reserve Board.

4.15. Subsidiaries; Capitalization. Schedule 4.15 of the Disclosure Letter includes a complete and accurate list as of the applicable Closing Date of Borrower and each of its Subsidiaries, setting forth (a) its name and jurisdiction of incorporation, organization or formation, (b) in the case of each Credit Party, the number of authorized and issued shares of each class of its Equity Interests outstanding, and (c) the percentage of its outstanding shares of each class owned (directly or indirectly) by Borrower or any of its Subsidiaries and the certificate numbers(s) for the same (if any), and (d) the number and effect, if exercised, of all of its outstanding options, warrants, rights of conversion or purchase and all other similar rights with respect thereto. Except as set forth on Schedule 4.15 of the Disclosure Letter, each Credit Party is a Registered Organization.

4.16. Employee Matters. Neither Borrower nor any of its Subsidiaries is engaged in any unfair labor practice that could reasonably be expected to result in a Material Adverse Change. There is (a) no unfair labor practice complaint pending against Borrower or any of its Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them before the National Labor Relations Board, and no grievance or arbitration proceeding arising out of or under any collective bargaining agreement that is pending against Borrower or any of its Subsidiaries or, to the Knowledge of Borrower, threatened in writing against any of them, (b) no strike or work stoppage in existence or, to the Knowledge of Borrower, threatened in writing involving Borrower or any of its Subsidiaries, and (c) to the Knowledge of Borrower, no union representation question existing with respect to the employees of Borrower or any of its Subsidiaries and, to the Knowledge of Borrower, no union organization activity that is taking place that in each case specified in any of clauses (a), (b) and (c) above, individually or taken together with any other matter specified in clause (a), (b) or (c) above, could reasonably be expected to result in a Material Adverse Change.

4.17. Full Disclosure. None of the documents, certificates or written statements (excluding any projections and forward-looking statements, estimates, budgets and general economic or industry data of a general nature) furnished or otherwise made available to the Collateral Agent or any Lender by or on behalf of any Credit Party for use in connection with the transactions contemplated hereby (in each case, taken as a whole and as modified or supplemented by other information so furnished promptly after the same becomes available) contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, as of the time when made or delivered, not misleading in light of the circumstances in which the same were made; provided, that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being understood that such projections are not a guarantee of financial performance and are subject to uncertainties and contingencies, many of which are beyond the control of Borrower or any Subsidiary, and neither Borrower nor any Subsidiary can give any assurance that such projections will be attained, that actual results may differ in a material manner from such projections and any failure to meet such projections shall not be deemed to be a breach of any representation or covenant herein). To the Knowledge of Borrower, there are no facts (other than matters of a general economic or industry nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change and that have not been disclosed herein or in such other documents, certificates and written statements furnished or made available to the Collateral Agent or any Lender for use in connection with the transactions contemplated hereby.

4.18. FCPA; Patriot Act; Sanctions; **Export and Import Laws**.

(a) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower has (i) used any corporate funds of Borrower or any Subsidiary of Borrower (including Borrower) for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity, (ii) made any direct or indirect unlawful payment to any foreign or domestic government official or employee or any Person from corporate funds of Borrower or any Subsidiary of Borrower (including Borrower), (iii) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977 (the "**FCPA**") or the U.K. Bribery Act 2010 ("**UKBA**") or (iv) made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment, and no part of the proceeds of any Credit Extension will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a

political party, candidate for political office or anyone else, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation of the FCPA, UKBA or any other applicable anti-corruption laws.

(b) (i) The operations of Borrower and its Subsidiaries are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the, the Bank Secrecy Act of 1970 (as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001) and the anti-money laundering laws, rules and regulations of each jurisdiction (foreign or domestic) in which Borrower or any of its Subsidiaries is subject to such jurisdiction's Requirements of Law (collectively, the "**Anti-Money Laundering Laws**") and (ii) no action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to the Anti-Money Laundering Laws is pending or to the Knowledge of Borrower, threatened in writing.

(c) None of Borrower, its Subsidiaries or, to the Knowledge of Borrower, any director, officer, agent or employee of Borrower or any Subsidiary of Borrower is a Sanctioned Person. Neither Borrower nor any of its Subsidiaries: (i) has assets located in, or otherwise directly or indirectly derives revenues from or engages in, investments, dealings, activities, or transactions in or with, any Sanctioned Country; or (ii) directly or indirectly derives revenues from, conducts any business or engages in investments, dealings, activities, or transactions with, any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Sanctioned Person. Borrower will not, directly or, to the Knowledge of Borrower, indirectly through an agent, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other Person, for the purpose of financing the activities of any Person that is a Sanctioned Person or is located, organized or resident at the time of such funding in a Sanctioned Country. No action, suit or proceeding by or before any Governmental Authority or any arbitrator involving Borrower or any of its Subsidiaries with respect to Sanctions is pending or to the Knowledge of such Credit Party, threatened in writing, nor is there a basis for such action, suit or proceeding.

(d) Borrower will not, directly or, to the Knowledge of Borrower, indirectly through an agent or any other Person, use any of the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds of any Credit Extension to any Subsidiary, joint venture partner or other Person, (i) for any payments to any governmental official or employee, political party, official of a political party, candidate for political office or anyone else, in order to obtain, retain or direct business, or to obtain any improper advantage, in violation of the FCPA, UKBA or any other applicable anti-corruption laws, (ii) in violation of any Anti-Money Laundering Laws, or (iii) in violation of Sanctions;

(e) Borrower, its Subsidiaries, and to the Knowledge of Borrower, their respective directors, officers, agents and employees, are in compliance with all applicable Sanctions. Borrower and its Subsidiaries have instituted and maintain appropriate procedures reasonably designed to ensure compliance with applicable Sanctions and applicable anti-corruption laws, including the FCPA and UKBA.

(f) Borrower and its Subsidiaries are in compliance, in all materials respects, with applicable Export and Import Laws.

4.19. Health Care Matters.

(a) *Compliance with Health Care Laws*. Except as set forth on Schedule 4.19(a) of the Disclosure Letter, each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries and each officer, Affiliate, and employee acting on behalf of such Credit Party or any of its Subsidiaries, is in compliance in all material respects with all Health Care Laws.

(b) *Compliance with FDA Laws*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, are in compliance in all material respects with all applicable FDA Laws, including the Food Drug and Cosmetic Act (21 U.S.C. § 301 et seq.) and the regulations promulgated thereunder (the "**FDCA**"), the Public Health Service Act (21 U.S.C. § 262 through § 263) and regulations promulgated thereunder (the "**PHSA**") and applicable FDA Guidance Documents, in any way relating to any research, development, testing, approval, post-approval monitoring, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale, distribution or sale of Product. Any Product distributed or sold in the Territory at all times during the past five (5) years has been (i) manufactured in all material respects in accordance with current FDA Good Manufacturing Practices, FDA Good Clinical Practices and FDA Good Laboratory Practices (as applicable), and (ii) if and to the extent such Product is required to be approved by the FDA pursuant to the FDCA or licensed by the FDA pursuant to the PHSA in order to be legally marketed in the Territory for such Product's intended uses, such Product has been approved for such intended uses, meets in all material respects any additional conditions of approval or licensure by the FDA (as applicable), and no inquiries

regarding material issues have been initiated by FDA, except in each case referred to in sub-clauses (i) or (ii) above, to the extent that any failure to ensure the foregoing could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

(c) *Compliance with DEA Laws*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, is in compliance in all material respects with all applicable DEA Laws, including those related to the reporting of controlled substances within the meaning of the Controlled Substances Act (including any foreign and state equivalent, the "**CSA**"), relating to any development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory. No Product distributed or sold in the Territory at any time during the past five (5) years (i) contains any controlled substances within the meaning of the CSA or (ii) is required to be authorized by the DEA pursuant to the CSA and its implementing regulations.

(d) *Material Statements*. Within the past four (4) years, neither any Credit Party, nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee of any Credit Party or Subsidiary in its capacity as a Subsidiary or as an officer, Affiliate or employee of a Credit Party or Subsidiary (as applicable), nor, to the Knowledge of Borrower, any agent of any Credit Party or Subsidiary, (i) has made an untrue statement of a material fact or a fraudulent statement to any Governmental Authority, (ii) has failed to disclose a material fact to any Governmental Authority, or (iii) has otherwise committed an act, made a statement or failed to make a statement that, at the time such statement or disclosure was made (or, in the case of such failure, should have been made) or such act was committed, could reasonably be expected to constitute a material violation of any Health Care Law.

(e) *Proceedings; Audits*. Except as has been set forth on Schedule 4.19(e) of the Disclosure Letter: (i) there is no Adverse Proceeding pending or, to the Knowledge of Borrower, threatened in writing, against any Credit Party or any of its Subsidiaries relating to any allegations of non-compliance with any Health Care Laws, Data Protection Laws, or FDA Laws; and (ii) to the Knowledge of Borrower, there are no facts, circumstances or conditions that, individually or in the aggregate, would reasonably be expected to form the basis for any such Adverse Proceeding.

(f) *Recalls, Safety Notices, Etc*. Neither any Credit Party nor any of its Subsidiaries has initiated or otherwise engaged in any recalls, field notifications, safety warnings, "dear doctor" letters, investigator notices, safety alerts or other notices of action, including as a result of any Risk Evaluation and Mitigation Strategy proposed or enforced by the FDA, relating to an alleged lack of safety or regulatory compliance of Product that could reasonably be expected to result in a Material Adverse Change or otherwise materially impact the ability to develop or commercially exploit Product. Neither any Credit Party nor any of its Subsidiaries has a reasonable expectation that there are grounds for imposition of a full or partial clinical hold, as described in 21 C.F.R. § 312.42, on any clinical trial, except as could not reasonably be expected to result in a Material Adverse Change. No portion of Product is adulterated or misbranded within the meaning of the FDCA, except for such adulterations or misbrandings that could not reasonably be expected to result in a Material Adverse Change or otherwise materially impact the ability to develop or commercially exploit Product.

(g) *Preclinical Studies / Clinical Trials*. All pre-clinical and clinical studies relating to Product conducted by or on behalf of any Credit Party or any of its Subsidiaries have been, or are being, conducted in compliance with all applicable Requirements of Law, including the requirements of FDA Good Laboratory Practices and FDA Good Clinical Practice, including regulations under 21 C.F.R. Parts 50, 54, 56, 58 and 312, the Common Rule, including regulations under 45 C.F.R. part 46, and guidance documents issued by the Office for Human Research Protection, the Animal Welfare Act and applicable experimental protocols, procedures and controls (and any foreign equivalents). No clinical trial conducted by or on behalf of any Credit Party or any of its Subsidiaries has been terminated or suspended by any Regulatory Authority and neither any Credit Party nor any of its Subsidiaries has received any notice that the FDA, any other Governmental Authority or any institutional review board, ethics committee or safety monitoring committee has recommended, initiated or threatened to initiate any action to suspend or terminate any clinical trial conducted by or on behalf of any Credit Party or any of its Subsidiaries or to otherwise restrict the preclinical research on or clinical study of Product. Neither any Credit Party nor any of its Subsidiaries has a reasonable expectation that there are grounds for imposition of a full or partial clinical hold, as described in 21 C.F.R. § 312.42, on any clinical trial that could reasonably be expected to result in a Material Adverse Change.

(h) *Advertising / Promotion*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, officers, employees and agents has advertised, promoted, marketed and distributed Product in compliance in all material respects with FDA Laws, DEA Laws and other Requirements of Law (and any foreign equivalents). Except as set forth on Schedule 4.19(h) of the Disclosure Letter, neither any Credit Party nor, to the Knowledge of Borrower, any of its Subsidiaries, officers, employees or agents has received any notice of or is subject to any civil, criminal or administrative action, suit, demand, claim, complaint, hearing, investigation, demand

letter, warning letter, untitled letter, proceeding or request for information from the FDA or any other Governmental Authority concerning noncompliance with any FDA Laws or other Requirements of Law (and any foreign equivalents) with regard to advertising, promoting, marketing or distributing Product.

(i) *Recordkeeping / Reporting*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, has maintained records relating to the research, development, testing, manufacture, recall, production, handling, labeling, packaging, storage, supply, promotion, distribution, marketing, commercialization, import, export and sale of Product in compliance in all material respects with FDA Laws, Health Care Laws and other applicable Requirements of Law (and any foreign equivalents), and each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, has submitted to the FDA and other Governmental Bodies in a timely manner all notices and annual or other reports required to be made by it, including adverse experience reports and annual reports, for Product save to the extent that could not reasonably be expected to have a materially adverse impact on such Credit Party's or Subsidiary's rights in respect of Product.

(j) *Prohibited Transactions; No Whistleblowers*. Except as set forth on Schedule 4.19(j) of the Disclosure Letter, within the past six (6) years, to the Knowledge of Borrower, neither any Credit Party, any Subsidiary, any of officer, Affiliate or employee of a Credit Party or Subsidiary, nor any other Person acting on behalf of any Credit Party or any Subsidiary, directly or indirectly: (i) has offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential patient, supplier, physician or contractor, in order to illegally obtain business or payments from such Person in material violation of any Health Care Law; (ii) has given or made, or is party to any illegal agreement to give or make, any illegal gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential patient, supplier, physician or contractor, or any other Person in material violation of any Health Care Law; (iii) has given or made, or is party to any agreement to give or make on behalf of any Credit Party or any of its Subsidiaries, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was a material violation of the laws of any Governmental Authority having jurisdiction over such payment, contribution or gift; (iv) has established or maintained any unrecorded fund or asset for any purpose or made any materially misleading, false or artificial entries on any of its books or records for any reason; or (v) has made, or is party to any agreement to make, any payment to any Person with the intention or understanding that any part of such payment would be in material violation of any Health Care Law. To the Knowledge of Borrower, there are no actions pending or threatened (in writing) against any Credit Party or any of its Subsidiaries or any of their respective Affiliates under any foreign, federal or state whistleblower statute, including under the False Claims Act of 1863 (31 U.S.C. § 3729 et seq.).

(k) *Exclusion*. Neither any Credit Party nor, to the Knowledge of Borrower, any Subsidiary or any officer, Affiliate or employee having authority to act on behalf of any Credit Party or any Subsidiary, is or, to the Knowledge of Borrower, has been threatened in writing to be: (i) excluded from any Governmental Payor Program pursuant to 42 U.S.C. § 1320a-7b and related regulations, to the extent applicable; (ii) "suspended" or "debarred" from selling any products to the U.S. government or its agencies pursuant to the Federal Acquisition Regulation relating to debarment and suspension applicable to federal government agencies generally (42 C.F.R. Subpart 9.4), or other U.S. Requirements of Law; (iii) debarred, disqualified, suspended or excluded from participation in Medicare, Medicaid or any other Governmental Payor Program or is listed on the General Services Administration list of excluded parties, to the extent applicable; (iv) debarred by the FDA; or (v) a party to any other action or proceeding by any Governmental Authority that would prohibit the applicable Credit Party or Subsidiary from distributing or selling Product in the Territory or providing any services to any governmental or other purchaser pursuant to any Health Care Laws.

(l) *Health Information*. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, to the extent applicable, is in material compliance with all applicable foreign, federal, state and local laws and regulations regarding the privacy, data protection, security, and notification of breaches of health information and regarding electronic transactions, including HIPAA, GDPR, CCPA and PIPEDA. Each Credit Party and, to the Knowledge of Borrower, each of its Subsidiaries, has implemented written policies and procedures as well as training that is reasonable and customary in the pharmaceutical and aesthetics industries, satisfies the requirements of all applicable Requirements of Law (including HIPAA, GDPR, CCPA and PIPEDA, as applicable) and is otherwise reasonably expected to be adequate to assure continued compliance and to detect non-compliance. Neither any Credit Party nor, to the Knowledge of Borrower, any Subsidiary that is not a Credit Party, is a "covered entity" as defined in HIPAA (45 C.F.R. § 160.103). Borrower is a "business associate" as defined in HIPAA (45 C.F.R. § 160.103).

(m) *Corporate Integrity Agreement*. Neither any Credit Party or Subsidiary or any of their respective Affiliates, nor any officer, director, managing employee or, to the Knowledge of Borrower, agent (as those terms are defined in 42 C.F.R. § 1001.1001) of any Credit Party or Subsidiary, is a party to or has any ongoing

reporting or disclosure obligations under, or is otherwise subject to, any corporate integrity agreement, monitoring agreement, deferred prosecution agreement, consent decree, settlement order or other similar agreements, or any order, in each case imposed by any U.S. Governmental Authority, concerning compliance with any laws, rules or regulations, issued under or in connection with a Governmental Payor Program.

4.20. Regulatory Approvals.

(a) Except as set forth on Schedule 4.20(a) of the Disclosure Letter, each Credit Party and each Subsidiary involved in any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory has all Regulatory Approvals material to the conduct of its business and operations.

(b) Each Credit Party, each Subsidiary and, to the Knowledge of Borrower, each licensee of a Credit Party or a Subsidiary of any Intellectual Property relating to Product, is in compliance with, and at all times during the past five (5) years, has complied with all applicable foreign, federal, state and local laws, rules and regulations governing the research, development, testing, approval, post-approval monitoring, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale, distribution or sale of Product in the Territory, including all such regulations promulgated by each applicable Regulatory Agency (including the FDA and CDC), except where any instance of failure to comply with any such laws, rules or regulations could not, whether individually or taken together with any other such failures, reasonably be expected to result in a Material Adverse Change. Except as set forth on Schedule 4.20(b) of the Disclosure Letter, no Credit Party or its Subsidiaries has received any written notice from any Regulatory Agency citing action or inaction by any Credit Party or any of its Subsidiaries that would constitute a violation of any applicable foreign, federal, state or local laws, rules or regulations, including a Warning Letter or Untitled Letter from the FDA.

4.21. Supply and Manufacturing.

(a) Except as set forth on Schedule 4.21(a) of the Disclosure Letter, to the Knowledge of Borrower, Product at all times has been manufactured in sufficient quantities and of a sufficient quality to satisfy demand of Product in the Territory, without the occurrence of any event or any series of related events causing inventory of Product to have become exhausted prior to satisfying such demand. To the Knowledge of Borrower, no event or series of related events has occurred that has caused or could reasonably be expected to cause inventory of Product to have become exhausted prior to satisfying such demand.

(b) Except as set forth on Schedule 4.21(b) of the Disclosure Letter, to the Knowledge of Borrower, (i) no manufacturer (including a contract manufacturer) or producer of Product has been subject to a Regulatory Agency shutdown, restriction or import or export prohibition, (ii) no manufacturer (including a contract manufacturer) or producer of Product has received in the past five (5) years or is currently subject to (1) a FDA Form 483 or (2) other written Regulatory Agency notice of inspectional observations, Warning Letter, Untitled Letter or request to make changes to Product that could reasonably be expected to impact Product, in either case of sub-clause (1) or (2) with respect to any facility manufacturing or producing Product for import, distribution or sale in the Territory, in each case, except as could not reasonably be expected to result in a Material Adverse Change, and (iii) with respect to each such FDA Form 483 received or other written Regulatory Agency notice (if any), including any subsequent FDA approval for marketing and distribution of such Product, all scientific and technical violations or other issues relating to good manufacturing practice requirements documented therein, and any disputes regarding any such violations or issues, have been corrected, and all corrective actions described therein as ongoing or promised have been completed.

(c) Except as disclosed in Schedule 4.21(c) of the Disclosure Letter, no Credit Party or any of its Subsidiaries has received any notice, oral or written, from any party to any Manufacturing Agreement containing any indication by or intent or threat of, such party to reduce or cease, in any material respect, the supply of Product or the active pharmaceutical ingredient incorporated therein in the Territory or any other raw materials needed to fulfill its contractual obligations related to Product in any Manufacturing Agreement through calendar year 2026 (or such earlier date in accordance with the terms and conditions of such Manufacturing Agreement, as applicable).

4.22. Cybersecurity and Data Protection.

(a) Except as set forth in Schedule 4.22(a) of the Disclosure Letter, to the Knowledge of any Credit Party, the information technology systems used in the business of each Credit Party and each of its Subsidiaries ("**Systems**") operate and perform in all material respects as required to permit the Credit Parties and their respective Subsidiaries to conduct their respective businesses as presently conducted in the Territory. For the

avoidance of doubt, "Systems" includes any applications Borrower makes available to medical partners. Borrower and each of its Subsidiaries has implemented and maintained reasonable and appropriate security controls and safeguards designed to protect the confidentiality, integrity, and availability of Sensitive Information and designed to protect the Systems. To the Knowledge of such Credit Party, no System contains any material ransomware, disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that are designed or intended to delete, destroy, disable, disrupt, impair, interfere with, perform unauthorized modifications to, or provide unauthorized access to any data, files, software, system, network or other device (including, for the avoidance of doubt, Sensitive Information or Systems). Borrower and its Subsidiaries have and maintain back-up systems, consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and each of its Subsidiaries, designed to provide continuing availability of the material functionality provided by the Systems in the event of any malfunction of, or other event interrupting access to or the functionality of, such Systems. Borrower and each of its Subsidiaries use commercially reasonable efforts to maintain System security, including to promptly identify and implement material security patches that are generally available for the Systems.

(b) Except as set forth on Schedule 4.22(b) of the Disclosure Letter, Borrower and each of its Subsidiaries has implemented and maintains a commercially reasonable enterprise-wide privacy and information security program ("**Security Program**") with plans, policies, and procedures for privacy and physical and cyber security (including for disaster recovery, business continuity, encryption, data back-up, Systems access controls, workstation use and security, incident detection and incident response), that includes reasonable and appropriate administrative, technical and physical safeguards designed to protect the integrity and availability of the Systems, consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and its Subsidiaries and designed to protect against (i) any unauthorized, accidental, or unlawful access to or, acquisition, use, control, disclosure, transmission, storage, retention, processing, loss, destruction, or modification of Personal Data that would require notification to any affected individuals or any Governmental Authority under any applicable Data Protection Laws (each, a "**Personal Data Breach**") (ii) any unauthorized, accidental, or unlawful access to or acquisition, use, disclosure, transmission, loss, destruction, corruption or modification of Sensitive Information that is not Personal Data, and (iii) any security incidents that would result in unauthorized, accidental, or unlawful access to or acquisition, use, control, disruption, destruction, or modification of any of the Systems (including cyber-attacks) (sub-clauses (i) through (iii), in each case only to the extent that such incidents could reasonably be expected to result in a material and adverse effect on the operation of Borrower's or any of its Subsidiaries' business operations as currently conducted, collectively, "**Security Incidents**").

(c) Borrower and each of its Subsidiaries has conducted commercially reasonable privacy and security audits and penetration tests at reasonable intervals on all Systems that maintain, store, access, or process Sensitive Information, in each case consistent with the industry in which Borrower and each of its Subsidiaries operate and the size and condition of Borrower and its Subsidiaries. Borrower and each of its Subsidiaries has taken commercially reasonable steps to address and remediate all material privacy or data security issues identified as "critical," "high risk," or similar level of risk rating that are raised in any such audits or penetration tests (including any third-party audits of the Systems).

(d) Borrower and each of its Subsidiaries has conducted commercially reasonable privacy and data security diligence, consistent with generally accepted practices within the industry in which Borrower and each of its Subsidiaries operate and in material compliance with applicable Data Protection Laws, on all applicable service providers (including clinical trial investigators, contract research organizations, contract laboratories, contract manufacturers, suppliers, clinical data management organizations, back-office service providers, vendors and contractors) that (i) collect, create, receive, access, maintain, store, or otherwise process Sensitive Information for or on behalf of Borrower or any of its Subsidiaries, or (ii) access or maintain the Systems. Except as set forth on Schedule 4.22(d) of the Disclosure Letter, neither Borrower nor any of its Subsidiaries has, in the past five (5) years received written notice from any such service provider that the service provider experienced a Security Incident materially impacting Borrower's or any of its Subsidiaries' Sensitive Information.

(e) Except as set forth on Schedule 4.22(e) of the Disclosure Letter, to the Knowledge of the Borrower, neither Borrower nor any of its Subsidiaries, nor to the Knowledge of Borrower, have in the past five (5) years has suffered (i) any Personal Data Breaches or (ii) any other Security Incidents, which, in each case of sub-clauses (i) and (ii) above individually or together with any other such breaches or incidents, could reasonably be expected to have a material and adverse effect on Borrower's or any of its Subsidiaries' business operations.

(f) Borrower and each of its Subsidiaries is in material compliance with the requirements of (i) their respective Security Programs, (ii) their respective contractual obligations regarding the privacy, the security and the notification of breaches of Personal Data, including, if applicable, customer, consumer, patient, clinical trial participant and employee information, (iii) their respective contractual non-disclosure obligations, (iv) their respective publicly available privacy notices and policies, and (v) all applicable Data Protection Laws.

(g) In the past five (5) years: (i) neither Borrower nor any of its Subsidiaries has received any written third-party claims or, to the Knowledge of such Credit Party, any threat (in writing) of a third-party claim, related to any Personal Data Breaches or other Security Incidents; and (ii) neither Borrower nor any of its Subsidiaries has received any written notice of any claims or investigations (including investigations by any Governmental Authority) relating to any Personal Data Breaches or other Security Incidents, except, in each case of sub-clauses (i) and (ii) above as could not reasonably be expected to be material to Borrower and its Subsidiaries, taken as a whole..

4.23. Additional Representations and Warranties.

(a) After giving effect to consummation of the transactions contemplated by this Agreement, there is no Indebtedness other than Permitted Indebtedness described in clauses (a) and (b) of the definition of Permitted Indebtedness.

(b) There are no Hedging Agreements as of the Tranche A Closing Date.

(c) Except as set forth in Schedule 4.23(c) of the Disclosure Letter, there is no registration rights agreement, investors' rights agreement or other similar agreement relating to, governing or otherwise affecting the ownership of the capital stock or other equity ownership interests of any Credit Party.

5 AFFIRMATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), each Credit Party shall, and shall cause each of its Subsidiaries to:

5.1. Maintenance of Existence. (a) Preserve, renew and maintain in full force and effect its and all its Subsidiaries' legal existence under the Requirements of Law in their respective jurisdictions of organization, incorporation or formation; (b) take all commercially reasonable action to maintain all rights, privileges (including its good standing), permits, licenses and franchises necessary or desirable for it and all of its Subsidiaries in the ordinary course of its business, except in the case of clause (a) (other than with respect to Borrower) and clause (b) above, (i) to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Change or (ii) pursuant to a transaction permitted by this Agreement; and (c) comply with all Requirements of Law of any Governmental Authority to which it is subject, except where the failure to do so could not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Change.

5.2. Financial Statements, Notices, Reports. Deliver to the Collateral Agent:

(a) Financial Statements.

