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

# FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the fiscal year ended December 31, 2018**
**or**
☐ TRANSITION REPORT PURSUANT TO SECTION 13 O**R 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 Dr., Suite 1200**
**Newport Beach, California 92660**
**(949) 284-4555**
**(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)**

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

| **Title of each class** | **Name of each exchange on which registered** |
|---|---|
| Common Stock, $0.00001 par value per share | The Nasdaq Stock Market LLC |

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

None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☐ No ☒

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes ☐ No ☒

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

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

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§ 229.405) is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

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

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

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial statement accounting standards provide pursuance 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 ☒

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant as of the last business day of the registrant's most recently completed second fiscal quarter was approximately $141.5 million, based on the closing price of the registrant's common stock on the Nasdaq Global Market of $27.99 per share for such date.

As of March 20, 2019, 27,274,991 shares of the registrant's sole class of common stock were outstanding.

**DOCUMENTS INCORPORATED BY REFERENCE**
None

**EVOLUS, INC.**

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**Special Note Regarding Forward-Looking Statements**

This Annual Report on Form 10-K contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act, that involve risks and uncertainties, including statements based on our current expectations, assumptions, estimates and projections about future events, our business, financial condition, results of operations and prospects, our industry and the regulatory environment in which we operate. Any statements contained herein that are not statements of historical facts may be deemed to be forward-looking statements. In some cases, you can identify forward-looking statements by terms such as "anticipate," "believe," "could," "estimate," "expect," "intend," "may," "plan," "potential," "predict," "project," "should," "will," "would" or the negative of those terms, or other comparable terms intended to identify statements about the future. Forward-looking statements include, but are not limited to, statements about:

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

The forward-looking statements included herein are not guarantees of future performance or events and are based on current expectations of our management based on available information and involve a number of risks and uncertainties, all of which are difficult or impossible to predict accurately and many of which are beyond our control. As such, our actual results may differ materially from those expressed in any forward-looking statements. Factors that may cause or contribute to such differences include, but are not limited to, those discussed in more detail in Item 1 "Business" and Item 1A "Risk Factors" of Part I and Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" of Part II of this Annual Report on Form 10-K. Readers should carefully review these risks, as well as the additional risks described in other documents we file from time to time with the Securities and Exchange Commission, or SEC. In light of the significant risks and uncertainties inherent in the forward-looking statements included herein, the inclusion of such information should not be regarded as a representation by us or any other person that such results will be achieved, and readers are cautioned not to place undue reliance on such forward-looking statements. Except as required by law, we undertake no obligation to revise the forward-looking statements contained herein to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events. You should read this Annual Report on Form 10-K and the documents we file with the

SEC, with the understanding that our actual future results, levels of activity, performance and achievements may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements. Unless the context indicates otherwise, as used in this Annual Report on Form 10-K, the terms “Evolus,” “company,” “we,” “us” and “our” refer to Evolus, Inc., a Delaware corporation, and our subsidiaries taken as a whole, unless otherwise noted.

EVOLUS™ and Jeuveau™ are two of our trademarks that are used in this Annual Report on Form 10-K. This Annual Report on Form 10-K 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 Annual Report on Form 10-K as BOTOX. Solely for convenience, trademarks and trade names referred to in this Annual Report on Form 10-K 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.

## Item 1. Business.

### Overview

We are a performance beauty company with a customer-centric approach focused on delivering breakthrough products in the self-pay aesthetic market. On February 1, 2019, the U.S. Food and Drug Administration, or FDA, approved our first product Jeuveau™ (prabotulinumtoxinA-xvfs). We plan to launch Jeuveau™ commercially in the United States in Spring 2019. Jeuveau™ is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. We believe we will offer physicians and consumers a compelling value proposition with Jeuveau™. Currently, onabotulinumtoxinA (BOTOX) is the neurotoxin market leader, and prior to the approval of Jeuveau™, was the only known 900 kDa botulinum toxin type A complex approved in the United States. We believe aesthetic physicians generally prefer the performance characteristics of the complete 900 kDa neurotoxin complex and are accustomed to injecting this formulation.

We have successfully completed a comprehensive global five-study clinical development program which we named TRANSPARENCY. The TRANSPARENCY global clinical program included studies in the United States, EU and Canada to meet the regulatory requirements for a Biologics License Application, or BLA, in the United States, a Marketing Authorization Application, or MAA, in the European Union, or EU, and a New Drug Submission, or NDS, in Canada, for the treatment of moderate to severe glabellar lines between the eyebrows. The program, which was developed in consultation with the FDA, Canadian and European regulatory bodies, included three multicenter, randomized, controlled, single dose Phase III studies and two open label, multiple dose, long-term Phase II studies. Over 2,100 adult male and female subjects with moderate to severe glabellar lines at maximum frown participated in the TRANSPARENCY program. All three Phase III studies in the TRANSPARENCY program successfully met their respective primary endpoints.

We submitted a New Drug Submission, or NDS, to Health Canada and in August 2018 we received approval from Health Canada for the temporary improvement in the appearance of moderate to severe glabellar lines in adult patients under 65 years of age. We plan to market the product in Canada in the first half of 2019 through our distribution partner Clarion Medical Technologies, Inc., or Clarion, a Canadian provider of medical and aesthetic equipment and consumables to hospitals, aesthetic clinics and private medical practices. We also submitted an MAA to the European Medicines Agency, or EMA, and it was accepted for review in July 2017. We expect an opinion from the Committee for Medicinal Products for Human Use, or CHMP, in the first quarter of 2019. If the CHMP provides a favorable opinion, we would expect approval of our MAA by end of second quarter 2019.

Our primary market is the self-pay aesthetic market, which includes medical products purchased by physicians that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. Within the self-pay aesthetic market, the global aesthetic neurotoxin market was estimated to generate approximately $2.5 billion of revenue in 2018 and is estimated to grow to approximately $3.5 billion in 2021. The United States is the largest portion of this market and was estimated to generate approximately $1.2 billion of revenue in 2018 and is expected to grow to approximately $1.7 billion in 2021. We believe the aesthetic neurotoxin markets is one of the most attractive in healthcare with secular growth trends. We believe the continued growth of the aesthetic neurotoxin market will be driven by an aging population, increased use by individuals between the ages of 19 and 34, whom we refer to as millennials, increasing life expectancy, rising disposable income, improved accessibility to these products and treatments due to an increase in the number of physicians who perform these procedures, continued innovation, and an increasing acceptance and utilization of elective or minimally invasive aesthetic procedures. According to the American Society for Aesthetic Plastic Surgery, aesthetic neurotoxin treatments are the number one cosmetic procedure being considered by millennials, and neurotoxin use among this group has increased by 87% between 2011 and 2016.

Jeuveau™ is the first known neurotoxin dedicated exclusively to aesthetics. We plan to launch Jeuveau™ in the United States in Spring 2019 by building a commercialization infrastructure, which includes our own specialty sales force of approximately 140 sales representatives. We intend to create a strongly desirable experience for physicians and consumers by leveraging our management team's extensive industry experience, our compelling head-to-head clinical data compared with BOTOX, and our unique technology platform designed to transform the aesthetic market by eliminating the friction points existing for customers today. Outside of the United States, we plan to market and sell our neurotoxin through distributors in the territories in which we have the right to sell it.

On September 30, 2013, we entered into a license and supply agreement, or the Daewoong Agreement, pursuant to which we have an exclusive distribution license to Jeuveau™ from Daewoong Pharmaceuticals Co., Ltd., or Daewoong, a South

Korean pharmaceutical manufacturer, for aesthetic indications in the United States, EU, Canada, Australia, Russia, Commonwealth of Independent States, or C.I.S., and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Jeuveau™ will be manufactured by Daewoong in a recently constructed facility in South Korea. We also have 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 license.

**Our Competitive Strengths**

We believe we will offer physicians and consumers a compelling value proposition beginning with the launch of Jeuveau™ for the following reasons:

- *Jeuveau™ will offer the U.S. market the first known 900 kDa neurotoxin alternative to BOTOX.* The manufacture of both Jeuveau™ and BOTOX starts with a 900 kDa complex, includes adding the excipients human serum albumin, or HSA, and sodium chloride, and finishes by vacuum drying. We believe Jeuveau™ is the only known neurotoxin product in the United States with a 900 kDa neurotoxin complex other than BOTOX. We also believe an important component of competitiveness in the neurotoxin market relates to the characteristics associated with the 900 kDa complex and the potential of the accessory proteins to increase the effectiveness of the active toxin portion of the complex.

- *Results from our TRANSPARENCY global clinical program in more than 2,100 patients provides robust data to physicians evaluating the purchase of Jeuveau™.* We believe the comprehensive TRANSPARENCY clinical data set, including a head-to-head Phase III study comparing Jeuveau™ and BOTOX, provides physicians with confidence in recommending Jeuveau™ to their patients.

- *Enhanced level of physician-customer interaction through a self-pay, aesthetic-only marketing strategy.* We have elected to specifically target the self-pay aesthetic market. With a reduced regulatory burden compared to third-party payor reimbursed therapeutic products, we believe we will achieve a number of benefits that market participants in reimbursed markets are unable to achieve, such as an enhanced level of interaction with our physician-customers. Jeuveau™ is the only U.S. neurotoxin without a therapeutic indication. We believe pursuing an aesthetic-only non-reimbursed product strategy will create meaningful strategic advantages in the United States, including pricing and marketing flexibility. We intend to utilize this flexibility to drive market adoption through programs such as promotional events, experience product programs and pricing strategies.

- *We are building a unique technology platform*. We intend to create a simple, personal and connected experience for physicians utilizing our proprietary technology platform. We are designing a platform with the goal of limiting friction and enhancing the overall experience for physicians and ultimately consumers.

- *We have strong relationships with aesthetic key opinion leaders, or KOLs*. We have established relationships with aesthetic KOLs as a result of our management team's industry experience and engagement of our clinical trial investigators. KOLs are important information resources to the general physician-customer market due to their clinical expertise, academic reputations, active clinical practices and their status as medical innovators. The broader physician community often looks to KOLs for their experience with products and procedures as part of their new product and procedure adoption process.

- *Our management team has significant experience and expertise in medical aesthetics*. Our management team has extensive experience in self-pay healthcare markets, in the development, market launch and commercialization of major medical products, execution and integration of business development transactions, identification of and partnerships with KOLs, and understanding of the regulatory environment of the healthcare markets. Key members of our leadership team have also served in relevant senior leadership positions with leading aesthetic companies.

**Our Strategy**

Our near-term strategy is to enter the U.S. medical aesthetic neurotoxin market with Jeuveau™. We plan to expand our product offerings over time through in-licensing, partnerships and acquisitions. The key components of our strategy are:

- Launch Jeuveau™ in the United States with our own specialty sales force of approximately 140 sales representatives.

- Partner outside of the United States to reach and serve physicians and consumers in those territories.
- Pursue an aesthetic-only strategy to enhance marketing and pricing flexibility along with improving transparency for our customers.
- Leverage our strong KOL relationships to assist in scientific presentations, publications, and other methods to drive success of our commercial launch of Jeuveau™.
- Establish a leading medical aesthetics company by in-licensing technology, developing partnerships and potentially acquiring products.

**Our Market**

Our primary market is self-pay aesthetic healthcare, which includes medical products purchased by physicians that are then sold to consumers or used in procedures for aesthetic indications that are not reimbursed by any third-party payor, such as Medicaid, Medicare or commercial insurance. By focusing on the self-pay medical aesthetics market, we believe we will not be exposed to reimbursement risk associated with a reliance on payments from such third-party payors, and we will be subject to fewer regulations that place limits on the types of marketing and other interactions we can have with physicians.

Within the self-pay aesthetic market, the global aesthetic neurotoxin market was estimated to generate approximately $2.5 billion of revenue in 2018 and is estimated to grow to approximately $3.5 billion in 2021. The U.S. aesthetic neurotoxin market was estimated to generate $1.2 billion in sales in 2018.

Within the multiple age groups that receive aesthetic neurotoxin treatments, we will strategically focus our marketing efforts on the Millennial segment which is the largest cohort in the U.S. population. In 2019 there are estimated to be approximately 73 million Millennials, defined as individuals born between 1981 and 1996. Botulinum toxin use among individuals between the age of 19 and 34 increased 87% between 2011 and 2016, and neurotoxin treatments are the number one cosmetic procedure considered by this generation. Approximately 1.7 million females between the age of 30 and 39, which includes many individuals we define as Millennials, are considering neurotoxins in the next twelve months.

We believe the growth in the medical aesthetics market is driven by a number of factors, including:

- Millennials are increasingly seeking medical aesthetic treatments and utilizing neurotoxins as an entry point for aesthetic procedures due to their minimally invasive nature;
- an aging population together with an increasing life expectancy, which is resulting in more consumers with a desire for improved appearance and well-being over a longer period of time;
- rising disposable income, with the U.S. Bureau of Economic Analysis reporting that real disposable income in the United States increased approximately 15% from March 2012 to March 2018;
- growing awareness, utilization and acceptance of elective or minimally invasive aesthetic procedures; and
- continued innovation and improved accessibility to these treatments due to an increase in the number of physicians who perform these procedures.

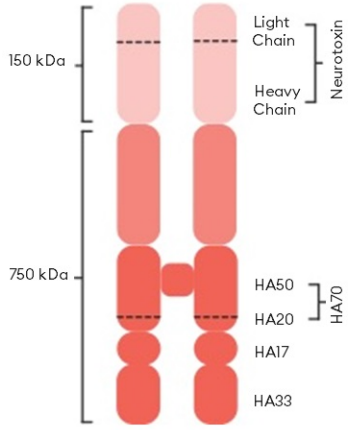
Currently, BOTOX, Dysport and Xeomin represent a majority of the medical aesthetics botulinum toxin type A market. In 2018, BOTOX U.S. unit market share was approximately 75% and generated approximately $907 million of revenue. In the same year, Dysport and Xeomin U.S. unit market share was approximately 19% and 7%, respectively.

**Jeuveau™ Overview**

We licensed Jeuveau™ from Daewoong in September 2013 and commenced clinical trials in 2014. Jeuveau™ is an injectable formulation of a 900 kDa botulinum toxin type A complex designed to address the needs of the large and growing facial aesthetics market. We completed the TRANSPARENCY global clinical program to meet the regulatory requirements for a BLA in the United States, a MAA in the EU, and a NDS in Canada, for the treatment of moderate to severe glabellar lines. Our program was developed in consultation with the FDA, Canadian and European regulatory bodies. These regulatory bodies provided guidance and feedback on the critical endpoints and statistical methodology required to develop the safety and efficacy endpoints that would support this indication’s approval.

As demonstrated in the figure below, Jeuveau™ contains a 900 kDa botulinum toxin type A complex produced by the bacterium *Clostridium botulinum*. The active part of the neurotoxin is the 150 kDa component, and the remaining 750 kDA of the complex is made up of accessory proteins that we believe help with the function of the active portion of the toxin. Jeuveau™ has the same mechanism of action as other type A botulinum toxins. When injected intramuscularly at therapeutic doses, botulinum toxin causes a chemical denervation of the muscle resulting in localized reduction of muscle activity. Botulinum toxin type A specifically blocks peripheral acetylcholine release at presynaptic cholinergic nerve terminals by cleaving SNAP-25, a protein integral to the successful docking and release of acetylcholine from vesicles situated within the nerve endings leading to denervation and relaxation of the muscle.

*Diagram of Botulinum Toxin Type A*




The following table provides a summary of the botulinum toxin type A complex composition for Jeuveau™ and available toxins in the United States.

| Product | Source | Toxin Complex |
|---|---|---|
| BOTOX | Clostridium botilinum | 900 kDa, full accessory protein complex |
| Jeuveau™ | | 900 kDa, full accessory protein complex |
| Dysport | | Undisclosed by manufacturer |
| Xeomin | | 150 kDa, no accessory proteins |

**TRANSPARENCY: Evolus Clinical Development for Glabellar Lines**

In 2014, we initiated a comprehensive five-study clinical development program for Jeuveau™, which we named TRANSPARENCY, in the United States, EU and Canada to meet the regulatory requirements for a BLA in the United States, a MAA in the EU, and a NDS in Canada, for the treatment of moderate to severe glabellar lines. The TRANSPARENCY program, which was developed in consultation with the FDA, Canadian, and European regulatory bodies, included three multicenter, randomized, double-blinded, controlled, single dose Phase III studies titled EV-001, EV-002 and EVB-003. Each Phase III study lasted 150 days. The TRANSPARENCY program also included two open label, multiple dose, long-term Phase II studies titled EV-004 and EV-006, each lasting one year. Between September 2014 and August 2016, over 2,100 adult male and female subjects with moderate to severe glabellar lines at maximum frown participated in this program.