(i) Annual Financial Statements. As soon as available, but in any event within [***] ([***]) days after the end of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-K under the Exchange Act, as applicable), beginning with the fiscal year ending December 31, 2024, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal year, and the related consolidated statements of income, cash flows and stockholders' equity for such fiscal year in each case certified by a Responsible Officer of Borrower and in form and substance reasonably acceptable to the Collateral Agent, all prepared in accordance with Applicable Accounting Standards, with such consolidated financial statements to be audited and accompanied by (A) a report and opinion of Borrower's independent certified public accounting firm of recognized national standing (which report and opinion shall be prepared in accordance with Applicable Accounting Standards and shall not be subject to any qualifications or exceptions other than a "going concern" qualification under ASC 205-40), stating that such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards, and (B) for each fiscal year of Borrower beginning with fiscal year 2025, if and only if Borrower is required to comply with the internal control provisions pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 requiring an attestation report of such independent certified public accounting firm, an attestation report of such independent certified public accounting firm as to Borrower's internal controls pursuant to Section 404 of the Sarbanes-Oxley Act of 2002 attesting to management's assessment that such internal controls meet the requirements of the Sarbanes-Oxley Act of 2002; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been

made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(ii) Quarterly Financial Statements. As soon as available, but in any event within [***] ([***]) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Borrower (or such earlier date on which Borrower is required to file a Form 10-Q under the Exchange Act, as applicable), beginning with the fiscal quarter ending March 31, 2025, a consolidated balance sheet of Borrower and its Subsidiaries as of the end of such fiscal quarter, and the related consolidated statements of income and cash flows and for such fiscal quarter and (in respect of the second and third fiscal quarters of such fiscal year) for the then-elapsed portion of Borrower's fiscal year, all prepared in accordance with Applicable Accounting Standards and not subject to any qualifications or exceptions other than a "going concern" qualification under ASC 205-40, subject to normal year-end audit adjustments and the absence of footnotes; provided, however, that Borrower shall be deemed to have made such delivery of such consolidated financial statements if such consolidated financial statements shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC). Such consolidated financial statements shall be certified by a Responsible Officer of Borrower as, to his or her knowledge, fairly presenting, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the dates and for the periods specified in accordance with Applicable Accounting Standards consistently applied, and on a basis consistent with the audited consolidated financial statements referred to under Section 5.2(a)(i), subject to normal year-end audit adjustments and the absence of footnotes; provided, however, that such certification by a Responsible Officer of Borrower shall be deemed to have made if a similar certification is required under the Sarbanes-Oxley Act of 2002 and such certification shall have been made available within the time period specified above on the SEC's EDGAR system (or any successor system adopted by the SEC);

(iii) Quarterly Compliance Certificate. Upon delivery (or within [***] ([***]) Business Days of any deemed delivery) of financial statements pursuant to Section 5.2(a)(i) or Section 5.2(a)(ii), a duly completed Compliance Certificate signed by a Responsible Officer of Borrower, certifying, among other things, that (A) such financial statements fairly present, in all material respects, the consolidated financial condition, results of operations and cash flows of Borrower and its Subsidiaries as of the applicable dates and for the applicable periods in accordance with Applicable Accounting Standards consistently applied (subject, in the case of financial statements delivered pursuant to Section 5.2(a)(ii), normal year-end audit adjustments and the absence of footnotes), and, in the case of financial statements delivered pursuant to Section 5.2(a)(i) are not subject to a "going concern" qualification under ASC 205-40 that relates to near-term liquidity or any other qualification or exception, and (B) no Event of Default or Default has occurred or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto; and

(iv) Information During Event of Default. As promptly as practicable (and in any event within [***] ([***]) Business Days of the request therefor), such additional information regarding the business or financial affairs of Borrower or any of its Subsidiaries, or compliance with the terms of this Agreement or any other Loan Documents, as the Collateral Agent may from time to time reasonably request during the existence of any Event of Default (subject to reasonable requirements of confidentiality, including requirements imposed by Requirements of Law or contract, in each case in a form reasonably acceptable to the Collateral Agent; provided that Borrower shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product).

(b) Notice of Defaults or Events of Default, ERISA Events and Material Adverse Changes. Written notice as promptly as practicable (and in any event within [***] ([***]) Business Days) after a Responsible Officer of any Credit Party shall have obtained knowledge thereof, of the occurrence of any (i) Default or Event of Default, (ii) ERISA Event or (iii) Material Adverse Change.

(c) Legal Action Notice. Prompt written notice (which shall be deemed given to the extent timely reported in a Form 8-K under the Exchange Act and available on the SEC's EDGAR system (or any successor system adopted by the SEC)) of any investigation by any Governmental Authority or of any legal action, litigation or proceeding pending or threatened in writing against Borrower or any of its Subsidiaries (i) that could reasonably be expected to result in uninsured damages or costs to Borrower or any of its Subsidiaries in an amount in excess of the materiality thresholds applied by Borrower in accordance with the Exchange Act and related regulations and standards for the purposes of its Exchange Act reporting or (ii) that alleges violations of any Health Care Laws, FDA Laws, Data Protection Laws or any other applicable statutes, rules, regulations, standards, guidelines, policies and order administered or issued by any U.S. or foreign Governmental Authority which, individually or together with any other such allegations, could reasonably be expected to result in a Material Adverse Change; and in each case of sub-clause (i) or (ii) above, provide such additional information (including a

description in reasonable detail regarding any material development) as the Collateral Agent may reasonably request in relation thereto; provided that Borrower shall not be obligated to disclose any information that is reasonably subject to the assertion of attorney-client privilege or attorney work-product.

5.3. **Taxes**. Timely file all U.S. federal, state, local and foreign income and other required Tax returns and reports or extensions therefor and timely pay all U.S. federal, state, local and foreign Taxes, assessments, deposits and contributions imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrue thereon except for such amounts not in excess of $[***]; provided, however, that no such Tax or any claim for Taxes that have become due and payable and have or may become a Lien on any Collateral shall be required to be paid if (a) it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as adequate reserves therefor have been set aside on its books and maintained in conformity with Applicable Accounting Standards, and (b) solely in the case of a Tax or claim that has or may become a Lien against any Collateral, such contest proceedings conclusively operate to stay the sale or forfeiture of any portion of any Collateral to satisfy such Tax or claim. No Credit Party will, nor will it permit any of its Subsidiaries to, file or consent to the filing of any consolidated income Tax return with any Person (other than Parent or any of its Subsidiaries) without the Collateral Agent's prior written consent.

5.4. **Insurance**. Maintain with financially sound and reputable independent insurance companies or underwriters, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons of comparable size engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons of comparable size engaged in the same or similar businesses as Borrower and its Subsidiaries) as are customarily carried under similar circumstances by such other Persons. Subject to the timing requirements of Section 5.14 (solely with respect to any such policies in effect as of the Tranche A Closing Date), any products liability or general liability insurance maintained in the United States regarding Collateral shall name the Collateral Agent, on behalf of the Lenders and the other Secured Parties, as additional insured or loss payee, as applicable (the additional insured clauses or endorsements for which, in form and substance reasonably satisfactory to the Collateral Agent). So long as no Event of Default shall have occurred and be continuing, Borrower and its Subsidiaries may retain all or any portion of the proceeds of any insurance of Borrower and its Subsidiaries (and each Lender shall promptly remit to Borrower any proceeds received by it with respect to any such insurance).

5.5. **Operating Accounts**. In the case of any Credit Party, following the establishment of any new Collateral Account at or with any bank or other depository or financial institution located in (a) the United States, subject such account to a Control Agreement or other appropriate instrument that is reasonably acceptable to the Collateral Agent, and (b) any jurisdiction other than the United States, comply with requirements set forth in the applicable Collateral Document in relation to Collateral Accounts in such jurisdiction. For each Collateral Account that each Credit Party at any time maintains in the United States, such Credit Party shall, within [***] ([***]) days (or such longer period as the Collateral Agent may agree in writing and in its sole discretion, taking into account reasonable good faith efforts) of establishing such Collateral Account, cause the applicable bank or other depository or financial institution located in the United States, at or with which any Collateral Account is maintained to execute and deliver, and such Credit Party shall execute and deliver, to the Collateral Agent, a Control Agreement or other appropriate instrument with respect to such Collateral Account to perfect the Collateral Agent's Lien, for the benefit of Lenders and the other Secured Parties, in such Collateral Account in accordance with the terms hereunder, which Control Agreement may not be terminated without the prior written consent of the Collateral Agent. The provisions of the previous two (2) sentences shall not apply to (1) accounts exclusively used for payroll, payroll Taxes and other employee wage and benefit payments to or for the benefit of any Credit Party's employees, (2) zero balance accounts, (3) accounts (including trust accounts) used exclusively for escrow, customs, insurance or fiduciary purposes, (4) merchant accounts, (5) accounts used exclusively for compliance with any Requirements of Law to the extent such Requirements of Law prohibit the granting of a Lien thereon, (6) accounts which constitute cash collateral in respect of a Permitted Lien, and (7) any other accounts designated as an Excluded Account by a Responsible Officer of Borrower in writing delivered to the Collateral Agent, the cash balance of which such accounts do not exceed $ [***] in the aggregate at any time (all such accounts in sub-clauses (1) through (7) above, collectively, the "**Excluded Accounts**"). Notwithstanding the foregoing, the Credit Parties shall have until the date that is [***] ([***]) days (or such longer period as the Collateral Agent may agree in its sole discretion) following (i) the Tranche A Closing Date to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties in existence on the Tranche A Closing Date (or opened during such [***]-day period (or such longer period as the Collateral Agent may agree in its sole discretion)) and (ii) the closing date of any Acquisition or other Investment to comply with the provisions of this Section 5.5 with regards to Collateral Accounts (other than Excluded Accounts) of the Credit Parties acquired in connection with such Acquisition or other Investment.

5.6. **Compliance with Laws**. Comply in all respects with the Requirements of Law and all orders, writs, injunctions, decrees and judgments applicable to it or to its business or its assets or properties (including Environmental Laws, ERISA, Anti-Money Laundering Laws, OFAC, FCPA, Health Care Laws, FDA Laws, DEA

Laws, Data Protection Laws and the Federal Fair Labor Standards Act, and any foreign equivalents thereof), except, in each case, if the failure to comply therewith could not, individually or taken together with any other such failures, reasonably be expected to result in a Material Adverse Change.

5.7. Protection of Intellectual Property Rights.

(a) Except as permitted under clause (b) below: (i) use all commercially reasonable efforts to protect, defend and maintain the validity and enforceability of the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory, including defending any future or current oppositions, interference proceedings, reissue proceedings, reexamination proceedings, *inter partes* review proceedings, derivation proceedings, post grant review proceedings, cancellation proceedings, injunctions, lawsuits, hearings, investigations, complaints, arbitrations, mediations, demands, International Trade Commission investigations, decrees, or any other disputes, disagreements, or claims, challenging the legality, validity, patentability, enforceability or ownership of any Company IP; (ii) use all commercially reasonable efforts to maintain the confidential nature of any trade secrets and trade secret rights material to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory; and (iii) use all commercially reasonable efforts to not allow any Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory to be abandoned, forfeited or dedicated to the public by Borrower or any of its Subsidiaries (other than through the abandonment of Current Company IP in the exercise of the Borrower's normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application) or any Current Company IP Agreement to be terminated, as applicable, without the Collateral Agent's prior written consent (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that with respect to any such Company IP that is not owned by Borrower or any of its Subsidiaries, the obligations in clauses (i) and (iii) above shall apply only to the extent Borrower or any of its Subsidiaries have the right to take such actions or to cause any licensee or other third party to take such actions pursuant to applicable agreements or contractual rights.

(b) (i) Except as Borrower may otherwise determine in its reasonable business judgment, use commercially reasonable efforts, at its (or its Subsidiaries') sole expense, either directly or indirectly, with respect to any licensee or licensor under the terms of any Credit Party's (or any of its Subsidiary's) agreement with the respective licensee or licensor, as applicable, to take any and all actions (including taking legal action to specifically enforce the applicable terms of any license agreement) and prepare, execute, deliver and file agreements, documents or instruments which are necessary to (A) prosecute and maintain the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory and (B) diligently defend or assert the Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory against material infringement, misappropriation, violation or interference by any other Persons and, in the case of Copyrights, Trademarks and Patents within such material Company IP, against any claims of invalidity, unpatentability or unenforceability (including by bringing any legal action for infringement, dilution, violation, derivation or defending any counterclaim of invalidity or action of a non-Affiliate third party for declaratory judgment of non-infringement or non-interference); and (ii) use commercially reasonable efforts to cause any licensee or licensor of any material Company IP not to, and such Credit Party shall not, disclaim or abandon, or fail to take any action necessary to prevent the disclaimer or abandonment of such Company IP material to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory (other than through the lapse, expiration or abandonment of Current Company IP in the exercise of the Borrower's normal prosecution practices and reasonable business judgment, e.g., the abandonment of a continuation application that is no longer needed to maintain the pendency of another patent application).

(c) Save as contemplated by any Permitted License, protect, defend and maintain market exclusivity for the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory through the Term Loan Maturity Date, and not allow for the manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of an equivalent version of Product in the Territory before the Term Loan Maturity Date, in each case if such equivalent version infringes or violates, or could reasonably be expected to infringe or violate, any of the rights of any Credit Party or its Subsidiary in or to any material Company IP, without the Collateral Agent's prior written consent. Borrower agrees to (i) notify the Collateral Agent in writing of, and (ii) keep the Collateral Agent reasonably informed regarding, and (iii) at the request of the Collateral Agent in writing, consult with and consider in good faith any comments of the Collateral Agent regarding, the commencement of and any filings in any opposition, interference proceeding, reissue proceeding, reexamination proceeding, *inter partes* review proceeding, post-grant review proceeding, derivation proceeding, cancellation proceeding, injunction, lawsuit, hearing, investigation, complaint, arbitration, mediation, demand, International Trade Commission investigation, decree, or

any other dispute, disagreement, or claim, in each case challenging the legality, validity, patentability, enforceability, inventorship or ownership of any material Company IP (including any claim in any material Patent within the Company IP).

(d) Provide written notice to the Collateral Agent within [***] ([***]) days of entering or becoming bound by any Restricted License (other than over-the-counter software that is commercially available to the public). Each Credit Party shall take such commercially reasonable steps as the Collateral Agent reasonably requests to obtain the consent of, or waiver by, any Person whose consent or waiver is necessary for (i) any Restricted License to, without giving effect to Section 9-408 of the Code, be deemed "Collateral" and for the Collateral Agent to have a security interest in it that might otherwise be restricted or prohibited by Requirements of Law or by the terms of any such Restricted License, whether now existing or entered into in the future, and (ii) the Collateral Agent to have the ability in the event of a liquidation of any Collateral to dispose of such Collateral in accordance with the Collateral Agent's rights and remedies under this Agreement and the other Loan Documents.

5.8. Books and Records. Maintain proper Books, in which entries that are full, true and correct in all material respects and are in conformity with Applicable Accounting Standards consistently applied shall be made of all material financial transactions and matters involving the assets, properties and business of such Credit Party (or such Subsidiary).

5.9. Access to Collateral; Audits. Allow the Collateral Agent, or its agents or representatives, at any time after the occurrence and during the continuance of an Event of Default, during normal business hours and upon reasonable advance notice, to visit and inspect any of the Collateral or to inspect and copy and (at the sole discretion of the Collateral Agent) audit any Credit Party's Books. The foregoing inspections and audits, if any, shall be at the relevant Credit Party's expense.

5.10. Use of Proceeds. (a) Use the proceeds of (i) the Tranche A Loan solely to repay all Indebtedness and any and all other amounts outstanding under the Prior Loan Agreement and any and all costs and expenses associated therewith (which, for the avoidance of doubt, shall not include any make-whole amounts or prepayment premiums payable thereunder, the payment of which such sums are hereby waived by the Collateral Agent and Lenders), to fund its general corporate and working capital requirements, and (ii) each of the Tranche B Loan and the Tranche C Loan solely to fund its general corporate and working capital requirements; and (b) not use the proceeds of the Term Loans, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock, for the purpose of extending credit to any other Person for the purpose of purchasing or carrying any Margin Stock or for any other purpose that might cause any Term Loan to be considered a "purpose credit" within the meaning of Regulation T, U or X of the Federal Reserve Board. If requested by the Collateral Agent, Borrower shall complete and sign Part I of a copy of Federal Reserve Form G-3 referred to in Regulation U and deliver such copy to the Collateral Agent.

5.11. Further Assurances. Promptly upon the reasonable written request of the Collateral Agent, execute, acknowledge and deliver such further documents and do such other acts and things in order to effectuate or carry out more effectively the purposes of this Agreement and the other Loan Documents at its expense, including after the Tranche A Closing Date taking such steps as are reasonably deemed necessary or desirable by the Collateral Agent to maintain, protect and enforce its Lien, for the benefit of Lenders and the other Secured Parties, on Collateral securing the Obligations created under the Collateral Documents and the other Loan Documents in accordance with the terms of the Collateral Documents and the other Loan Documents, subject to Permitted Liens.

5.12. Additional Collateral; Guarantors.

(a) From and after the Tranche A Closing Date, except as otherwise approved in writing by the Collateral Agent, each Credit Party (other than Borrower) shall, and each Credit Party shall cause each of its Subsidiaries (other than Excluded Subsidiaries), and the Borrower may at its election cause any of its Excluded Subsidiaries (and the Collateral Agent and Lenders shall cooperate with any such election) to guarantee the Obligations, and each Credit Party (other than Borrower) shall, and each Credit Party shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon (subject to Permitted Liens), and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, all of such Credit Party's or Subsidiary's properties and assets constituting Collateral, whether now existing or hereafter acquired or existing (including in connection with an Asset Acquisition), to secure such guaranty; provided, that such Credit Party's obligations to take the foregoing actions with respect to any assets acquired as part of an Asset Acquisition and to cause any Subsidiaries incorporated, organized, formed or acquired (including by Stock Acquisition) after the Tranche A Closing Date, including all such Subsidiary's properties and assets (including in connection with an Asset Acquisition), to take the foregoing actions shall, in each case, be subject to the timing requirements of Section

5.13 or Section 5.14, as applicable. Additionally, from and after the Tranche A Closing Date, each Credit Party shall, and shall cause each of its Subsidiaries to, grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon (subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents), and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, all of such Credit Party's or Subsidiary's properties and assets constituting Collateral, whether now existing or hereafter acquired or existing (including in connection with an Asset Acquisition), to secure the payment and performance in full of all of the Obligations; provided, that such Credit Party's obligations to take the foregoing actions with respect to any assets acquired as part of an Asset Acquisition and to cause any Subsidiaries incorporated, organized, formed or acquired (including by Stock Acquisition) after the Tranche A Closing Date, including all such Subsidiary's properties and assets (including in connection with an Asset Acquisition), to take the foregoing actions shall, in each case, be subject to the timing requirements of Section 5.13 or Section 5.14, as applicable. Furthermore, except as otherwise approved in writing by the Collateral Agent, from and after the Tranche A Closing Date, each Credit Party shall, and shall cause each of its Subsidiaries to, grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a first priority security interest in and Lien upon (subject to Permitted Liens, the limitations set forth herein and the limitations set forth in the other Loan Documents), and pledge to the Collateral Agent for the benefit of Lenders and the other Secured Parties, all of the Equity Interests (other than Excluded Equity Interests) in each of its Subsidiaries (other than Excluded Subsidiaries). In connection with each pledge of certificated Equity Interests required under the Loan Documents, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent, such certificate(s) together with stock powers or assignments, as applicable, properly endorsed for transfer to the Collateral Agent or duly executed in blank, in each case reasonably satisfactory to the Collateral Agent. In connection with each pledge of uncertificated Equity Interests required under the Loan Documents, the Credit Parties shall deliver, or cause to be delivered, to the Collateral Agent an executed uncertificated stock control agreement among the issuer, the registered owner and the Collateral Agent, substantially in the form attached as an Annex to the Security Agreement.

(b) In the event any Credit Party acquires any fee title to real estate in the U.S. with a fair market value (reasonably determined in good faith by a Responsible Officer of Borrower) in excess of $[***], unless otherwise agreed by the Collateral Agent, such Person shall execute or deliver, or cause to be executed or delivered, to the Collateral Agent, (i) within [***] ([***]) days after such acquisition, an appraisal complying with the Financial Institutions Reform, Recovery and Enforcement Act of 1989, (ii) within [***] ([***]) days after receipt of notice from the Collateral Agent that such real estate is located in a Special Flood Hazard Area, Federal Flood Insurance, (iii) within [***] ([***]) days after such acquisition, a fully executed Mortgage, in form and substance reasonably satisfactory to the Collateral Agent, together with an A.L.T.A. lender's title insurance policy issued by a title insurer reasonably satisfactory to the Collateral Agent, in form and substance (including any endorsements) and in an amount reasonably satisfactory to the Collateral Agent insuring that the Mortgage is a valid and enforceable first priority Lien on the respective property, free and clear of all defects, encumbrances and Liens (other than Permitted Liens), (iv) simultaneously with such acquisition, then-current A.L.T.A. surveys, certified to the Collateral Agent by a licensed surveyor sufficient to allow the issuer of the lender's title insurance policy to issue such policy without a survey exception and (v) within [***] ([***]) days after such acquisition, an environmental site assessment prepared by a qualified firm reasonably acceptable to the Collateral Agent, in form and substance reasonably satisfactory to the Collateral Agent.

(c) If any Credit Party becomes (or any New Subsidiary is) a Registered Organization, Borrower or such Credit Party shall (or shall cause such New Subsidiary to) promptly notify the Collateral Agent of such occurrence and provide the Collateral Agent with such Credit Party's (or New Subsidiary's) organizational identification number.

5.13. Formation or Acquisition of Subsidiaries. If any Credit Party or any of its Subsidiaries at any time after the Tranche A Closing Date incorporates, organizes, forms or acquires (including by a Stock Acquisition) a Subsidiary (including by division) other than an Excluded Subsidiary (a "**New Subsidiary**") or if any Credit Party makes an Asset Acquisition, as promptly as practicable but in no event later than [***] ([***]) days after such incorporation, organization, formation or acquisition or Asset Acquisition: (a) without limiting the generality of clause (c) below, such Credit Party will cause such New Subsidiary or Credit Party, as applicable, to the extent required or applicable to execute and deliver to the Collateral Agent a joinder to the Security Agreement (in the form attached thereto) and any relevant IP Agreement or other Collateral Documents, as applicable; (b) such Credit Party will deliver (or cause to be delivered) to the Collateral Agent (i) true, correct and complete copies of the Operating Documents of such New Subsidiary, (ii) a Secretary's Certificate, certifying that the copies of the Operating Documents of such New Subsidiary are true, correct and complete (such Secretary's Certificate to be in form and substance reasonably satisfactory to the Collateral Agent) and (iii) a good standing certificate for such New Subsidiary certified by the Secretary of State (or the equivalent thereof) of its jurisdiction of organization, incorporation or formation (where applicable in the subject jurisdiction); and (c) such Credit Party will cause such New Subsidiary to satisfy all requirements contained in this Agreement (including Section 5.12) and each other Loan Document if and to the extent applicable to such New Subsidiary. The parties hereto agree that any New Subsidiary shall constitute a Credit Party for all purposes hereunder as of the date of the execution and delivery of

any joinder contemplated by clause (a) above or the date such New Subsidiary provides any guarantee of the Obligations as contemplated by Section 5.12. Any document, agreement or instrument executed or issued pursuant to this Section 5.13 shall be a Loan Document.

5.14. Post-Closing Requirements. Borrower will, and will cause each of its Subsidiaries, as applicable, to take each of the actions set forth on Schedule 5.14 of the Disclosure Letter within the time period prescribed therefor on such schedule (or such longer period as the Collateral Agent may agree in its sole discretion), which shall include, among other things, that: (a) notwithstanding anything to the contrary in Section 3.1(g) or Section 5.4, the Credit Parties shall have until the date that is [***] ([***]) days following the Tranche A Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.4 with regards to naming the Collateral Agent, on behalf of the Lenders and the other Secured Parties, as additional insured or loss payee, on any products liability or general liability insurance in the United States regarding Collateral in effect on the Tranche A Closing Date; (b) notwithstanding anything to the contrary in Section 5.5, the Credit Parties shall have until the date that is [***] ([***]) days following the Tranche A Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 5.5 with regards to Collateral Accounts of the Credit Parties in existence on the Tranche A Closing Date or opened during such [***]-day period (or such longer period as the Collateral Agent may agree in its sole discretion); and (c) [***]; and (d) notwithstanding anything to the contrary in Section 6.2(b), the Credit Parties shall have until the date that is [***] ([***]) days following the Tranche A Closing Date (or such longer period as the Collateral Agent may agree in its sole discretion) to comply with the provisions of Section 6.2(b)(ii) with regards to the location of the primary Books of any Credit Party or any of its Subsidiaries or the location of any material portion of the Collateral on the Tranche A Closing Date or during such [***]-day period (or such longer period as the Collateral Agent may agree in its sole discretion). All representations and warranties and covenants contained in this Agreement and the other Loan Documents shall be deemed modified to the extent necessary to take the actions set forth on Schedule 5.14 of the Disclosure Letter within the time periods set forth therein, rather than elsewhere provided in the Loan Documents, such that to the extent any such action set forth in Schedule 5.14 of the Disclosure Letter is not overdue, the applicable Credit Party shall not be in breach of any representation or warranty or covenant contained in this Agreement or any other Loan Document applicable to such action for the period from the Tranche A Closing Date until the date on which such action is required to be fulfilled as set forth on Schedule 5.14 of the Disclosure Letter.

5.15. Environmental.

(a) Deliver to the Collateral Agent:

(i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of Borrower or any of its Subsidiaries or by independent consultants, governmental authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any material Environmental Claims;

(ii) promptly upon a Responsible Officer of any Credit Party or any of its Subsidiaries obtaining knowledge of the occurrence thereof, written notice describing in reasonable detail (A) any Release required to be reported to any federal, state, local or foreign governmental or regulatory agency under any applicable Environmental Laws (B) any remedial action taken by any Credit Party or any other Person in response to (x) any Hazardous Materials Activities, the existence of which, individually or in the aggregate, could reasonably be expected to result in one or more Environmental Claims resulting in a Material Adverse Change, or (y) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (C) any Credit Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws, provided, that with respect to real property adjoining or in the vicinity of any Facility, Borrower shall have no duty to affirmatively investigate or make any efforts to become or stay informed regarding any such adjoining or nearby properties;

(iii) as soon as practicable following the sending or receipt thereof by any Credit Party, a copy of any and all written communications with respect to (A) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, (B) any Release required to be reported to any federal, state, local or foreign governmental or regulatory agency (C) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Credit Party or any of its Subsidiaries may be potentially responsible for any Hazardous Materials Activity that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change;

(iv) prompt written notice describing in reasonable detail (A) any proposed acquisition of stock, assets, or property by Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to (x) expose Borrower or any of its Subsidiaries to, or result in, Environmental Claims that could reasonably be expected to result in a Material Adverse Change or (y) affect the ability of Borrower or any of its Subsidiaries to maintain in full force and effect all material Governmental Approvals required under any Environmental Laws for their respective operations and (B) any proposed action to be taken by Borrower or any of its Subsidiaries to modify current operations in a manner that, individually or taken together with any other such proposed actions, could reasonably be expected to subject Borrower or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws; and

(v) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by the Collateral Agent in relation to any matters disclosed pursuant to this Section 5.15(a).

(b) Each Credit Party shall, and shall cause each of its Subsidiaries to, promptly take any and all actions reasonably necessary to (i) cure any violation of applicable Environmental Laws by Borrower or any of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change, and (ii) make an appropriate response to any Environmental Claim against Borrower or any of its Subsidiaries and discharge any obligations it may have to any Person thereunder where failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

5.16. Inventory; Returns; Maintenance of Properties. Keep all Inventory which constitutes Product in good and marketable condition, free from material defects and otherwise keep all Inventory which constitutes Product in material compliance with all applicable FDA Laws, FDA Good Manufacturing Practices, FDA Good Clinical Practice, FDA Good Laboratory Practices and FDA Guidance Documents, as applicable. Returns and allowances between a Credit Party and its Account Debtors shall follow such Credit Party's customary practices. Each Credit Party will, and will cause each of its Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear, casualty and condemnation excepted, all material tangible properties used or useful in its respective business, and from time to time will make or cause to be made all commercially reasonable repairs, renewals and replacements thereof except where failure to do so could not reasonably be expected to result in a Material Adverse Change.

5.17. Regulatory Obligations; Maintenance of FDA Approval; Manufacturing, Marketing and Distribution. (a)(i) Comply in all material respects with FDA post-marketing approval requirements (and foreign equivalents) for Product in the Territory, and (ii) maintain all FDA approvals and any other Regulatory Approvals to manufacture, market, and distribute Product in the Territory which have been obtained.

(b) Deliver to the Collateral Agent, as promptly as practicable after a Responsible Officer of any Credit Party shall have obtained knowledge thereof, written notice describing in reasonable detail any instance where the Credit Party or any of its Subsidiaries has a reasonable expectation that there are grounds for imposition of a clinical hold, as described in 21 C.F.R. § 312.42.

(c) With respect to each facility manufacturing or producing Product pursuant to a Manufacturing Agreement for import, distribution or sale in the Territory, conduct (or cause to be conducted), on an annual basis, a third-party mock-FDA audit of such facility to assess compliance with FDA Good Manufacturing Practices and other FDA Laws, and use commercially reasonable efforts to promptly take corrective action on the major and minor observations, if any, received from the applicable third-party auditor only to the extent required to be in compliance with FDA Good Manufacturing Practices and other FDA Laws.

(d) With respect to the Daewoong Agreement, use commercially reasonable efforts, either directly or indirectly, to promptly take all actions necessary to ensure that applicable Product will be manufactured in sufficient quantities to satisfy or exceed the minimum delivery requirements for such Product, or in the absence thereof, the forecast of requirements of such Product, set forth therein, including diligently exercising its applicable rights and defending its applicable interests thereunder (including by taking legal action to enforce the applicable terms thereof or bringing legal action (and, where applicable, seeking appropriate damages) for breach thereof).

5.18. Collateral Documents. Comply in all respects with all of its covenants, agreements, undertakings and obligations arising under each Collateral Document to which it is a party.

6 NEGATIVE COVENANTS

Each Credit Party covenants and agrees that, until payment in full of all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted), such Credit Party shall not, and shall cause each of its Subsidiaries not to:

6.1. Dispositions. Convey, sell, lease, transfer, exchange, assign, covenant not to sue, exclusively or non-exclusively license out, or otherwise dispose of (including any sale-leaseback or any transfer of assets pursuant to a plan of division), directly or indirectly and whether in one or a series of transactions (collectively, "**Transfer**"), all or any part of its properties or assets constituting Collateral (including, for the avoidance of doubt, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party) or any Company IP that does not constitute Collateral under the Loan Documents but is material to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory; except, in each case of this Section 6.1, for Permitted Transfers (unless otherwise expressly prohibited under in Section 6.6(b)).

6.2. Fundamental Changes; Location of Collateral.

(a) Without at least [***] ([***]) days prior written notice to the Collateral Agent, solely in the case of a Credit Party: (i) change its jurisdiction of organization, incorporation or formation, (ii) change its organizational structure or type, (iii) change its legal name, or (iv) change any organizational number (if any) assigned by its jurisdiction of organization, incorporation or formation.

(b) Maintain its primary Books or deliver any Collateral having a value in excess of $[***] in the aggregate to one or more mortgaged or leased locations or one or more warehouses, processors or bailees, as applicable, unless (i) with respect to any such new mortgaged or leased location or new warehouse, processor or bailee acquired after the Tranche A Closing Date, such Credit Party has delivered at least [***] ([***]) days' prior written notice to the Collateral Agent, which such notice shall in reasonable detail identify such Books or Collateral (as applicable) and indicate the location from which it is being delivered and the location to which it is being delivered (and may be in the form of an update to the Perfection Certificate; provided that any update to the Perfection Certificate by any Credit Party pursuant to this Section 6.2(b)(i) shall not relieve any Credit Party of any other Obligation under this Agreement, including under clause (ii) below), and (ii) subject to the timing requirements of Section 5.14 (solely with respect to such locations, warehouses, processors or bailees where such Books or Collateral is located on the Tranche A Closing Date or during the [***]-day period following the Tranche A Closing Date), a Collateral Access Agreement for such mortgaged or leased location or such warehouse, processor or bailee governing both such Books or Collateral (as applicable) and the location to which such Books or Collateral (as applicable) has been delivered, executed and delivered by all parties thereto (in form and substance reasonably satisfactory to the Collateral Agent), as promptly as practicable (and in no event later than [***] ([***]) days after) such Books or Collateral is delivered to such mortgaged or leased location or warehouse, processor or bailee (as applicable).

6.3. Mergers, Acquisitions, Liquidations or Dissolutions.

(a) Merge, divide itself into two (2) or more entities, consolidate, liquidate or dissolve, or permit any of its Subsidiaries to merge, divide itself into two (2) or more entities, consolidate, liquidate or dissolve with or into any other Person, except that:

(i) any Subsidiary of Borrower may merge or consolidate with or into Borrower Party, provided that Borrower is the surviving entity,

(ii) any Subsidiary of Borrower may merge or consolidate with any other Subsidiary of Borrower, provided that if any party to such merger or consolidation is a Credit Party then either (x) such Credit Party is the surviving entity or (y) the surviving or resulting entity executes and delivers to the Collateral Agent a joinder to the Security Agreement in the form attached thereto and any relevant IP Agreement or other Collateral Documents, as applicable, and otherwise satisfies the requirements of Section 5.13 substantially contemporaneously with completion of such merger or consolidation;

(iii) any Subsidiary of Borrower may divide itself into two (2) or more entities or be dissolved or liquidated, provided that if such Subsidiary is a Credit Party, the properties and assets of such Subsidiary are allocated or distributed to an existing or newly-formed Credit Party; and

(iv) any Permitted Acquisition or Permitted Investment may be structured as a merger or consolidation.

(b) make, or permit any of its Subsidiaries to make, Acquisitions outside the ordinary course of business other than Permitted Acquisitions or Permitted Investments.

6.4. Indebtedness. Directly or indirectly, create, incur, assume or guaranty, or otherwise become or remain directly or indirectly liable with respect to, any Indebtedness (including any Indebtedness consisting of obligations evidenced by a bond, debenture, note or other similar instrument) that is not Permitted Indebtedness; provided, however, that the accrual of interest, the accretion of accreted value and the payment of interest in the form of additional Indebtedness shall not be deemed to be an incurrence of Indebtedness for purposes of this Section 6.4.

6.5. Encumbrances. Except for Permitted Liens, (i) create, incur, allow, or suffer to exist any Lien on any Collateral, or (ii) permit (other than pursuant to the terms of the Loan Documents) any material portion of the Collateral not to be subject to the first priority security interest granted in the Loan Documents or otherwise pursuant to the Collateral Documents, in each case of this clause (ii), other than as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation thereof under the Loan Documents.

6.6. No Further Negative Pledges; Negative Pledge.

(a) No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of such Credit Party or Subsidiary to create, incur, assume or suffer to exist any Lien upon any Collateral, whether now owned or hereafter acquired, in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, with respect to the Obligations or under the Loan Documents, in each case of this Section 6.6, other than Permitted Negative Pledges.

(b) Notwithstanding Section 6.1, no Credit Party will Transfer, or create, incur, allow or suffer to exist any Lien on, any Equity Interests constituting Collateral issued by any Subsidiary which are owned or otherwise held by such Credit Party, except for: (i) Permitted Liens; (ii) transfers between or among Credit Parties, provided that, any and all steps as may be required to be taken in order to create and maintain a first priority security interest in and Lien upon such Equity Interests in favor of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, are taken contemporaneously with the completion of any such transfer; and (iii) sales, assignments, transfers, exchanges or other dispositions to qualify directors if required by Requirements of Law or otherwise permitted under this Agreement, provided that such sale, assignment, transfer, exchange or other disposition shall be for the minimum number of Equity Interests as are necessary for such qualification under Requirements of Law.

6.7. Maintenance of Collateral Accounts. Maintain any Collateral Account except in accordance with the terms of Section 5.5 hereof.

6.8. Distributions; Investments.

(a) Pay any dividends or make any distribution or payment on, or redeem, retire or repurchase any of its Equity Interests, except, in each case of this Section 6.8, for Permitted Distributions.

(b) Directly or indirectly make any Investment other than Permitted Acquisitions and Permitted Investments.

6.9. No Restrictions on Subsidiary Distributions. No Credit Party nor any of its Subsidiaries shall enter into any agreement, document or instrument directly or indirectly prohibiting (or having the effect of prohibiting) or limiting the ability of any Subsidiary of Borrower to (a) pay dividends or make any other distributions on any of such Subsidiary's Equity Interests owned by Borrower or any other Subsidiary of Borrower, (b) repay or prepay any Indebtedness owed by such Subsidiary to Borrower or any other Subsidiary of Borrower, (c) make loans or advances to Borrower or any other Subsidiary of Borrower, or (d) transfer, lease or license any

Collateral to Borrower or any other Subsidiary of Borrower, except, in each case of this Section 6.9, for Permitted Subsidiary Distribution Restrictions.

6.10. Subordinated Debt. Notwithstanding anything to the contrary in this Agreement:

(a) Make or permit any voluntary or optional prepayment or repayment of the outstanding principal amount of any Subordinated Debt other than in accordance with the express terms of a subordination, intercreditor or other similar agreement relating to such Subordinated Debt that is in form and substance reasonably satisfactory to the Collateral Agent;

(b) Make or permit any payment of interest (including accrued and unpaid interest) in cash on or in respect of any Subordinated Debt at any time that a Default or Event of Default shall have occurred and be continuing other than in accordance with the express terms of a subordination, intercreditor or other similar agreement relating to such Subordinated Debt that is in form and substance reasonably satisfactory to the Collateral Agent; or

(c) Amend, restate, supplement or otherwise modify any terms, conditions or other provisions of any Subordinated Debt, or any agreement, instrument or other document relating thereto, in any manner which would contravene in any respect any of the foregoing or adversely affect the payment or priority subordination thereof (as applicable) to Obligations owed to Lenders without the prior written consent of the Collateral Agent (in its sole discretion).

For the avoidance of doubt, no Credit Party shall, and shall cause each of its Subsidiaries not to, directly or indirectly, create, incur, assume or guaranty, or otherwise become directly or indirectly liable with respect to, any Subordinated Debt except as otherwise expressly permitted hereunder.

6.11. Amendments or Waivers of Organizational Documents. Amend, restate, supplement or otherwise modify, or waive, any provision of its Operating Documents in a manner that would reasonably be expected to result in a Material Adverse Change.

6.12. Compliance.

(a) Become an "investment company" under the Investment Company Act of 1940, 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) No ERISA Affiliate shall cause or suffer to exist (i) any event that would result in the imposition of a Lien on any assets or properties of any Credit Party or a Subsidiary of a Credit Party with respect to any Plan or Multiemployer Plan or (ii) any other ERISA Event that, in the case of clauses (i) and (ii), could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change; or

(c) Permit the occurrence of any other event with respect to any present pension, profit sharing or deferred compensation plan which could reasonably be expected to result in a Material Adverse Change.

6.13. Compliance with Sanctions and Anti-Money Laundering Laws. The Collateral Agent and each Lender hereby notifies each Credit Party that pursuant to the requirements of Sanctions and Anti-Money Laundering Laws, and such Person's policies and practices, the Collateral Agent and each Lender is required to obtain, verify and record certain information and documentation that identifies each Credit Party and its principals, which information includes the name and address of each Credit Party and its principals and such other information that will allow the Collateral Agent and each Lender to identify such party in accordance with Sanctions and Anti-Money Laundering Laws. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or controlled Affiliates to, directly or indirectly, enter into any documents or contracts with any Sanctioned Person. Each Credit Party shall notify the Collateral Agent and each Lender in writing promptly (but in any event within [***] ([***]) Business Days after) a Responsible Officer of any Credit Party becomes aware that any Credit Party or any Subsidiary or Affiliate of any Credit Party is a Sanctioned Person 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. No Credit Party will, nor will any Credit Party permit any of its Subsidiaries or Affiliates to, directly or indirectly, (i) conduct any business or engage in any transaction or dealing with any Sanctioned Person, including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Sanctioned Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to Sanctions, or (iii) engage in or conspire to engage in any transaction that evades or

avoids or violates, or has the purpose of evading or avoiding, or attempts to violate, any of prohibitions under applicable Sanctions or Anti-Money Laundering Laws.

6.14. Amendments or Waivers of Current Company IP Agreements. (a) Waive, amend, cancel or terminate, exercise or fail to exercise, any material rights constituting or relating to any of the Current Company IP Agreements or (b) breach, default under, or take any action or fail to take any action that, with the passage of time or the giving of notice or both, would constitute a default or event of default under any of the Current Company IP Agreements, in each case of this Section 6.14, which could reasonably be expected to, individually or taken together with any other such waivers, amendments, cancellations, terminations, exercises or failures, result in a Material Adverse Change.

7 EVENTS OF DEFAULT

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

7.1. Payment Default. Any Credit Party fails to (a) make any payment of any principal of the Term Loans when and as the same shall become due and payable, whether at the due date thereof (including pursuant to Section 2.2(c)) or at a date fixed for prepayment (whether voluntary or mandatory) thereof or by acceleration thereof or otherwise, or (b) within [***] ([***]) Business Days after the same becomes due, any payment of interest or premium pursuant to Section 2.2, including any applicable Additional Consideration, Exit Consideration or Prepayment Premium, or any other Obligations (which such [***] ([***]) Business Day cure period shall not apply to any such payments due on the Term Loan Maturity Date or such earlier date pursuant to Section 2.2(c)(ii) hereof or the date of acceleration pursuant to Section 8.1(a) hereof). A failure to pay any such interest, premium or Obligations pursuant to the foregoing clause (b) prior to the end of such [***] ([***]) Business Day-period shall not constitute an Event of Default (unless such payment is due on the Term Loan Maturity Date or such earlier date pursuant to Section 2.2(c)(ii) hereof or the date of acceleration pursuant to Section 8.1(a) hereof).

7.2. Covenant Default.

(a) The Credit Parties: (i) fail or neglect to perform any obligation in Sections 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.10, 5.12, 5.13, 5.14 5.16 or 5.17 or (ii) violate or breach any covenant or agreement in Section 6; or

(b) The Credit Parties fail or neglect to perform, keep, or observe any other term, provision, condition, covenant or agreement contained in this Agreement or any Loan Documents on its part to be performed, kept or observed and such failure continues for [***] ([***]) days, after the earlier of the date on which (i) a Responsible Officer of any Credit Party becomes aware of such failure and (ii) written notice thereof shall have been given to Borrower by the Collateral Agent or any Lender. Cure periods provided under this Section 7.2(b) shall not apply, among other things, to any of the covenants referenced in clause (a) above.

7.3. Material Adverse Change. A Material Adverse Change occurs.

7.4. Attachment; Levy; Restraint on Business.

(a) (i) The service of process seeking to attach, by trustee or similar process, any funds of any Credit Party or of any entity under the control of any Credit Party (including a Subsidiary) in excess of $[***] on deposit or otherwise maintained with the Collateral Agent, or (ii) a notice of lien or levy is filed against any of material portion of Collateral by any Governmental Authority, and the same under sub-clauses (i) and (ii) hereof are not, for a period of thirty (30) consecutive days after the occurrence thereof, discharged, satisfied, vacated, or stayed (whether through the posting of a bond or otherwise); provided, however, that no Credit Extensions shall be made during any [***] ([***]) day cure period; or

(b) (i) Any material portion of Collateral is attached, seized, levied on, or comes into possession of a trustee or receiver, or (ii) any court order enjoins, restrains, or prevents Borrower and its Subsidiaries from conducting any material part of their business, taken as a whole.

7.5. Insolvency.

(a) An involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking: (i) relief in respect of any Credit Party, or of a substantial part of the property of any Credit Party, under Title 11 of the United States Code, as now constituted or hereafter amended, or

any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; or (iii) the winding-up or liquidation of any Credit Party, and such proceeding or petition shall continue undismissed or unstayed for [***] ([***]) days or an order or decree approving or ordering any of the foregoing shall be entered; or

(b) Any Credit Party shall: (i) voluntarily commence any proceeding or file any petition seeking relief under Title 11 of the United States Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership or similar law; (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (a) above; (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Credit Party or for a substantial part of the property or assets of any Credit Party; (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding; (v) make a general assignment for the benefit of creditors; (vi) become unable, admit in writing its inability or fail generally to pay its debts as they become due; or (vii) wind up or liquidate (except as otherwise expressly permitted hereunder).

7.6. Other Agreements. Any Credit Party fails to pay any Indebtedness (other than the Indebtedness represented by this Agreement and the other Loan Documents) within any applicable grace period after such payment is due and payable (including at final maturity) or after the acceleration of any such Indebtedness by the holder(s) thereof because of a default, in each case, if the total amount of such Indebtedness unpaid or accelerated exceeds $[***].

7.7. Judgments. One or more final, non-appealable judgments, orders, or decrees for the payment of money in an amount in excess of $[***] (but excluding any final judgments, orders, or decrees for the payment of money if and to the extent fully covered by independent third-party insurance as to which liability has not been denied by such insurance carrier or by an indemnification claim against a solvent and unaffiliated Person that is not a Credit Party as to which such Person has not denied liability for such claim), shall be rendered against one or more Credit Parties and the same are not, within thirty (30) days after the entry thereof, discharged, satisfied, vacated or execution thereof stayed or bonded pending appeal, or such judgments are not discharged or satisfied upon or prior to the expiration of any such stay.

7.8. Misrepresentations. Any Credit Party or any Person acting for any Credit Party makes or is deemed to make any representation, warranty, or other statement now or later in this Agreement, any other Loan Document or in any writing delivered to the Collateral Agent or any Lender or to induce the Collateral Agent or any Lender to enter this Agreement or any other Loan Document, and such representation, warranty, or other statement is incorrect in any material respect (or, to the extent any such representation, warranty or other statement is qualified by materiality or Material Adverse Change, in any respect) when made or deemed to be made.

7.9. Loan Documents; Collateral. Any material provision of any Loan Document shall for any reason cease to be valid and binding on or enforceable against any Credit Party, or any Credit Party shall so state in writing or bring an action to limit its obligations or liabilities thereunder; or any Collateral Document shall for any reason (other than pursuant to the terms thereof) cease to create a valid security interest in any material portion of the Collateral purported to be covered thereby or such security interest shall for any reason (other than pursuant to the terms of the Loan Documents) cease to be a perfected and first priority security interest in any material portion of the Collateral subject thereto, subject only to Permitted Liens, in each case, other than as a direct result of any action by the Collateral Agent or any Lender or failure of the Collateral Agent or any Lender to perform an obligation thereof under the Loan Documents.

7.10. ERISA Event. An ERISA Event occurs that, individually or taken together with any other ERISA Events, results or could reasonably be expected to result in a Material Adverse Change, or the imposition of a Lien under Section 303(k) of ERISA on any Collateral that could reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change.

8 RIGHTS AND REMEDIES UPON AN EVENT OF DEFAULT

8.1. Rights and Remedies. While an Event of Default occurs and continues, the Collateral Agent may, or at the request of the Required Lenders, will, without notice or demand:

(a) declare all Obligations (including, for the avoidance of doubt, any and all amounts payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable) immediately due and payable (but if an Event of Default described in Section 7.5 occurs, all Obligations, including any and all amounts payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, are automatically and immediately due and payable without any notice, demand or other action by the Collateral Agent or any Lender), whereupon all Obligations for principal, interest,

premium or otherwise (including, for the avoidance of doubt, any and all amounts payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable) shall become due and payable by Borrower without presentment for payment, demand, notice of protest or other demand or notice of any kind, which are all expressly waived by the Credit Parties hereby;

(b) stop advancing money or extending credit for Borrower's benefit under this Agreement;

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

(d) make any payments and do any acts it considers necessary or reasonable to protect the Collateral or the Collateral Agent's security interest, for the benefit of Lenders and the other Secured Parties, in the Collateral. Borrower shall assemble the Collateral if the Collateral Agent or the Required Lenders requests and make it available as the Collateral Agent designates or the Required Lenders designate. The Collateral Agent or its agents or representatives 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 that appears to be prior or superior to its security interest, for the benefit of Lenders and the other Secured Parties, and pay all expenses incurred. Borrower grants the Collateral Agent an irrevocable, royalty-free license or other right to enter, use, operate and occupy (and for its agents or representatives to enter, use, operate and occupy), without charge, any such premises to exercise any of the Collateral Agent's or any Lender's rights or remedies under this Section 8.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, advertise for sale, sell, assign, license out, convey, transfer or grant options to purchase any Collateral);

(e) apply to the Obligations (i) any balances and deposits of Borrower it holds, (ii) any amount held by the Collateral Agent owing to or for the credit or the account of Borrower or (iii) any balance from any Collateral Account of any Credit Party (or instruct the bank at which any such Collateral Account is maintained to pay the balance of any such Collateral Account to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, or to any Lender on behalf of itself and the other Secured Parties, as the Collateral Agent shall direct;

(f) ship, reclaim, recover, store, finish, maintain, repair, prepare for sale, advertise for sale, and sell the Collateral. With respect to any and all Intellectual Property owned or held by any Credit Party and included in Collateral, each Credit Party hereby grants to the Collateral Agent, for the benefit of Lenders and the other Secured Parties: (i) an irrevocable, non-exclusive, assignable, royalty-free license or other right to use (and for its agents or representatives to use), without charge, including the right to sublicense, use and practice, any and all such Intellectual Property in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, advertise for sale, sell, assign, license out, convey, transfer or grant options to purchase any Collateral, and access to all media in which any of the licensed items may be recorded or stored and to all Software and programs used for the compilation or printout thereof; and (ii) in connection with the Collateral Agent's exercise of its rights or remedies under this Section 8.1 (including in order to take possession of, collect, receive, assemble, process, appropriate, remove, realize upon, sell, assign, license out, convey, transfer or grant options to purchase any Collateral), each Credit Party's rights under all licenses and all franchise Contracts inure to the benefit of all Secured Parties;

(g) place a "hold" on any account maintained with the Collateral Agent 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;

(h) demand and receive possession of the Books of any Credit Party regarding Collateral; and

(i) exercise all rights and remedies available to the Collateral Agent or any Lender under the Collateral Documents or any other Loan Documents or at law or equity, including all remedies provided under the Code (including disposal of the Collateral pursuant to the terms thereof).

Each of the Collateral Agent and Lender agrees that in connection with any foreclosure or other exercise of rights under this Agreement or any other Loan Document with respect to any Intellectual Property included in the Collateral, the rights of the licensees under any license of such Intellectual Property will not be terminated, limited or otherwise adversely affected so long as no default exists thereunder in a way that would permit the licensor to terminate such license (commonly termed a non-disturbance). Without limitation to any other provision herein or in any other Loan Document, while an Event of Default occurs and continues, at the Collateral Agent's or the Required

Lenders' request, representatives from Borrower and the Collateral Agent shall promptly meet (in person or telephonically) to discuss in good faith how to collect, receive, appropriate and realize upon Borrower's rights and interests in, to and under any Current Company IP Agreement, including in connection with any foreclosure or other exercise of the Collateral Agent's or any Lender's rights with respect thereto. If Borrower and the Collateral Agent do not mutually agree with respect thereto within ten (10) Business Days after such request by the Collateral Agent (or such later date as agreed by the Collateral Agent), then the Collateral Agent may request Borrower to, and Borrower (promptly following the receipt of such request) shall, use reasonable best efforts to obtain the written consent of any counterparty to the exercise by the Collateral Agent or any Lender of any and all rights and remedies under this Agreement or any other Loan Document with respect to any Current Company IP Agreement, in form and substance reasonably satisfactory to the Collateral Agent.

8.2. Power of Attorney. Borrower hereby irrevocably appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact, exercisable upon the occurrence and during the continuance of an Event of Default, to: (a) endorse Borrower's name on any checks or other forms of payment or security; (b) sign Borrower's 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 Collateral Accounts directly with depository banks where the Collateral Accounts are maintained, for amounts and on terms the Collateral Agent determines reasonable; (d) make, settle, and adjust all claims under Borrower's products liability or general liability insurance policies maintained in any jurisdiction regarding Collateral; (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 the Collateral Agent or a third party as the Code permits. Borrower hereby appoints the Collateral Agent and any Related Party thereof as its lawful attorney-in-fact to file or record any documents necessary to perfect or continue the perfection of the Collateral Agent's security interest, for the benefit of Lenders and the other Secured Parties, in the Collateral regardless of whether an Event of Default has occurred until all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been satisfied in full and no Lender is under any further obligation to make Credit Extensions hereunder. The foregoing appointment of the Collateral Agent and any Related Party thereof as Borrower's attorney in fact, and all of the Collateral Agent's (or such Related Party's) rights and powers, coupled with an interest, are irrevocable until all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) have been fully repaid and performed and each Lender's obligation to provide Credit Extensions terminates.

8.3. Application of Payments and Proceeds Upon Default. If an Event of Default has occurred and is continuing, the Collateral Agent shall apply any funds in its possession, whether from Borrower account balances, payments, proceeds realized as the result of any collection of Collateral Accounts or disposition of any other Collateral, or otherwise, to the Obligations in such order as the Collateral Agent shall determine in its sole discretion. Any surplus shall be paid to Borrower or other Persons legally entitled thereto; Borrower shall remain liable to Lenders for any deficiency. If the Collateral Agent or any Lender directly or indirectly enters into a deferred payment or other credit transaction with any purchaser at any sale of Collateral, the Collateral Agent or such Lender, as applicable, shall have the option, exercisable at any time, of either reducing the Obligations by the principal amount of the purchase price or deferring the reduction of the Obligations until the actual receipt by the applicable Lender(s) of cash therefor.

8.4. Collateral Agent's Liability for Collateral. So long as the Collateral Agent complies with Requirements of Law regarding the safekeeping of the Collateral in the possession or under the control of the Collateral Agent and absent bad faith, gross negligence or willful misconduct of the Collateral Agent, the Collateral Agent shall not be liable or responsible for: (a) the safekeeping of the Collateral; (b) any loss or damage to the Collateral; or (c) any act or default of any other Person. In no event shall the Collateral Agent or any Lender have any liability for any diminution in the value of the Collateral for any reason except as a result of Collateral Agent's bad faith, gross negligence or willful misconduct. Borrower bears all risk of loss, damage or destruction of the Collateral.

8.5. No Waiver; Remedies Cumulative. The Collateral Agent's or any Lender's failure, at any time or times, to require strict performance by Borrower or any other Person of any provision of this Agreement or any other Loan Document shall not waive, affect, or diminish any right of the Collateral Agent or any Lender thereafter to demand strict performance and compliance herewith or therewith. No waiver hereunder shall be effective unless signed by the party granting the waiver and then is only effective for the specific instance and purpose for which it is given. Each of the Collateral Agent's and Lender's rights and remedies under this Agreement and the other Loan Documents are cumulative. Each of the Collateral Agent and Lenders has all rights and remedies provided under the Code, by law, or in equity. The exercise by the Collateral Agent or any Lender of one right or remedy is not an election and shall not preclude the Collateral Agent or any Lender from exercising any other remedy under this Agreement or other remedy available at law or in equity, and the waiver by the Collateral Agent or any Lender of

any Event of Default is not a continuing waiver. The Collateral Agent's or any Lender's delay in exercising any remedy is not a waiver, election, or acquiescence.

8.6. Demand Waiver; Exit Consideration; Prepayment Premium. Except for such notices as are expressly required under the terms of the Loan Documents, Borrower waives demand, notice of default or dishonor, notice of payment and nonpayment, notice of any default, nonpayment at maturity, release, compromise, settlement, extension, or renewal of accounts, documents, instruments, chattel paper, and guarantees held by the Collateral Agent on which Borrower is liable. Borrower acknowledges and agrees that if the maturity of all Obligations shall be accelerated pursuant to Section 8.1(a) by reason of the occurrence of an Event of Default, the applicable Exit Consideration and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, shall become due and payable by Borrower upon such acceleration, whether such acceleration is automatic or is effected by the Collateral Agent's or any Lender's declaration thereof, as provided in Section 8.1(a), and shall also become due and payable in the event the Obligations are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other similar means, and Borrower shall pay the applicable Exit Consideration and Prepayment Premium that is payable pursuant to Section 2.2(e) and Section 2.2(f), as applicable, as compensation to Lenders for the loss of its investment opportunity and not as a penalty, and Borrower waives any right to object thereto in any voluntary or involuntary bankruptcy, insolvency or similar proceeding or otherwise.