In our clinical trials, subjects received intramuscular injections in five target sites in muscles that contribute to the formation of glabellar lines: the midline of the procerus, the inferomedial aspect of each corrugator, and the superior middle aspect of each corrugator. Each of the five target sites was injected with 0.1 milliliters, or mL, for a total of 0.5mL. Subjects assigned (in the open label studies) or randomized (in the controlled studies) to Jeuveau™ received a total of 20 units per treatment, administered as 4 units per 0.1mL and those subjects who were randomized to the placebo group received 0.5mL saline. In our EVB-003 Phase III trial, the only study of the five with both a placebo and active control arm, subjects randomized to the active control received a total of 20 units of BOTOX administered as 4 units per 0.1mL.

All five studies contributed data to the evaluation of efficacy and safety. The table below summarizes our five-study TRANSPARENCY global clinical program.

*Listing of the TRANSPARENCY Clinical Studies - Design Features and Efficacy Assessments*

| | EV-001 | EV-002 | EVB-003 | EV-004 | EV-006 |
|---|---|---|---|---|---|
| **Study** | U.S. Pivotal Phase III Safety and Efficacy | U.S. Pivotal Phase III Safety and Efficacy | EU and Canadian Pivotal Phase III Safety and Efficacy | U.S. Phase II Long-term Safety | U.S. Phase II Long-term Safety |
| **Population** | Healthy adults (≥18 years) who had moderate to severe glabellar lines (Glabellar Line Scale, or GLS, score ≥2) at maximum frown, as independently assessed by both Investigator Assessment (IA) and Subject Assessment(SA) | Healthy adults (≥18 years) who had moderate to severe glabellar lines (GLS score ≥2) at maximum frown, as independently assessed by both IA and SA | Healthy adults (≥18 years) who had moderate to severe glabellar lines (GLS score ≥2) at maximum frown assessed by IA only and who felt that their glabellar lines had an important psychological impact | Healthy adults (≥18 years) who had moderate to severe glabellar lines (GLS score ≥2) at maximum frown assessed by IA only | Healthy adults (≥18 years) who had moderate to severe glabellar lines (GLS score ≥2) at maximum frown, as independently agreed by both IA and SA |
| **Design, including Duration** | Multicenter<br>Randomized (3:1)<br>Double blind<br>Placebo controlled<br>Single dose<br>150 days duration | Multicenter<br>Randomized (3:1)<br>Double blind<br>Placebo controlled<br>Single dose<br>150 days duration | Multicenter<br>Randomized (5:5:1)<br>Double blind<br>Placebo and active controlled<br>Single dose<br>150 days duration | Multicenter<br>Non-randomized<br>Open label<br>Multiple dose (initial treatment plus up to three repeat treatments)<br>365 days duration | Multicenter<br>Non-randomized<br>Open label<br>Multiple dose (initial treatment plus up to three repeat treatments)<br>365 days duration |
| **Treatments** | Single treatment of:<br>20 units of Jeuveau™ or<br>0.5mL saline (Placebo) | Single treatment of:<br>20 units of Jeuveau™ or<br>0.5mL saline (Placebo) | Single treatment of:<br>20 units of Jeuveau™ or<br>20 units of BOTOX or<br>0.5mL saline (Placebo) | 20 units of Jeuveau™/treatment, up to a maximum of 4 treatments | 20 units of Jeuveau™/treatment, up to a maximum of 4 treatments |
| **Number of Subjects** | 330 randomized (3:1) | 324 randomized (3:1) | 540 randomized (5:5:1) | 352 treated with Jeuveau™ | 570 treated with Jeuveau™ |
| **Location of Sites** | United States | United States | Canada; France; Germany; Sweden; United Kingdom | United States | United States |
| **Primary Endpoint** | Proportion of subjects classified as responders on Day 30;<br>A composite endpoint<br>A responder was a subject with a ≥2 point improvement on the GLS from Day 0 to Day 30 at maximum frown | Proportion of subjects classified as responders on Day 30<br>A composite endpoint<br>A responder was a subject with a ≥2 point improvement on the GLS from Day 0 to Day 30 at maximum frown | Proportion of subjects classified as responders on Day 30<br>Not a composite endpoint<br>A responder was a subject with a GLS score of 0 or 1 | None, all efficacy endpoints were exploratory | None, all efficacy endpoints were exploratory |

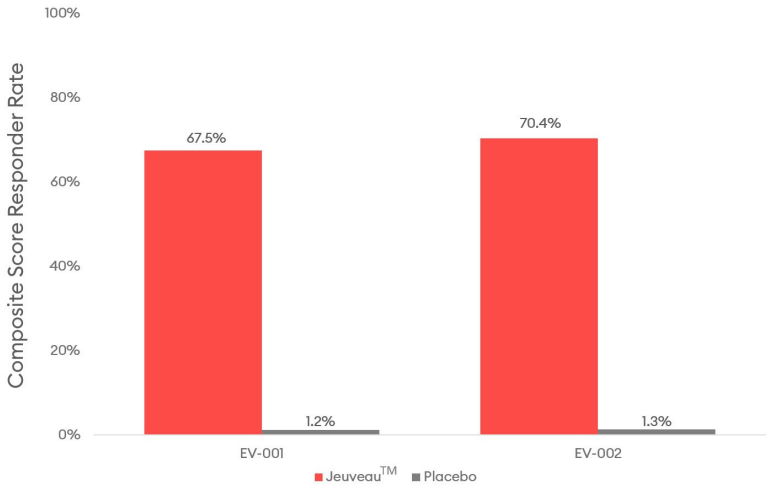
***Phase III U.S. Based Clinical Trials.*** The two identical U.S. Phase III studies, EV-001 and EV-002, enrolled subjects who were selected from a population of healthy adults, at least 18 years of age, who had moderate to severe glabellar lines at maximum frown, as independently assessed by the investigator and subject using the 4-point photonumeric Glabellar Line Scale, or GLS, where 0=no lines, 1=mild lines, 2=moderate lines and 3=severe lines. On Day 0, eligible subjects were randomly assigned in a 3:1 ratio to receive a single treatment of either Jeuveau™ or placebo. Subjects were followed for 150 days after treatment.

The primary efficacy endpoint was defined as the proportion of subjects classified as responders on Day 30. This was a composite endpoint in which a responder was a subject with a 2 point improvement or greater on the GLS from Day 0 to Day 30 at maximum frown, only if independently agreed by both investigator and subject assessment.

Both studies met the primary endpoint of superiority over placebo. The percentages of responders in the intent to treat population for the composite primary endpoint, a two point or greater score composite improvement, in each of the two controlled single dose studies were:

- EV-001: 1.2% placebo, 67.5% Jeuveau™, with an absolute difference between the groups of 66.3%, 95% CI (59.0, 72.4)
- EV-002: 1.3% placebo, 70.4% Jeuveau™, with an absolute difference between the groups of 69.1%, 95% CI (61.5, 75.1)

*U.S. Phase III Primary Endpoint - Composite Score ≥ 2 Point GLS Improvement at Maximum Frown on Day 30*




Since a two point or greater composite score requires both the investigator and subject to agree simultaneously, studies using this definition generally have a lower responder rate than non-composite studies. Xeomin and Dysport represent two botulinum toxin type A products who also conducted trials using a two point or greater composite responder rate. The Xeomin two point or greater responder rates in their Phase III studies, per FDA labels, were 48% and 60%, and the Dysport rates were 52%, 55% and 60%. Importantly, no comparison across any of the studies can be made.

*U.S. Phase III Primary Endpoint - Components of Composite Score, ≥ 2 Point GLS Improvement at Maximum Frown on Day 30 by Investigator and Subject Assessment*

| EV-001 ≥ 2 Point Improvement | | | |
|---|---|---|---|
| Investigator | | Subject | |
| Treatment | Placebo | Treatment | Placebo |
| 77.5% | 1.2% | 76.7% | 3.6% |

| EV-002 ≥ 2 Point Improvement | | | |
|---|---|---|---|
| Investigator | | Subject | |
| Treatment | Placebo | Treatment | Placebo |
| 82.5% | 2.7% | 76.3% | 4.0% |

In the EV-001 study, analysis of the secondary endpoints investigated the response at maximum frown beyond Day 30 using a two point composite score. A subject was considered a responder only if a ≥2 point improvement had occurred on the GLS at maximum frown from Day 0, by both investigator and subject assessment:

- At Day 90 (post hoc), the percentage of responders was 1.3% in the placebo group and 26.5% in the Jeuveau™ group with an absolute difference of 25.2%, p<0.001.
- At Day 120, the percentage of responders was 1.3% in the placebo group and 8.3% in the Jeuveau™ group with an absolute difference of 7.0%, p=0.023.
- At Day 150 or early termination, the percentage of responders was 0.0% in the placebo group and 4.6% in the Jeuveau™ group. The absolute difference of 4.6% between the groups remained statistically significant for the composite endpoint, p=0.041.

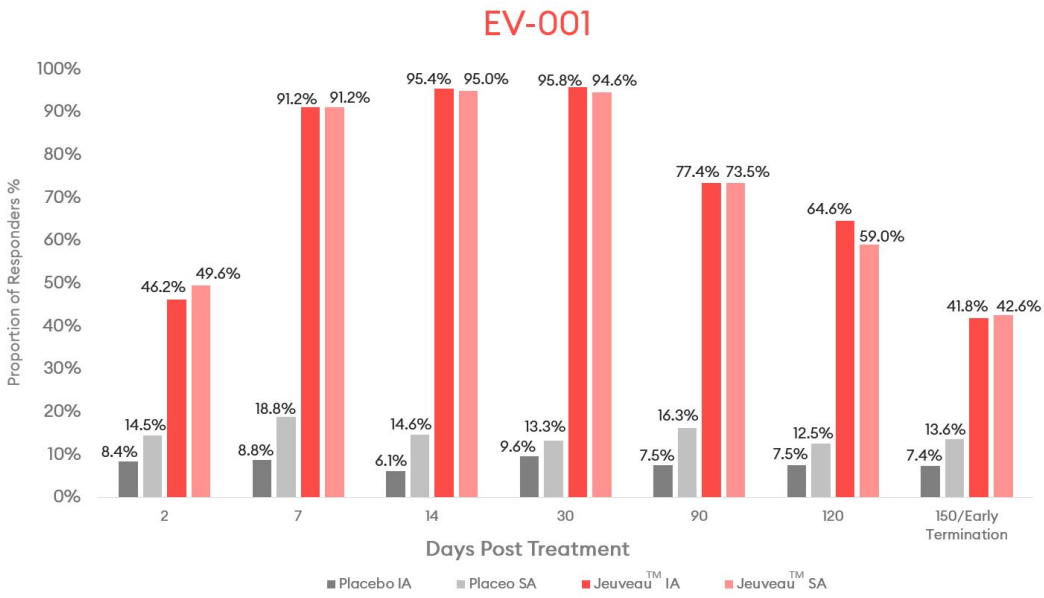
A p value, as expressed in the data above, is the probability that the difference between two data sets was due to chance. The smaller the p value, the more likely the differences are not due to chance alone. In general, if the p value is less than or equal to 0.05, the outcome is statistically significant.

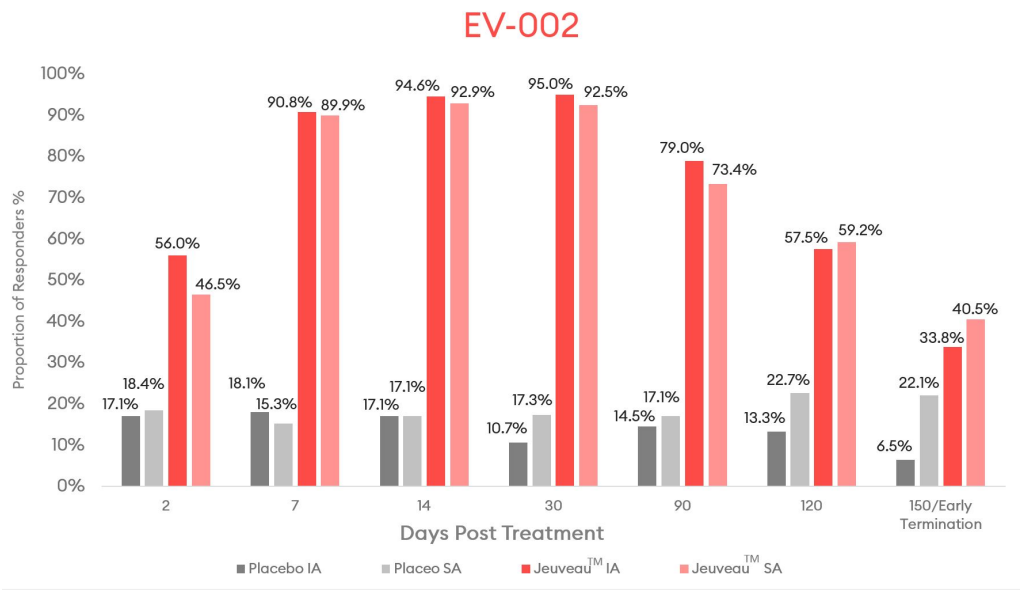
The 2 point composite score results were similar in the EV-002 study to the EV-001 study for the secondary endpoints:

- At Day 90 (post hoc), the percentage of responders was 0.0% in the placebo group and 25.8% in the Jeuveau™ group with an absolute difference of 25.8%, p<0.001.
- At Day 120, the percentage of responders was 0.0% in the placebo group and 12.4% in the Jeuveau™ group, with an absolute difference of 12.4%, p<0.001.
- At Day 150 or early termination, the percentage of responders was 0.0% in the placebo group and 4.6% in the Jeuveau™ group. The absolute difference of 4.6% between the groups remained statistically significant for the composite endpoint, p=0.047.

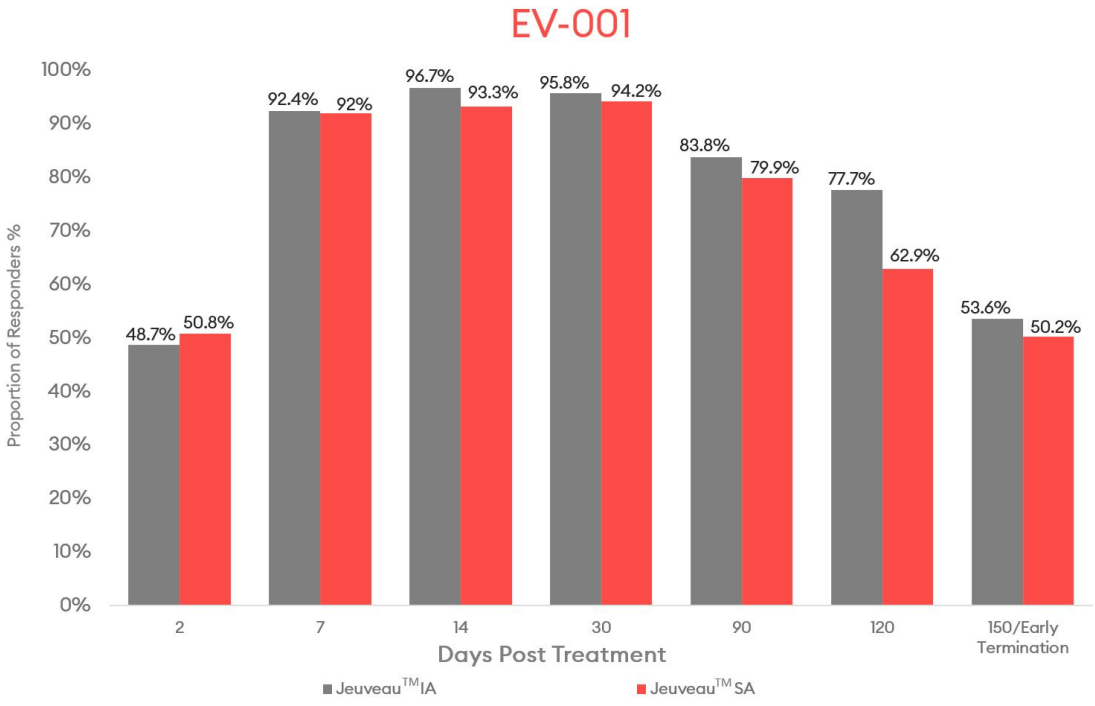
Additional exploratory efficacy analyses in the EV-001 and EV-002 studies were conducted where Jeuveau™ was investigated for a one point or greater improvement as assessed by either the subject or investigator at various days at maximum frown based on the GLS. Jeuveau™ was compared against a placebo at 2 days, 7 days, 14 days, 30 days, 90 days, 120 days and 150 days or early termination.