9 NOTICES

All notices, consents, requests, approvals, demands, or other 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; (c) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid; (d) when delivered, if hand-delivered by messenger; or (e) if sent by electronic mail, when received in readable form, all of which shall be addressed to the party to be notified and sent to the address, facsimile number, or email address (if any) indicated below. Any party to this Agreement may change its mailing or electronic mail address or facsimile number by giving all other parties hereto written notice thereof in accordance with the terms of this Section 9.

If to Borrower or any other Credit Party:

Evolus, Inc.
520 Newport Center Drive
Suite 1200
Newport Beach, CA 92660
Attn: Sandra Beaver, Chief Financial Officer
Jeffrey Plumer, General Counsel
Email: [***]
[***]

with copies to (which shall not constitute notice) to:

O'Melveny & Myers LLP
Two Embarcadero Center, 27th Floor
San Francisco, California 94111
Attn: Jennifer Taylor
Facsimile: [***]
Email: [***]

If to Collateral Agent: BioPharma Credit PLC
c/o MUFG Corporate Governance Limited
Central Square
29 Wellington Street
Leeds
LS1 4DL

United Kingdom
Attn: Company Secretary
Tel: [***]
Email: [***]

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: [***]
Fax: [***]
Email: [***]

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: [***]
Email: [***]

If to any Lender: To the address of such Lender set forth on Exhibit D attached hereto

with copies (which shall not constitute notice) to:

Pharmakon Advisors, LP
110 East 59th Street, #2800
New York, NY 10022
Attn: Pedro Gonzalez de Cosio
Phone: [***]
Fax: [***]
Email: [***]

and

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036-6745
Attn: Geoffrey E. Secol
Phone: [***]
Fax: [***]
Email: [***]

10 CHOICE OF LAW, VENUE, AND JURY TRIAL WAIVER

THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS, AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO AND THERETO, SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. Each party hereto submits to the exclusive jurisdiction of the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and agrees that all claims in respect of any such action, litigation or proceeding may be heard and

determined in such New York State court or, to the fullest extent permitted by Requirements of Law, in such Federal court; provided, however, that nothing in this Agreement shall be deemed to operate to preclude the 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 the Collateral Agent or any Lender. Each Credit Party expressly submits and consents in advance to such jurisdiction in any action or suit commenced in any such court, and each Credit Party 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. Each Credit Party 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 such party at the address set forth in (or otherwise provided in accordance with the terms of) Section 9 of this Agreement and that service so made shall be deemed completed upon the earlier to occur of such party's actual receipt thereof or three (3) days after deposit in the U.S. mails, proper postage prepaid.

TO THE FULLEST EXTENT PERMITTED BY REQUIREMENTS OF LAW, EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ITS RIGHT TO A JURY TRIAL IN ANY CLAIM, SUIT, ACTION OR PROCEEDING WITH RESPECT TO, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREIN AND THEREIN OR RELATED HERETO OR THERETO (WHETHER FOUNDED IN CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO OTHER PARTY AND NO RELATED PARTY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10 AND (C) HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.

11 GENERAL PROVISIONS

11.1. Successors and Assigns.

(a) This Agreement binds and is for the benefit of the parties hereto and their respective successors and permitted assigns.

(b) No Credit Party may transfer, pledge or assign this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder without the prior written consent of each Lender. Subject to Section 11.1(d):

(i) any Lender may at any time sell, transfer, assign or pledge this Agreement or any other Loan Document or any of its rights or obligations hereunder or thereunder, or grant a participation in all or any part of, or any interest in, such Lender's obligations, rights or benefits under this Agreement and the other Loan Documents, including with respect to any Term Loan or any portion thereof (any such sale, transfer, assignment, pledge or grant of a participation, a "**Lender Transfer**"), to any other Lender or any Affiliate of any Lender without Borrower's consent;

(ii) BPCR Limited Partnership may at any time make a Lender Transfer to any third Person without Borrower's consent, provided, however, that no Lender Transfer may be made to a Competitor of Borrower without Borrower's prior written consent (in its sole discretion) except after the occurrence and during the continuance of an Event of Default; and

(iii) no Lender other than BPCR Limited Partnership may at any time make a Lender Transfer (A) to any third Person that is not a Competitor of Borrower without Borrower's written consent (which consent shall not be unreasonably withheld, conditioned or delayed) except after the occurrence and during the continuance of an Event of Default or (B) to a Competitor of Borrower without Borrower's prior written consent (in its sole discretion) except after the occurrence and during the continuance of an Event of Default.

(c) In the case of a Lender Transfer in the form of a participation granted by any Lender to any third party, (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of its obligations hereunder, (iii) Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (iv) any agreement or instrument pursuant to which such Lender sells such participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, restatement, supplement or other modification hereto, in each case subject to the terms and conditions of this Agreement. Borrower agrees that each participant shall be entitled to the benefits of Sections 2.5 and 2.6 (subject to the requirements and limitations therein, including the requirements under Section 2.6(d) (it being understood that the documentation required under Section 2.6(d) shall be delivered to the applicable Lender)) to the same extent as if it were a Person that had acquired its interest by assignment pursuant to clause (b) above; provided that, with respect to any participation, such participant shall not be entitled to receive any greater payment under Sections 2.5 or 2.6 than the applicable Lender (i.e., the party that participated the interest) would have been entitled to receive, except to the extent of any entitlement to receive a greater payment resulting from a Change in Law that occurs after such participant acquired the applicable participation.

(d) The Collateral Agent (as a non-fiduciary agent on behalf of Borrower) shall record any Lender Transfer in the Note Register. Each Lender shall provide Borrower and the Collateral Agent with written notice of a Lender Transfer delivered no later than five (5) Business Days prior to the date on which such Lender Transfer is consummated. If any Lender sells a participation, such Lender shall, acting solely for this purpose as a non-fiduciary agent of Borrower, maintain a register on which it enters the name and address of each participant and principal amounts of (and stated interest on) each participant's interest in the Term Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided, however, that such Lender shall have no 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 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" within the meaning of Section 163(f), 871(h)(2) and 881(c)(2) of the IRC and any related regulations (and any other relevant or successor provisions of the IRC or such regulations). The entries in the Participant Register shall be conclusive absent manifest error, and the Collateral Agent and each 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.

(e) Any attempted transfer, pledge or assignment of this Agreement or any other Loan Document or any rights or obligations hereunder or thereunder in violation of this Section 11.1 shall be null and void and neither Borrower nor any transfer agent shall give any effect in the Note Register to such attempted transfer.

11.2. Indemnification.

(a) Borrower agrees to indemnify and hold harmless each of the Collateral Agent, Lenders and its and their respective Affiliates (and its or their respective successors and assigns) and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof (each such Person, an "**Indemnified Person**") from and against any and all Indemnified Liabilities; provided, however, that (i) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the bad faith, gross negligence or willful misconduct of such Indemnified Person (or any of such Indemnified Person's Affiliates or controlling Persons or any of their respective directors, officers, managers, partners, members, agents, sub-agents or advisors), in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction, (ii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from a material breach of any obligation of such Indemnified Person hereunder, and (iii) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liabilities if and to the extent such Indemnified Liabilities arise from any claim by one Indemnified Person against another Indemnified Person that does not relate to any act or omission of Borrower or any Credit Party (other than against the Collateral Agent or any intercreditor agent in their respective capacities as such), and (iv) no Credit Party shall be liable for any settlement of any claim or proceeding effected by any Indemnified Person without the prior written consent of such Credit Party (which consent shall not be unreasonably withheld, conditioned or delayed), but if settled with such consent or if there shall be a final judgment against an Indemnified Person, each of the Credit Parties shall, jointly and severally with each other Credit Parties, indemnify and hold harmless such Indemnified Person from and against any loss or liability by reason of such settlement or judgment in the manner set forth in this Agreement. This Section 11.2(a) shall not apply with respect to Taxes other than any Taxes that represent liabilities, obligations, losses, damages, penalties, claims, costs, expenses and disbursements arising from any non-Tax claim.

(b) To the extent permitted by Requirements of Law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any other party hereto (and its or their successors

and assigns), and each manager, member, partner, controlling Person, director, officer, employee, agent or sub-agent, advisor and affiliate thereof, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, arising out of, as a result of, or in any way related to, this Agreement or any Loan Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Credit Extension or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each party to this Agreement hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

(c) Any action taken by any Credit Party under or with respect to any Loan Document, even if required under any Loan Document or at the request of the Collateral Agent or any Lender, shall be at the expense of such Credit Party, and neither the Collateral Agent nor any Secured Party shall be required under any Loan Document to reimburse any Credit Party or any Subsidiary of any Credit Party therefor except as expressly provided therein. In addition, and without limiting the generality of Section 2.4, Borrower agrees to pay or reimburse upon demand each of the Collateral Agent and Lenders (and their respective successors and assigns) and each of their respective Related Parties (solely if and to the extent applicable), for any and all fees, expenses and disbursements of the kind or nature described in clause (ii) of the definition of "Lender Expenses" incurred by it.

11.3. Severability of Provisions. In case any provision in or obligation hereunder or under any other Loan Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

11.4. Correction of Loan Documents. The Collateral Agent or Required Lenders may correct patent errors and fill in any blanks in the Loan Documents consistent with the agreement of the parties hereto so long as the Collateral Agent or Required Lenders, as applicable, provides the Credit Parties and the other parties hereto with written notice of such correction and allows the Credit Parties at least ten (10) days to object to such correction in writing delivered to the Collateral Agent and each Lender. In the event of such objection, such correction shall not be made except by an amendment to this Agreement in accordance with Section 11.5.

11.5. Amendments in Writing; Integration.

(a) No amendment, restatement or modification of or supplement to any provision of this Agreement or any other Loan Document, or waiver, discharge or termination of any obligation hereunder or thereunder, no approval or consent hereunder or thereunder (including any consent to any departure by Borrower or any other Credit Party herefrom or therefrom), shall in any event be effective unless the same shall be in writing and signed by Borrower (on its own behalf and on behalf of each other Credit Party) and the Required Lenders; provided, however, that no such amendment, restatement, modification, supplement, waiver, discharge, termination, approval or consent shall, unless in writing and signed by the Collateral Agent and the Required Lenders, affect the rights or duties of, or any amounts payable to, the Collateral Agent under this Agreement or any other Loan Document. Any such waiver, approval or consent granted shall be limited to the specific circumstance expressly described in it, and shall not apply to any subsequent or other circumstance, whether similar or dissimilar, or give rise to, or evidence, any obligation or commitment to grant any further waiver, approval or consent.

(b) 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 among the parties hereto about the subject matter of this Agreement and the Loan Documents merge into this Agreement and the Loan Documents.

11.6. 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.

11.7. Survival. **Termination Prior to Term Loan Maturity Date**. All covenants, representations and warranties made in this Agreement continue in full force until this Agreement has terminated pursuant to this Section 11.17 and all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted and any other obligations which, by their terms, are to survive the termination of this Agreement) have been paid in full and satisfied in accordance with the terms of this Agreement. The obligation of Borrower or any other the Credit Parties in Section 11.2 to indemnify Indemnified Persons shall survive until the statute of limitations with respect to such claim or cause of action shall have run. So long all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted and any other obligations which, by their terms, are to survive the termination of this Agreement and for which no claim has been

made) have been paid in full and satisfied in accordance with the terms of this Agreement, this Agreement shall be terminated (a) prior to the Term Loan Maturity Date by Borrower, effective five (5) Business Days (or such shorter period as the Collateral Agent may agree in its sole discretion) after written notice of termination is delivered to the Collateral Agent and the Lenders, or (b) if no such notice is delivered, automatically on the Term Loan Maturity Date.

11.8. Confidentiality. Any information regarding the Credit Parties and their Subsidiaries and their businesses provided to the Collateral Agent or any Lender by or on behalf of any Credit Party pursuant to the Loan Documents shall be deemed "Confidential Information"; provided, however, that Confidential Information does not include information that is either: (i) in the public domain or in the possession of the Collateral Agent, any Lender or any of their respective Affiliates or when disclosed to the Collateral Agent, any Lender or any of their respective Affiliates, or becomes part of the public domain after disclosure to the Collateral Agent, any Lender or any of their respective Affiliates, in each case, other than as a result of a breach by the Collateral Agent, any Lender or any of their respective Affiliates of the obligations under this Section 11.8; or (ii) disclosed to the Collateral Agent, any Lender or any of their respective Affiliates by a third party if the Collateral Agent, such Lender or such Affiliate, as applicable, does not know (following due and careful enquiry) that the third party is prohibited from disclosing the information. Neither the Collateral Agent nor any Lender shall disclose any Confidential Information to a third party or use Confidential Information for any purpose other than the exercise of its rights and the performance of its duties or obligations under the Loan Documents. The foregoing in this Section 11.8 notwithstanding, the Collateral Agent and each Lender may disclose Confidential Information: (a) to any of its Subsidiaries or Affiliates; (b) to prospective transferees, purchasers or participants of any interest in the Term Loans (including, for the avoidance of doubt, in connection with any proposed Lender Transfer), provided that no such disclosure to any Competitors shall be permitted hereunder without Borrower's prior written consent); (c) as required by law, regulation, subpoena, or other order, provided, that (x) prior to any disclosure under this clause (c), the Collateral Agent or such Lender, as applicable, agrees to endeavor to provide Borrower with prior written notice thereof and with respect to any law, regulation, subpoena or other order, to the extent that the Collateral Agent or such Lender is permitted to provide such prior notice to Borrower pursuant to the terms hereof, and (y) any disclosure under this clause (c) shall be limited solely to that portion of the Confidential Information as may be specifically compelled by such law, regulation, subpoena or other order; (d) to the extent requested by regulators having jurisdiction over the Collateral Agent or such Lender or as otherwise required in connection with the Collateral Agent's or such Lender's examination or audit by such regulators; (e) as the Collateral Agent or such Lender considers reasonably necessary in exercising remedies under the Loan Documents; (f) to third-party service providers of the Collateral Agent or such Lender; and (g) to any of the Collateral Agent's or such Lender's Related Parties; provided, however, that the third parties to which Confidential Information is disclosed pursuant to clauses (a), (b), (f) and (g) are bound by obligations of confidentiality and non-use that are no less restrictive than those contained herein.

The provisions of this Section 11.8 shall survive the termination of this Agreement.

11.9. Attorneys' Fees, Costs and Expenses. In any action or proceeding between any Credit Party and the Collateral Agent or any Lender arising out of or relating to the Loan Documents, the prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, in addition to any other relief to which it may be entitled.

11.10. Right of Set-Off. In addition to any rights now or hereafter granted under Requirements of Law and not by way of limitation of any such rights, upon the occurrence of an Event of Default and at any time thereafter during the continuance of any Event of Default, each Lender is hereby authorized by each Credit Party at any time or from time to time, without prior notice to any Credit Party, any such notice being hereby expressly waived by Borrower (on its own behalf and on behalf of each other Credit Party), to set off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts) and any other Indebtedness at any time held or owing by such Lender to or for the credit or the account of any Credit Party against and on account of the obligations and liabilities of any Credit Party to such Lender hereunder and under the other Loan Documents, including all claims of any nature or description arising out of or connected hereto or with any other Loan Document, irrespective of whether or not (a) the Collateral Agent or such Lender shall have made any demand hereunder or (b) the principal of or the interest on the Term Loans or any other amounts due hereunder shall have become due and payable pursuant to Section 2 and although such obligations and liabilities, or any of them, may be contingent or unmatured. Each Lender agrees promptly to notify Borrower and the Collateral Agent after any such set off and application made by such Lender; provided, that the failure to give such notice shall not affect the validity of such set off and application.

11.11. Marshalling; Payments Set Aside. Neither the Collateral Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Credit Party makes a payment or payments to any Lender, or the Collateral Agent or any Lender enforces any Liens or exercises its rights of setoff, and such payment or payments or

the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other state or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

11.12. Electronic Execution of Documents. The words "execution," "execute," "signed," "signature," and words of like import in this Agreement and the other Loan Documents shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Requirements of Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

11.13. Captions. Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

11.14. Construction of Agreement. The parties hereto mutually acknowledge that they and their respective attorneys have participated in the preparation and negotiation of this Agreement. In cases of uncertainty, this Agreement shall be construed without regard to which of the parties hereto caused the uncertainty to exist.

11.15. Third Parties. Nothing in this Agreement, whether express or implied, is intended to: (a) except as expressly provided in Section 11.2(a), confer any benefits, rights or remedies under or by reason of this Agreement on any Persons other than the express parties to it and their respective successors and permitted assigns; (b) relieve or discharge the obligation or liability of any Person not an express party to this Agreement; or (c) give any Person not an express party to this Agreement any right of subrogation or action against any party to this Agreement.

11.16. No Advisory or Fiduciary Duty. The Collateral Agent and each Lender may have economic interests that conflict with those of the Credit Parties. Each Credit Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender or the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries, and any of their respective stockholders or affiliates, on the other hand. Each Credit Party acknowledges and agrees that (i) the transactions contemplated by the Loan Documents are arm's-length commercial transactions between each Lender and the Collateral Agent, on the one hand, and such Credit Party, its Subsidiaries and their respective affiliates, on the other hand, (ii) in connection therewith and with the process leading to such transaction, the Collateral Agent and each Lender is acting solely as a principal and not the advisor, agent or fiduciary of such Credit Party, its Subsidiaries or their respective affiliates, management, stockholders, creditors or any other Person, (iii) neither the Collateral Agent nor any Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its Subsidiaries or their respective affiliates with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether the Collateral Agent or any Lender or any of their respective affiliates has advised or is currently advising such Credit Party, its Subsidiaries or their respective affiliates on other matters) or any other obligation to such Credit Party, its Subsidiaries or their respective affiliates except the obligations expressly set forth in the Loan Documents, and (iv) each Credit Party, its Subsidiaries and their respective affiliates have consulted their own legal and financial advisors to the extent each deemed appropriate. Each Credit Party further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that the Collateral Agent or any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, its Subsidiaries or their respective affiliates in connection with such transaction or the process leading thereto.

11.17. Credit Parties' Agent. Each of the Credit Parties hereby irrevocably appoints Borrower, as its agent, attorney-in-fact and legal representative for all purposes, including requesting disbursement of the Term Loans and receiving account statements and other notices and communications to Credit Parties (or any of them) from the Collateral Agent or the Lenders, executing amendments, waivers or other modifications of or supplements to Loan Documents and executing or designating new Loan Documents. The Collateral Agent or the Lenders may rely, and shall be fully protected in relying, on any request for the Term Loans, disbursement instruction, report, information or any other notice or communication made or given by Borrower and any amendment, waiver or other modification of or supplement to a Loan Document or the execution or designation of new Loan Documents executed or made by Borrower, whether in its own name or on behalf of one or more of the other Credit Parties, and the Collateral Agent or the Lenders shall not have any obligation to make any inquiry or request any confirmation from or on behalf of any other Credit Party as to the binding effect on it of any such request, instruction, report,

information, other notice, communication, amendment, supplement, waiver, other modification, execution or designation, nor shall the joint and several character of the Credit Parties' obligations hereunder be affected thereby.

11.18. Effect of Amendment and Restatement.

(a) On the Effective Date, the Prior Loan Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (i) this Loan Agreement and the other documents entered into in connection herewith do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Prior Loan Agreement) under the Prior Loan Agreement, as in effect prior to the Effective Date but rather a substitution of certain of the terms contained therein, as set forth herein and (ii) such "Obligations" are in all respects continuing after the Effective Date (as amended and restated hereby) as indebtedness and obligations outstanding under this Loan Agreement, enforceable with only the terms thereof being modified as provided by this Agreement and shall be deemed to be Obligations governed by this Agreement. On and after the Effective Date, the rights and obligations of the parties hereto shall be governed by this Loan Agreement, except that the rights and obligations of the parties hereto with respect to the period prior to the Effective Date shall be governed by the provisions of the Prior Loan Agreement as it existed prior to such amendment and restatement.

(b) In connection with the amendment and restatement of the Prior Loan Agreement, Borrower and each other Credit Party release, waive and discharge any claims or causes of action which it may have against the Collateral Agent, and each of the Lenders (as each such term is defined in the Prior Loan Agreement) and any of the other holders of the Obligations (as defined in the Prior Loan Agreement) arising under the Prior Loan Agreement or any of the other Loan Documents (as defined in the Prior Loan Agreement) executed in connection with the Prior Loan Agreement (the "**Prior Loan Documents**"), whether on the Original Effective Date or at any time thereafter but prior to the Effective Date, or relating to any of their performance thereunder.

(c) On and after the Effective Date, all references to the Prior Loan Agreement or the "Loan Agreement" in any and all of the Prior Loan Documents shall be deemed to include references to this Agreement, as amended, restated, supplemented or otherwise modified from time to time.

12 COLLATERAL AGENT

12.1. Appointment and Authority. Each Lender hereby irrevocably appoints BioPharma Credit PLC to act on its behalf as the Collateral Agent hereunder and under the other Loan Documents and authorizes the Collateral Agent to take such actions on its behalf and to exercise such powers as are delegated to the Collateral Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except for the first two (2) sentences of Section 12.6 and the first sentence and penultimate paragraph of Section 12.8, the provisions of this Section 12 are solely for the benefit of the Collateral Agent and Lenders, and neither Borrower nor any other Credit Party shall have rights as a third party beneficiary of any of such provisions. Subject to Section 12.8 and Section 11.5, any action required or permitted to be taken by the Collateral Agent hereunder shall be taken with the prior approval of the Required Lenders.

12.2. Rights as a Lender. The Person serving as the Collateral Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Collateral Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Collateral Agent hereunder in its individual capacity. Such Person and its Affiliates may lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Collateral Agent hereunder and without any duty to account therefor to any Lender.

12.3. Exculpatory Provisions.

(a) The Collateral Agent shall not have any duties or obligations to the Lenders except those expressly set forth herein and in the other Loan Documents to which it is a party. Without limiting the generality of the foregoing, with respect to the Lenders, the Collateral Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents to which it is a party that the Collateral Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in such other Loan Documents), provided that the Collateral Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Collateral Agent to liability or that is contrary to any Loan Document or Requirements of Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents to which it is a party, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Collateral Agent or any of its Affiliates in any capacity.

(b) The Collateral Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Collateral Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.5) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Collateral Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Collateral Agent in writing by Borrower or a Lender.

(c) The Collateral Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Section 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Collateral Agent.

12.4. Reliance by Collateral Agent. The Collateral Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Collateral Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. The Collateral Agent may consult with legal counsel (who may be counsel for Borrower), independent accountants, manufacturing consultants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants, consultants or experts.

12.5. Delegation of Duties. The Collateral Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Collateral Agent. The Collateral Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Section 12 shall apply to any such sub-agent and to the Related Parties of the Collateral Agent and any such sub-agent. The Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agent except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Collateral Agent acted with gross negligence or willful misconduct in the selection of such sub-agent.

12.6. Resignation of Collateral Agent. The Collateral Agent may at any time give notice of its resignation to the Lenders and Borrower. Upon the receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of Borrower so long as no Default or Event of Default has occurred and is continuing, to appoint a successor (which shall not be a Competitor); provided, however, that Borrower's consent shall not be required to the extent the successor is a Related Party of the Collateral Agent or any Lender. If no successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Collateral Agent gives notice of its resignation, then the retiring Collateral Agent may, on behalf of the Lenders, appoint a successor Collateral Agent; provided that, whether or not a successor has been appointed or has accepted such appointment, such resignation shall become effective upon delivery of the notice thereof. Upon the acceptance of a successor's appointment as Collateral Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired)

Collateral Agent, and the retiring Collateral Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this Section 12.6). After the retiring Collateral Agent's resignation, the provisions of this Section 12 and Section 10 shall continue in effect for the benefit of such retiring Collateral Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Collateral Agent was acting as Collateral Agent. Upon any resignation by the Collateral Agent, all payments, communications and determinations provided to be made by, to or through the Collateral Agent shall instead be made by, to or through each Lender directly, until such time as a Person accepts an appointment as Collateral Agent in accordance with this Section 12.6.

12.7. Non-Reliance on Collateral Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and make Credit Extensions hereunder. Each Lender also acknowledges that it will, independently and without reliance upon the Collateral Agent or any other Lender or any of their respective Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

12.8. Collateral and Guaranty Matters. Each Lender agrees that any action taken by the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement or of the other Loan Documents, and the exercise by the Collateral Agent or Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Without limiting the generality of the foregoing, the Lenders irrevocably authorize and instruct the Collateral Agent, and the Collateral Agent agrees:

(a) to release any Lien on any property granted to or held by the Collateral Agent under any Collateral Document (i) upon payment and satisfaction in full of all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) in accordance with the terms of this Agreement, (ii) that is sold, transferred, disposed or to be sold, transferred, disposed as part of or in connection with any sale, transfer or other disposition (other than any sale to a Credit Party) permitted hereunder, (iii) subject to Section 11.5, if approved, authorized or ratified in writing by the Required Lenders, or (iv) to the extent such property is owned by a Guarantor, upon the release of such Guarantor from its obligations under the Loan Documents pursuant to clause (c) below;

(b) to subordinate any Lien on any property granted to or held by the Collateral Agent under any Loan Document to the holder of any Lien on such property that is permitted by clause (d), (i), (j), (m), (n) and (r) of the definition of "Permitted Liens" (solely with respect to modifications, replacements, extensions or renewals of Liens permitted under clause (d), (i), (j), (m) and (n) of the definition of "Permitted Liens");

(c) to release any Guarantor from its obligations under each Collateral Document if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder or upon payment and satisfaction in full of all Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) in accordance with this Agreement;

(d) to enter into non-disturbance and similar agreements in connection with the licensing of Intellectual Property permitted pursuant to the terms of this Agreement; and

(e) to enter into any subordination, intercreditor or other similar agreement with respect to any Permitted Indebtedness that constitutes Subordinated Debt.

Without prejudice to the obligation to fulfill the foregoing, upon request by the Collateral Agent at any time the Required Lenders will confirm in writing the Collateral Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor) from its obligations under each Collateral Document pursuant to this Section 12.8.

In each case as specified in this Section 12.8, the Collateral Agent will (and each Lender irrevocably authorizes and instructs the Collateral Agent to), at Borrower's expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request (i) to evidence the release or subordination of such item of Collateral from the Liens and security interests granted under the Collateral Documents, (ii) to enter into non-disturbance or similar agreements in connection with the licensing of Intellectual Property, (iii) to enter into any subordination, intercreditor or other similar agreement with respect to any Permitted Indebtedness that constitutes

Subordinated Debt or (iv) to evidence the release of any Guarantor from its obligations under each Collateral Document, in each case in accordance with the terms of the Loan Documents and this Section 12.8 and in form and substance reasonably acceptable to the Collateral Agent.

Without limiting the generality of Section 12.10 below, the Collateral Agent shall deliver to the Lenders notice of any action taken by it under this Section 12.8 promptly after the taking thereof; provided that delivery of or failure to deliver any such notice shall not affect the Collateral Agent's rights, powers, privileges and protections under this Section 12.

12.9. Reimbursement by Lenders. To the extent that Borrower for any reason fails to indefeasibly pay any amount required under Section 2.4 to be paid by it to the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (based upon the percentages as used in determining the Required Lenders as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, damage, liability or related expense, as the case may be, was incurred by or asserted against the Collateral Agent (or any such sub-agent) in its capacity as such or against any Related Party of any of the foregoing acting for the Collateral Agent (or any sub-agent) in connection with such capacity.

12.10. Notices and Items to Lenders. The Collateral Agent shall deliver to the Lenders each notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or other item received by it pursuant to this Agreement or any other Loan Document (including any item received by it pursuant to Section 3 or set forth on Schedule 5.14 of the Disclosure Letter); provided, that any delivery of or failure to deliver any such notice, report, statement, approval, direction, consent, exemption, authorization, waiver, certificate, filing or item shall not otherwise alter or effect the rights of the Lenders or the Collateral Agent under this Agreement or any other Loan Document or the validity of such item. In addition, to the extent the Collateral Agent or the Required Lenders deliver any notices, approvals, authorizations, directions, consents or waivers to Borrower pursuant to this Agreement or any other Loan Document, the Collateral Agent or the Required Lenders, as applicable, will also deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders on or about the same time such notice, approval, authorization, direction, consent or waiver is provided to Borrower; provided, that the delivery of or failure to deliver such notice, approval, authorization, direction, consent or waiver to the other Lenders shall not in any way effect the obligations of Borrower, or the rights of the Collateral Agent or the Required Lenders, in respect of such notice, approval, authorization, direction, consent or waiver or the validity thereof.

13 DEFINITIONS

13.1. Definitions. For the purposes of and as used in the Loan Documents: (a) references to any Person include its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities; (b) except as the context otherwise requires (including to the extent otherwise expressly provided in any Loan Document), (i) references to any law, statute, treaty, order, policy, rule or regulation include any amendments, supplements and successors thereto and (ii) references to any contract, agreement, instrument or other document include any amendments, restatements, supplements or modifications thereto or thereof from time to time to the extent permitted by the provisions thereof; (c) the word "shall" is mandatory; (d) the word "may" is permissive; (e) the word "or" has the inclusive meaning represented by the phrase "and/or"; (f) the words "include", "includes" and "including" are not limiting; (g) the singular includes the plural and the plural includes the singular; (h) numbers denoting amounts that are set off in parentheses are negative unless the context dictates otherwise; (i) each authorization herein shall be deemed irrevocable and coupled with an interest; (j) all accounting terms shall be interpreted, and all determinations relating thereto shall be made, in accordance with Applicable Accounting Standards; (k) references to any time of day shall be to New York time; (l) the words "herein", "hereof", "hereby", "hereto" and "hereunder" refer to this Agreement as a whole; and (m) unless otherwise expressly provided, references to specific sections, articles, clauses, sub-clauses, annexes and exhibits are to this Agreement and references to specific schedules are to the Disclosure Letter. As used in this Agreement, the following capitalized terms have the following meanings:

"**Account**" means any "account" as defined in the Code with such additions to such term as may hereafter be made, and includes all accounts receivable, book debts, and other sums owing to Credit Parties.

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

"**Acquisition**" means (a) any Stock Acquisition, or (b) any Asset Acquisition.

"**Additional Consideration**" means, individually or collectively, as the context dictates, the Tranche A Additional Consideration, the Tranche B Additional Consideration and the Tranche C Additional Consideration.

"**Advance Request Form**" means a Loan Advance Request Form in substantially the form attached hereto as Exhibit A.

"**Adverse Proceeding**" means any action, suit, proceeding, hearing (whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Credit Party or any of its Subsidiaries) at law or in equity, or before or by any Governmental Authority, domestic or foreign (including any Environmental Claims), whether pending or, to the Knowledge of Borrower, threatened in writing against or directly and adversely affecting any Credit Party or any of its Subsidiaries or any property or assets of any Credit Party or any of its Subsidiaries.

"**Affiliate**" means, with respect to any Person, each other 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 or limited liability partnership, that Person's managers and members. As used in this definition, "control" means (a) direct or indirect beneficial ownership of at least fifty percent (50%) (or such lesser percentage which is the maximum allowed to be owned by a foreign corporation in a particular jurisdiction) of the voting share capital or other equity interest in a Person or (b) the power to direct or cause the direction of the management of such Person by contract or otherwise. In no event shall the Collateral Agent or any Lender be deemed to be an Affiliate of Borrower or any of its Subsidiaries.

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

"**Anti-Money Laundering Laws**" is defined in Section 4.18(b).

"**Applicable Accounting Standards**" means with respect to Borrower and its Subsidiaries, generally accepted accounting principles in the United States as 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, which are applicable to the circumstances as of the date of determination, consistently applied.

"**Applicable Margin**" means, for any day, as to any Term Loan, a rate *per annum* equal to [***] percent ([***]%).

"**Applicable Percentage**" means, at any time: (a) with respect to the Tranche A Loan or the Tranche A Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche A Closing Date, the amount of such Lender's Tranche A Commitment at such time and the denominator of which is the Tranche A Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche A Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche A Loan at such time; (b) with respect to the Tranche B Loan or the Tranche B Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche B Closing Date, the amount of such Lender's Tranche B Commitment at such time and the denominator of which is the Tranche B Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche B Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche B Loan at such time; (c) with respect to the Tranche C Loan or the Tranche C Loan Amount, the percentage equal to a fraction, the numerator of which is (i) on or prior to the Tranche C Closing Date, the amount of such Lender's Tranche C Commitment at such time and the denominator of which is the Tranche C Loan Amount at such time or (ii) thereafter, the outstanding principal amount of such Lender's portion of the Tranche C Loan at such time, and the denominator of which is the aggregate outstanding principal amount of the Tranche C Loan at such time; (d) with

respect to the Term Loans and the Term Loan Commitments, the percentage equal to a fraction, the numerator of which is, the sum of the amount of such Lender's outstanding Term Loan Commitments and the amount of such Lender's portion of the outstanding principal amount of the Term Loans at such time, and the denominator of which is the sum of the amount of all outstanding Term Loan Commitments and the aggregate outstanding principal amount of the Term Loans at such time.

"**ASC**" is defined in Section 1.

"**Asset Acquisition**" means the purchase, in-license or other acquisition by Borrower or any of its Subsidiaries of any properties or assets of any other Person, including the purchase or other acquisition by Borrower or any of its Subsidiaries of any business unit, line of business or division of such other Person.

"**Available Tenor**" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark pursuant to this Agreement, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.3(e).

"**Bankruptcy Code**" means Title 11 of the United States Code entitled "Bankruptcy," as now and hereafter in effect, or any successor statute.

"**Benchmark**" means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.3(e).

"**Benchmark Replacement**" means, with respect to any Benchmark Transition Event, the first alternative set forth in the order below that can be determined by the Collateral Agent for the applicable Benchmark Replacement Date:

(a) the sum of (i) Daily Simple SOFR and (ii) 0.170% (17.0 basis points); or

(b) the sum of: (i) the alternate benchmark rate that has been selected by the Collateral Agent and Borrower giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment;

provided that, if the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

"**Benchmark Replacement Adjustment**" means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Collateral Agent and Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities at such time.

"**Benchmark Replacement Date**" means a date and time determined by the Collateral Agent in its reasonable discretion, which date shall be no later than the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); and

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the "Benchmark Replacement Date" will be deemed to have occurred in the case of clause (a) or (b) above with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Transition Event**" means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a "Benchmark Transition Event" will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

"**Benchmark Unavailability Period**" means, the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(e) and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.3(e).

"**BLA**" means a Biologics License Application, including both an original BLA and 351(k) BLA under the Biologics Price Competition and Innovation Act ("**BPCIA**").

"**Board of Directors**" means, with respect to any Person, (i) in the case of any corporation, the board of directors of such Person, (ii) in the case of any limited liability company, the board of managers of such Person, or if there is none, the Board of Directors of the managing member of such Person, (iii) in the case of any partnership or exempted limited partnership, the Board of Directors of the general partner of such Person and (iv) in any other case, the functional equivalent of the foregoing.

"**Board of Governors**" means the Board of Governors of the United States Federal Reserve System, or any successor thereto.

"**Books**" means all books and records including ledgers, records regarding a Credit Party's assets or liabilities, the Collateral, business operations or financial condition, and all computer programs or storage or any equipment containing such information.

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

"**Borrowing Resolutions**" means, with respect to any Credit Party, those resolutions adopted by such Credit Party's Board of Directors and delivered by such Credit Party to the Collateral Agent pursuant to Section 3.1(d) approving the Loan Documents to which such Credit Party is a party and the transactions contemplated thereby (including the Term Loans).

"**Business Day**" means any day that is not a Saturday or a Sunday or a day on which banks are authorized or required to be closed in Newport Beach, California, New York, New York, London, England or the Cayman Islands.

"**Capital Lease**" means, as applied to any Person, any lease of, or other arrangement conveying the right to use, any property by that Person as lessee that has been or should be accounted for as a capital lease on a balance sheet of such Person prepared in accordance with Applicable Accounting Standards (subject to Section 1 hereof).

"**Capital Lease Obligations**" means, at any time, with respect to any Capital Lease, any lease entered into as part of any sale leaseback transaction of any Person or any synthetic lease, the amount of all obligations of such Person that is (or that would be, if such synthetic lease or other lease were accounted for as a Capital Lease) capitalized on a balance sheet of such Person prepared in accordance with Applicable Accounting Standards.

"**Cash Equivalents**" means

(a) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government or by the government of any other member country of O.E.C.D. (provided that the full faith and credit of the United States or such other member country of O.E.C.D., as applicable, is pledged in support of those securities), in each case, having maturities of not more than [***] ([***]) years from the date of acquisition;

(b) certificates of deposit, time deposits with maturities of [***] or less from the date of acquisition, bankers' acceptances with maturities not exceeding [***] and overnight bank deposits and demand deposits, in each case, with any commercial bank having (i) capital and surplus in excess of $[***] in the case of U.S. banks or (ii) capital and surplus in excess of $[***] (or the U.S. dollar equivalent as of the date of determination) in the case of non-U.S. banks or a rating for its long-term unsecured and noncredit enhanced debt obligations of "A" or higher by Standard & Poor's Rating Services or Fitch Ratings Ltd or "A2" or higher by Moody's Investors Service Limited;;

(c) commercial paper or marketable short-term money market or readily marketable direct obligations and similar securities having a credit rating of either A-1 or higher by Standard & Poor's Rating Service or F1 or

higher by Fitch Ratings Ltd or P-1 or higher Moody's Investors Service Limited, and, in each case, maturing within [***] ([***]) years after the date of acquisition;

(d) repurchase obligations with a term of not more than [***] ([***]) days for underlying securities of the types described in clauses (a) and (c) above entered into with any financial institution meeting the qualifications specified in clause (b) above;

(e) investment funds investing [***] percent ([***]%) of their assets in securities of the types described in clauses (a) through (d) above and clause (f) below;

(f) investments in money market funds which have a credit rating of either A-1 or higher by Standard & Poor's Rating Service or F1 or higher by Fitch Ratings Ltd or P-1 or higher by Moody's Investors Service Limited (or, if at any time none of Fitch Ratings Ltd, Moody's Investors Service Limited or Standard & Poor's Rating Service shall be rating such obligations, an equivalent rating from another rating agency) and that have portfolio assets of at least $[***]; and

(g) other investments in accordance with the Borrower's investment policy as of the Tranche A Closing Date or otherwise approved in writing by the Collateral Agent.

"**CCPA**" means the provisions of the California Consumer Privacy Act, as amended by the California Privacy Rights Act and codified at Cal. Civ. Code § 1798.100 et seq., with any implementing regulations.

"**CDC**" means the United States Centers for Disease Control and Prevention (and any foreign equivalents).

"**Change in Control**" means a transaction or series of transactions (including any merger or consolidation involving Borrower) in which any "person" or "group" (within the meaning of Section 13(d) and 14(d)(2) of the Exchange Act, but excluding any employee benefit plan of such Person or its Subsidiaries, and any Person acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) is or becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of a majority of shares of the then outstanding capital stock of Borrower ordinarily entitled to vote in the election of directors; (b) a sale, directly or indirectly, of all or substantially all of the consolidated assets of Borrower and its Subsidiaries in one transaction or a series of transactions (whether by way of merger, stock purchase, asset purchase or otherwise); or (c) a merger or consolidation involving Borrower, in which Borrower is not the surviving Person.

"**Change in Law**" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking into effect of any law, treaty, order, policy, rule or regulation, (b) any change in any law, treaty, order, policy, rule or regulation or in the administration, published interpretation or application thereof by any Governmental Authority or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

"**Closing Date**" means the Tranche A Closing Date, Tranche B Closing Date or the Tranche C Closing Date, as applicable.

"**CMIA**" means the California Confidentiality of Medical Information Act, codified at Cal. Civ. Code pt. 2.6 § 56 et seq.

"**Code**" means the Uniform Commercial Code, as the same may, from time to time, be enacted and in effect in the State of New York; 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 of the Code, the definition of such term

contained in Article 9 of the Code 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, the Collateral Agent's Lien, for the benefit of Lenders and the other Secured Parties, on any Collateral is governed by the Uniform Commercial Code in effect in a jurisdiction other than the State of New York, 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.

"**Collaboration Transaction**" means any transaction or arrangement (including collaboration, OEM, distribution, co-promotion or co-marketing agreements) pursuant to which Borrower or any of its Subsidiaries (a) provides or receives a license or sublicense of Intellectual Property owned or controlled by one or more third Persons, (b) Transfers Intellectual Property owned or controlled by it to one or more third Persons, (c) provides a right of reference to regulatory filings and applications with relevant Governmental Authorities to one or more third Persons or (d) provides rights with respect to pre-clinical and clinical data to one or more third Persons, in each case of clauses (a) through (d) above, in connection with the research, clinical development, regulatory activities, manufacturing, commercialization or marketing of Product in the Territory.

"**Collateral**" means, collectively, "Collateral" (as such term is defined in the Security Agreement) and any and all other assets and properties of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateral Document, but in any event excluding all Excluded Property.

"**Collateral Access Agreement**" means an agreement, in form and substance reasonably satisfactory to the Collateral Agent and to which the Collateral Agent is a party, pursuant to which a mortgagee or lessor of real property on which Collateral is stored or otherwise located, or a warehouseman, processor or other bailee of Inventory or other property owned by any Credit Party, acknowledges the Liens and security interests of the Collateral Agent, for the benefit of Lenders and the other Secured Parties, and waives (or, if approved by the Collateral Agent in its sole discretion, subordinates) any Liens or security interests held by such Person on any such Collateral, and, in the case of any such agreement with a mortgagee or lessor, permits the Collateral Agent and any Lender (and its representatives and designees) reasonable access to any Collateral stored or otherwise located thereon.

"**Collateral Account**" means any Deposit Account of a Credit Party maintained with a bank or other depository or financial institution located in the United States, any Securities Account of a Credit Party maintained with a securities intermediary located in the United States, or any Commodity Account of a Credit Party maintained with a commodity intermediary located in the United States, in each case, other than an Excluded Account.

"**Collateral Agent**" is defined in the preamble hereof.

"**Collateral Documents**" means the Security Agreement, the Control Agreements, the IP Agreements, any Mortgages and all other instruments, documents and agreements delivered by any Credit Party pursuant or incidental to this Agreement or any of the other Loan Documents, in each case, in order to grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, or perfect a Lien on any Collateral as security for the Obligations, and all amendments, restatements, modifications or supplements thereof or thereto.

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

"**Common Rule**" means the U.S. Federal Policy for the Protection of Human Subjects, codified at 45 C.F.R. part 46, or foreign equivalents.

"**Company IP**" means any and all of the following, as they exist in and throughout the Territory: (a) Current Company IP; (b) improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications with respect to any Current Company IP, any patent issued with respect to any of the Current Company IP, any patent right claiming the apparatus, system, component or composition of matter of, or the method

of making or using, Product in the Territory, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent and all foreign and international counterparts of any of the foregoing; (c) trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how, operating manuals, confidential or proprietary information, research in progress, algorithms, data, databases, data collections, designs, processes, procedures, methods, protocols, materials, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, and the results of experimentation and testing, including samples, in each case, as specifically related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory; and (d) any and all IP Ancillary Rights specifically relating to any of the foregoing.

"**Competitor**" means, at any time of determination, any Person (and the Affiliates of such Person) that is directly and primarily engaged in the same, substantially the same or similar line of business as Borrower and its Subsidiaries as of such time.

"**Compliance Certificate**" means that certain certificate in the form attached hereto as Exhibit E.

"**Conforming Changes**" means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods and other technical, administrative or operational matters) that the Collateral Agent decides (after consultation with Borrower) may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Collateral Agent in a manner substantially consistent with market practice (or, if the Collateral Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Collateral Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Collateral Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

"**Connection Income Taxes**" means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

"**Contingent Obligation**" means, for any Person, (a) any direct or indirect liability, contingent or not, of that Person for any indebtedness, lease, dividend, letter of credit or other obligation of another Person 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 (other than by endorsements of instruments in the course of collection) and (b) any obligation of that Person to pay an earn-out payment, milestone payment or similar contingent payment or contingent compensation (including purchase price adjustments) to a counterparty incurred or created in connection with an Acquisition, Transfer or Investment or otherwise in connection with any collaboration, development or similar agreement, in each instance where such contingent payment or compensation becomes due and payable upon the occurrence of an event or the performance of an act (and not solely with the passage of time). 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 reasonably determined by such Person in good faith; but the amount may not exceed the maximum of the obligations under any guarantee or other support arrangement.

"**Control Agreement**" means, with respect to any Credit Party, any control agreement entered into among such Credit Party, the Collateral Agent and, in the case of a Deposit Account, the bank or other depository or financial institution located in the United States at which such Credit Party maintains such Deposit Account, or, in the case of a Securities Account or a Commodity Account, the securities intermediary or commodity intermediary located in the United States at which such Credit Party maintain such Securities Account or Commodities Account,

in either case, pursuant to which the Collateral Agent obtains control (within the meaning of the Code), or otherwise has a perfected first priority security interest (subject to any Permitted Liens), over such Collateral Account.

"**Copyrights**" means any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret (and all related IP Ancillary Rights).

"**Credit Extension**" means any Term Loan or any other extension of credit by any Lender for Borrower's benefit pursuant to this Agreement.

"**Credit Party**" means Borrower and each Guarantor.

"**CSA**" is defined in Section 4.19(c).

"**Current Company IP**" is defined in Section 4.6(c).

"**Current Company IP Agreement**" means each contract or agreement, pursuant to which Borrower or any of its Subsidiaries has the legal right to exploit Current Company IP or other Intellectual Property that is owned by another Person and that is material to the business of Borrower and its Subsidiaries, to research, develop, manufacture, produce, use, supply, commercialize, market, import, store, transport, offer for sale, distribute or sell Product, for which the material breach of, material default or material nonperformance under, cancellation or termination of or the failure to renew could reasonably be expected to result in a Material Adverse Change, including the License and Supply Agreement, dated as of September 30, 2013, by and between Daewoong Pharmaceutical Co., Ltd and Evolus, Inc., as amended by that certain First Amendment, dated as of February 26, 2014, as further amended by that certain Second Amendment, dated as of July 15, 2014, and that certain Third Amendment, dated as of March 23, 2021. For the avoidance of doubt, Current Company IP Agreements shall not include any down-stream supply agreements to the customers of Borrower or its Subsidiaries.

"**Daewoong Agreement**" means the License and Supply Agreement, dated as of September 30, 2013, by and between Daewoong Pharmaceutical Co., Ltd and Evolus, Inc., as amended by that certain First Amendment, dated as of February 26, 2014, as further amended by that certain Second Amendment, dated as of July 15, 2014, and that certain Third Amendment, dated as of March 23, 2021.

"**Daily Simple SOFR**" means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Collateral Agent in accordance with the conventions for this rate recommended by the Relevant Governmental Body for determining "Daily Simple SOFR" for bilateral business loans; provided, that if the Collateral Agent decides that any such convention is not administratively feasible for the Collateral Agent, then the Collateral Agent may establish another convention in its reasonable discretion.

"**Data Protection Laws**" means any and all applicable foreign or domestic (including U.S. federal, state and local), statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of Governmental Authorities relating to privacy, security, notification of breaches, or confidentiality of personal data (including individually identifiable information) or and other sensitive information, in each case, in any manner applicable to any Credit Party or any of its Subsidiaries, including, to the extent applicable, HIPAA, Section 5 of the FTC Act and other consumer protection laws, GDPR, PIPEDA, CCPA and other comprehensive state privacy laws, CMIA and other U.S. state medical information privacy laws and genetic testing laws.

"**DEA**" means the United States Drug Enforcement Administration (or foreign equivalents).

"**DEA Laws**" means all applicable statutes (including the CSA), rules, regulations and orders implemented, administered, enforced or issued by DEA (and any foreign or U.S. state equivalents).

"**Default**" means any breach of or default under any term, provision, condition, covenant or agreement contained in this Agreement or any other Loan Document or any other event, in each case that, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

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

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

"**Disclosure Letter**" means the disclosure letter, dated the Effective Date, delivered by the Credit Parties to the Collateral Agent, as may be updated on the applicable Closing Date (if required and as permitted hereunder).

"**Disqualified Equity Interest**" means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable) or upon the happening of any event or condition: (a) matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise (except if redeemable or convertible into other Equity Interest that would not constitute a Disqualified Equity Interest or as a result of a change of control, asset sale or similar event so long as any and all rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full in cash of the Term Loans and the satisfaction in full of all other Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) in accordance with the terms of this Agreement); (b) is redeemable at the option of the holder thereof, in whole or in part (except if redeemable or convertible into other Equity Interest that would not constitute a Disqualified Equity Interest or as a result of a change of control, asset sale or similar event so long as any rights of the holders thereof upon the occurrence of a change of control, asset sale or similar event shall be subject to the prior repayment in full in cash of the Term Loans and the satisfaction in full of all other Obligations (other than contingent indemnification obligations to the extent no claim giving rise thereto has been asserted) in accordance with this Agreement); (c) provides for the scheduled payments of dividends or distributions in cash; or (d) is convertible into or exchangeable for (i) Indebtedness which is not Permitted Indebtedness or (ii) any other Equity Interest that would constitute a Disqualified Equity Interest; in each case described in clauses (a) through (d) above, prior to the date that is [***] days after the Term Loan Maturity Date; provided that, if any such Equity Interest is issued pursuant to any plan for the benefit of any employee, director, manager or consultant of the Borrower or its Subsidiaries or by any such plan to such employee, director, manager or consultant, such Equity Interest shall not constitute a "Disqualified Equity Interest" solely because it may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of the termination, death or disability of such employee, director, manager or consultant.

"**Dollars**," "**dollars**" or use of the sign "**$**" means only lawful money of the United States and not any other currency, regardless of whether that currency uses the "$" sign to denote its currency or may be readily converted into lawful money of the United States.

"**Effective Date**" is defined in the preamble hereof.

"**Environmental Claim**" means any investigation, notice, notice of violation, claim, action, suit, proceeding, demand, abatement order or other order or directive (conditional or otherwise), by any Governmental Authority or any other Person, arising (i) pursuant to or in connection with any actual or alleged violation of any Environmental Law; (ii) in connection with any Hazardous Material or any actual or alleged Hazardous Materials Activity; or (iii) in connection with any actual or alleged damage, injury, threat or harm to health, safety, natural resources or the environment.

"**Environmental Laws**" means any and all current or future, foreign or domestic, statutes, ordinances, orders, rules, regulations, judgments, Governmental Approvals, or any other requirements of Governmental Authorities relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and

health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, in each case, in any manner applicable to any Credit Party or any of its Subsidiaries or any Facility.

"**Equity Interests**" means, with respect to any Person, collectively, any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in such Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase or other arrangements or rights to acquire (by purchase, conversion, dividend, distribution or otherwise) any of the foregoing (and all other rights, powers, privileges, interests, claims and other property in any manner arising therefrom or relating thereto); provided, however, that Indebtedness convertible into Equity Interests (or into any combination of cash and Equity Interests based on the value of such Equity Interests) shall not constitute Equity Interests unless and until (and solely to the extent) so converted into Equity Interests.

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

"**ERISA Affiliate**" means, with respect to any Person, any trade or business (whether or not incorporated) that, together with such Person, is treated as a single employer under Section 414(b) or (c) of the IRC or, solely for purposes of Section 302 of ERISA or Section 412 of the IRC, Section 412(m) or (o) of the IRC.

"**ERISA Event**" means (a) any "reportable event," as defined in Section 4043 of ERISA or the regulations issued thereunder, with respect to a Plan (other than an event for which the 30-day notice period is waived by regulation); (b) with respect to a Plan, the failure by Borrower or its Subsidiaries or their ERISA Affiliates to satisfy the minimum funding standard of Section 412 of the IRC and Section 302 of ERISA, whether or not waived; (c) the failure by Borrower or its Subsidiaries or their ERISA Affiliates to make by its due date a required installment under Section 430(j) of the IRC with respect to any Plan or to make any required contribution to a Multiemployer Plan; (d) the filing pursuant to Section 412(c) of the IRC or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (e) the incurrence by Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (f) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates from the Pension Benefit Guaranty Corporation (referred to and defined in ERISA) or a plan administrator of any notice relating to the intention to terminate any Plan or Plans under Section 4041 or 4041A of ERISA or to appoint a trustee to administer any Plan under Section 4042 of ERISA, or the occurrence of any event or condition which could reasonably be expected to constitute grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Plan under Section 4041 Section 4042 of ERISA; (g) the incurrence by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any liability with respect to the withdrawal from any Plan or Multiemployer Plan; (h) the receipt by Borrower or its Subsidiaries or any of their respective ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent, within the meaning of Section 4245 or Section 4241, respectively, of ERISA; (i) the "substantial cessation of operations" by Borrower or its Subsidiaries or their ERISA Affiliates within the meaning of Section 4062(e) of ERISA with respect to a Plan; or (j) the occurrence of a nonexempt prohibited transaction (within the meaning of Section 4975 of the IRC or Section 406 of ERISA) which could reasonably be expected to result in material liability to Borrower or its Subsidiaries.

"**Event of Default**" is defined in Section 7.

"**Exchange Act**" means the Securities Exchange Act of 1934.

"**Exchange Act Documents**" means any and all documents filed by Borrower with the SEC pursuant to the Exchange Act.

"**Excluded Accounts**" is defined in Section 5.5.

"**Excluded Equity Interests**" means, collectively: (i) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured

Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Equity Interests in any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party and such consent, approval or waiver has not been obtained by Borrower following Borrower's commercially reasonable efforts to obtain the same; (iii) any Equity Interests in any Subsidiary that is a non-Wholly-Owned Subsidiary that the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Equity Interests, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, the Operating Documents or the joint venture agreement or shareholder agreement with respect to, or any other contract with such third party relating to such non-Wholly-Owned Subsidiary, including any contract evidencing Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract is in effect; (iv) any voting Equity Interests in excess of [***]% of the issued and outstanding Equity Interests of each Foreign Subsidiary; and (v) any Equity Interests in any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost (including Tax costs) of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest in and Lien upon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, such Equity Interests, to secure the Obligations (and any guaranty thereof) are excessive, relative to the value to be afforded to the Secured Parties thereby.

"**Excluded License**" means an exclusive license or sublicense, to a Person other than a Subsidiary of Borrower, of any Intellectual Property within the Territory covering Product that is tantamount to a sale of substantially all rights to the Intellectual Property covering such Product because it conveys to the licensee or sublicensee exclusive rights to practice such Intellectual Property in the Territory for consideration that is not based upon future development or commercialization of Product in the Territory (other than pursuant to so-called earn-out payments) or services by the licensee or sublicensee (other than transition services), such as, for example, consideration of only upfront advances or initial license fees or similar payments in consideration of such rights, with no anticipated subsequent payments or only *de minimis* payments to Borrower or any of its Subsidiaries (other than pursuant to so-called earn-out payments or transition services).