*U.S. Phase III Exploratory Endpoints - ≥ 1 Point Improvement GLS at Maximum Frown*

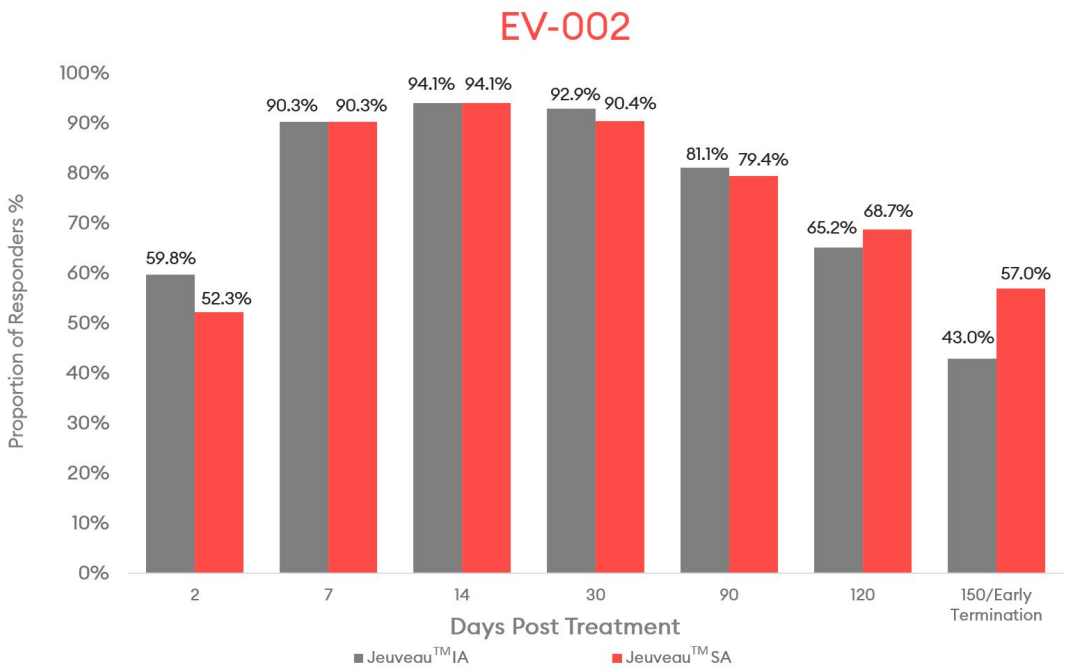




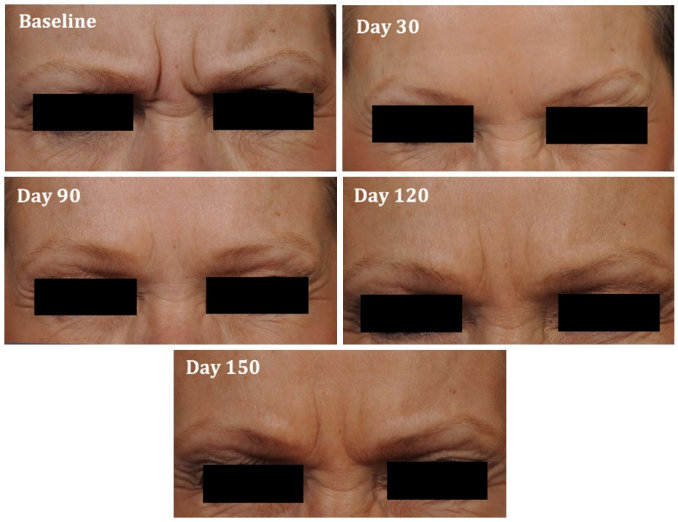

In each of the EV-001 and EV-002 studies, we also assessed as an exploratory endpoint investigator and patient assessments on the Global Aesthetic Improvement Scale, or GAIS. The GAIS is a five-point scale on which an evaluator, the subject or investigator, can determine the aesthetic outcome for the subject from: much improved, improved, no change, worse or much worse. The rate of positive responders, those who were assessed by either the subject or the investigator as much improved or improved, over the course of the study is provided below.



*U.S. Phase III studies Exploratory Endpoint - Global Aesthetic Improvement Responders (Much Improved/Improved)*




*EV-002 Subject - Glabellar Lines at Maximum Frown*




In the EV-001 study, the adverse event, or AE, rate was 32.1% in the placebo group and 38.2% in the Jeuveau™ group. Placebo and Jeuveau™ groups were similar in the overall incidence of subjects who experienced one or more AEs. Three Jeuveau™ subjects (3/246, 1.2%) experienced serious adverse events, or SAEs, but none were assessed as study drug related. Placebo and Jeuveau™ groups were also similar in the percentages of subjects who experienced AEs assessed by the investigator as study drug related: 13.1% of placebo subjects and 15.4% of Jeuveau™ subjects. The drug related eyelid and eyebrow ptosis rates, the drooping of an upper eyelid or eyebrow, respectively, in the Jeuveau™ group was 0.8% and 0.4%, respectively.

In the EV-002 study, the AE rate was 26.9% in the placebo group and 28.5% in the Jeuveau™ group. Placebo and Jeuveau™ groups were similar in the overall incidence of subjects who experienced one or more AEs. Four Jeuveau™ subjects (4/246, 1.6%) experienced a SAE, but none were assessed as study drug related. Placebo and Jeuveau™ groups were also similar in the percentages of subjects who experienced an AE assessed by the investigator as study drug related: 7.7% of placebo subjects and 9.8% of Jeuveau™ subjects. The drug related eyelid and eyebrow ptosis rates in the Jeuveau™ arm were 1.2% and 0.4% respectively. Overall, AEs with an incidence of 1% or greater were headache at 9.3% in the Jeuveau™ groups and 7.6% in the placebo groups and eyelid ptosis at 1% in the Jeuveau™ groups and 0% in the placebo groups.

*U.S. Phase III Trials - Adverse Event Rate Summary*

| | EV-001 | | EV-002 | |
|---|---|---|---|---|
| | Placebo | Jeuveau™ | Placebo | Jeuveau™ |
| All Adverse Events (%) | 32.1% | 38.2% | 26.9% | 28.5% |
| Any Study Drug-Related AE (%) | 13.1% | 15.4% | 7.7% | 9.8% |

**Phase III European and Canadian Clinical Trial for Glabellar Lines**

The EVB-003 study was the third Phase III safety and efficacy study in the Jeuveau™ clinical development program, and was conducted in Europe and Canada. 540 subjects with moderate to severe glabellar lines, or a GLS score of 2 or 3, as assessed by the investigator, were eligible to be enrolled provided that subjects also felt their glabellar lines had an important psychological impact, such as on their mood, anxiety or depressive symptoms. On Day 0, eligible subjects were randomly assigned in a 5:5:1 ratio to receive a single treatment of 20 units of Jeuveau™, 20 units of BOTOX or placebo.

The primary efficacy endpoint was defined as the proportion of subjects classified as responders on Day 30. A responder was a subject with a GLS score of 0 or 1, as assessed by the investigator at maximum frown. The primary analysis of the primary efficacy endpoint in the EVB-003 study showed the superiority of Jeuveau™ over placebo, and established non-inferiority of Jeuveau™ to BOTOX. The percentages of responders for the primary efficacy endpoint were:

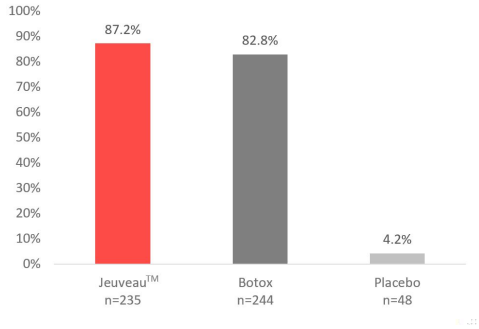
- 4.2% in the placebo group, 95% CI (0.0, 9.8);
- 82.8% in the BOTOX group, 95% CI (78.1, 87.5); and
- 87.2% in the Jeuveau™ group, 95% CI (83.0, 91.5).

A confidence interval, or CI, is a range of values in which, statistically, there is a specified level of confidence where the result lies. As an example, in the results above for this Phase III study, the results indicate that there is a 95% level of confidence that the responder rate for placebo was between 0.0% and 9.8%, which we express as: 95% CI (0.0, 9.8).

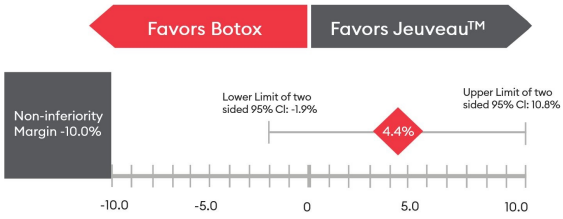
The absolute differences between the treatment groups were:

- 83.1% between Jeuveau™ and placebo groups, 95% CI (70.3, 89.4), ($p<0.001$), indicating Jeuveau™ was superior to placebo; and
- 4.4% between Jeuveau™ and BOTOX groups, 95% CI (-1.9, 10.8), with non-inferiority of Jeuveau™ versus BOTOX concluded based on the lower bound of the 95% CI for the absolute difference exceeding -10.0%.

*EU Phase III Primary Endpoint - Responder Rates at Maximum Frown on Day 30 (GLS = 0 or 1) by Investigator Assessment*




*EU Phase III Primary Endpoint - Non-Inferiority, at Maximum Frown on Day 30 by Investigator Assessment*




As presented in the table below, within each group, 32.7% of placebo subjects, 41.9% of BOTOX subjects and 37.6% of Jeuveau™ subjects experienced AEs. One placebo subject (1/49, 2.0%), one BOTOX subject (1/246, 0.4%) and three Jeuveau™ subjects (3/245, 1.2%) experienced a total of 11 SAEs and none were assessed as study drug related. The drug related eyelid ptosis rates were 1.6% in the Jeuveau™ arm and 0% in the BOTOX arm and the eyebrow ptosis rates were 0% in the Jeuveau™ arm and 0.4% in the BOTOX arm.

*EU and Canadian Phase III Trial - Adverse Event Rate Summary*

| | Placebo | Botox | Jeuveau™ |
|---|---|---|---|
| All Adverse Events (%) | 32.7% | 41.9% | 37.6% |
| Any Study Drug-Related AE (%) | 4.1% | 14.6% | 15.5% |

As presented in the table below, in EVB-003, we also assessed as a secondary endpoint ≥ 1 point improvement GLS at maximum frown for both investigator and patient satisfaction. The investigator assessment at Day 2, the beginning of the study, and at Day 150, at the end of the study, Jeuveau™ is statistically superior to placebo as measured by a one-point improvement on the GLS scale by investigator assessment. We also looked at subject satisfaction on Day 30, and Jeuveau™ was superior to placebo at 91% versus 6% in the placebo arm.

*EU and Canadian Phase III Trial - Select Secondary Endpoints*

| Measurement | Point in Time | Placebo | Onabot | Prabot |
|---|---|---|---|---|
| ≥1 Improvement GLS at Maximum Frown | Day 2 | 12.20% | 57.00% | 54.2%* |
| ≥1 Improvement GLS at Maximum Frown | Day 150 | 8.30% | 34.40% | 37.7%* |
| Subject Satisfaction | Day 30 | 6.30% | 86.60% | 91.3%* |

*P-Value Placebo vs Jeuveau™ <0.001

**Phase II Repeat Dose Clinical Trial for Glabellar Lines**

The primary objective of the Phase II EV-004 study was to demonstrate the safety of Jeuveau™ in adult subjects receiving repeat doses of Jeuveau™ for the treatment of moderate to severe glabellar lines. This multi-dose study lasted one year. Subjects were selected from a population of healthy adults at least 18 years of age who had moderate to severe glabellar lines at maximum frown, as assessed by the investigator. On Day 0, eligible subjects were administered a single treatment, 20 units of Jeuveau™. On and after Day 90, subjects were eligible for a repeat treatment if their GLS score was 2 or greater at maximum frown, as assessed by the investigator. If a subject did not have a GLS score of 2 or greater, they were followed monthly until eligible for a repeat treatment or until the study ended on Day 365. The test product in this study was different from all the other Evolus sponsored studies because each vial contained lyophilized, instead of vacuum dried, Jeuveau™. See the section entitled "Additional Safety Evaluations" below for additional information. All other studies in the Evolus sponsored program used vials containing vacuum dried Jeuveau™. Over the course of the one year study, the 352 subjects in the study received a median total dose of 60 units, or 3 treatments.

*Total AEs*

- 148 subjects (148/352, 42.0%) experienced a total of 265 AEs.
- 7 subjects (7/352, 2.0%) experienced a total of 9 SAEs, none assessed as study drug related.

*Study Drug Related AEs*

- 51 subjects (51/352, 14.5%) experienced a total of 59 AEs (59/265 events, 22.3%) assessed by the investigator as study drug related.
- 39 subjects (39/352, 11.1%) experienced a study drug related AE following the initial treatment visit, representing 76.5% of all subjects who experienced study drug related AEs (39/51). Progressively lower percentages of subjects experienced study drug related AEs following each repeat treatment: 3.4% (11/319) after the first repeat treatment, 1.5% (4/262) after the second repeat treatment, and none after the third repeat treatment.

The Phase II, EV-006 study's primary objective was also to demonstrate the safety of Jeuveau™ in adult subjects receiving repeat doses of Jeuveau™ for the treatment of moderate to severe glabellar lines. Like EV-004, the EV-006 was a multi-dose study that lasted one year. Subjects were selected from a population of healthy adults at least 18 years of age who had moderate to severe glabellar lines at maximum frown, agreed by both the investigator and the subject, as opposed to the sole assessment of the investigator in the EV-004 study. On Day 0, eligible subjects were administered a single treatment of 20 units of Jeuveau™. On and after Day 90, subjects were eligible for repeat treatment if their GLS score was a 2 or greater at maximum frown, as assessed by the investigator. If a subject did not have a GLS score ≥2, they were followed monthly until eligible for repeat treatment or until the study ended on Day 365.

Over the course of the one-year study, the 570 subjects in the study received a median total dose of 60 units, or 3 treatments.

*Total AEs*

- 235 subjects (235/570, 41.2%) experienced a total of 475 AEs.
- Seven subjects (7/570, 1.2%) experienced eight SAEs, none of the SAEs were assessed as study drug related. One death (1/570, 0.2%) was reported during the study, a SAE, this event was not related to the study drug.

*Study Drug Related AEs*

- 61 subjects (61/570, 10.7%) experienced a total of 91 AEs (91/473 events, 19.2%) assessed by the investigator as study drug related.
- 37 subjects (37/570, 6.5%) experienced 46 study drug related AEs following the initial treatment visit, representing 60.7% of all subjects who experienced study drug related AEs (37/61). Progressively lower percentages of subjects experienced study drug related AEs following each repeat treatment: 3.6% (19/524) after the first repeat treatment, 3.2% (14/431) after the second repeat treatment, and 1.9% (4/214) after the third repeat treatment.

The combined Jeuveau™ drug-related eyelid ptosis rate for the EV-004 and EV-006 studies was 0.9%.

**Additional Safety Evaluations**

The five Evolus sponsored studies, EV-001, EV-002, EVB-003, EV-004 and EV-006, assessed the vital signs of subjects, and there were no notable differences found between the Jeuveau™ group and placebo. In the U.S.-based studies, EV-001, EV-002, EV-004 and EV-006, additional testing was conducted such as chemistry, hematology, urinalysis, and electrocardiograms, and these additional tests did not reveal any notable differences between the Jeuveau™ and placebo groups. During the course of the U.S.-based studies, testing was also conducted looking for subjects who developed antibotulinum toxin antibodies after exposure to the drug, referred to as cases of seroconversion. There were two cases of seroconversion in the EV-004 repeat dose study. The formulation in the EV-004 study was not the same as the formulation used in all the other Evolus studies. Specifically, the formulation for the EV-004 study used a lyophilizing, or freeze drying, method for removing water. The pivotal studies EV-001 and EV-002, and the repeat dose study EV-006, used a Jeuveau™ formulation that was vacuum dried, and there were no cases of seroconversion in any subjects. This vacuum dried formulation was tested for antibotulinum antibody formations in 1,739 treatments in the 570 subjects in the repeat treatment EV-006 trial, and 492 treatments in the two U.S. single treatment Phase III trials, EV-001 and EV-002. We plan to commercialize the vacuum dried formulation of Jeuveau™.