"**Excluded Property**" has the meaning set forth in the Security Agreement.

"**Excluded Subsidiaries**" means, collectively: (i) any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests in such Subsidiary to secure the Obligations (and any guaranty thereof) are validly prohibited by Requirements of Law; (ii) any Subsidiary with respect to which the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests in such Subsidiary to secure the Obligations (and any guaranty thereof) require the consent, approval or waiver of any Governmental Authority or other third party (other than Borrower or an Affiliate of Borrower) and such consent, approval or waiver has not been obtained by Borrower or such Subsidiary following Borrower's and such Subsidiary's commercially reasonable efforts to obtain the same; (iii) any Subsidiary that is a non-Wholly-Owned Subsidiary, with respect to which, the grant to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of a security interest in and Lien upon, and the pledge to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, of, the properties and assets of such non-Wholly-Owned Subsidiary, to secure the Obligations (and any guaranty thereof) are validly prohibited by, or would give any third party (other than Borrower or an Affiliate of Borrower) the right to terminate its obligations under, such non-Wholly-Owned

Subsidiary's Operating Documents or the joint venture agreement or shareholder agreement with respect thereto or any other contract with such third party relating to such non-Wholly-Owned Subsidiary, including any contract evidencing Indebtedness of such non-Wholly-Owned Subsidiary (other than customary non-assignment provisions which are ineffective under Article 9 of the Code or other Requirements of Law), but only, in each case, to the extent, and for so long as such Operating Document, joint venture agreement, shareholder agreement or other contract is in effect; and (iv) any Subsidiary that owns properties and assets with an aggregate fair market value (reasonably determined in good faith by a Responsible Officer of Borrower), individually or when aggregated together with all other Subsidiaries under this sub-clause (iv), of less than $[***]; (v) any Foreign Subsidiary; and (vi) any other Subsidiary with respect to which, Borrower and the Collateral Agent reasonably determine by mutual agreement that the cost (including Tax costs) of granting the Collateral Agent, for the benefit of Lenders and the other Secured Parties, a security interest in and Lien upon, and pledging to the Collateral Agent, for the benefit of Lenders and the other Secured Parties, such Subsidiary's properties and assets subject or purported to be subject from time to time to a Lien under any Collateral Document and the Equity Interests of such Subsidiary to secure the Obligations (and any guaranty thereof) are excessive relative to the value to be afforded to the Secured Parties thereby. Notwithstanding the foregoing or any other provision of this Agreement, the parties hereto agree that without the prior written consent of the Collateral Agent or the Required Lenders, no Subsidiary (including any Foreign Subsidiary) existing as of the Effective Date or organized, formed or acquired, directly or indirectly, by any Credit Party from and after the Effective Date, that at any time (A) owns, co-owns or otherwise maintains any material Company IP, (B) holds a Material Marketing Authorization, (C) licenses any Company IP from any third-party, (D) enters into any Material Contract or otherwise becomes a party thereto or bound thereby or (E) otherwise engages in any business operations material to any aspect of the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, packaging, labelling, promotion, advertising, offer or sale, distribution or sale of Product in the Territory and owns properties and assets with an aggregate fair market value (as reasonably determined in good faith by a Responsible Officer of Borrower) equal to or greater than $[***], individually or when aggregated together with all other Subsidiaries excluded under sub-clause (iv) above, shall, in any such case, be (or be deemed to be) an Excluded Subsidiary for any purpose under the Loan Documents and, therefore, such Subsidiary shall constitute a Credit Party for all purposes under the Loan Documents, as of the date of such ownership, co-ownership, maintenance, license, entry or becoming so bound or engagement (without any action being required on the part of any party hereto), and, additionally, in each case, Borrower shall cause such entity, within the time periods required by Section 5.12, 5.13, or 5.14, as and to the extent applicable, to become a Guarantor in accordance therewith.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to Lender or required to be withheld or deducted from a payment to Lender, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of Lender being organized under the laws of, or having its principal office or its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of Lender with respect to any Obligation pursuant to a law in effect on the date on which (i) Lender acquires such interest in any Obligation or (ii) Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.6, amounts with respect to such Taxes were payable either to Lender's assignor immediately before Lender became a party hereto or to Lender immediately before it changed its lending office, (c) Taxes attributable to Lender's failure to comply with Section 2.6(d), and (d) any withholding Taxes imposed under FATCA.

"**Exit Consideration**" means the Tranche A Exit Consideration, Tranche B Exit Consideration or the Tranche C Exit Consideration, individually or collectively, as applicable.

"**Export and Import Laws**" means any applicable law, regulation, order or directive that applies to the import, export, re-export, transfer, disclosure or provision of goods, software, technology or technical assistance including, without limitation, restrictions or controls administered pursuant to the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774, administered by the U.S. Department of Commerce, Bureau of Industry and Security; U.S. Customs regulations; and similar import and export laws, regulations, orders and directives of other jurisdictions to the extent applicable.

"**Facility**" means, with respect to any Credit Party, any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by such Credit Party or any of its Subsidiaries or any of their respective predecessors or Affiliates.

"**FATCA**" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (including, for the avoidance of doubt, any agreements between the governments of the United States and the jurisdiction in which the applicable Lender is resident implementing such provisions), or any amended or successor version that is substantively comparable and not materially more onerous to comply with, and any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the IRC, any intergovernmental agreement entered into in connection with the implementation of the foregoing sections of the IRC and any fiscal or regulatory legislation, regulations, rules or practices adopted pursuant to, or official interpretations implementing such Sections of the IRC or intergovernmental agreements.

"**FCPA**" is defined in Section 4.18(a).

"**FDA**" means the United States Food and Drug Administration (and any state and foreign equivalents, including the United Kingdom Medicines and Healthcare Products Regulatory Agency, European Medicines Agency and Health Canada).

"**FDA Good Clinical Practices**" means the standards set forth in 21 C.F.R. Parts 50, 54, 56, 312, and 314 (and any foreign equivalents) and FDA's implementing guidance documents (and any foreign equivalents).

"**FDA Good Laboratory Practices**" means the standards set forth in 21 C.F.R. Part 58 (and any foreign equivalents) and FDA's implementing guidance documents (and any foreign equivalents).

"**FDA Good Manufacturing Practices**" means the standards set forth in 21 C.F.R. Part[s] 210, 211, 600 and 610 (and any foreign equivalents) and FDA's implementing guidance documents (and any foreign equivalents).

"**FDA Laws**" means all applicable statutes (including the FDCA and PHSA), rules and regulations implemented administered or enforced by the FDA (and any foreign equivalents), including FDA Good Clinical Practices, FDA Good Laboratory Practices, FDA Good Manufacturing Practices, FDA regulations specific to biological products (21 C.F.R. Part 600 et seq.) and FDA Guidance Documents.

"**FDA Guidance Documents**" means all applicable guidance documents issued by the FDA (and any foreign equivalents).

"**FDCA**" is defined in Section 4.19(b).

"**Federal Reserve Board**" means the Board of Governors.

"**Floor**" means a rate of interest equal to 3.50% *per annum*.

"**Foreign Lender**" means a Lender that is not a "United States person" as defined in Section 7701(a)(30) of the IRC.

"**Foreign Subsidiary**" means a Subsidiary that is not organized under the laws of the United States.

"**GDPR**" means, collectively, (i) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (the "**EU GDPR**") and (ii) the EU GDPR as it forms part of the laws of the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 (the "**UK GDPR**").

"**Governmental Approval**" means 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**" means any nation or government, any state or other political subdivision thereof, any agency (including Regulatory Agencies and data protection authorities), government department, authority, instrumentality, regulatory body, commission, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government, any securities exchange and any self-regulatory organization.

"**Governmental Payor Programs**" means all governmental third party payor programs in which any Credit Party or its Subsidiaries participates, including Medicare, Medicaid, TRICARE or any other U.S. federal or state health care programs.

"**Guarantor**" means, at any time, any Person that is, pursuant to the terms of any Loan Document, a guarantor of any of the Obligations at that time.

"**Hazardous Materials**" means any chemical, material or substance, exposure to which is prohibited, limited or regulated by any Governmental Authority or which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment.

"**Hazardous Materials Activity**" means any past, current, proposed or threatened activity, event or occurrence involving any Hazardous Materials, including the use, manufacture, possession, storage, holding, presence, existence, location, Release, threatened Release, discharge, placement, generation, transportation, processing, construction, treatment, abatement, removal, remediation, disposal, disposition or handling of any Hazardous Materials, and any corrective action or response action with respect to any of the foregoing.

"**Health Care Laws**" means, collectively: (a) applicable federal, state or local laws, rules, regulations, codes, orders, ordinances, statutes and requirements issued under or in connection with Medicare, Medicaid or any other Government Payor Program; (b) applicable federal and state laws and regulations governing the privacy, security, confidentiality, or notification of breaches regarding health information, including HIPAA and Section 5 of the FTC Act; (c) applicable federal, state and local fraud and abuse laws of any Governmental Authority, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7(b)), the civil False Claims Act (31 U.S.C. § 3729 et seq.), Sections 1320a-7 and 1320a-7a of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (d) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. No. 108-173) and the regulations promulgated thereunder; (e) the Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h); (f) any applicable reporting and disclosure requirements, including any arising under Section 603 of the Veteran's Health Care Act (Quarterly and Annual Non-Federal Average Manufacturer Price and Federal Ceiling Price), Best Price, Federal Supply Schedule Contract Prices and Tricare Retail Pharmacy Refunds, and Medicare Part D; (g) health care laws, rules, codes, statutes, regulations, orders, ordinances and requirements pertaining to Medicare or Medicaid; (h) federal, state or local laws, rules, regulations, ordinances, statutes and requirements relating to (x) the regulation of managed care, third party payors and Persons bearing the financial risk for the provision or arrangement of health care services, (y) billings to insurance companies, health maintenance organizations and other Managed Care Plans or otherwise relating to insurance fraud and (z) any insurance, health maintenance organization or managed care Requirements of Law; (i) the interoperability, information blocking, and health information technology certification regulations promulgated under the 21st Century Cures Act (to the extent effective); (j) CDC regulations (including regulations implemented by the CDC Division of Select Agents and Toxins ("DSAT") or otherwise relating to the Federal Select Agent Program ("FSAP"), such as 7 C.F.R. Part 331, 9 C.F.R. Part 121, and 42 C.F.R. Part 73); and (k) any other applicable domestic or foreign health care laws, rules, codes, regulations, manuals (to the extent such manuals are binding and have the force of law), orders, ordinances, and statutes relating to the research, development, testing, approval, licensure, post-approval or post-licensure monitoring, reporting, manufacture, production, packaging, labeling, use, commercialization, marketing, promotion, advertising, importing, exporting, storage, transport, offer for sale, distribution or sale of or payment for Product.

"**Hedging Agreement**" means any interest rate, currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect a Person against fluctuations in interest rates, currency exchange rates or commodity or equity prices or values (including any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), and any confirmation execution in connection with any such agreement or arrangement.

"**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by the Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009, any and all rules or regulations promulgated from time to time thereunder, and any U.S. state or federal laws with regard to the security, privacy, or notification of breaches of the confidentiality of health information which are not preempted pursuant to 45 C.F.R. Part 160, Subpart B.

"**Indebtedness**" means, with respect to any Person, without duplication: (a) all indebtedness for advanced or borrowed money of, or credit extended to, such Person; (b) all obligations issued, undertaken or assumed by such Person as the deferred purchase price of assets, properties, services or rights (other than (i) accrued expenses and trade payables entered into in the ordinary course of business which are not more than [***] ([***]) days past due or subject to a bona fide dispute, (ii) obligations to pay for services provided by employees and individual independent contractors in the ordinary course of business which are not more than [***] ([***]) days past due or subject to a bona fide dispute, (iii) liabilities associated with customer prepayments and deposits, and (iv) prepaid or deferred revenue arising in the ordinary course of business), including (A) any obligation or liability to pay deferred purchase price or other similar deferred consideration for such assets, properties, services or rights where such deferred purchase price or consideration becomes due and payable solely upon the passage of time, and (B) any obligation described in clause (b) of the definition of "Contingent Obligation" that is due and payable (or that becomes due and payable) solely with the passage of time (and not upon the occurrence of an event or the performance of an act); (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder and all reimbursement or payment obligations with respect to letters of credit, surety bonds, performance bonds and other similar instruments issued by such Person; (d) all obligations of such Person evidenced by notes, bonds, debentures or other debt securities or similar instruments (including debt securities convertible into Equity Interests), including obligations so evidenced incurred in connection with the acquisition of properties, assets or businesses; (e) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement or incurred as financing, in either case with respect to property acquired by such Person (even though the rights and remedies of the seller or bank under such agreement in the event of default are limited to repossession or sale of such property); (f) all Capital Lease Obligations of such Person; (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing product by such Person; (h) Disqualified Equity Interests; (i) all indebtedness referred to in clauses (a) through (g) above of other Persons secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in assets or properties (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness of such other Persons; and (i) all Contingent Obligations of such Person described in clause (a) of the definition thereof.

"**Indemnified Liabilities**" means, collectively, any and all liabilities, obligations, losses, damages (including natural resource damages), penalties, claims, actions, judgments, suits, costs, reasonable and documented out-of-pocket fees, expenses and disbursements of any kind or nature whatsoever (including the reasonable and documented fees, expenses and disbursements of one counsel for Indemnified Persons plus, as applicable, one local legal counsel in each relevant material jurisdiction and one intellectual property legal counsel, and in the case of an actual or perceived conflict of interest, one additional counsel for such affected Indemnified Persons, in connection with any investigative, administrative or judicial proceeding or hearing commenced or threatened in writing by any Person, whether or not any such Indemnified Person shall have commenced such proceeding or hearing or be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnified Persons in enforcing any indemnity hereunder) whether direct, indirect or consequential and whether based on any federal, state or foreign laws, statutes, rules or regulations, on common law or equitable cause or on contract or otherwise, that may be imposed on, incurred by, or asserted against any such Indemnified Person, in any manner relating to or arising out of this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby (including any Lender's agreement to make Credit Extensions or the use or intended use of the proceeds thereof, or

any enforcement of any of the Loan Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of any guaranty of the Obligations)).

"**Indemnified Person**" is defined in Section 11.2(a).

"**Indemnified Taxes**" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of any Credit Party under any Loan Document and (b) to the extent not otherwise described in clause (a) above, Other Taxes.

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

"**Intellectual Property**" means all:

(a) Copyrights, Trademarks, and Patents;

(b) trade secrets and trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals;

(c) (i) all computer programs, including source code and object code versions, (ii) all data, databases and compilations of data, whether machine readable or otherwise, and (iii) all documentation, training materials and configurations related to any of the foregoing (collectively, "**Software**");

(d) all Internet Domain Names;

(e) design rights;

(f) IP Ancillary Rights (including all IP Ancillary Rights related to any of the foregoing); and

(g) all other intellectual property or industrial property rights.

"**Interest Date**" means the last day of each calendar quarter, commencing with the last day of the calendar quarter during which the Tranche A Closing Date occurs.

"**Interest Period**" means: (a) as to each Term Loan, (i) with respect to the Tranche A Loan, the period commencing on (and including) the Tranche A Closing Date and ending on (and including) the first Interest Date occurring from and after the Tranche A Closing Date, (ii) with respect to the Tranche B Loan, the period commencing on (and including) the Tranche B Closing Date and ending on (and including) the first Interest Date following the Tranche B Closing Date, and (iii) with respect to the Tranche C Loan, the period commencing on (and including) the Tranche C Closing Date and ending on (and including) the first Interest Date following the Tranche C Closing Date; and (b) thereafter, with respect to each Term Loan, each period beginning on (and including) the first day following the end of the preceding Interest Period and ending on the earlier of (and including) (i) the next Interest Date and (ii) the Term Loan Maturity Date.

"**Internet Domain Name**" means all right, title and interest (and all related IP Ancillary Rights) arising under any contract or Requirements of Law in or relating to Internet domain names.

"**Inventory**" means 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 all merchandise (including Product), materials (including raw materials), parts, components (including component materials and component raw materials), supplies, packing and shipping materials, work in process and finished products, technology (including software, systems, and solutions), and all elements needed to fulfill obligations related to Product under any Manufacturing Agreements including such

inventory as is temporarily out of a Credit Party's or Subsidiary's custody or possession or in transit (prior to title having transferred) and including any returned goods and any documents of title representing any of the above.

"**Investment**" means (a) any beneficial ownership interest in any Person (including Equity Interests), (b) any Acquisition or (c) the making of any advance, loan, extension of credit or capital contribution in or to, any Person.

"**IP Agreements**" means, collectively, (a) that certain Intellectual Property Security Agreement entered into by and among Borrower and the Collateral Agent, dated as of the Tranche A Closing Date, and (b) any Intellectual Property Security Agreement entered into by and among Borrower, any relevant Credit Party and the Collateral Agent after the Tranche A Closing Date in accordance with the Loan Documents.

"**IP Ancillary Rights**" means, with respect to any Copyright, Trademark, Patent, Software, trade secrets or trade secret rights, including any rights to unpatented inventions, know-how, show-how and operating manuals, all income, royalties, proceeds and liabilities at any time due or payable or asserted under or with respect to any of the foregoing or otherwise with respect thereto, including all rights to sue or recover at law or in equity for any past, present or future infringement, misappropriation, dilution, violation or other impairment thereof, and, in each case, all rights to obtain any other intellectual property right ancillary to any Copyright, Trademark, Patent, Software, trade secrets or trade secret rights.

"**IRC**" means the Internal Revenue Code of 1986.

"**IRS**" is defined in Section 2.6(d)(i).

"**Knowledge**" means, with respect to any Person, the actual knowledge, after reasonable investigation, of the Responsible Officers of such Person.

"**Lender**" means each Person signatory hereto as a "Lender" and its successors and assigns.

"**Lender Expenses**" means, collectively:

(a) all reasonable and documented out-of-pocket fees and expenses of the Collateral Agent and, as applicable, each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel, manufacturing consultants or intellectual property experts (it being agreed that such consultant or expert fees, expenses and disbursements shall be limited to one such consultant and one such expert for the Collateral Agent, Lenders and such Related Parties, taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Person) therefor, (i) incurred in connection with developing, preparing, negotiating, syndicating, executing and delivering, and interpreting, investigating and administering, the Loan Documents (or any term or provision thereof), any commitment, proposal letter, letter of intent or term sheet therefor or any other document prepared in connection therewith, (ii) incurred in connection with the consummation and administration of any transaction contemplated therein, (iii) incurred in connection with the performance of any obligation or agreement contemplated therein, (iv) incurred in connection with any modification or amendment of any term or provision of, or any supplement to, or the termination (in whole or in part) of, any Loan Document, (v) incurred in connection with internal audit reviews and Collateral audits, or (vi) otherwise incurred with respect to the Credit Parties in connection with the Loan Documents, including any filing or recording fees and expenses; and

(b) all reasonable and documented out-of-pocket costs and expenses incurred by the Collateral Agent and each Lender (and their respective successors and assigns) and their respective Related Parties (including the reasonable and documented out-of-pocket fees, expenses and disbursements of any legal counsel therefor for the Collateral Agent, Lenders and such Related Parties taken as a whole and in the case of an actual or perceived conflict of interest, one additional legal counsel for such affected Indemnified Person) in connection with (i) any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a "work-out," (ii) the enforcement or protection or preservation of any right or remedy under any Loan Document, any Obligation, with respect to any of the Collateral or any other related right or remedy, or (iii) the commencement, defense, conduct of, intervention in, or the taking of any other action with respect to, any proceeding (including any Insolvency Proceeding) related to any Credit Party or any Subsidiary of any Credit Party in respect of any Loan Document or Obligation, or otherwise in connection with any Loan Document or Obligation (or the response to and preparation

for any subpoena or request for document production relating thereto); provided, that, except with respect to an Insolvency Proceeding, to the extent such enforcement entails the Collateral Agent or any Lender commencing legal action of any sort against Borrower, any fees and expenses incurred in connection therewith shall only be payable by Borrower to the extent the Collateral Agent or any Lender is successful in such legal action.

"**Lender Transfer**" is defined in Section 11.1(b)(i).

"**Lien**" means a claim, mortgage, deed of trust, levy, charge, pledge, security interest or other encumbrance of any kind or assignment for security purposes, whether voluntarily incurred or arising by operation of law or otherwise against any property or assets.

"**Loan Documents**" means, collectively, this Agreement, the Disclosure Letter, the Term Loan Notes, the Security Agreement, the IP Agreements, the Perfection Certificate, any Control Agreement, any Collateral Access Agreement, any other Collateral Document, any guaranties executed by a Guarantor in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties in connection with this Agreement, and any other present or future agreement between or among a Credit Party, the Collateral Agent and any Lender in connection with this Agreement, including in each case, for the avoidance of doubt, any annexes, exhibits or schedules thereto.

"**Managed Care Plans**" means all health maintenance organizations, preferred provider organizations, individual practice associations, competitive medical plans and similar arrangements.

"**Manufacturing Agreement**" means, with respect to (x) Product described in clauses (a), (b) and (c) of the definition thereof and (y) Product described in clause (d) of the definition thereof which (as of any date of determination) generates [***] percent ([***]%) or more of the net consolidated product revenue of Borrower and its Subsidiaries (consistent with the calculation of the same in Borrower's financial statements), (i) any contract or agreement entered into on or prior to the Effective Date by any Credit Party or any of its Subsidiaries with third parties for the commercial manufacture or in-bound supply in the Territory of such Product for any indication or for the commercial manufacture or in-bound supply of the active pharmaceutical ingredient incorporated therein that was included in the new drug application for such Product (with the Manufacturing Agreements in effect as of the Effective Date being set forth in Schedule 12.1 of the Disclosure Letter) or BLA (including a biosimilar application), including the Daewoong Agreement, and (ii) any future contract or agreement entered into after the Effective Date by any Credit Party or any of its Subsidiaries with third parties for the commercial manufacture or supply in the Territory of such Product for any indication or for the commercial manufacture or supply of the active ingredient incorporated therein.

"**Margin Stock**" means "margin stock" within the meaning of Regulations U and X of the Federal Reserve Board as now and from time-to-time hereafter in effect.

"**Material Adverse Change**" means any material adverse change in or effect on: (i) the business, financial condition, properties or assets (including all or any portion of the Collateral), liabilities (actual or contingent), operations, prospects or performance of the Credit Parties, taken as a whole, since December 31, 2020; (ii) without limiting the generality of clause (i) above, (x) the rights of the Credit Parties, taken as a whole, in or related to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory, or (y) the rights of any Credit Party or any of its Subsidiaries under, or anticipated revenues or liabilities arising from, any of the Material Contracts; (iii) the ability of the Credit Parties, taken as a whole, to fulfill the payment or performance obligations under this Agreement or any other Loan Document; or (iv) the binding nature or validity of, or the ability of the Collateral Agent or any Lender to enforce, the Loan Documents or any of its rights or remedies under the Loan Documents (except to the extent directly resulting from any act or omission to act on the part of the Collateral Agent or any Lender). Notwithstanding the foregoing, none of the following events shall, in and of itself, constitute a Material Adverse Change: solely with respect to any New Product or any Material Contract or other properties or assets relating solely thereto, (a) adverse results or delays in any nonclinical or clinical trial, (b) the failure to achieve any clinical or non-clinical trial goals or objectives, including without limitation, the failure to demonstrate the desired safety or efficacy of any drug or companion diagnostic, (c) the denial, delay or limitation of approval of, or taking of any other

regulatory action by, the FDA (or foreign equivalents) or any other Governmental Authority, or (d) a change in or discontinuation of a strategic partnership or other collaboration or license arrangement.

"**Material Contract**" means any contract or other arrangement to which any Credit Party or any of its Subsidiaries is a party (other than the Loan Documents) or by which any of its assets or properties are bound, in each case, relating to the research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory, for which the breach of, default or nonperformance under, cancellation or termination of or the failure to renew could reasonably be expected to result in a Material Adverse Change. For the avoidance of doubt, each Manufacturing Agreement and each Current Company IP Agreement is a Material Contract.

"**Material Marketing Authorization**" means a marketing authorization with respect to the Product in the United Kingdom or European Union (and as to the European Union, excluding, for the avoidance of doubt, authorizations granted in its individual member states).

"**Medicaid**" means the health care assistance program established by Title XIX of the SSA (42 U.S.C. 1396 et seq.).

"**Medicare**" means the health insurance program for the aged and disabled established by Title XVIII of the SSA (42 U.S.C. 1395 et seq.).

"**Mortgage**" means any deed of trust, leasehold deed of trust, mortgage, leasehold mortgage, deed to secure debt, leasehold deed to secure debt or other document creating a Lien on real estate or any interest in real estate.

"**Multiemployer Plan**" means a multiemployer plan within the meaning of Section 4001(a)(3) or Section 3(37) of ERISA (a) to which Borrower or its Subsidiaries or their respective ERISA Affiliates is then making or accruing an obligation to make contributions; (b) to which Borrower or its Subsidiaries or their respective ERISA Affiliates has within the preceding five (5) plan years made contributions; or (c) with respect to which Borrower or its Subsidiaries could incur material liability.

"**New Product**" means any pharmaceutical, biopharmaceutical or therapeutic product (including any companion diagnostic or other medical device) acquired, commercialized, sold or out-licensed by any Credit Party or its Subsidiaries at any time after the Tranche A Closing Date, other than the products described in clauses (a), (b) and (c) of the definition of "Product".

"**Note Register**" is defined in Section 2.8(a).

"**Obligations**" means, collectively, the Credit Parties' obligations to pay when due any and all debts, principal, interest, Lender Expenses, the Additional Consideration, the Exit Consideration, the Prepayment Premium and any other fees, expenses, indemnities and amounts any Credit Party owes any Lender or the Collateral Agent now or later, under this Agreement or any other Loan Document, including interest accruing after Insolvency Proceedings begin (whether or not allowed), and to perform Borrower's duties under the Loan Documents.

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

"**Operating Documents**" means, collectively with respect to any Person, such Person's formation and constitutional documents and, (a) if such Person is a corporation, its bylaws (or similar organizational regulations), (b) if such Person is an exempted company or a company limited by shares, its memorandum and articles of association (or similar organizational regulations), (c) if such Person is a limited liability company, its limited liability company agreement (or similar agreement), and (d) if such Person is a partnership, its partnership agreement (or similar agreement), in each case including all amendments, restatements, supplements and modifications thereto.

"**ordinary course of business**" means, in respect of any transaction involving any Person, the ordinary course of such Person's business, undertaken by such Person in good faith and not for purposes of evading any covenant, prepayment obligation or restriction in any Loan Document.

"**Other Connection Taxes**" means, with respect to any Lender, Taxes imposed as a result of a present or former connection between such Lender and the jurisdiction imposing such Tax (other than connections arising solely from such 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 any Loan Document, or sold or assigned an interest in any Term Loan or Loan Document).

"**Other Taxes**" means all present or future stamp, court or documentary, intangible, recording, filing, or similar Taxes that arise from any payment made hereunder, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to a Lender Transfer.

"**Participant Register**" is defined in Section 11.1(d).

"**Patents**" means all patents and patent applications (including any improvements, continuations, continuations-in-part, divisions, provisionals or any substitute applications), any patent issued with respect to any of the foregoing patent applications, any reissue, reexamination, renewal or patent term extension or adjustment (including any supplementary protection certificate) of any such patent, and any confirmation patent or registration patent or patent of addition based on any such patent, and all foreign and international counterparts of any of the foregoing. For the avoidance of doubt, patents and patent applications under this definition include individual patent claims and include all patents and patent applications filed with the U.S. Patent and Trademark Office or which could be nationalized in the United States.

"**Patriot Act**" is defined in Section 3.1(h).

"**Perfection Certificate**" is defined in Section 4.6.

"**Periodic Term SOFR Determination Day**" has the meaning specified in the definition of Term SOFR.

"**Permitted Acquisition**" means any Acquisition, so long as:

(a) no Default or Event of Default shall have occurred and be continuing as of, or could reasonably be expected to result from, the consummation of such Acquisition;

(b) the properties or assets being acquired or licensed, or the Person whose Equity Interests are being acquired, are useful in or engaged in, as applicable, (i) the same, similar or a related line of business as that then-conducted by Borrower or any of its Subsidiaries, or (ii) a line of business that is related or ancillary to or in furtherance of a line of business as that then-conducted by Borrower or any of its Subsidiaries

(c) in the case of any Asset Acquisition, any and all assets are being acquired or licensed in such Acquisition by a Credit Party and, within the timeframes expressly set forth in Section 5.12, such Credit Party shall have executed and delivered or authorized, as applicable, any and all joinders, security agreements, financing statements and any other documentation, and made such other deliveries, required by Section 5.12 or reasonably requested by the Collateral Agent in order to include such newly acquired or licensed assets within the Collateral, in each case to the extent required by Section 5.12;

(d) in the case of any Stock Acquisition, any and all Equity Interests are being acquired in such Acquisition directly by a Credit Party and, within the timeframes expressly set forth in Section 5.13, such Credit Party shall have complied with its obligations under Section 5.13, in each case to the extent such Equity Interests are subject thereto; and

(e) any Indebtedness or Liens assumed in connection with such Acquisition are otherwise permitted under Section 6.4 or 6.5, respectively.

"**Permitted Distributions**" means, in each case subject to Section 6.8 if applicable:

(a) dividends, distributions or other payments by any Wholly-Owned Subsidiary of Borrower on its Equity Interests to, or the redemption, retirement or purchase by any Wholly-Owned Subsidiary of Borrower of its Equity Interests from, Borrower or any other Wholly-Owned Subsidiary of Borrower;

(b) dividends, distributions or other payments by any non-Wholly-Owned Subsidiary on its Equity Interests to, or the redemption, retirement or purchase by any non-Wholly-Owned Subsidiary of its Equity Interests from, Borrower or any other Subsidiary or each other owner of such non-Wholly-Owned Subsidiary's Equity Interests based on their relative ownership interests of the relevant class of such Equity Interests;

(c) exchanges, redemptions or conversions by Borrower in whole or in part any of its Equity Interests for or into another class of its Equity Interests or rights to acquire its Equity Interests or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests;

(d) any such payments arising from a Permitted Acquisition or other Permitted Investment by Borrower or any of its Subsidiaries;

(e) the payment of dividends by Borrower solely in non-cash pay and non-redeemable capital stock (including, for the avoidance of doubt, dividends and distributions payable solely in Equity Interests);

(f) cash payments in lieu of the issuance of fractional shares arising out of stock dividends, splits or combinations or in connection with the exercise of warrants, options or other securities convertible into or exchangeable for Equity Interests;

(g) in connection with any Acquisition or other Investment by Borrower or any of its Subsidiaries, (i) the receipt or acceptance of the return to Borrower or any of its Subsidiaries of Equity Interests of Borrower constituting a portion of the purchase price consideration in settlement of indemnification claims, or as a result of a purchase price adjustment (including earn-outs or similar obligations) and (ii) payments or distributions to equity holders pursuant to appraisal rights required under Requirements of Law;

(h) the distribution of rights pursuant to any shareholder rights plan or the redemption of such rights for nominal consideration in accordance with the terms of any shareholder rights plan;

(i) dividends, distributions or payments on its Equity Interests by any Subsidiary to any Credit Party;

(j) dividends, distributions or payments on its Equity Interests by any Subsidiary that is not a Credit Party to any other Subsidiary that is not a Credit Party;

(k) purchases of Equity Interests of Borrower or its Subsidiaries in connection with the exercise of stock options by way of cashless exercise, or in connection with the satisfaction of withholding tax obligations;

(l) issuance to directors, officers, employees or contractors of Borrower of common stock of Borrower upon the vesting of restricted stock, restricted stock units, or other rights to acquire common stock of Borrower, in each case pursuant to plans or agreements approved by Borrower's Board of Directors or stockholders;

(m) the repurchase of issued and outstanding Equity Interests of Borrower; provided, however, that the aggregate payments made under this clause (m) do not exceed $[***];

(n) the repurchase, retirement or other acquisition or retirement for value of Equity Interests of Borrower or any of its Subsidiaries held by any future, present or former employee, consultant, officer or director (or

spouse, ex-spouse or estate of any of the foregoing or trust for the benefit of any of the foregoing or any lineal descendants thereof) of Borrower or any of its Subsidiaries pursuant to any management equity plan or stock option plan or any other management or employee benefit plan or agreement, or any stock subscription or shareholder agreement or employment agreement; provided, however, that the aggregate payments made under this clause (n) do not exceed in any calendar year the sum of (i) $[***] plus (ii) the amount of any payments received in such calendar year under key-man life insurance policies; and

(o) dividends or distributions on its Equity Interests by Borrower or any of its Subsidiaries payable solely in additional shares of its common stock.

"**Permitted Hedging Agreement**" means a Hedging Agreement entered into by Borrower or any of its Subsidiaries in the ordinary course of business solely in connection with foreign currency exchange, commodity exchange or interest rate hedging transactions and not for speculative purposes.

"**Permitted Indebtedness**" means:

(a) Indebtedness of the Credit Parties to Secured Parties under this Agreement and the other Loan Documents (which, for the avoidance of doubt, shall not include any Indebtedness under the Prior Loan Agreement);

(b) Indebtedness existing on the Effective Date and shown on Schedule 12.2 of the Disclosure Letter;

(c) accrued expenses and trade payables entered into in the ordinary course of business which are not more than [***] ([***]) days past due or subject to a bona fide dispute, and obligations to pay for services provided by employees and individual independent contractors in the ordinary course of business which are not more than [***] ([***]) days past due or subject to a bona fide dispute not to exceed $[***]in the aggregate at any one time outstanding;

(d) Indebtedness not to exceed $[***] in the aggregate at any time outstanding, consisting of (i) Indebtedness incurred to finance the purchase, construction, repair, or improvement of fixed assets and (ii) Capital Lease Obligations;

(e) unsecured Indebtedness in connection with trade credit, corporate credit cards, purchasing cards or bank card products;

(f) guarantees of Permitted Indebtedness;

(g) (x) Indebtedness assumed in connection with any Permitted Acquisition or Permitted Investment, so long as such Indebtedness (i) was not incurred in connection with, or in anticipation of, such Acquisition or Investment and (ii) is at all times Subordinated Debt, and (y) Indebtedness incurred in connection with any Permitted Acquisition or Permitted Investment to finance all or a portion of the consideration therefor, so long as such Indebtedness (i) does not exceed $[***]in the aggregate at any time outstanding and (ii) is at all times Subordinated Debt;

(h) Indebtedness of Borrower or any of its Subsidiaries with respect to letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments outstanding and to the extent secured, secured solely by cash or Cash Equivalents, in each case entered into in the ordinary course of business;

(i) Indebtedness owed: (i) by a Credit Party to another Credit Party; (ii) by a Subsidiary of Borrower that is not a Credit Party to another Subsidiary of Borrower that is not a Credit Party; (iii) by a Credit Party to a Subsidiary of Borrower that is not a Credit Party; or (iv) by a Subsidiary of Borrower that is not a Credit Party to a Credit Party, not to exceed $[***] in the aggregate per fiscal year, unless, no later than [***] days (or such longer period as the Collateral Agent may agree in its sole discretion) following any time such amount is surpassed, Borrower causes each applicable Subsidiary to execute and deliver to the Collateral Agent a joinder to the Security

Agreement (in the form attached thereto) and any relevant IP Agreement or other Collateral Documents, as applicable (each of which such joinder shall be a Loan Document);

(j) Indebtedness not to exceed $[***] in the aggregate at any time outstanding consisting of Contingent Obligations described in clause (a) of the definition thereof: (i) of a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder and are not prohibited hereunder) of another Credit Party; (ii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder and are not prohibited hereunder) of another Subsidiary of Borrower which is not a Credit Party; (iii) of a Subsidiary of Borrower which is not a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder and are not prohibited hereunder) of a Credit Party; or (iv) of a Credit Party of Permitted Indebtedness (or obligations that do not constitute Indebtedness hereunder and are not prohibited hereunder) of a Subsidiary of Borrower which is not a Credit Party;

(k) Indebtedness not to exceed $[***] in the aggregate at any time outstanding consisting of Contingent Obligations described in clause (b) of the definition thereof, incurred in connection with any Permitted Acquisition, Permitted Transfer or Permitted Investment, in each instance only if such Indebtedness is due and payable upon the occurrence of an event or the performance of an act (and not solely with the passage of time);

(l) Indebtedness of any Person that becomes a Subsidiary (or of any Person not previously a Subsidiary that is merged or consolidated with or into a Subsidiary in a transaction permitted hereunder) of Borrower after the Effective Date, or Indebtedness of any Person that is assumed after the Effective Date by any Subsidiary in connection with an acquisition of assets by such Subsidiary; provided, that all such Indebtedness is at all times Subordinated Debt;

(m) (i) Indebtedness with respect to workers' compensation claims, payment obligations in connection with health, disability or other types of social security benefits, unemployment or other insurance obligations, reclamation and statutory obligations or (ii) Indebtedness related to employee benefit plans, including annual employee bonuses, accrued wage increases and 401(k) plan matching obligations; in each case, incurred in the ordinary course of business;

(n) Indebtedness in respect of performance bonds, bid bonds, appeal bonds, statutory bonds, release bonds, surety bonds and completion guarantees and similar obligations arising in the ordinary course of business;

(o) Indebtedness in respect of netting services, overdraft protection and other cash management services, in each case in the ordinary course of business;

(p) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(q) Indebtedness consisting of guarantees resulting from endorsement of negotiable instruments for collection by any Credit Party in the ordinary course of business;

(r) unsecured Indebtedness incurred in connection with any items of Permitted Distributions in clause (m) of the definition of "Permitted Distributions";

(s) Subordinated Debt, not to exceed $[***] in the aggregate at any time outstanding;

(t) Indebtedness of Borrower in the form of a working capital or revolving loan facility with a maximum credit line of no more than $[***] (plus any ordinary course interest, fees and other amounts) at any time; provided, that, subject and pursuant to a subordination, intercreditor, or other similar agreement among the Collateral Agent, Borrower and the lender (or representative or agent thereof) under such facility, in form and substance reasonably satisfactory to the Collateral Agent and the lender (or representative or agent thereof) under such facility, such Indebtedness may be secured on a first-priority basis by Liens solely on (x) Collateral constituting (i) accounts receivable, (ii) finished product Inventory, (iii) all supporting obligations in respect of the foregoing and (iv) all proceeds of the foregoing, and (y) all other assets, other than Collateral, over which an accounts receivable-

based revolving lender would customarily have a first priority Lien to secure the obligations under such facility, and such Liens may be senior in rank, order of priority and enforcement to the security interests and Liens of the Collateral Agent in favor and for the benefit of Lenders and the other Secured Parties in any of such assets to secure the Obligations at all times until all of the obligations under such facility have been paid, performed or discharged in full and Borrower has no further right to obtain any extension of credit thereunder; provided, further, that no Subsidiary shall guarantee, or provide a Lien to secure, the obligations under such facility without the prior written consent of the Collateral Agent or Required Lenders (in its or their sole discretion);

(u) Permitted Hedging Agreements; and

(v) subject to the proviso immediately below, extensions, refinancings, renewals, modifications, amendments, restatements and, in the case of any items of Permitted Indebtedness in clause (b) of the definition thereof or Permitted Indebtedness constituting notes governed by an indenture, exchanges, of any items of Permitted Indebtedness in clauses (a) through (s) above, provided, that in the case of clauses (b) and (g) above, the principal amount thereof is not increased (other than by any reasonable amount of premium (if any), interest (including post-petition interest), fees, expenses, charges or additional or contingent interest reasonably incurred in connection with the same and the terms thereof).

"**Permitted Investments**" means:

(a) Investments (including Investments in Subsidiaries) existing on the Effective Date and shown on Schedule 12.3 of the Disclosure Letter, including any extensions, renewals or reinvestments thereof;

(b) Investments consisting of cash and Cash Equivalents;

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

(d) subject to Section 5.5, Investments consisting of deposit accounts or securities accounts;

(e) Investments in connection with Permitted Transfers;

(f) Investments consisting of (i) travel advances and employee relocation loans and other employee advances in the ordinary course of business, and (ii) loans to employees, officers or directors relating to the purchase of equity securities of Borrower pursuant to employee stock purchase plans or agreements approved by Borrower's Board of Directors;

(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 accounts receivable of, or prepaid royalties and other credit extensions or advances to, customers and suppliers who are not Affiliates, in the ordinary course of business; provided that this clause (h) shall not apply to Investments of any Credit Party in any of its Subsidiaries;

(i) joint ventures or strategic alliances consisting of the non-exclusive licensing of technology, the development of technology or the providing of technical support;

(j) Investments (i) consisting of or otherwise required in connection with a Permitted Acquisition (including the formation of any Subsidiary for the purpose of effectuating such Permitted Acquisition, the capitalization of such Subsidiary whether by capital contribution or intercompany loans to the extent otherwise permitted by the terms of this Agreement, related Investments in Subsidiaries necessary to consummate such Permitted Acquisition and the receipt of any non-cash consideration in such Permitted Acquisition), and (ii)

consisting of earnest money or escrow deposits required in connection with a Permitted Acquisition or other acquisition of properties or assets not otherwise prohibited hereunder;

(k) Investments constituting the formation of any Subsidiary for the purpose of consummating a merger or acquisition transaction permitted by Section 6.3(a)(i) through (iv) hereof, which such transaction is otherwise a Permitted Investment;

(l) Investments of any Person that (i) becomes a Subsidiary of Borrower (or of any Person not previously a Subsidiary of Borrower that is merged or consolidated with or into a Subsidiary of Borrower in a transaction permitted hereunder) after the Effective Date, or (ii) are assumed after the Effective Date by any Subsidiary of Borrower in connection with an acquisition of assets from such Person by such Subsidiary, in either case, in a Permitted Acquisition; provided, that in each case, any such Investment (x) exists at the time such Person becomes a Subsidiary of Borrower (or is merged or consolidated with or into a Subsidiary of Borrower) or such assets are acquired, (y) was not made in contemplation of or in connection with such Person becoming a Subsidiary of Borrower (or merging or consolidating with or into a Subsidiary of Borrower) or such acquisition of assets, and (z) could not reasonably be expected to result in a Default or an Event of Default;

(m) Investments arising as a result of the licensing of Intellectual Property in the ordinary course of business and not prohibited under this Agreement;

(n) Permitted Hedging Agreements;

(o) Investments by: (i) any Credit Party in any other Credit Party; (ii) any Subsidiary of Borrower which is not a Credit Party in another Subsidiary of Borrower which is not a Credit Party; (iii) any Subsidiary of Borrower which is not a Credit Party in any Credit Party; and (iv) any Credit Party in a Subsidiary of Borrower which is not a Credit Party, not to exceed $[***] in the aggregate at any time, unless, no later than [***] ([***]) days (or such longer period as the Collateral Agent may agree in its sole discretion) following any time such amount is surpassed, Borrower causes each applicable Subsidiary to execute and deliver to the Collateral Agent a joinder to the Security Agreement (in the form attached thereto) and any relevant IP Agreement or other Collateral Documents, as applicable (each of which such document, agreement or instrument shall be a Loan Document);

(p) Investments consisting of Asset Acquisitions of inventory, equipment and similar assets, in each case acquired in the ordinary course of business consistent with past practice;

(q) repurchases of capital stock of Borrower or any of its Subsidiaries deemed to occur upon the exercise of options, warrants or other rights to acquire capital stock of Borrower or such Subsidiary solely to the extent that shares of such capital stock represent a portion of the exercise price of such options, warrants or such rights;

(r) repurchases of Equity Interests of Borrower permitted by clause (m) of the definition of Permitted Distributions; and

(s) so long as no Default or Event of Default shall have occurred and be continuing or could reasonably be expected to result therefrom, any other Investments in an aggregate amount not to exceed $[***] per fiscal year;

provided, however, that, none of the foregoing Investments shall be a "Permitted Investment" if any Indebtedness or Liens assumed in connection with such Investment are not otherwise permitted under Section 6.4 or 6.5, respectively.

"**Permitted Licenses**" means, collectively: (a) any non-exclusive license or covenant not to sue in any geography within the Territory, of or with respect to any Intellectual Property; (b) any exclusive license or covenant not to sue as to any geography within the Territory other than the U.S. of or with respect to any Intellectual Property; (c) any non-exclusive grant in any geography within the Territory, or any exclusive grant as to any geography within

the Territory other than the U.S. of development, manufacturing, production, commercialization, marketing, co-promotion, distribution, sale, lease or similar commercial rights with respect to Product; and (d) any intercompany license or other similar arrangement (i) in any geography within the Territory between or among Credit Parties and (ii) in any geography within the Territory other than the U.S. between or among Credit Parties and their respective Subsidiaries. Notwithstanding the foregoing or any other provision of this Agreement, no Excluded License entered into after the Tranche A Closing Date shall be a "Permitted License" hereunder without the prior written consent of the Collateral Agent or the Required Lenders.

"**Permitted Liens**" means:

(a) Liens in favor and for the benefit of any Lender and the other Secured Parties securing the Obligations pursuant to any Loan Document;

(b) Liens existing on the Effective Date and set forth on Schedule 12.4 of the Disclosure Letter (which, for the avoidance of doubt, shall include the Liens in favor and for the benefit of any Lender and the other Secured Parties in connection with the Prior Loan Agreement);

(c) Liens for Taxes, assessments or governmental charges (i) which are not yet delinquent or (ii) which are being contested in good faith and by appropriate proceedings promptly instituted and diligently conducted; provided that adequate reserves therefor have been set aside on the books of the applicable Person and maintained in conformity with Applicable Accounting Standards, if required; provided, further, that in the case of a Tax, assessment or charge that has or may become a Lien against any Collateral, (x) such contest proceedings conclusively operate to stay the sale or forfeiture of any portion of any Collateral to satisfy such Tax, assessment or charge and (y) no notice of any such Lien has been filed or recorded under the IRC and the Treasury Regulations adopted thereunder;

(d) (i) Pledges or deposits made in the ordinary course of business (other than Liens imposed by ERISA) in connection with workers' compensation, payroll taxes, employment insurance, unemployment insurance, old-age pensions, or other similar social security legislation, (ii) pledges or deposits made in the ordinary course of business securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to Borrower or any of its Subsidiaries, (iii) subject to Section 6.2(b), statutory or common law Liens of landlords, (iv) Liens otherwise arising by operation of law in favor of the owner or sublessor of leased premises and confined to the property rented, (v) Liens that are restrictions on transfer of securities imposed by applicable securities laws, (vi) Liens resulting from a filing by a lessor as a precautionary filing for a true lease, (vii) pledges or deposits to secure performance of tenders, bids, leases, contracts, statutory or regulatory obligations, surety and appeal bonds, government contracts, performance and return-of-money bonds and other obligations of like nature, in each case other than for borrowed money and entered into in the ordinary course of business, and (viii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

(e) Liens arising from attachments or judgments, orders, or decrees in circumstances not constituting an Event of Default under either Section 7.4 or 7.7;

(f) Liens (including the right of set-off) in favor of banks or other financial institutions incurred on deposits made in accounts held at such institutions in the ordinary course of business; provided that such Liens (i) are not given in connection with the incurrence of any Indebtedness, (ii) relate solely to obligations for administrative and other banking fees and expenses incurred in the ordinary course of business in connection with the establishment or maintenance of such accounts and (iii) are within the general parameters customary in the banking industry;

(g) Liens that are contractual rights of set-off (i) relating to pooled deposit or sweep accounts of Borrower or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business or (ii) relating to purchase orders and other agreements entered into with customers of Borrower

or any of its Subsidiaries in the ordinary course of business, including vendors' liens to secure payment arising under Article 2 of the Code or similar provisions of Requirements of Law in the ordinary course of business, covering only the goods sold and securing only the unpaid purchase price for such goods and related expenses;

(h) Liens solely on any cash earnest money deposits made by Borrower or any of its Subsidiaries in connection with any Permitted Acquisition, Permitted Investment or other acquisition of assets or properties not otherwise prohibited under this Agreement;

(i) Liens existing on assets or properties at the time of its acquisition or existing on the assets or properties of any Person at the time such Person becomes a Subsidiary of Borrower, in each case after the Effective Date; provided that (i) neither such Lien was created nor the Indebtedness secured thereby was incurred in contemplation of such acquisition or such Person becoming a Subsidiary of Borrower, (ii) such Lien does not extend to or cover any other assets or properties (other than the proceeds or products thereof and other than after-acquired assets or properties subject to a Lien securing Indebtedness and other obligations incurred prior to such time and which Indebtedness and other obligations are permitted hereunder that requires, pursuant to its terms and conditions in effect at such time, a pledge of after-acquired assets or properties, it being understood that such requirement shall not be permitted to apply to any assets or properties to which such requirement would not have applied but for such acquisition), (iii) the Indebtedness and other obligations secured thereby is permitted under Section 6.4 hereof and (iv) such Liens are of the type otherwise permitted under Section 6.5 hereof;

(j) (i) Liens securing Indebtedness permitted under clause (t) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments and restatements of such Indebtedness permitted under clause (v) of the definition of "Permitted Indebtedness"), and (ii) Liens securing Indebtedness permitted under clause (d) of the definition of "Permitted Indebtedness" (including any extensions, refinancings, modifications, amendments or restatements of such Indebtedness permitted under clause (v) of the definition of "Permitted Indebtedness"); provided, that, such Lien does not extend to or cover any assets or properties other than those that are (x) subject to such Capital Lease Obligations or (y) acquired with or otherwise financed by such Indebtedness;

(k) servitudes, easements, rights-of-way, restrictions and other similar encumbrances on real property imposed by Requirements of Law and encumbrances consisting of zoning or building restrictions, easements, licenses, restrictions on the use of property or minor defects or other irregularities in title which, in the aggregate, are not material, and which do not in any case materially detract from the value of the property subject thereto or interfere with the ordinary conduct of the business of any Credit Party or any Subsidiary of any Credit Party;

(l) to the extent constituting a Lien, escrow arrangements securing indemnification obligations associated with any Permitted Acquisition or Permitted Investment;

(m) (i) leases or subleases of real property granted in the ordinary course of business (including, if referring to a Person other than a Credit Party or a Subsidiary, in the ordinary course of such Person's business), (ii) licenses, sublicenses, leases or subleases of personal property (other than Intellectual Property) granted to third parties in the ordinary course of business, in each case which do not interfere in any material respect with the operations of the business of any Credit Party or any of its Subsidiaries and do not prohibit granting the Collateral Agent a security interest therein for the benefit of the Lenders and other Secured Parties, and (iii) Permitted Licenses;

(n) Liens on cash or other current assets pledged to secure (i) Indebtedness in respect of corporate credit cards, purchasing cards or bank card products, (ii) Indebtedness in the form of letters of credit or bank guarantees or (iii) Permitted Hedging Agreements;

(o) Liens on any properties or assets of Borrower or any of its Subsidiaries which do not constitute Collateral under the Loan Documents, other than (i) any Company IP that does not constitute Collateral under the Loan Documents but is related to any research, development, manufacture, production, use, commercialization,

marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory and (ii) Equity Interests of any Subsidiary;

(p) Liens on any properties or assets of Borrower or any of its Subsidiaries imposed by law or regulation which were incurred in the ordinary course of business, including landlords', carriers', warehousemen's, mechanics', materialmen's, contractors', suppliers of materials', architects' and repairmen's Liens, and other similar Liens arising in the ordinary course of business; provided that such Liens (i) do not materially detract from the value of such properties or assets subject thereto or materially impair the use of such properties or assets subject thereto in the operations of the business of Borrower or such Subsidiary or (ii) are being contested in good faith by appropriate proceedings which conclusively operate to stay the sale or forfeiture of any portion of such properties or assets subject thereto, and for which adequate reserves have been set aside on the books of the applicable Person and maintained in conformity with Applicable Accounting Standards, if required;

(q) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or any of its Subsidiaries in the ordinary course of business;

(r) subject to the provisos immediately below, the modification, replacement, extension or renewal of the Liens described in clauses (a) through (q) above; provided, however, that any such modification, replacement, extension or renewal must (i) be limited to the assets or properties encumbered by the existing Lien (and any additions, accessions, parts, improvements and attachments thereto and the proceeds thereof) and (ii) not increase the principal amount of any Indebtedness secured by the existing Lien (other than by any reasonable premium or other reasonable amount paid and fees and expenses reasonably incurred in connection therewith); provided, further, that to the extent any of the Liens described in clauses (a) through (q) above secure Indebtedness of a Credit Party, such Liens, and any such modification, replacement, extension or renewal thereof, shall constitute Permitted Liens if and only to the extent that such Indebtedness is permitted under Section 6.4 hereof;

(s) Liens arising out of any Collaboration Transaction that constitutes a Permitted Acquisition hereunder and are not otherwise prohibited under this Agreement; and

(t) other Liens securing obligations not prohibited under this Agreement in an aggregate amount not to exceed $[***] in the aggregate at any time.

"**Permitted Negative Pledges**" means:

(a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement entered into in the ordinary course of business;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each relevant agreement, document or instrument if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;

(e) prohibitions or limitations imposed by Requirements of Law;

(f) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;

(g) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any agreement relating to any Permitted Transfer pending the consummation of such Permitted Transfer;

(h) customary provisions in shareholders' agreements, joint venture agreements, Operating Documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(i) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(j) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;

(l) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(m) prohibitions or limitations imposed by any Loan Document;

(n) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(o) limitations imposed with respect to any license acquired in a Permitted Acquisition;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, including with respect to any Collaboration Transaction that constitutes a Permitted Acquisition hereunder, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clause (d) of the definition of "Permitted Indebtedness";

(r) RESERVED;

(s) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (r) above, except

to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

"**Permitted Subsidiary Distribution Restrictions**" means, in each case notwithstanding Section 6.8:

(a) prohibitions or limitations with regard to specific properties or assets encumbered by Permitted Liens, if and only to the extent each such prohibition or limitation applies only to such properties or assets;

(b) prohibitions or limitations set forth in any lease, license or other similar agreement entered into in the ordinary course of business;

(c) prohibitions or limitations relating to Permitted Indebtedness, in the case of each relevant agreement, document or instrument if and only to the extent such prohibitions or limitations, taken as a whole, are not materially more restrictive than the prohibitions and limitations set forth in this Agreement and the other Loan Documents, taken as a whole (as reasonably determined by a Responsible Officer of Borrower in good faith);

(d) customary provisions restricting assignments, subletting, sublicensing or other transfer of properties or assets subject thereto set forth in leases, subleases, licenses (including Permitted Licenses) and other similar agreements that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such restriction applies only to the properties or assets subject to such leases, subleases, licenses or agreements, and customary provisions restricting assignment, pledges or transfer of any agreement entered into in the ordinary course of business;

(e) prohibitions or limitations on the transfer or assignment of any properties, assets or Equity Interests set forth in any agreement entered into in the ordinary course of business that is not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to such properties, assets or Equity Interests;

(f) prohibitions or limitations imposed by Requirements of Law;

(g) prohibitions or limitations that exist as of the Effective Date under Indebtedness existing on the Effective Date;

(h) customary prohibitions or limitations arising in connection with any Permitted Transfer or contained in any agreement relating to any Permitted Transfer pending the consummation of such Permitted Transfer;

(i) customary provisions in shareholders' agreements, joint venture agreements, Operating Documents or similar binding agreements relating to, or any agreement evidencing Indebtedness of, any joint venture entity or non-Wholly-Owned Subsidiary and applicable solely to such joint venture entity or non-Wholly-Owned Subsidiary and the Equity Interests issued thereby;

(j) customary net worth provisions set forth in real property leases entered into by Subsidiaries of Borrower, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(k) customary net worth provisions set forth in customer agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document, so long as such net worth provisions could not reasonably be expected to impair the ability of Borrower or its Subsidiaries to meet their ongoing obligations (as reasonably determined by a Responsible Officer of Borrower in good faith);

(l) restrictions on cash or other deposits (including escrowed funds) imposed by agreements entered into in the ordinary course of business that are not otherwise prohibited under this Agreement or any other Loan Document;

(m) prohibitions or limitations set forth in any agreement in effect at the time any Person becomes a Subsidiary (but not any amendment, modification, restatement, renewal, extension, supplement or replacement expanding the scope of any such restriction or condition); provided that such agreement was not entered into in contemplation of such Person becoming a Subsidiary and each such prohibition or limitation does not apply to Borrower or any other Subsidiary (other than such Person and any other Person that is a Subsidiary of such first Person at the time such first Person becomes a Subsidiary);

(n) prohibitions or limitations imposed by any Loan Document;

(o) customary provisions set forth in joint venture agreements or agreements governing minority investments that are not otherwise prohibited under this Agreement or any other Loan Document, if and only to the extent each such prohibition or limitation applies only to the joint venture entity or minority investment that is the subject of such agreement;

(p) customary provisions restricting assignments or other transfer of properties or assets subject thereto set forth in any agreement entered into in the ordinary course of business, if and only to the extent each such restriction applies only to the properties or assets subject to such agreement;

(q) prohibitions or limitations imposed by any agreement evidencing any Permitted Indebtedness of the type described in any of clause (d) of the definition of "Permitted Indebtedness"; and

(r) prohibitions or limitations imposed by any amendments, modifications, restatements, renewals, extensions, supplements or replacements of any of the agreements referred to in clauses (a) through (q) above, except to the extent that any such amendment, modification, restatement, renewal, extension, supplement or replacement expands the scope of any such prohibition or limitation.