**Manufacturing**

Daewoong manufactures and supplies Jeuveau™ to us. Daewoong has over 70 years of experience manufacturing pharmaceutical products and is one of the largest pharmaceutical companies in South Korea. Daewoong has recently constructed a facility in which drug product for Jeuveau™ is produced. The facility is located in Gyeonggi-do, South Korea. We believe this facility will be sufficient to meet demand for Jeuveau™ for the foreseeable future. The FDA conducted a current Good Manufacturing Practice, or cGMP, and pre-approval inspection of the facility in November 2017 in connection with our BLA for Jeuveau™. The UK Medicines and Healthcare Products Regulatory Agency, or MHRA, also completed an inspection of the manufacturing facility in February 2018 in connection with our MAA. The U.S. FDA approval of Jeuveau™ in February 2019 included approval to manufacture Jeuveau™ at Daewoong's facility.

Daewoong manufactures the Jeuveau™ drug substance in a separate facility on the same campus. The manufacture of Jeuveau™ drug substance is based on the fermentation of Daewoong's *C.botulinum* cell line, followed by isolation and purification of the drug substance. Daewoong has received a U.S. patent for the production process. The drug substance production facility was renovated to comply with FDA and EMA cGMP requirements.

**Our History**

We were incorporated in November 2012 and are headquartered in Newport Beach, California. In a series of related transactions in 2013, SCH-AEON, LLC (formerly known as Strathspey Crown Holdings, LLC), or SCH, acquired all of our outstanding equity in exchange for membership interests in SCH. In 2014, SCH contributed our equity that it had acquired in 2013 to its subsidiary operating entity, ALPHAEON, in exchange for the payments described in Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations—Payment Obligations Related to Our Acquisition by ALPHAEON." As a result of these transactions, we were a wholly-owned subsidiary of ALPHAEON.

**Daewoong License and Supply Agreement**

On September 30, 2013, we entered into the Daewoong Agreement with Daewoong, pursuant to which Daewoong agreed to manufacture and supply Jeuveau™ and grant us an exclusive license to import, distribute, promote, market, develop, offer for sale and otherwise commercialize and exploit Jeuveau™ in the United States, EU, Canada, Australia, Russia, C.I.S., and South Africa, each, a covered territory. Daewoong also granted us a non-exclusive license to do the same in Japan. In connection with our entry into the Daewoong Agreement, we made an upfront payment to Daewoong of $2.5 million and agreed to make milestone payments upon certain confidential development and commercial milestones, including payment to Daewoong upon each of FDA and EMA approval of Jeuveau™. Under the Daewoong Agreement, the maximum aggregate amount of future milestone payments that could be owed to Daewoong upon the satisfaction of all milestones is $13.5 million as of December 31, 2018. In February 2019, we paid $2.0 million to Daewoong upon obtaining FDA approval of Jeuveau™. Under the Daewoong Agreement, Daewoong is responsible for all costs related to the manufacturing of Jeuveau™, including costs related to the operation and upkeep of its manufacturing facility, and we are responsible for all costs related to obtaining regulatory approval, including clinical expenses, and commercialization of Jeuveau™.

Under the Daewoong Agreement, Daewoong has agreed to supply us with Jeuveau™ at an agreed-upon, transfer price, and we have agreed to make milestone payments upon completion of certain confidential development and commercial milestones. Our

exclusivity is subject to certain minimum annual purchases upon commercialization, irrespective of aesthetic or therapeutic indications, and if we fail to meet these targets, Daewoong may, at its option, convert the exclusive license to a non-exclusive license. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions. During the term of the Daewoong Agreement, we cannot purchase, sell or distribute any competing products in a covered territory or Japan or sell Jeuveau™ outside a covered territory or Japan. We also have 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 covered territory or Japan.

The initial term of the Daewoong Agreement is from September 30, 2013 to the later of (i) the fifth anniversary of approval from the relevant governmental authority necessary to market and sell Jeuveau™ or (ii) September 30, 2023, and automatically renews for unlimited additional three-year terms if we meet certain performance requirements. The Daewoong Agreement will terminate (A) upon written notice by either us or Daewoong upon a continuing default that remains uncured within 90 days (or 30 days for a payment default) by the other party, or (B) without notice upon the bankruptcy or insolvency of our company.

In addition to the aesthetic use of Jeuveau™, we held an option to obtain the therapeutic rights to botulinum toxin products in the licensed territories which was held in trust for ALPHAEON. In September 2018, ALPHAEON exercised the right to obtain the therapeutic rights and remitted the option exercise price directly to Daewoong.

We are the sole owner of any marketing authorization and clinical trial results we pursue in a covered territory. However, if we do not renew the Daewoong Agreement or upon termination of the Daewoong Agreement due to a breach by us, we are obligated to transfer our rights to Daewoong.

The Daewoong Agreement also provides that Daewoong will indemnify us for any losses arising out of (i) Daewoong's willful misconduct or gross negligence in performing its obligations under the agreement, (ii) Daewoong's breach of the agreement, or (iii) any allegation that Jeuveau™ or Daewoong's trademark infringes or misappropriates the rights of a third party, except, in each case, as a result of our willful misconduct or gross negligence. We have agreed to indemnify Daewoong for any losses arising out of (A) our willful misconduct or gross negligence in performing our obligations under the agreement, or (B) our breach of the agreement, except, in each case, as a result of Daewoong's willful misconduct or gross negligence.

**Competition**

Our primary competitors in the pharmaceutical market are companies offering injectable dose forms of botulinum toxin. There are only four approved injectable botulinum toxin type A neurotoxins in the United States, including Jeuveau™. There are also other injectable botulinum toxin type A products being developed for the U.S. market. We believe the primary competing products in this market include BOTOX, Dysport and Xeomin:

- BOTOX, marketed by Allergan plc, or Allergan, received FDA approval in 2002 for glabellar lines. Allergan was the first company to market neurotoxins for aesthetic purposes.
- Dysport, marketed by Galderma S.A., or Galderma, received FDA approval in 2009 for glabellar lines.
- Xeomin, marketed by Merz Pharma GmbH & Co., or Merz, received FDA approval in 2011 for glabellar lines.

In addition to the companies commercializing neurotoxins, there are other products and treatments that may indirectly compete with Jeuveau™, such as dermal fillers, laser treatments, brow lifts, chemical peels, fat injections and cold therapy. We compete with various companies that have products in these medical aesthetic categories. Among these companies are Allergan, Sanofi, Sun Pharma, Valeant Pharmaceuticals International, Inc., or Valeant, Mentor Worldwide LLC, a division of Johnson & Johnson, Merz, Galderma, and Skinceuticals, a division of L'Oreal SA. 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 in various phases of development in North America for the treatment of glabellar lines.

**Government Regulation Applicable to Us**

We operate in a highly regulated industry that is subject to significant federal, state, local and foreign regulation. Our business has been, and will continue to be, subject to a variety of laws including the Federal Food Drug and Cosmetic Act, or

FFDCA, and the Public Health Service Act, or the PHS Act, among others. Biologics and medical devices are subject to regulation under the FFDCA and PHS Act.

In the United States, cosmetics, dietary supplements, biopharmaceutical products and medical devices are subject to extensive regulation by the FDA. The FFDCA, PHS Act, and other federal and state statutes and regulations, govern, among other things, the research, development, testing, manufacture, storage, recordkeeping, regulatory approval, license or clearance, labeling, promotion and marketing, distribution, post-approval monitoring and reporting, sampling, and import and export of these products. Failure to comply with applicable U.S. requirements may subject a company to a variety of administrative or judicial sanctions, such as FDA refusal to approve pending license or marketing applications, warning letters and other enforcement actions, product recalls, product seizures, total or partial suspension of production or distribution, injunctions, fines, civil penalties and criminal prosecution.

**U.S. Biological Products Development Process**

The process required by the FDA before a biological product may be marketed in the United States generally involves the following:

- completion of nonclinical laboratory tests and animal studies according to good laboratory practices, or GLPs, and applicable requirements for the humane use of laboratory animals or other applicable regulations;
- submission to the FDA of an investigative new drug application, or IND, which must become effective before human clinical trials may begin;
- performance of adequate and well-controlled human clinical trials to establish the safety and efficacy of the proposed biological product for its intended use, according to the FDA's regulations, commonly referred to as good clinical practices, or GCPs, and any additional requirements including those for the protection of human research subjects and their health and other personal information;
- submission to the FDA of a BLA for marketing approval that includes substantive evidence of safety;
- purity and potency from results of nonclinical testing and clinical trials;
- satisfactory completion of an FDA inspection of the manufacturing facility or facilities where the biological product is produced to assess compliance with cGMP, to assure that the facilities, methods and controls are adequate to preserve the biological product's identity, strength, quality and purity and, if applicable, the FDA's current good tissue practices for the use of human cellular and tissue products;
- potential FDA audits of the nonclinical study and clinical trial sites that generated the data in support of the BLA; and
- FDA review and approval of the BLA.

***Preclinical Studies***

Biological product development in the United States typically involves preclinical laboratory and animal tests. Preclinical tests include laboratory evaluation of product chemistry, formulation, and toxicity, as well as animal trials to assess the characteristics and potential safety and efficacy of the product. The conduct of the preclinical tests must comply with federal regulations and requirements including GLPs, among other requirements. The results of preclinical testing are submitted to the FDA as part of an IND along with other information, including information about product chemistry, manufacturing and controls, and a proposed clinical trial protocol. Long-term preclinical tests, such as animal tests of reproductive toxicity and carcinogenicity, may continue after the IND is submitted. A 30-day waiting period after the submission of each IND is required prior to the commencement of clinical testing in humans. If the FDA has not objected to the IND within this 30-day period, the clinical trial proposed in the IND may begin.

***Clinical Studies***

Clinical trials must be conducted pursuant to an IND and in compliance with federal regulations and GCPs, an international standard meant to protect the rights and health of subjects and to define the roles of clinical trial sponsors, administrators, and monitors, as well as under protocols detailing the objectives of the trial, the parameters to be used in monitoring safety and the effectiveness criteria to be evaluated. Each protocol involving testing on U.S. subjects and subsequent protocol

amendments must be submitted to the FDA as part of the IND. The FDA may order the temporary or permanent discontinuation of a clinical trial at any time or impose other requirements or sanctions if it believes that the clinical trial is not being conducted in accordance with FDA requirements or presents an unacceptable risk to the clinical trial subjects. The clinical trial protocol, any protocol amendments, and informed consent information for subjects in clinical trials must also be submitted to an institutional review board, or IRB, for approval. An IRB may require the clinical trial at the site to be halted, either temporarily or permanently, for failure to comply with the IRB's requirements, or may impose other conditions. The IRB also approves the form and content of the informed consent form that must be signed by each clinical trial subject or his or her legal representative, and the IRB must monitor the clinical trial until completed. Human clinical trials are typically conducted in three sequential phases that may overlap or be combined:

- Phase I. The product candidate is initially introduced into a limited population of healthy human subjects and tested for safety, dosage tolerance, absorption, metabolism, distribution and excretion. In the case of some products for some diseases, or when the product may be too inherently toxic to ethically administer to healthy volunteers, the initial human testing is often conducted in patients with the disease or condition for which the product candidate is intended to gain an early indication of its effectiveness.

- Phase II. The product candidate is evaluated in a limited patient population, but larger than in Phase I, to identify possible adverse events and safety risks, to preliminarily evaluate the efficacy of the product for specific targeted indications and to assess dosage tolerance, optimal dosage and dosing schedule.

- Phase III. Clinical trials are undertaken to further evaluate dosage, and provide substantial evidence of clinical efficacy and safety in an expanded patient population, such as several hundred to several thousand subjects, at geographically dispersed clinical trial sites. Phase III clinical trials are typically conducted when Phase II clinical trials demonstrate that a dose range of the product candidate is effective and has an acceptable safety profile. These trials typically have at least 2 groups of patients who, in a blinded fashion, receive either the product or a placebo. Phase III clinical trials are intended to establish the overall risk-benefit ratio of the product and provide an adequate basis for product labeling. Generally, two adequate and well-controlled Phase III clinical trials are required by the FDA for approval of a BLA.

- Phase IV. In some cases, the FDA may condition approval of a BLA for a product candidate on the sponsor's agreement to conduct additional clinical studies after approval. In other cases, a sponsor may voluntarily conduct additional clinical studies after approval to gain more information about the product. Such post-approval studies are typically referred to as Phase IV clinical trials.

***Marketing Approval***

Clinical trials to support BLAs, which are applications for marketing approval, are typically conducted in three sequential phases, but the phases may overlap. In Phase I, the initial introduction of the investigational biologic candidate into patients, the investigational biologic is tested to assess side effects and, if possible, early evidence on effectiveness. Phase II usually involves trials in a limited subject population to determine the effectiveness of the investigational biologic for a particular indication or indications and identify common adverse effects and safety risks.

If an investigational biologic demonstrates evidence of effectiveness and an acceptable safety profile in Phase II evaluations, Phase III clinical trials are undertaken to obtain additional information about clinical efficacy and safety in a larger number of subjects, typically at geographically dispersed clinical trial sites, to permit the FDA to evaluate the overall benefit-risk relationship of the investigational product and to provide adequate information for its labeling. In most cases, the FDA requires two adequate and well-controlled Phase III clinical trials to demonstrate the efficacy and safety of the biologic for use in a specific indication or population. A single Phase III clinical trial with other confirmatory evidence may be sufficient in rare instances where the study is a large multicenter trial demonstrating internal consistency and a statistically very persuasive finding of a clinically meaningful effect on mortality, irreversible morbidity, or prevention of a disease with a potentially serious outcome and confirmation of the result in a second trial would be practically or ethically impossible. After completion of the required clinical testing, a BLA is prepared and submitted to the FDA. FDA approval of the BLA is required before marketing of the product may begin in the United States. The BLA must include the results of all preclinical, clinical and other testing and a compilation of data relating to the product's manufacture and controls. The cost of preparing and submitting a BLA is substantial. The submission of most BLAs is additionally subject to a substantial application fee, and the manufacturer or sponsor under an approved BLA are also subject to annual FDA product and establishment user fees.

The FDA has 60 days from its receipt of a BLA to determine whether the application will be accepted for filing based on the agency's threshold determination that it is sufficiently complete to permit substantive review. Once the submission is

accepted for filing, the FDA begins an in-depth review. The FDA has agreed to certain performance goals in the review of BLAs. Most such applications for standard review biologics products are reviewed within twelve months of submission; most applications for priority review biologics are reviewed within eight months of submission. Priority review for biologics is limited to those products intended to treat a serious or life-threatening disease with unmet medical need relative to the currently approved products. The review process may be extended by the FDA for three additional months to consider certain late-submitted information, or information intended to clarify information already provided in the submission. The FDA may also refer applications for novel biologics products or biologics products that present difficult questions of safety or efficacy to an advisory committee, typically a panel that includes clinicians and other experts, for review, evaluation and a recommendation as to whether the application should be approved. The FDA is not bound by the recommendation of an advisory committee, but it generally follows such recommendations. Before approving a BLA, the FDA will typically inspect one or more clinical sites to assure compliance with GCPs.

Additionally, the FDA will inspect the facility or the facilities at which the biologic product is manufactured. The FDA will not approve the BLA unless it determines that compliance with cGMP is satisfactory. Manufacturers of biologics also must comply with the FDA's general biological product standards. After the FDA evaluates the BLA and the manufacturing facilities, it issues either an approval letter or a complete response letter. A complete response letter outlines the deficiencies in the submission and may require substantial additional testing, including additional large-scale clinical testing or information in order for the FDA to reconsider the application. If, or when, those deficiencies have been addressed to the FDA's satisfaction in a resubmission of the BLA, the FDA will issue an approval letter. The FDA has committed to reviewing such resubmissions in two or six months depending on the type of information included. An approval letter authorizes commercial marketing of the biologic with specific prescribing information for specific indications. As a condition of BLA approval, the FDA may require substantial post-approval testing and surveillance to monitor the product's safety or efficacy and may impose other conditions, including labeling restrictions, which can materially affect the product's potential market and profitability. Once granted, product approvals may be withdrawn if compliance with regulatory standards is not maintained or if problems or safety issues are identified following initial marketing. Changes to some of the conditions established in an approved application, including changes in indications, labeling, ingredients or manufacturing processes or facilities, require submission and FDA approval of a new BLA or BLA supplement before the change can be implemented. A BLA supplement for a new indication typically requires clinical data similar to that in the original application, and the FDA uses the same procedures and actions in reviewing BLA supplements as it does in reviewing BLAs.

***Post-Approval Requirements***

Once a BLA is approved, a product will be subject to certain post-approval requirements. For instance, the FDA closely regulates the post-approval marketing and promotion of biologics, including standards and regulations, off-label promotion, industry-sponsored scientific and educational activities and promotional activities involving the internet. Biologics may be marketed only for the approved indications and in accordance with the provisions of the approved labeling. Adverse event reporting and submission of periodic reports is required following FDA approval of a BLA. The FDA also may require post-marketing testing, known as Phase IV testing, Risk Evaluation and Mitigation Strategies, or REMS, and surveillance to monitor the effects of an approved product or place conditions on an approval that could restrict the distribution or use of the product. In addition, quality control as well as product manufacturing, packaging and labeling procedures must continue to conform to cGMP after approval. Manufacturers and certain of their subcontractors are required to register their establishments with the FDA and certain state agencies, and are subject to periodic unannounced inspections by the FDA during which the agency inspects manufacturing facilities to assess compliance with applicable regulations such as cGMP and the Quality System Regulation. Accordingly, manufacturers must continue to expend time, money and effort in the areas of production and quality control to maintain compliance with cGMP. Regulatory authorities may withdraw product approvals or request product recalls if a company fails to comply with regulatory standards, if it encounters problems following initial marketing, or if previously unrecognized problems are subsequently discovered.

***Biosimilar Approval Process***

The Biologics Price Competition and Innovation Act of 2009, or BPCIA, established an abbreviated pathway for the approval of biosimilar and interchangeable biological products. The new abbreviated regulatory pathway establishes legal authority for the FDA to review and approve biosimilar biologics, including the possible designation of a biosimilar as "interchangeable" based on their similarity to an existing brand product.

Under the BPCIA, 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. However, an application may be submitted after four years. The BPCIA is

complex and is still in the process of being interpreted and implemented by the FDA. As a result, its ultimate impact and implementation are subject to uncertainty.

**Government Regulation in Europe**

In the European Economic Area, or EEA (which is composed of the 28 Member States of the EU plus Norway, Iceland and Liechtenstein), medicinal products can only be commercialized after obtaining a Marketing Authorization, or MA.

There are two types of MAs:

- The Community MA, which is issued by the European Commission through the Centralized Procedure, based on the opinion of the Committee for Medicinal Products for Human Use, or CHMP, of the EMA and which is valid throughout the entire territory of the EEA. The Centralized Procedure is mandatory for certain types of products, such as biotechnology medicinal products, orphan medicinal products, and medicinal products indicated for the treatment of AIDS, cancer, neurodegenerative disorders, diabetes, auto-immune and viral diseases. The Centralized Procedure is optional for products containing a new active substance not yet authorized in the EEA, or for products that constitute a significant therapeutic, scientific or technical innovation or which are in the interest of public health in the EU. Under the Centralized Procedure the maximum timeframe for the evaluation of a marketing authorization application is 210 days (excluding clock stops, when additional written or oral information is to be provided by the applicant in response to questions asked by the CHMP). Accelerated evaluation might be granted by the CHMP in exceptional cases, when the authorization of a medicinal product is of major interest from the point of view of public health and in particular from the viewpoint of therapeutic innovation. Under the accelerated procedure the standard 210 days review period is reduced to 150 days.

- National MAs, which are issued by the competent authorities of the Member States of the EEA and only cover their respective territory, are available for products not falling within the mandatory scope of the Centralized Procedure. Where a product has already been authorized for marketing in a Member State of the EEA, this National MA can be recognized in other Member States through the Mutual Recognition Procedure. If the product has not received a National MA in any Member State at the time of application, it can be approved simultaneously in various Member States through the Decentralized Procedure.

Because we are a biotechnology medicinal products company, we are eligible for a Community MA under the Centralized Procedure.

Under the above described procedures, before granting the MA, the EMA or the competent authorities of the Member States of the EEA make an assessment of the risk-benefit balance of the product on the basis of scientific criteria concerning its quality, safety and efficacy.

**Product Approval Process Outside the United States and Europe**

In addition to regulations in the United States and EU, we will be subject to a variety of regulations in other jurisdictions governing manufacturing, clinical trials, commercial sales and distribution of our future products. Whether or not we obtain FDA approval or MA 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 process varies from country to country, and the time may be longer or shorter than that required for FDA approval or MA approval. The requirements governing the conduct of clinical trials, product licensing, pricing and reimbursement vary greatly from country to country.

**Federal and State Fraud and Abuse**

While we do not currently have plans for our neurotoxin product to be covered by insurance or government reimbursement programs, if we were to offer reimbursable products, we could be subject to federal laws and regulations covering reimbursable products, such as the Anti-Kickback Statute, Stark Law and Physician Payment Sunshine Act. These laws that may affect our ability to operate include, but are not limited to:

- the Anti-Kickback Statute, which prohibits, among other things, knowingly and willfully offering, paying, soliciting, or receiving any remuneration (including any ownership, kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind, to induce, or in return, for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or order of any good, facility, service or item for which payment is made, in

whole or in part, under a federal health care program. The Anti-Kickback Statute has been interpreted to apply, among others, to arrangements between pharmaceutical manufacturers on one hand and prescribers, purchasers and formulary managers on the other. Although there are a number of statutory exceptions and regulatory safe harbors protecting certain common activities from prosecution, the exceptions and safe harbors are drawn narrowly, and practices that involve remuneration intended to induce prescribing, purchasing, or recommending may be subject to scrutiny if they do not qualify for a statutory exception or a regulatory safe harbor. Failure to meet all of the requirements of a particular applicable statutory exception or regulatory safe harbor does not make the conduct per se illegal under the Anti-Kickback Statute. Instead, the legality of the arrangement will be evaluated on a case-by-case basis based on a cumulative review of all of its facts and circumstances. A person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation. Violations of the Anti-Kickback Statute may result in substantial civil or criminal penalties, including criminal fines of up to $25,000 for each violation and imprisonment of up to five years for each violation. Violations are also subject to sanctions under the Civil Monetary Penalties Law, including penalties of up to $50,000 for each violation, plus up to three times the remuneration involved. Civil penalties for such conduct can further be assessed under the federal False Claims Act of up to $11,000 for each claim submitted, plus up to three times the amounts paid for such claims, and exclusion from participation in the Medicare and Medicaid programs;

- the Federal False Claims Act, which prohibits, among other things, any person or entity from knowingly presenting, or causing to be presented, claims for payment from Medicare, Medicaid or other federal healthcare programs that are false or fraudulent. Suits filed under the False Claims Act, known as “qui tam” actions, can be brought by any individual on behalf of the government and such individuals, commonly known as “whistleblowers,” may share in amounts paid by the entity to the government in fines or settlement. When an entity is determined to have violated the False Claims Act, the government may impose penalties of not less than $5,500 and not more than $11,000 per claim, plus up to three times the amount of damages which the government sustains because of the submission of a false claim, and may exclude the entity from participation in Medicare, Medicaid and other federal healthcare programs. Recently, the civil False Claims Act has been used to assert liability on the basis of kickbacks and improper referrals, improperly reported government pricing metrics such as Medicaid Best Price or Average Manufacturer Price, improper use of supplier or provider Medicare numbers when detailing a provider of services, improper promotion of drugs or off-label uses not expressly approved by the FDA in a drug’s label, and misrepresentations with respect to the services rendered or items provided, among other issues;

- the Federal Civil Monetary Penalties Law, which prohibits, among other things, offering or transferring remuneration to a federal healthcare beneficiary that a person knows or should know is likely to influence the beneficiary’s decision to order or receive items or services reimbursable by the government from a particular provider or supplier;

- the Federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, which created new federal criminal statutes that prohibit knowingly and willfully executing, or attempting to execute, a scheme to defraud or to obtain, by means of false or fraudulent pretenses, representations, or promises, any of the money or property owned by, or under the custody or control of, any healthcare benefit program, including private third-party payors and knowingly and willfully falsifying, concealing or covering up by trick, scheme or device a material fact or making any materially false, fictitious or fraudulent statement in connection with the delivery of or payment for healthcare benefits, items or services relating to healthcare matters. Similar to the Anti-Kickback Statute, a person or entity does not need to have actual knowledge of the statute or specific intent to violate it to have committed a violation. Significantly, the HIPAA provisions apply not only to federal programs, but also to private health benefit programs. HIPAA also broadened the authority of the Office of Inspector General to exclude participants from federal healthcare programs; and

- the Federal Physician Payments Sunshine Act, and its implementing regulations, which require that certain manufacturers of drugs, medical devices, biologics, and medical supplies for which payment is available under Medicare, Medicaid, or the Children’s Health Insurance Program (with certain exceptions) to report to the CMS information related to certain payments or other transfers of value made or distributed to physicians, which is defined broadly to include other healthcare providers, teaching hospitals, and ownership and investment interests held by physicians and their immediate family members. Manufacturers are required to submit reports to CMS by the 90th day of each calendar year. Failure to submit the required information may result in civil monetary penalties up to an aggregate of $150,000 per year (and up to an aggregate of $1 million per year for “knowing failures”) for all payments, transfers of value or ownership or investment interests not reported in an annual submission, and may

result in liability under other federal laws or regulations. Some state laws require biopharmaceutical companies to adopt or disclose specific compliance policies to regulate a company's interactions with healthcare professionals. Moreover, some states, such as Minnesota and Vermont, also impose an outright ban on certain gifts to physicians.

We may also be subject to analogous state and foreign law equivalents of each of the above federal laws, such as anti-kickback and false claims laws, which may apply to items or services reimbursed by any third-party payor, including commercial insurers or self-pay patients; state laws that require pharmaceutical companies to comply with the industry's voluntary compliance guidelines and the applicable compliance guidance promulgated by the federal government or otherwise restrict payments that may be made to healthcare providers and other potential referral sources; state laws that require pharmaceutical manufacturers to report information related to payments and other transfers of value to physicians and other healthcare providers or marketing expenditures; state laws governing the privacy and security of health information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts; and state laws related to insurance fraud in the case of claims involving private insurers.

**Data Privacy and Security Laws and Regulations**

We are also subject to data privacy and security regulation by the federal government, states and non-U.S. jurisdictions in which we conduct our business. For example, HIPAA, as amended by the Health Information Technology and Clinical Health Act, or HITECH, and its implementing regulations, imposes certain requirements relating to the privacy, security and transmission of individually identifiable health information. Among other things, HITECH makes HIPAA's privacy and security standards directly applicable to "business associates," those independent contractors or agents of covered entities that create, receive, maintain, transmit or obtain protected health information in connection with providing a service on behalf of a covered entity. HITECH also increased the civil and criminal penalties that may be imposed against covered entities, business associates and possibly other persons, and gave state attorneys general new authority to file civil actions for damages or injunctions in federal courts to enforce the federal HIPAA laws and seek attorney's fees and costs associated with pursuing federal civil actions. In addition, state and non-U.S. laws, including the General Data Protection Regulation adopted by the EU, govern the privacy and security of health and other personal information in certain circumstances, many of which differ from each other in significant ways and may not have the same effect, thus complicating compliance efforts.

**Environmental Regulation**

We are subject to numerous foreign, federal, state, and local environmental, health and safety laws and regulations relating to, among other matters, safe working conditions, manufacturing practices, fire hazard control, product stewardship and end-of-life handling or disposition of products, and environmental protection, including those governing the generation, storage, handling, use, transportation and disposal of hazardous or potentially hazardous substances and biological materials.

**Employees**

As of February 28, 2019, we had 70 employees, all of whom constituted full-time employees. None of our employees are represented by a collective bargaining agreement, and we have never experienced any work stoppage. We believe we have good relations with our employees.

**Corporate Information**

We were incorporated in the State of Delaware in November 2012. Our principal executive offices are located at 520 Newport Center Drive, Suite 1200, Newport Beach, California 92660, and our telephone number is (949) 284-4555. Our website address is www.evolus.com. We do not incorporate the information on or accessible through our website into this Annual Report on Form 10-K, and you should not consider any information on, or that can be accessed through, our website a part of this Annual Report on Form 10-K or any other filing we make with the SEC. We are an emerging growth company under the Jumpstart Our Business Startups Act of 2012 and also a smaller reporting company, and therefore we are subject to reduced public company reporting requirements.

**Available Information**

We make available, free of charge, on our website at www.evolus.com our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K and any amendments to such reports, as soon as reasonably practicable after such reports are electronically filed with, or furnished to, the SEC. All such reports are also available free of charge via EDGAR through the SEC website at www.sec.gov. The contents of these websites are not incorporated into this Annual Report on Form 10-K.

**Item 1A. Risk Factors.**

*You should carefully consider the risks and uncertainties described below, together with all the other information in this Annual Report on Form 10-K, including Item 7"Management's Discussion and Analysis of Financial Condition and Results of Operations" and the financial statements and the related notes included in Item 8 "Financial Statements and Supplementary Data." If any of the following risks actually occurs, our business, reputation, financial condition, results of operations, revenue, and future prospects could be seriously harmed. The risks and uncertainties described below are not the only ones we face. Additional risks and uncertainties that we are unaware of, or that we currently believe are not material, may also become important factors that adversely affect our business. Unless otherwise indicated, references to our business being seriously harmed in these risk factors will include harm to our business, reputation, financial condition, results of operations, revenue, and future prospects. In that event, the market price of our common stock could decline, and you could lose part or all of your investment.*

**Risks Related to Our Business and Strategy**

***We have a limited operating history and have incurred significant losses since our inception and anticipate that we will continue to incur losses for the foreseeable future. We have only one product and no commercial sales, which, together with our limited operating history, make it difficult to assess our future viability.***

We are a performance beauty company with a limited operating history. Pharmaceutical product development is a highly speculative undertaking and involves a substantial degree of risk. To date, we have invested substantially all of our efforts and financial resources in the clinical development and regulatory approval of, and commercial planning for, Jeuveau™, which is currently our only product. We are not profitable and have incurred losses in each year since our inception in 2012. We have a limited operating history upon which you can evaluate our business and prospects. Consequently, any predictions about our future success, performance or viability may not be as accurate as they could be if we had a longer operating history or experience commercializing a product. In addition, we have limited experience and have not yet demonstrated an ability to successfully overcome many of the risks and uncertainties frequently encountered by companies in the medical aesthetics field. To date, we have not generated any revenue from product sales relating to Jeuveau™. We continue to incur significant expenses related to the commercialization of Jeuveau™. We have recorded net losses of $46.9 million and $4.5 million for the years ended December 31, 2018 and 2017, respectively, and had an accumulated deficit as of December 31, 2018 of $123.0 million. We expect to continue to incur losses for the foreseeable future, and we anticipate these losses will increase as we begin to commercialize Jeuveau™. Our ability to achieve revenue and profitability is dependent on our ability to successfully market and commercialize Jeuveau™. Even if we achieve profitability in the future, we may not be able to sustain profitability in subsequent periods. Our prior losses, combined with expected future losses, may adversely affect the market price of our common stock and our ability to raise capital and continue operations.

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

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

- our success in educating physicians and consumers about the benefits, administration and use of Jeuveau™;
- the prevalence, duration and severity of potential side effects experienced with Jeuveau™;
- achieving and maintaining compliance with all regulatory requirements applicable to Jeuveau™;
- the ability to raise additional capital on acceptable terms, or at all, if needed, to support the commercial launch of Jeuveau™;
- the acceptance by physicians and consumers of the safety and efficacy of Jeuveau™;
- our ability to successfully commercialize Jeuveau™, whether alone or in collaboration with others, including our ability to hire, retain and train sales representatives in the United States;

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

- the availability, perceived advantages, relative cost, relative safety and relative efficacy of competing products, the timing of new product introductions by our competitors, and the sales and marketing tactics of our competitors, including bundling of multiple products, in response to our launch of Jeuveau™.

If we do not achieve one or more of these factors, many of which are beyond our control, in a timely manner or at all, we could experience significant delays or an inability to commercialize Jeuveau™. Further, we may never be able to successfully commercialize Jeuveau™ or any future product candidates. In addition, are in the process of transitioning from a company with a development focus to a company capable of supporting commercial activities. We may not be successful in such transition. Accordingly, we may not be able to generate sufficient revenue through the sale of Jeuveau™ or any future product candidates to continue our business.