"**Permitted Transfers**" means:

(a) Transfers of any properties or assets which do not constitute Collateral under the Loan Documents, other than any Company IP that does not constitute Collateral under the Loan Documents but is related to any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory;

(b) Transfers of Inventory in the ordinary course of business;

(c) Transfers of surplus, damaged, worn out or obsolete equipment that is, in the reasonable judgment of Borrower exercised in good faith, no longer economically practicable to maintain or useful in the ordinary course of business, and Transfers of other properties or assets in lieu of any pending or threatened institution of any proceedings for the condemnation or seizure of such properties or assets or for the exercise of any right of eminent domain;

(d) Transfers made in connection with Permitted Liens, Permitted Investments or transaction permitted under Section 6.3(a) hereof;

(e) Transfers of cash and Cash Equivalents made in connection with Permitted Distributions or otherwise in the ordinary course of business for equivalent value and in a manner that is not prohibited under this Agreement or the other Loan Documents;

(f) Transfers (i) between or among Credit Parties, provided that, with respect to any properties or assets constituting Collateral under the Loan Documents, any and all steps as may be required to be taken in order to

create and maintain a first priority security interest in and Lien upon such properties and assets in favor of the Collateral Agent for the benefit of Lenders and the other Secured Parties are taken contemporaneously with the completion of any such Transfer, and (ii) between or among non-Credit Parties;

(g) the sale or issuance of Equity Interests of any Subsidiary of Borrower to any Credit Party or Subsidiary, provided, that any such sale or issuance by a Credit Party shall be to another Credit Party;

(h) the discount without recourse or sale or other disposition of unpaid and overdue accounts receivable arising in the ordinary course of business in connection with the compromise, collection or settlement thereof and not part of a financing transaction;

(i) any abandonment, cancellation, non-renewal or discontinuance of use or maintenance of Company IP that Borrower reasonably determines in good faith (i) is no longer economically practicable to maintain or useful in the ordinary course of business and that (ii) could not reasonably be expected to be adverse to the rights, remedies and benefits available to, or conferred upon, the Collateral Agent or any Lender under any Loan Document in any material respect;

(j) Transfers by Borrower or any of its Subsidiaries pursuant to any Permitted License; and

(k) intercompany licenses or grants of rights of distribution, co-promotion or similar commercial rights (i) between or among Credit Parties or (ii) between or among Credit Parties, on the one hand, and Subsidiaries that are not Credit Parties, on the other hand, entered into prior to the Effective Date, and in each case of sub-clause (i) and (ii) above, renewals, replacements and extensions thereof (including additional licenses or grants in relation to new territories) on comparable terms in the ordinary course of business;

(l) any involuntary loss, damage or destruction of property or any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property;

(m) the leasing or subleasing of assets of any Credit Party or any of its Subsidiaries in the ordinary course of business, in each case not otherwise prohibited hereunder (including under Section 6.1 hereof);

(n) dispositions of Investments in joint ventures to the extent required by, or otherwise pursuant to customary buy/sell arrangements set forth in, joint venture agreements or similar agreements that in each case is not otherwise prohibited under this Agreement or any other Loan Document;

(o) Transfers of any properties or assets which do not constitute Collateral under the Loan Documents made in connection with any Collaboration Transaction that constitutes a Permitted Acquisition hereunder and is not otherwise prohibited under this Agreement; and

(p) other Transfers of properties or assets, including Collateral, for fair market value; provided, however, in each case, such properties or assets are not required in connection with, or otherwise material to, any research, development, manufacture, production, use, commercialization, marketing, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory.

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

"**Personal Data**" means information protected as "personal data," "personal information," "personally identifiable information," "protected health information," "medical information," "identifiable private information," or any similar terms under applicable Data Protection Laws.

"**Personal Data Breach**" is defined in Section 4.22(b).

"**PHSA**" is defined in Section 4.19(b).

"PIPEDA" means the Canada Personal Information Protection and Electronic Documents Act, including any applicable Canadian provincial privacy, security, or breach notification laws.

"**Plan**" means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the IRC or Section 302 of ERISA which is maintained or contributed to by Borrower or its Subsidiaries or their respective ERISA Affiliates or with respect to which Borrower or its Subsidiaries have any liability (including under Section 4069 of ERISA).

"**Prepayment Premium**" means the Tranche A Prepayment Premium, Tranche B Prepayment Premium, or the Tranche C Prepayment Premium (as applicable) or any combination thereof, as the context dictates.

"**Prior Effective Date**" is defined in the preamble hereof.

"**Product**" means, collectively, (a) JEUVEAU® (prabotulinumtoxinA-xvfs) for injection, for intramuscular use, (b) any further indications approved by FDA or foreign equivalent for Borrower's proprietary 900 kDa purified botulinum toxin type A formulation (including prabotulinumtoxinA-xvfs), (c) any successor to prabotulinumtoxinA-xvfs (including JEUVEAU®), and (d) any other pharmaceutical, biopharmaceutical or therapeutic product (including any companion diagnostic or other medical device) acquired, commercialized, sold or out-licensed by any Credit Party or its Subsidiaries at any time after the Effective Date.

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

"**Regulatory Agency**" means a U.S. or foreign Governmental Authority with responsibility for the approval of the marketing and sale of pharmaceuticals or other regulation of pharmaceuticals, or otherwise having authority to regulate Product, including the FDA and CDC.

"**Regulatory Approval**" means all approvals, product or establishment licenses, registrations or authorizations of any Regulatory Agency necessary for the manufacture, use, import, export, storage, transport, offer for sale, or distribution or sale of Product.

"**Regulatory Submission Material**" means all nonpublic regulatory filings, submissions, approvals, and authorizations related to any research, development, manufacture, production, use, commercialization, marketing, post-approval monitoring, labeling, reporting, importing, storage, transport, offer for sale, distribution or sale of Product in the Territory, including all data and information provided in, and used to develop, any of the foregoing.

"**Related Parties**" means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection, escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

"**Relevant Governmental Body**" means the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto.

"**Required Lenders**" means, (a) prior to the Tranche A Closing Date, Lenders obligated with respect to greater than fifty percent (50%) of the Term Loan Commitments and (b), as of any date of determination thereafter,

Lenders representing greater than fifty percent (50%) of the principal amount of the Term Loans outstanding as of such date.

"**Requirements of Law**" means, as to any Person, the organizational or governing documents of such Person, and any law (statutory or common), treaty, order, policy, rule or regulation or determination of an arbitrator or a court or other Governmental Authority (including Health Care Laws, Data Protection Laws, FDA Laws and DEA Laws, and all applicable statutes, rules, regulations, standards, guidelines, policies and orders administered or issued by any foreign Governmental Authority) in each case, applicable to and binding upon such Person or any of its assets or properties or to which such Person or any of its assets or properties are subject, including, with respect to Borrower, the rules or requirements of any applicable U.S. national securities exchange applicable to Borrower or any of its Equity Interests.

"**Responsible Officers**" means, with respect to any Credit Party, collectively, each of the President, Chief Executive Officer, Chief Financial Officer, Chief Medical Officer, Chief Marketing Officer, Executive Vice President, Corporate Development, and Head of Research and Development of such Credit Party or, in each case, if none, of Borrower.

"**Restricted License**" means any material license or other material agreement of the kind or nature subject or purported to be subject from time to time to a Lien under any Collateral Document, with respect to which a Credit Party is the licensee, (a) that prohibits or otherwise restricts such Credit Party from granting a security interest in such Credit Party's interest in such license or agreement in a manner enforceable under Requirements of Law or (b) for which a breach of or default under could reasonably be expected to interfere with the Collateral Agent's or any Lender's right to sell any Collateral in furtherance of the exercise by the Collateral Agent or any Lender of its rights under the Loan Documents or its remedies in respect of the Collateral pursuant to the Collateral Documents.

"**Sanctioned Country**" means, at any time, a country or territory which is itself the subject or target of comprehensive Sanctions (currently, those portions of the Donetsk People's Republic and the Luhansk People's Republic regions (and such other regions) of Ukraine over which any Sanctions authority imposes comprehensive Sanctions, Crimea, Cuba, Iran, Syria and North Korea).

"**Sanctioned Person**" means an individual or entity that is, or that is fifty percent (50.0%) or more owned or otherwise controlled by individuals or entities that are, (i) the target of Sanctions or (ii) located, organized or resident in a Sanctioned Country.

"**Sanctions**" means, collectively, any economic, trade or financial sanctions or restrictive measures administered and enforced by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, or His Majesty's Treasury.

"**SEC**" shall mean the Securities and Exchange Commission and any analogous Governmental Authority.

"**Secretary's Certificate**" means, with respect to any Person, a certificate of such Person executed by its Secretary, authorized signatory or director certifying as to the various matters set forth therein.

"**Section 5 of the FTC Act**" means the Section 5(a) of the U.S. Federal Trade Commission Act (15 U.S.C. § 45), which prohibits unfair and deceptive acts or practices in or affecting commerce and serves as the primary basis for U.S. Federal Trade Commission authority on privacy and security.

"**Secured Parties**" means each Lender, each other Indemnified Person and each other holder of any Obligation of a Credit Party.

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

"**Security Agreement**" means the Guaranty and Security Agreement, dated as of the Tranche A Closing Date, by and among the Credit Parties and the Collateral Agent, in form and substance substantially similar to Exhibit C attached hereto or in such form or substance as the Credit Parties and the Collateral Agent may otherwise agree.

"**Sensitive Information**" means, collectively, (a) any Personal Data that is subject to any Data Protection Law(s), (b) any information in which Borrower or any of its Subsidiaries have IP Ancillary Rights or any other Intellectual Property rights (including Company IP), (c) any information with respect to which Borrower or any of its Subsidiaries have contractual non-disclosure obligations, and (d) nonpublic Regulatory Submission Materials.

"**SOFR**" means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

"**SOFR Administrator**" means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

"**Software**" means "Software", as such term is defined in the Security Agreement.

"**Solvent**" means, with respect to any Person as of any date of determination, that, as of such date, (a) the value of the assets (including goodwill minus disposition costs) of such Person (both at fair value and present fair saleable value), on a going concern basis, is greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person, (b) such Person is able to generally pay all liabilities (including trade debt) of such Person as such liabilities become absolute and mature in the ordinary course of business and (c) such Person does not have unreasonably small capital after giving due consideration to the prevailing practice in the industry in which it is engaged or will be engaged. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"**SSA**" means the Social Security Act of 1935, codified at Title 42, Chapter 7, of the United States Code.

"**Stock Acquisition**" means the purchase or other acquisition by Borrower or any of its Subsidiaries of any of the Equity Interests (by merger, stock purchase or otherwise) in any other Person.

"**Subordinated Debt**" means any Indebtedness in the form of or otherwise constituting term debt incurred by any Credit Party or any Subsidiary thereof (including any Indebtedness incurred in connection with any Acquisition or other Investment) that (in each case, except as otherwise agreed by the Required Lenders in their sole discretion): (a) is subordinated in right of payment to the Obligations at all times until all of the Obligations have been paid, performed or discharged in full and Borrower has no further right to obtain any Credit Extension hereunder pursuant to a subordination, intercreditor or other similar agreement that is in form and substance reasonably satisfactory to the Collateral Agent (which agreement shall include turnover provisions that are reasonably satisfactory to the Collateral Agent); (b) except as permitted by clause (d) below, is not subject to scheduled amortization, redemption (mandatory), sinking fund or similar payment and does not have a final maturity, in each case, before a date that is at least [***] ([***]) days following the Term Loan Maturity Date; (c) does not include covenants (including financial covenants) and agreements (excluding agreements with respect to maturity, amortization, pricing and other economic terms) that, taken as a whole, are more restrictive or onerous on the Credit Parties in any material respect than the comparable covenants and agreements, taken as a whole, in the Loan Documents (as reasonably determined by a Responsible Officer of Borrower in good faith); (d) is not subject to repayment or prepayment, including pursuant to a put option exercisable by the holder of any such Indebtedness, prior to a date that is at least [***] ([***]) days following the final maturity thereof except (i) in the case of an event of default or change of control (or, in each case, the equivalent thereof, however described) or (ii) in connection with the conversion of such Subordinated Debt into Equity Interests other than Disqualified Equity Interests; and (e) does not provide or otherwise include provisions having the effect of providing that a default or event of default (or the equivalent thereof, however described) under or in respect of such Indebtedness shall exist, or such Indebtedness shall otherwise become due prior to its scheduled maturity or the holder or holders thereof or any trustee or agent on

its or their behalf shall be permitted (with or without the giving of notice, the lapse of time or both) to cause any such Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in any such case upon the occurrence of a Default or Event of Default hereunder unless and until the Obligations have been declared, or have otherwise automatically become, immediately due and payable pursuant to Section 8.1(a).

"**Subsidiary**" means, with respect to any Person, a corporation, partnership, limited liability company or other entity of which more than fifty percent (50.0%) of whose shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors (or similar body, if applicable) of such corporation, partnership or other entity are at the time owned, directly or indirectly through one or more intermediaries, or both, by such Person. Unless the context otherwise requires, each reference to a Subsidiary herein shall be a reference to a Subsidiary of a Credit Party.

"**Systems**" is defined in Section 4.22(a).

"**Tax**" means any present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

"**Term Loan**" means each of the Tranche A Loan, Tranche B Loan and Tranche C Loan, as applicable, and "**Term Loans**" means, collectively, the Tranche A Loan, Tranche B Loan and Tranche C Loan.

"**Term Loan Commitment**" mean each of the Tranche A Loan Commitment, the Tranche B Loan Commitment and the Tranche C Loan Commitment, as applicable, and "**Term Loan Commitments**" means, collectively, the Tranche A Loan Commitment, Tranche B Loan Commitment and the Tranche C Loan Commitment.

"**Term Loan Maturity Date**" means the 5th-year anniversary of the Tranche A Closing Date.

"**Term Loan Note**" means the Tranche A Note, the Tranche B Note or the Tranche C Note (as applicable), or any combination thereof, as the context dictates.

"**Term Loan Rate**" is defined in Section 2.3(a)(i).

"**Term SOFR**" means, for any day in any calendar month, the Term SOFR Reference Rate for a tenor of three (3) months to the applicable Interest Period on the day (such day, the "**Periodic Term SOFR Determination Day**") that is two (2) U.S. Government Securities Business Days' prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day; provided, further, that if Term SOFR determined as provided above (including pursuant to the proviso above) shall ever be less than the Floor, then Term SOFR shall be deemed to be the Floor.

"**Term SOFR Administrator**" means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Collateral Agent in its reasonable discretion).

"**Term SOFR Reference Rate**" means the forward-looking term rate based on SOFR.

"**Territory**" means anywhere in the world.

"**Third Party IP**" is defined in Section 4.6(k).

"**Trademarks**" means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, service marks, elements of package or trade dress of goods or services, logos and other source or business identifiers, together with the goodwill associated therewith, including all registrations and recordings thereof, and all applications in connection therewith, in the United States Patent and Trademark Office or in any similar office or agency of the United States or any state thereof or in any similar office or agency anywhere in the world in which foreign counterparts are registered or issued, and (b) all renewals thereof.

"**Tranche A Additional Consideration**" is defined in Section 2.7(a).

"**Tranche A Closing Date**" means the date on which the Tranche A Loan is advanced by Lenders, which is the Effective Date.

"**Tranche A Commitment**" means, with respect to any Lender, the commitment of such Lender to make the Credit Extensions relating to the Tranche A Loan on the Tranche A Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto.

"**Tranche A Exit Consideration**" means, with respect to any prepayment of the Tranche A Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche A Loan pursuant to Section 8.1(a), or any repayment of the Tranche A Loan by Borrower pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), in any such case, an amount equal to the product of (a) the amount of any principal so prepaid or repaid, *multiplied by* (b) 0.02.

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

"**Tranche A Loan Amount**" means an original principal amount equal to One Hundred and Fifty Million Dollars ($150,000,000.00).

"**Tranche A Note**" means a promissory note in substantially the form attached hereto as Exhibit B-1, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche A Prepayment Premium**" means, with respect to any prepayment of the Tranche A Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 1st-year anniversary of the Tranche A Closing Date, 0.03;

(b) if such prepayment occurs on or after the 1st-year anniversary of the Tranche A Closing Date but prior to the 2nd-year anniversary of the Tranche A Closing Date, 0.02;

(c) if such prepayment occurs on or after the 2nd-year anniversary of the Tranche A Closing Date but prior to the 3rd-year anniversary of the Tranche A Closing Date, 0.01;

(d) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche A Closing Date but prior to the 4th-year anniversary of the Tranche A Closing Date, 0.005; and

(e) if such prepayment occurs on or after the 4th-year anniversary of the Tranche A Closing Date but prior to the Maturity Date, 0.00.

For the avoidance of doubt, no Tranche A Prepayment Premium shall be due and owing for any payment of principal of the Tranche A Loan made on the Term Loan Maturity Date.

"**Tranche B Additional Consideration**" is defined in Section 2.7(b).

"**Tranche B Closing Date**" means the date on which the Tranche B Loan is advanced by Lenders, which, as indicated in the Advance Request for the Tranche B Loan and subject to the satisfaction of the conditions precedent to the Tranche B Loan set forth in Section 3.2, Section 3.4, Section 3.5 and Section 3.6, shall be ninety (90) days (or such shorter period as may reasonably be agreed to by Lenders) following the delivery by Borrower to the Collateral Agent of a completed Advance Request Form for the Tranche B Loan and, in no event, later than March 31, 2027.

"**Tranche B Commitment**" means, with respect to any Lender, each commitment of such Lender to make the Credit Extensions relating to the Tranche B Loan on the Tranche B Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto; provided, however, that the parties hereto agree that each such commitment, and any obligations of such Lender hereunder with respect thereto, shall terminate automatically without any further action by any party hereto and be of no further force and effect if the Tranche B Closing Date does not occur on or before March 31, 2027 (in either of which case, for purposes of this Agreement, such Lender's Tranche B Commitment equals zero).

"**Tranche B Exit Consideration**" means, with respect to any prepayment of the Tranche B Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche B Loan pursuant to Section 8.1(a), or any repayment of the Tranche B Loan by Borrower pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), in any such case, an amount equal to the product of (a) the amount of any principal so prepaid or repaid, *multiplied by* (b) 0.02.

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

"**Tranche B Loan Amount**" means an original principal amount equal to no less than Twenty-Five Million Dollars ($25,000,000.00) and no greater than Fifty Million Dollars ($50,000,000.00).

"**Tranche B Note**" means a promissory note in substantially the form attached hereto as Exhibit B-2, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche B Prepayment Premium**" means, with respect to any prepayment of the Tranche B Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 1st-year anniversary of the Tranche B Closing Date, 0.03;

(b) if such prepayment occurs on or after the 1st-year anniversary of the Tranche B Closing Date but prior to the 2nd-year anniversary of the Tranche B Closing Date, 0.02;

(c) if such prepayment occurs on or after the 2nd-year anniversary of the Tranche B Closing Date but prior to the 3rd-year anniversary of the Tranche B Closing Date, 0.01;

(d) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche B Closing Date but prior to the 4th-year anniversary of the Tranche B Closing Date, 0.005; and

(e) if such prepayment occurs on or after the 4th-year anniversary of the Tranche B Closing Date but prior to the Maturity Date, 0.00.

For the avoidance of doubt, no Tranche B Prepayment Premium shall be due and owing for any payment of principal of the Tranche B Loan made on the Term Loan Maturity Date.

"**Tranche C Additional Consideration**" is defined in Section 2.7(c).

"**Tranche C Closing Date**" means the date on which the Tranche C Loan is advanced by Lenders, which, as indicated in the Advance Request for the Tranche C Loan and subject to the satisfaction of the conditions precedent to the Tranche C Loan set forth in Section 3.3, Section 3.4, Section 3.5 and Section 3.6, shall be ninety (90) days (or such shorter period as may reasonably be agreed to by Lenders) following the delivery by Borrower to the Collateral Agent of a completed Advance Request Form for the Tranche C Loan and, in no event, later than March 31, 2027.

"**Tranche C Commitment**" means, with respect to any Lender, each commitment of such Lender to make the Credit Extensions relating to the Tranche C Loan on the Tranche C Closing Date in the aggregate principal amount set forth opposite such Lender's name on Exhibit D attached hereto; provided, however, that the parties hereto agree that each such commitment, and any obligations of such Lender hereunder with respect thereto, shall terminate automatically without any further action by any party hereto and be of no further force and effect if the Tranche C Closing Date does not occur on or before March 31, 2027 (in either of which case, for purposes of this Agreement, such Lender's Tranche C Commitment equals zero).

"**Tranche C Exit Consideration**" means, with respect to any prepayment of the Tranche C Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Tranche C Loan pursuant to Section 8.1(a), or any repayment of the Tranche C Loan by Borrower pursuant to Section 2.2(b) or otherwise (including, for the avoidance of doubt, on the Term Loan Maturity Date), in any such case, an amount equal to the product of (a) the amount of any principal so prepaid or repaid, *multiplied by* (b) 0.02.

"**Tranche C Loan**" is defined in Section 2.2(a)(iii).

"**Tranche C Loan Amount**" means an original principal amount equal to no less than Twenty-Five Million Dollars ($25,000,000.00) and no greater than Fifty Million Dollars ($50,000,000.00).

"**Tranche C Note**" means a promissory note in substantially the form attached hereto as Exhibit B-3, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**Tranche C Prepayment Premium**" means, with respect to any prepayment of the Tranche C Loan by Borrower pursuant to Section 2.2(c) or as a result of the acceleration of the maturity of the Term Loans pursuant to Section 8.1(a), an amount equal to the product of the amount of any principal so prepaid, *multiplied by*:

(a) if such prepayment occurs prior to the 1st-year anniversary of the Tranche C Closing Date, 0.03;

(b) if such prepayment occurs on or after the 1st-year anniversary of the Tranche C Closing Date but prior to the 2nd-year anniversary of the Tranche C Closing Date, 0.02;

(c) if such prepayment occurs on or after the 2nd-year anniversary of the Tranche C Closing Date but prior to the 3rd-year anniversary of the Tranche C Closing Date, 0.01;

(d) if such prepayment occurs on or after the 3rd-year anniversary of the Tranche C Closing Date but prior to the 4th-year anniversary of the Tranche C Closing Date, 0.005; and

(e) if such prepayment occurs on or after the 4th-year anniversary of the Tranche C Closing Date but prior to the Maturity Date, 0.00.

For the avoidance of doubt, no Tranche C Prepayment Premium shall be due and owing for any payment of principal of the Tranche C Loan made on the Term Loan Maturity Date.

"**Transfer**" is defined in Section 6.1.

"**Treasury Regulations**" mean those regulations promulgated pursuant to the IRC.

"**TRICARE**" means, collectively, a program of medical benefits covering former and active members of the uniformed services and certain of their dependents, financed and administered by the United States Departments of Defense, Health and Human Services and Transportation, and all laws applicable to such programs.

"**UKBA**" is defined in Section 4.18(a).

"**United States**" or "**U.S.**" means the United States of America, its fifty (50) states, the District of Columbia, Puerto Rico and any other jurisdiction within the United States of America.

"**U.S. Government Securities Business Day**" means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities.

"**Wholly-Owned Subsidiary**" means, with respect to any Person, a Subsidiary of such Person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to Requirements of Law) are owned by such Person or another Wholly-Owned Subsidiary of such Person. Unless the context otherwise requires, each reference to a Wholly-Owned Subsidiary herein shall be a reference to a Wholly-Owned Subsidiary of a Credit Party.

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

[Signature page follows]

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

EVOLUS, INC.,
as Borrower and a Credit Party

By /s/ Sandra Beaver

Name: Sandra Beaver

Title: Chief Financial Officer

BIOPHARMA CREDIT PLC,
as Collateral Agent

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BPCR LIMITED PARTNERSHIP,
as a Lender

By: Pharmakon Advisors, LP,
its Investment Manager

By: Pharmakon Management I, LLC,
its General Partner

By /s/ Pedro Gonzalez de Cosio_____
Name: Pedro Gonzalez de Cosio
Title: Managing Member

BIOPHARMA CREDIT INVESTMENTS V (MASTER) LP,
as Lender

By: BioPharma Credit Investments V GP LLC,
its general partner

By: Pharmakon Advisors, LP,
its Investment Manager

By /s/ Pedro Gonzalez de Cosio_____
Name: Pedro Gonzalez de Cosio
Title: CEO and Managing Member

EXHIBIT A – LOAN ADVANCE REQUEST FORM

[***]

EXHIBIT B-1

[***]

EXHIBIT B-2

[***]

EXHIBIT B-3

[***]

EXHIBIT C

FORM OF SECURITY AGREEMENT

[***]

EXHIBIT D

COMMITMENTS; NOTICE ADDRESSES

[***]

EXHIBIT E

COMPLIANCE CERTIFICATE

[***]

Exhibit 31.1

CERTIFICATION PURSUANT TO
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, David Moatazedi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Evolus, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 5, 2025

/s/ David Moatazedi
David Moatazedi
President and Chief Executive Officer
(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, David Moatazedi, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of Evolus, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 5, 2025

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

Exhibit 32.1

CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO 18 U.S.C. § 1350 AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

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 capacity as an officer of Evolus, Inc., that, to his knowledge:

(1) the Quarterly Report on Form 10-Q of Evolus, Inc. for the quarter ended June 30, 2025 (the "Report") fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of Evolus, Inc.

Date: August 5, 2025

By: /s/ David Moatazedi

David Moatazedi
President and Chief Executive Officer
(Principal Executive Officer and Principal Financial Officer)