***We rely on the Daewoong Agreement to provide us exclusive rights to distribute Jeuveau™ in certain territories. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect our development or commercialization of Jeuveau™.***

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

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

If we breach any material obligations, or use the intellectual property licensed to us in an unauthorized manner, we may be required to pay damages to Daewoong and Daewoong may have the right to terminate our license. In addition, if any of the regulatory milestones or other cash payments become due under the terms of the Daewoong Agreement, we may not have sufficient funds available to meet our obligations, which would allow Daewoong to terminate the Daewoong Agreement. Any termination or loss of rights (including exclusivity) under the Daewoong Agreement would materially and adversely affect our ability to commercialize Jeuveau™, which in turn would have a material adverse effect on our business, operating results and prospects. If we were to lose our rights under the Daewoong Agreement, we believe it would be difficult for us to find an alternative supplier of a botulinum toxin type A complex. In addition, to the extent the alternative supplier has not secured regulatory approvals in a jurisdiction, we would have to expend significant resources to obtain regulatory approvals that may never be obtained or require several years to obtain, which could significantly delay commercialization. We may be unable to raise additional capital to fund our operations during this extended time on terms acceptable to us or at all. Additionally, if we experience delays as a result of a dispute with Daewoong, the demand for Jeuveau™ could be materially and adversely affected. Additionally, if the Daewoong Agreement is terminated, breached or has certain other adverse actions, it may constitute an event of default under our loan and security agreement, or credit facility, with Oxford Finance, LLC, or Oxford. Under the credit facility, in the event of default, a default interest rate equal to the applicable rate plus 5.0% would apply and

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

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

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

In addition, our reliance on Daewoong entails additional risks, including reliance on Daewoong for regulatory compliance and quality assurance, the possible breach of the Daewoong Agreement by Daewoong, and the possible termination or nonrenewal of the Daewoong Agreement at a time that is costly or inconvenient for us. Our failure, or the failure of Daewoong, to comply with applicable regulations could result in sanctions being imposed on us, including fines, injunctions, civil penalties, delays, suspension or withdrawal of approvals, license revocation, seizures or recalls of products, operating restrictions and criminal prosecutions, any of which could significantly and adversely affect supplies of Jeuveau™. Our dependence on Daewoong also subjects us to all of the risks related to Daewoong's business, which are all generally beyond our control. Daewoong's ability to perform its obligations under the Daewoong Agreement is dependent on Daewoong's operational and financial health, which could be negatively impacted by several factors, including changes in the economic, political and legislative conditions in South Korea and the broader region in general and the ability of Daewoong to continue to successfully attract customers and compete in its market. Furthermore, Daewoong's recently constructed manufacturing facility is Daewoong's only facility meeting FDA and EMA cGMP requirements. Daewoong's lack of familiarity with, or inability to effectively operate, the facility and produce products of consistent quality, may harm our ability to compete in our market.

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

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

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

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

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

Third parties may assert that we or any of our current or future licensors, including Daewoong, are employing their proprietary technology without authorization. There may be third-party patents or patent applications with claims to materials, methods of manufacture or methods for treatment related to the use or manufacture of Jeuveau™ or any future product candidates. Because patent applications can take many years to issue, there may be currently pending patent applications that may later result in issued patents that Jeuveau™ or any future product candidates may infringe. In addition, third parties may obtain patents in the future and claim that use of our technologies infringes upon these patents. If any third-party patents were held by a court of competent jurisdiction to cover the manufacturing process of Jeuveau™ or any future product candidates, the holders of any such patents may be able to block our ability to commercialize such product candidate unless we obtain a license under the applicable patents or until such patents expire. Similarly, if any third-party patent were held by a court of competent jurisdiction to cover aspects of our methods of use, the holders of any such patent may be able to block our ability to develop and commercialize the applicable product candidate unless we obtain a license or until such patent expires. In either case, such a license may not be available on commercially reasonable terms or at all.

In addition to claims of patent infringement, third parties may bring claims against us asserting misappropriation of proprietary technology or other information in the development, manufacture and commercialization of Jeuveau™ or any of our future product candidates. Defense of such a claim would require dedicated time and resources, which time and resources could otherwise be used by us toward the maintenance of our own intellectual property and the development and commercialization of Jeuveau™ and any of our future product candidates or by any of our current or future licensors for operational upkeep and manufacturing of our products. Presently, we are a defendant in a lawsuit brought by Medytox, Inc., or Medytox, on June 7, 2017 in the Superior Court of the State of California, alleging, among other things, that Daewoong stole Medytox's botulinum toxin bacterial strain, or the BTX strain, that Daewoong misappropriated certain trade secrets of Medytox, including the process used to manufacture Jeuveau™ (which Medytox claims is similar to its biopharmaceutical drug, Meditoxin) using the BTX strain, and that Daewoong thereby interfered with Medytox's plan to license Meditoxin to us, or the Medytox Litigation. Medytox claims that as a result of Daewoong's conduct, we entered into the Daewoong Agreement instead of an agreement with Medytox to license Meditoxin.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We have utilized substantial amounts of cash since our inception in order to conduct clinical development to support regulatory approval of Jeuveau™ initially in the United States, EU and Canada. We expect that we will continue to expend substantial resources for the foreseeable future in order to commercialize Jeuveau™, for the development of any other indications of Jeuveau™, and for the clinical development of any additional product candidates we may choose to pursue.

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

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

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

Our future capital requirements depend on many factors, including:

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

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

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

In the event we are unable to raise sufficient capital to fund our commercialization efforts to achieve specified minimum sales targets under the Daewoong Agreement, we will lose exclusivity of the license that we have been granted under the Daewoong Agreement. In addition, if we are unable to raise additional capital when required or on acceptable terms, we may be required to significantly reduce operating expenses and delay, reduce the scope of or discontinue some of our development programs, commercialization efforts or other aspects of our business plan, out-license intellectual property rights to our product candidates and sell unsecured assets, or a combination of the above. As a result, our ability to achieve profitability or to respond to competitive pressures would be significantly limited and may have a material adverse effect on our business, results of operations, financial condition and/or our ability to fund our scheduled obligations on a timely basis or at all.

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

Jeuveau™ may fail to gain sufficient market acceptance by physicians, consumers and others in the medical aesthetics community. The commercial success of Jeuveau™ and any future product candidates will depend significantly on the broad adoption and use of the resulting product by physicians for approved indications, including, in the case of Jeuveau™, the treatment of glabellar lines and other aesthetic indications that we may seek to pursue. We are aware that other companies are seeking to develop alternative products and treatments, any of which could impact the demand for Jeuveau™.

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

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

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

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

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

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

Treatment of glabellar lines with Jeuveau™ is an elective procedure, the cost of which must be borne by the consumer, and we do not expect costs related to the treatment to be reimbursable through any third-party payor, such as Medicaid, Medicare or commercial insurance. The decision by a consumer to undergo treatment with Jeuveau™ for the treatment of glabellar lines or other aesthetic indications that we may pursue may be influenced by a number of factors, including:

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

- the success of any direct-to-consumer marketing efforts that we may initiate;
- the ability and ease with which physicians are able to incorporate Jeuveau™ into their practices;
- changes in demographic and social trends; and
- general consumer confidence, which may be impacted by economic and political conditions.

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

In addition, we have not pursued regulatory approval of Jeuveau™ for indications other than for the treatment of glabellar lines, which may limit adoption of Jeuveau™. Many of our competitors have received approval of multiple aesthetic and therapeutic indications for their neurotoxin product and may be able to market such product for use in a way we cannot. For example, we are aware that one of our competitors, Allergan plc, or Allergan, has obtained and plans to obtain additional indications for its neurotoxin product within medical aesthetics and therefore is able to market its product across a greater number of indications than Jeuveau™. If we are unable to obtain approval for indications in addition to glabellar lines, our marketing efforts for Jeuveau™ will be severely limited. As a result, we may not generate physician and consumer demand or approval of Jeuveau™.

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

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

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

Competitors and other parties may also seek to impact regulatory approval of our future product applications through the filing of citizen petitions or other similar documents, which could require costly and time-consuming responses to the regulatory agencies. Larger competitors could seek to prevent or delay our market entry via costly litigation which can be lengthy and expensive and serve to distract our management team's attention. We could face competition from other sources as well, including academic institutions, governmental agencies and public and private research institutions. In addition, we are aware of other companies also developing and/or marketing products in one or more of our target markets, including competing injectable botulinum toxin type A formulations that are currently in Phase III clinical development in North America for the treatment of glabellar lines. We would face similar risks with respect to any future product candidates that we may seek to develop or commercialize in the broader self-pay healthcare market. Successful competitors in that market have the ability to effectively discover, obtain patents, develop, test and obtain regulatory approvals for products, as well as the ability to effectively commercialize, market and promote approved products, including communicating the effectiveness, safety and value of products to actual and prospective customers and medical staff.

Our planned strategy to compete in the aesthetic neurotoxin market is dependent on the marketing and pricing flexibility that we believe is afforded to a company with a portfolio limited to self-pay healthcare, comprised of products and procedures that are not reimbursed by third-party payors. In the event that regulations applicable to reimbursed products are changed to apply to self-pay healthcare products, we would no longer have this flexibility and we may not be able to compete as effectively with our competitors which may have a material effect on our business, financial condition and results of operations.

The first use of Jeuveau™ will be in aesthetic medicine. The aesthetic product market, and the facial aesthetic market in particular, is highly competitive and dynamic and is characterized by rapid and substantial technological development and product innovations. We have received regulatory approval of Jeuveau™ for the treatment of glabellar lines. We anticipate that Jeuveau™ will face significant competition from other facial aesthetic products, such as other injectable and topical botulinum toxins and dermal fillers. Jeuveau™ may also compete with unapproved and off-label treatments. In addition, competitors may develop new technologies within the aesthetic market that may be superior in safety and efficacy to Jeuveau™ or offer alternatives to the use of toxins, including surgical and radio frequency techniques. To compete successfully in the aesthetic market, we will have to demonstrate that Jeuveau™ is at least as safe and effective as current products sold by our competitors. Competition in the aesthetic market could result in price-cutting and reduced profit margins, any of which would harm our business, financial condition and results of operations.

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

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

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

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

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

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

Daewoong developed the manufacturing process for Jeuveau™ and manufactures Jeuveau™ in a recently constructed facility located in South Korea. We plan to utilize Daewoong's facility for commercial production of Jeuveau™. If this facility were to be damaged, destroyed or otherwise unable to operate or comply with regulatory requirements, whether due to earthquakes, fire, floods, hurricanes, storms, tornadoes, other natural disasters, employee malfeasance, terrorist acts, power outages or otherwise, or if operations at the facility is disrupted for any other reason, such an event could jeopardize

Daewoong's ability to manufacture Jeuveau™ as promptly as we or our customers expect or possibly at all. If we experience delays in achieving our development objectives, or if Daewoong is unable to manufacture Jeuveau™ within a timeframe that meets ours and our customers' expectations, our business, prospects, financial results and reputation could be materially harmed.

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

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

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

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

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

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

***We have entered into an agreement with ALPHAEON relating to certain rights to the therapeutic indications of Jeuveau™ under the Daewoong Agreement and, as a result, we will not be able to pursue therapeutic indications for Jeuveau™.***

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

However, pursuant to the therapeutic agreement, we agreed not to sell, sub-license or otherwise dispose in whole or in part the therapeutic option or the rights underlying the therapeutic option and hold the therapeutic option and the underlying rights

in trust for ALPHAEON. In September 2018, ALPHAEON exercised the right to obtain the therapeutic option to botulinum toxin products and remitted the option exercise price directly to Daewoong.

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

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

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

The FDA and other regulatory agencies strictly regulate the marketing and promotional claims that are made about pharmaceutical products, such as Jeuveau™. In particular, a product may not be promoted for uses or indications that are not approved by the FDA or other similar regulatory authorities as reflected in the product's approved labeling. Physicians could use Jeuveau™ on their patients in a manner that is inconsistent with the approved label of the treatment of moderate to severe glabellar lines, potentially including for the treatment of other aesthetic or therapeutic indications. If we are found to have promoted such off-label uses, we may receive warning letters from and be subject to other enforcement actions by the FDA, EMA and other regulatory agencies, and become subject to significant liability, which would materially harm our business. The federal government has levied large civil and criminal fines against companies for alleged improper promotion and has enjoined several companies from engaging in off-label promotion. If we become the target of such an investigation or prosecution based on our marketing and promotional practices, we could face similar sanctions, which would materially harm our business. In addition, management's attention could be diverted from our business operations, significant legal expenses could be incurred, and our reputation could be damaged. The FDA has also required that companies enter into consent decrees or permanent injunctions under which specified promotional conduct is changed or curtailed in order to resolve FDA enforcement actions. If we are deemed by the FDA to have engaged in the promotion of our products for off-label use, we could be subject to FDA prohibitions or other restrictions on the sale or marketing of our products and other operations or significant fines and penalties, and the imposition of these sanctions could also affect our reputation and position within the industry.

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

***Jeuveau™ or any of our future product candidates may cause serious or undesirable side effects or possess other unexpected properties that could delay or prevent their regulatory approval, limit the commercial profile of approved labeling or result in post-approval regulatory action.***

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

Additionally, if we or others identify undesirable side effects, or other previously unknown problems, caused by

Jeuveau™, or any of our future product candidates, after obtaining regulatory approval in the United States or other jurisdictions, a number of potentially negative consequences could result, including:

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

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

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

Although a substantial amount of our effort will focus on the commercialization of Jeuveau™, a key element of our long-term strategy is to in-license, acquire, develop, market and commercialize a portfolio of products to serve the self-pay aesthetic market. Because our internal research and development capabilities are limited, we may be dependent upon pharmaceutical companies, academic scientists and other researchers to sell or license products or technology to us. The success of this strategy depends partly upon our ability to identify and select promising pharmaceutical product candidates and products, negotiate licensing or acquisition agreements with their current owners and finance these arrangements.

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

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

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

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

We have no prior experience in the marketing, sale and distribution of pharmaceutical products, and there are significant risks involved in building and managing a sales organization, including our ability to hire, retain and incentivize qualified individuals, provide adequate training to sales and marketing personnel, generate sufficient sales leads, effectively manage a geographically dispersed sales and marketing team, adequately provide complementary products to be offered by sales personnel, which may otherwise put us at a competitive disadvantage relative to companies with more extensive product lines, and handle any unforeseen costs and expenses. Any failure or delay in the development of our internal sales, marketing and distribution capabilities would adversely impact the commercialization of these products. We may choose to collaborate with third parties that have direct sales forces and established distribution systems, either to augment our own sales force and distribution systems or in lieu of our own sales force and distribution systems. If we are unable to enter into such arrangements on acceptable terms or at all, we may not be able to successfully commercialize Jeuveau™ or any future product candidates. To the extent we commercialize our product candidates by entering into agreements with third-party collaborators, we may have limited or no control over the sales, marketing and distribution activities of these third parties, in which case our future revenues would depend heavily on the success of the efforts of these third parties. If we are not successful in commercializing Jeuveau™ or any future product candidates, either on our own or through collaborations with one or more third parties, our future product revenue will suffer and we would incur significant additional losses.

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

As of February 28, 2019, we had 70 employees, all of whom constituted full-time employees. We will need to continue to expand our managerial, operational, finance and other resources to manage our operations, commercialize Jeuveau™ or any other product candidates, and continue our development activities. Our management and personnel, systems and facilities currently in place may not be adequate to support this future growth. Our need to effectively execute our growth strategy requires that we:

- manage any of our future clinical trials effectively;
- identify, recruit, retain, incentivize and integrate additional employees;
- manage our internal development efforts effectively while carrying out our contractual obligations to third parties; and
- continue to improve our operational, financial and management controls, reporting systems and procedures.

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

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

We are exposed to the risk that our employees, independent contractors, consultants, commercial collaborators, principal investigators, vendors and other agents may engage in fraudulent conduct or other illegal activity. Misconduct by these parties could include intentional, reckless and/or negligent conduct or disclosure of unauthorized activities to us that violates applicable regulations, including those laws requiring the reporting of true, complete and accurate information to regulatory agencies, manufacturing standards, and federal and state healthcare laws and regulations. In particular, sales, marketing and business arrangements in the healthcare industry are subject to extensive laws and regulations intended to prevent fraud,

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

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

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

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

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

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

We may not be able to control the amount and timing of resources that any future third-party distribution partners may devote to our products, or prevent any third-party from pursuing the development of alternative technologies or products that

compete with our products, except to the extent our contractual arrangements protect us against such activities. Also, we may not be able to prevent any other third-party from withdrawing its support of our products.

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

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

We purchase Jeuveau™ from Daewoong. Pursuant to the Daewoong Agreement, we submit forecasts of anticipated product orders to Daewoong and may, from time to time, submit purchase orders on the basis of these forecasting requirements. Our limited historical experience may not provide us with enough data to accurately predict future demand. In addition, we expect Daewoong to manufacture its own product, Nabota, a botulinum toxin formulation, from this facility for sale in the South Korean market and other markets in which we do not have exclusive rights. If our business significantly expands, our demand for commercial products would increase and Daewoong may be unable to meet our increased demand. In addition, our product will have fixed future expiration dates. If we overestimate our component and material requirements, we will have excess inventory, which may have to be disposed of if such inventory exceeds approved expiration dates, which would result in lost revenues and increase our expenses. If we underestimate our component and material requirements, we may have inadequate inventory, which could interrupt, delay or prevent delivery of our products to our customers. Any of these occurrences would negatively affect our financial performance.

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

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

- requirements or preferences for domestic products or solutions, which could reduce demand for our products;
- differing existing or future regulatory and certification requirements;
- management communication and integration problems resulting from cultural and geographic dispersion;
- greater difficulty in collecting accounts receivable and longer collection periods;
- difficulties in enforcing contracts;
- difficulties and costs of staffing and managing non-U.S. operations;
- the uncertainty of protection for intellectual property rights in some countries;

- tariffs and trade barriers, export regulations and other regulatory and contractual limitations on our ability to sell our products;
- multiple, conflicting and changing laws and regulations such as privacy regulations, including General Data Protection Regulation, or GDPR, tax laws, export and import restrictions, employment laws, immigration laws, labor laws, regulatory requirements and other governmental approvals, permits and licenses;
- more stringent data protection standards in some countries;
- greater risk of a failure of foreign employees to comply with both U.S. and foreign laws, including export and antitrust regulations, the U.S. Foreign Corrupt Practices Act, or FCPA, quality assurance and other healthcare regulatory requirements and any trade regulations ensuring fair trade practices;
- heightened risk of unfair or corrupt business practices in certain geographies and of improper or fraudulent sales arrangements that may impact financial results and result in restatements of, or irregularities in, financial statements;
- foreign currency exchange rates and the generally lower average sales prices available in most international markets compared to those in the United States;
- potentially adverse tax consequences, including multiple and possibly overlapping tax structures and difficulties relating to repatriation of cash; and
- political and economic instability, political unrest and terrorism.

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

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

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

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

Further, for our two identical double blind, pivotal U.S. Phase III clinical trials of Jeuveau™ (EV-001 and EV-002), one of the twenty clinical investigators was at the time of the pivotal clinical trial an indirect physician investor in our company. For our pivotal double blind, European Phase III study of Jeuveau™ (EVB-003), one of the nineteen clinical investigators was at the time an indirect physician investor in our company. Additionally, in our unblinded, non-pivotal U.S. Phase II clinical trials of Jeuveau™ (EV-004 and EV-006), eight of the twenty-nine clinical investigators are or were at the time of the non-pivotal clinical trial indirect physician investors of our company. In the future, clinical investigators for any of our future pivotal or non-pivotal clinical trials may be indirect physician investors in our company. We believe it is likely that they will be required to report some of these relationships to the FDA or EMA to the extent not already disclosed. The FDA or EMA may conclude that a financial relationship, such as an indirect investment, between us and a clinical investigator has created a conflict of interest or otherwise affected interpretation of the study. The FDA or EMA may therefore question the integrity of the data generated at the applicable clinical trial site and the utility of the clinical trial itself may be jeopardized. This could result in a delay in approval, or rejection, of our marketing applications by the FDA or EMA and may ultimately lead to the denial of marketing approval of one or more of our future product candidates. In addition, should our products become eligible for government reimbursement in the future, such indirect investments or other financial relationships with clinical investigators may become subject to additional regulations and disclosure requirements.

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

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

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

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

amounts. Moreover, in the future, we may not be able to maintain insurance coverage at a reasonable cost or in sufficient amounts to protect us against losses.

***If we fail to attract and keep senior management and key scientific personnel, we may be unable to successfully develop Jeuveau™ or any future product candidates, conduct our clinical trials and commercialize Jeuveau™ or any future products we develop.***

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

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

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

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

In addition, our business strategy was developed based on a number of important assumptions about the self-pay healthcare market. For example, we believe that the number of self-pay healthcare procedures will increase in the future. However, these trends are uncertain and limited sources exist to obtain reliable market data. Therefore, sales of Jeuveau™ or any of our future product candidates could differ materially from our projections if our assumptions are incorrect.

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

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

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

We incur and expect to incur significant legal, accounting and other expenses as a public company, including costs resulting from public company reporting obligations under the Exchange Act and regulations regarding corporate governance practices. The listing requirements of the Nasdaq Global Market, or Nasdaq, and the rules of the SEC require that we satisfy certain corporate governance requirements. Our management and other personnel devote a substantial amount of time to ensure that we comply with all of these requirements. Moreover, the reporting requirements, rules and regulations increase our legal and financial compliance costs and make some activities more time-consuming and costly. Any changes we make to

comply with these obligations may not be sufficient to allow us to satisfy our obligations as a public company on a timely basis, or at all. These reporting requirements, rules and regulations, coupled with the increase in potential litigation exposure associated with being a public company, could also make it more difficult for us to attract and retain qualified persons to serve on our board of directors or board committees or to serve as executive officers, or to obtain certain types of insurance, including directors' and officers' insurance, on acceptable terms.

We are subject to Section 404 of the Sarbanes-Oxley Act, or Section 404, and the related rules of the SEC, which generally require our management and independent registered public accounting firm to report on the effectiveness of our internal control over financial reporting. In order to maintain effective internal controls, we will need additional financial personnel, systems and resources. However, for so long as we remain an emerging growth company, as defined in the Jumpstart Our Business Startups Act of 2012, or the JOBS Act, we intend to take advantage of certain exemptions from various reporting requirements that are applicable to public companies that are not emerging growth companies, including, but not limited to, not being required to comply with the auditor attestation requirements of Section 404(b). Once we are no longer an emerging growth company or, if prior to such date, we opt to no longer take advantage of the applicable exemption, we will be required to include an opinion from our independent registered public accounting firm on the effectiveness of our internal control over financial reporting. We will remain an emerging growth company until the earliest of: (i) December 31, 2023; (ii) the first fiscal year after our gross annual revenues are $1.07 billion or more; (iii) the date on which we have, during the immediately preceding three-year period, issued more than $1.0 billion in non-convertible debt securities; or (iv) the end of any fiscal year in which the market value of our common stock held by non-affiliates is $700 million or more as of the end of the second quarter of that fiscal year.

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

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

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

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

We may license or selectively pursue strategic collaborations for the development, validation and commercialization of Jeuveau™ and any future product candidates. In any third-party collaboration, we would be dependent upon the success of the collaborators in performing their responsibilities and their continued cooperation. Our collaborators may not cooperate with us or perform their obligations under our agreements with them. Our collaborators may choose to pursue alternative technologies in preference to those being developed in collaboration with us. The development, validation and

commercialization of our product candidates will be delayed if collaborators fail to conduct their responsibilities in a timely manner or in accordance with applicable regulatory requirements or if they breach or terminate their collaboration agreements with us. Disputes with our collaborators could also impair our reputation or result in development delays, decreased revenues and litigation expenses.

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

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

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

We have incurred substantial losses during our history and do not expect to become profitable in the near future, and we may never achieve profitability. To the extent that we continue to generate taxable losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. In addition, we currently do not have a tax sharing arrangement in place with ALPHAEON. Under Section 382 of the Internal Revenue Code of 1986, as amended, or the Code, if a corporation undergoes an "ownership change," generally defined as a greater than 50% change (by value) in its equity ownership over a three-year period, the corporation's ability to use its pre-change net operating loss carryforwards, or NOLs, and other pre-change tax attributes, such as research tax credits, to offset its post-change income may be limited. As of December 31, 2018, we had $99.8 million of federal NOLs, available to offset our future taxable income, if any. As of December 31, 2018, we had federal research and development credit carryforwards of $1.2 million. These federal NOLs and research and development tax credit carryforwards expire at various dates beginning in 2034. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we earn net taxable income, our ability to use our pre-change NOLs to offset U.S. federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed.

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

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

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

Despite the implementation of security measures, our internal computer systems, and those of third parties on which we rely, are vulnerable to damage from computer viruses, malware, natural disasters, terrorism, war, telecommunication and electrical failures, cyber-attacks or cyber-intrusions over the internet, attachments to emails, persons inside our organization, or persons

with access to systems inside our organization. The risk of a security breach or disruption, particularly through cyber-attacks or cyber-intrusions, including by computer hackers, foreign governments, and cyber-terrorists, has generally increased as the number, intensity and sophistication of attempted attacks and intrusions from around the world have increased. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our current or future product development programs. The costs to us to mitigate network security problems, bugs, viruses, worms, malicious software programs and security vulnerabilities could be significant, and while we have implemented security measures to protect our data security and information technology systems, our efforts to address these problems may not be successful, and these problems could result in unexpected interruptions, delays, cessation of service, government files or penalties and other harm to our business and our competitive position. If such an event were to occur and cause interruptions in our operations, it could result in a material disruption of our product development programs. For example, the loss of clinical trial data from completed, ongoing or planned clinical trials could result in delays in our regulatory approval efforts and significantly increase our costs to recover or reproduce the data.

Moreover, if a computer security breach affects our systems or results in the unauthorized release of personally identifiable information, or PII, our reputation could be materially damaged. In addition, such a breach may require notification to governmental agencies, the media or individuals pursuant to various international, federal and state privacy and security laws, if applicable, including the GDPR, the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Clinical Health Act of 2009, and its implementing rules and regulations, as well as regulations promulgated by the Federal Trade Commission and state breach notification laws. Additionally, the regulatory environment governing information, security and privacy laws is increasingly demanding and continues to evolve and a number of states have adopted laws and regulations that may affect our privacy and data security practices regarding the use, disclosure and protection of PII. For example, California recently enacted legislation, the California Consumer Privacy Act, that will, among other things, create new individual privacy rights and impose increased obligations on companies handling PII, when it goes into effect on January 1, 2020. We would also be exposed to a risk of loss or litigation and potential liability, which could materially adversely affect our business, results of operations and financial condition. Our liability insurance may not be sufficient in type or amount to cover us against claims related to security breaches, cyber-attacks and other related breaches.

**Risks Related to Intellectual Property**

***If we or any of our current or future licensors, including Daewoong, are unable to maintain, obtain or protect intellectual property rights related to Jeuveau™ or any of our future product candidates, we may not be able to compete effectively in our market.***

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

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

We are reliant on the ability of Daewoong, as the licensor of our only product, and will be reliant on future licensors of any future product candidates, to maintain their intellectual property and protect their intellectual property against misappropriation, infringement or other violation. We may not have primary control over our future licensors' patent

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

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

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

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

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

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

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

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

products and our patents or other intellectual property rights may not be effective or sufficient to prevent them from competing.

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

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

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

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

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

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

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

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

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

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

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

we are unable to establish name recognition based on our trademarks and trade names, then we may not be able to compete effectively and our business may be adversely affected.

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

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

**Risks Related to Government Regulation**

***Our business and products are subject to extensive government regulation.***

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

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

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

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

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

- impose restrictions on the marketing or manufacturing of the product, suspend or withdraw product approvals or revoke necessary licenses;
- issue warning letters, show cause notices or untitled letters describing alleged violations, which may be publicly available;
- mandate modifications to promotional materials or require us to provide corrective information to healthcare practitioners;
- require us to enter into a consent decree, which can include imposition of various fines, reimbursements for inspection costs, required due dates for specific actions and penalties for noncompliance;

- commence criminal investigations and prosecutions;
- impose injunctions;
- impose other civil or criminal penalties;
- suspend any ongoing clinical trials;
- delay or refuse to approve pending applications or supplements to approved applications filed by us;
- refuse to permit drugs or active ingredients to be imported or exported;
- suspend or impose restrictions on operations, including costly new manufacturing requirements; or
- seize or detain products or require us to initiate a product recall.

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

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

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

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

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

Jeuveau™ and any other approved products will be subject to continual regulatory review by the FDA, the EMA and other similar regulatory authorities.

Any regulatory approvals that we or our collaborators receive for any future product candidates may also be subject to limitations on the approved indications for which the product may be marketed or to the conditions of approval, or contain requirements for potentially costly post-marketing testing, including Phase IV clinical trials, and surveillance to monitor the safety and efficacy of the product. In addition, the manufacturing processes, labeling, packaging, distribution, adverse event reporting, storage, advertising, promotion and recordkeeping for Jeuveau™ and any other future product candidates will be subject to extensive and ongoing regulatory requirements. These requirements include submissions of safety and other post-marketing information and reports, registration, as well as continued compliance with cGMP requirements and compliance with GCP requirements, for any clinical trials that we conduct post-approval. Later discovery of previously unknown problems with Jeuveau™ or any future product candidates, including adverse events of unanticipated severity or frequency, or with our third-party manufacturers or manufacturing processes, or failure to comply with regulatory requirements, may result in, among other things:

- restrictions on the marketing or manufacturing of the product, withdrawal of the product from the market, or voluntary or mandatory product recalls;
- fines, warning letters or holds on clinical trials;
- refusal by the FDA, EMA or other similar regulatory authorities to approve pending applications or supplements to approved applications filed by us or our strategic collaborators or suspension or revocation of product license approvals;
- product seizure or detention or refusal to permit the import or export of products; and
- injunctions or the imposition of civil or criminal penalties.

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

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

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

***Jeuveau™ or any future products may cause or contribute to adverse medical events that we are required to report to regulatory agencies and if we fail to do so, we could be subject to sanctions that would materially harm our business.***

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

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

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

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

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

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

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

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

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

- changes to manufacturing or marketing methods;
- changes to product labeling or promotional materials;

- recall, replacement, or discontinuance of one or more of our products; and
- additional recordkeeping.

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

**Risks Related to Our Relationship with ALPHAEON**

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

As of February 28, 2019, ALPHAEON, which is majority-owned by SCH, owns 56.0% of our outstanding shares of common stock. As long as ALPHAEON beneficially owns a majority of the voting power of our outstanding common stock, it will generally be able to determine the outcome of all corporate actions requiring stockholder approval, including the election and removal of directors. Even if ALPHAEON were to beneficially own less than a majority of the voting power of our outstanding common stock, it may have the ability to influence the outcome of such corporate actions if it owns a significant portion of our common stock. In addition, if SCH chooses to sell some or all of its controlling interest in ALPHAEON, it could result in a change-of-control of ALPHAEON that could result in us being indirectly controlled by an unknown third-party.

As a result, we are a "controlled company" within the meaning of the NASDAQ corporate governance requirements and ALPHAEON has the ability to control the direction of our business and the concentrated ownership of our common stock, and the rights described above will prevent you and other stockholders from influencing significant decisions. In addition, we may take actions that stockholders other than ALPHAEON do not view as beneficial. This voting control may also discourage transactions involving a change-of-control of our company, including transactions in which you as a holder of our common stock might otherwise receive a premium for your shares.

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

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

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

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

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

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

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

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

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

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

These decisions include:

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

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

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

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

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

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

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

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

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

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

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

**Risks Related to Our Common Stock**

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

Our stock price may be volatile. For example, the closing price of our common stock since February 8, 2018, has ranged from a low of $6.85 to a high of $38.49. The stock market in general and the market for earlier-stage pharmaceutical companies in particular have experienced extreme volatility that has often been unrelated to the operating performance of particular companies. The market price for our common stock may be influenced by many factors, some of which are beyond our control, including:

- announcements of regulatory approval or disapproval of product candidates;
- adverse results from or delays in clinical trials of any of our future product candidates;
- unanticipated safety concerns related to the use of Jeuveau™ or any of our future products;
- any termination or loss of rights under the Daewoong Agreement;
- FDA or other U.S. or foreign regulatory or legal actions or changes affecting us or our industry;
- adverse developments concerning our manufacturer or any future strategic partnerships;
- introductions and announcements of new technologies and products by us, any commercialization partners or our competitors, and the timing of these introductions and announcements;
- variations in our financial results or those of companies that are perceived to be similar to us;
- success or failure of competitive products or medical aesthetic products generally;
- changes in the structure of healthcare payment systems;
- announcements by us or our competitors of significant acquisitions, licenses, strategic partnerships, new product approvals and introductions, joint ventures or capital commitments;
- overall financial market conditions for the pharmaceutical and biopharmaceutical sectors and issuance of securities analysts' reports or recommendations;
- quarterly variations in our results of operations or those of our competitors;
- changes in financial estimates or guidance, including our ability to meet our future revenue and operating profit or loss estimates or guidance;
- the public's reaction to our earnings releases, other public announcements and filings with the SEC;
- rumors and market speculation involving us or other companies in our industry;
- short selling of our common stock or the publication of opinions regarding our business prospects in a manner that is designed to create negative market momentum;
- sales of substantial amounts of our stock by ALPHAEON or other significant stockholders or our insiders, or the expectation that such sales might occur;
- general economic, industry and market conditions, including the size and growth, if any, of the medical aesthetics market;
- news reports relating to trends, concerns and other issues in medical aesthetics market or the pharmaceutical or biopharmaceutical industry;
- operating and stock performance of other companies that investors deem comparable to us and overall performance of the equity markets;

- additions or departures of key personnel, including our Chief Executive Officer and Chief Financial Officer;
- intellectual property, product liability or other litigation against us, our manufacturer or other parties on which we rely or litigation against our general industry;
- announcements or actions taken by ALPHAEON as our controlling stockholder, including sales of substantial amounts of our common stock by ALPHAEON;
- changes in our capital structure, such as future issuances of securities and the incurrence of additional debt;
- changes in accounting standards, policies, guidelines, interpretations or principles; and
- other factors described in this "Risk Factors" section.

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

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

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

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

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

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

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

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

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

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

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

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

As of December 31, 2018, ALPHAEON owned 56.0% of our outstanding shares of common stock. Subject to the restrictions described in the paragraph below, future sales of these shares in the public market will be subject to the volume and other restrictions of Rule 144 under the Securities Act for so long as ALPHAEON is deemed to be our affiliate, unless the shares to be sold are registered with the SEC. The sale by ALPHAEON of a substantial number of shares of our common stock, or a perception that such sales could occur, could significantly reduce the market price of our common stock.

We have filed a registration statement with the SEC covering shares of our common stock available for future issuance under our 2017 Omnibus Incentive Plan, and may file future registration statements covering shares of our common stock for future issuance under any future plans. Upon effectiveness of such registration statements, any shares subsequently issued under such plans will be eligible for sale in the public market, except to the extent that they are restricted by the lock-up agreements referred to above and subject to compliance with Rule 144 in the case of our affiliates. Sales of a large number of the shares issued under these plans in the public market could have an adverse effect on the market price of our common stock.

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

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

- permit our board of directors to issue shares of preferred stock, with any rights, preferences and privileges as they may designate, without stockholder approval, which could be used to dilute the ownership of a hostile bidder significantly;
- provide that the authorized number of directors may be changed only by resolution of our board of directors and that, from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, a director may only be removed for cause by the affirmative vote of the holders of at least 66 2/3% of our voting stock;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- divide our board of directors into three classes, with each class serving staggered three-year terms, which may delay the ability of stockholders to change the membership of a majority of our board of directors;
- from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, require that any action to be taken by our stockholders must be effected at a duly called annual or special meeting of stockholders and not be taken by written consent;

- provide that stockholders seeking to present proposals before a meeting of stockholders or to nominate candidates for election as directors at a meeting of stockholders must provide notice in writing in a timely manner and also specify requirements as to the form and content of a stockholder's notice, which may discourage or deter a potential acquiror from conducting a solicitation of proxies to elect the acquiror's own slate of directors or otherwise attempting to obtain control of our company;

- prohibit cumulative voting in the election of directors, which limits the ability of minority stockholders to elect director candidates; and

- provide that special meetings of our stockholders may be called only by the chairman of the board, our Chief Executive Officer or by our board of directors pursuant to a resolution adopted by a majority of the total number of authorized directors, which may delay the ability of our stockholders to force consideration by our company of a take-over proposal or to take certain corporate actions, including the removal of directors.

These provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors, which is responsible for appointing the members of our management. In addition, our certificate of incorporation provides that, from and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, we will be subject to Section 203 of the General Corporation Law of the State of Delaware, or the DGCL, which generally prohibits a Delaware corporation from engaging in any of a broad range of business combinations with an interested stockholder who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. This provision could have the effect of delaying or preventing a change-of-control, whether or not it is desired by or beneficial to our stockholders. Further, other provisions of Delaware law may also discourage, delay or prevent someone from acquiring us or merging with us.

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

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

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

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

- We have indemnified our directors and officers for serving us in those capacities, or for serving as a director, officer, employee or agent of other business enterprises at our request, to the fullest extent permitted by Delaware law. Delaware law provides that we may indemnify such person if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to our best interest and, with respect to any criminal proceeding, had no reasonable cause to believe such person's conduct was unlawful.

  We may, in our discretion, indemnify employees and agents in those circumstances where indemnification is permitted by applicable law.

- We will be required to advance expenses, as incurred, to our directors and officers in connection with defending a proceeding, except that such directors or officers shall undertake to repay such advances if it is ultimately determined that such person is not entitled to indemnification.

- The rights conferred in our bylaws will not be exclusive. We may not retroactively amend our bylaw provisions to reduce our indemnification obligations to directors, officers, employees and agents.

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

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

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

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

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

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

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

Even after we no longer qualify as an emerging growth company, we may still qualify as a "smaller reporting company" which would allow us to take advantage of many of the same exemptions from disclosure requirements, including exemption from compliance with the auditor attestation requirements of Section 404 and reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements. Investors could find our common stock less attractive because we may rely on these exemptions. If some investors find our common stock less attractive as a result, there may be a less active trading market for our common stock and our trading price may be more volatile.

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

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

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

**Item 1B. Unresolved Staff Comments.**

Not applicable.

**Item 2. Properties.**

Our corporate headquarters is located at 520 Newport Center Drive, Suite 1200, Newport Beach, CA 92660, in a facility that we sublease, encompassing approximately 17,758 square feet of space. The sublease for this facility expires on January 20, 2020. We also maintain a corporate office located at 1027 Garden Street, Santa Barbara, California 93101, in a facility we lease encompassing approximately 4,450 square feet of space. The lease for this facility expires on May 31, 2020. We believe our facilities are sufficient for our current needs. When our lease expires, we may exercise our renewal option or look for additional or alternate space for our operations, and we believe that suitable additional or alternative space will be available in the future on commercially reasonable terms.

**Item 3. Legal Proceedings.**

***Medytox Litigation***

On June 7, 2017, Medytox Inc., or Medytox, filed an initial complaint in the Superior Court of the State of California, or the Medytox Litigation, against, us, ALPHAEON, SCH, Daewoong, Byung Kook Lee, Jae Chun Yoon, Jae Seung Yoon and Chang Woo Suh, among others, or collectively, the defendants. On August 14, 2017, Medytox filed an amended complaint against the defendants, or the amended complaint. The amended complaint alleges, 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. Medytox claims that as a result of Daewoong's conduct, we entered into the Daewoong Agreement instead of an agreement with Medytox to license Meditoxin.

Daewoong filed a motion to dismiss or stay for forum non conveniens, claiming that the place where the complaint has been filed, in the Superior Court of the State of California, is not the proper place for the trial of the claims in the complaint because, among other reasons, the underlying facts that gave rise to the complaint occurred in South Korea. Daewoong's motion to dismiss was granted by the Superior Court of the State of California on October 12, 2017. As a result, the action filed with the Superior Court of the State of California is stayed pending resolution of the proceedings in South Korea. In October 2017, Medytox initiated a civil lawsuit against Daewoong and its parent company, Daewoong Co. Ltd., in the Seoul Central District Court in Seoul, South Korea, related to the same subject matter in the Medytox litigation and is seeking, among other things, money damages, injunctive relief and destruction of related documents and products. We are not a party to the litigation in the Seoul Central District Court.

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

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

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

We are vigorously defending Medytox's claims against us. Given the early stage in the Medytox Litigation, we are unable to predict the likelihood of success of Medytox's claims against us or Daewoong or to quantify any risk of loss. The litigation

could go on for an extended period of time and require us to dedicate significant financial and management resources to those efforts. While we are entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient. An adverse ruling against either us or one of the other defendants could materially and adversely affect our business, consolidated financial position, results of operations, or cash flows and could also result in reputational harm. Even if we are successful, the litigation may result in delays in our product development, reputational damage or other collateral consequences.

***ITC Complaint***

On January 30, 2019, Allergan and Medytox filed a complaint against us and Daewoong in the U.S. International Trade Commission, or the ITC, containing substantially similar allegations to the Medytox Litigation, specifically that Jeuveau™ is manufactured based on misappropriated trade secrets of Medytox and therefore the importation of Jeuveau™ is an unfair act. The ITC matter is entitled *In the Matter of Certain Botulinum Toxin Products*, or the ITC Complaint. On March 6, 2019, the ITC instituted an investigation as ITC Inv. No. 337-TA-1145, or the ITC Action. The ITC complaint calls for an investigation by the ITC under Section 337 of the Tariff Act of 1930. The ITC complaint seeks (i) an investigation pursuant to Section 337 of the Tariff Act of 1930, (ii) a hearing with the ITC on permanent relief, (iii) issuance of a limited exclusion order forbidding entry of Jeuveau™ into the United States, (iv) a cease and desist order prohibiting Daewoong and us from engaging in the importations, sale for importation, marketing, distribution, offering for sale, the sale after the importation of, or otherwise transferring Jeuveau™ within the United States, (v) a bond issued during the presidential review period, (vi) the return of Medytox's trade secrets and other confidential information including the alleged stolen BTX Strain, and (vii) exclusion and cease and desist orders.

We intend to defend the claims contained in the ITC complaint and the related ITC Action vigorously. Given the early stage in the ITC Action, we are unable to predict the likelihood of success of Medytox's and Allergan's claims against us or Daewoong or to quantify the risk of the imposition of an exclusion order or cease and desist order. The ITC Action could require us to dedicate significant financial and management resources to those efforts. While we are entitled to indemnity under the Daewoong Agreement, the indemnity may not be sufficient. An adverse ruling against either us or one of the other defendants could materially and adversely affect our business, consolidated financial position, results of operations, or cash flows and could also result in reputational harm. Even if we are successful, the ITC Action may result in reputational damage or other collateral consequences.

***Other Matters***

In January 2017, Medytox initiated a criminal investigation into the foregoing matter in South Korea, which appears to target one or more of the above defendants, but does not appear to target us.

In addition to the Medytox Litigation and the ITC Complaint, from time to time, we may be subject to other legal proceedings and claims in the ordinary course of business.

**Item 4. Mine Safety Disclosures.**

Not applicable.

## Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

### Market Information

On February 12, 2018, we consummated the initial public offering of our common stock at a price of $12.00 per share. Our common stock is traded on the Nasdaq under the symbol "EOLS". Prior to the initial public offering, there was no public market for our common stock.

### Holders of Record

As of March 12, 2019, we had approximately 39 holders of record of our common stock. This number does not include beneficial owners whose shares were held in street name. The actual number of holders of our common stock is greater than this number of record holders and includes stockholders who are beneficial owners, but whose shares are held in street name by brokers or held by other nominees. This number of holders of record also does not include stockholders whose shares may be held in trust by other entities.

### Dividend Policy

We have never declared or paid any cash dividends on our capital stock and we do not currently intend to pay any cash dividends on our capital stock for the foreseeable future. We currently intend to retain all available funds and any future earnings to support our operations and finance the growth and development of our business. Any future determination related to our dividend policy will be made at the discretion of our board of directors and will depend upon, among other factors, our results of operations, financial condition, capital requirements, tax considerations, legal or contractual restrictions, business prospects, the requirements of current or then-existing debt instruments, general economic conditions and other factors our board of directors may deem relevant. The payment of dividends is also restricted under our credit facility.

### Securities Authorized for Issuance Under Equity Compensation Plan

See Item 12 "Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters—Securities Authorized for Issuance Under Equity Compensation Plan."

### Recent Sales of Unregistered Securities

From January 1, 2018 to December 31, 2018, the period covered by this Annual Report on Form 10-K, we did not issue any unregistered securities.

### Purchases of Equity Securities

We made no purchases of our equity securities during the fourth quarter of the year ended December 31, 2018.

### Performance Graph

Not applicable.

**Item 6. Selected Financial Data.**

Not applicable.

## Item 7. 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 selected financial data in Item 6 and historical financial statements, the notes thereto included in Item 8 "Financial Statements and Supplementary Data" and included elsewhere in this Annual Report on Form 10-K. 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 the Item 1A "Risk Factors" section of this Annual Report on Form 10-K. 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."*

### Overview

We are a performance beauty company with a customer-centric approach focused on delivering breakthrough products in the self-pay aesthetic market. On February 1, 2019, the U.S. Food and Drug Administration, or FDA, approved our first product Jeuveau™ (prabotulinumtoxinA-xvfs). We plan to launch Jeuveau™ commercially in the United States in Spring 2019. Jeuveau™ is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. We believe we will offer physicians and consumers a compelling value proposition with Jeuveau™. Currently, onabotulinumtoxinA (BOTOX) is the neurotoxin market leader, and prior to the approval of Jeuveau™, was the only known 900 kDa botulinum toxin type A complex approved in the United States. We believe aesthetic physicians generally prefer the performance characteristics of the complete 900 kDa neurotoxin complex and are accustomed to injecting this formulation.

Since our inception in 2012, we have devoted substantially all our efforts to identify and recruit personnel, conduct clinical trials, and seek regulatory approval for Jeuveau™. Our resources have largely been devoted to the clinical development of Jeuveau™. On September 30, 2013, we entered into a License and Supply Agreement, or the Daewoong Agreement, with Daewoong Pharmaceuticals Co., Ltd., or Daewoong, a South Korean pharmaceutical manufacturer, pursuant to which Daewoong agreed to manufacture and supply us with Jeuveau™ and granted us an exclusive license to develop, distribute, market and sell the product in the United States, EU, Canada, Australia, Russia, Commonwealth of Independent States, or C.I.S., and South Africa, or the covered territories. Daewoong also granted us a non-exclusive license to do the same in Japan.

We submitted a New Drug Submission, or NDS, to Health Canada and in August 2018 we received approval from Health Canada for the temporary improvement in the appearance of moderate to severe glabellar lines in adult patients under 65 years of age. We plan to market the product in Canada in the first half of 2019 through our distribution partner Clarion Medical Technologies, Inc., or Clarion, a Canadian provider of medical and aesthetic equipment and consumables to hospitals, aesthetic clinics and private medical practices. We also submitted a Marketing Authorization Application, or MAA, to the European Medicines Agency, or EMA, and it was accepted for review in July 2017. We expect an opinion from the Committee for Medicinal Products for Human Use, or CHMP, in the first quarter of 2019. If the CHMP provides a favorable opinion, we would expect approval of our MAA by end of second quarter of 2019.

We have never generated revenue from Jeuveau™ and have never been profitable. As of December 31, 2018, we had an accumulated deficit of $123.0 million. We incurred net losses of approximately $46.9 million and $4.5 million in the years ended December 31, 2018 and 2017, respectively.

We expect to continue to incur significant expenses and increasing net operating losses for the foreseeable future as we seek to commercialize Jeuveau™ and seek regulatory approvals outside of the United States. We utilized contract research organizations, or CROs, to carry out our clinical development. We expect to incur significant expenses related to building our commercialization infrastructure, including marketing, sales and distribution functions, inventory build prior to commercial launch and training and deploying a specialty sales force and implementing a targeted marketing campaign. We also expect to incur additional costs associated with operating as a public company and in building our internal resources.

### Initial Public Offering

In February 2018, we completed our initial public offering and sold 5,047,514 shares of our common stock at a public offering price of $12.00 per share, inclusive of 47,514 shares of our common stock upon the exercise by the underwriters of their option to purchase additional shares. The net proceeds were approximately $56.3 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

**Follow-on Public Offering**

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

**Daewoong License and Supply Agreement**

On September 30, 2013, we entered into the Daewoong Agreement pursuant to which we have an exclusive distribution license to Jeuveau™ from Daewoong for aesthetic indications in the United States, EU, Canada, Australia, Russia, C.I.S., and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. Under the Daewoong Agreement, we are required to make certain minimum annual purchases upon commercialization in order to maintain the exclusivity of the license. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and our future market share in various jurisdictions. In connection with our entry into the Daewoong Agreement, we made an upfront payment to Daewoong of $2.5 million. We further agreed to make milestone payments upon certain confidential development and commercial milestones, including a confidential payment to Daewoong upon each of the U.S. Food and Drug Administration, or FDA, and the European Medicines Agency, or EMA, approval of Jeuveau™. Under the Daewoong Agreement, the maximum aggregate amount of future milestone payments that could be owed to Daewoong upon the satisfaction of all milestones is $13.5 million. Upon the FDA approval in February 2019, the Company paid a $2.0 million milestone payment. Under the Daewoong Agreement, Daewoong is responsible for all costs related to the manufacturing of Jeuveau™, including costs related to the operation and upkeep of its manufacturing facility, and we are responsible for all costs related to obtaining regulatory approval, including clinical expenses, and commercialization of Jeuveau™. We had the option, subject to certain payment conditions, to expand the permitted use of the product beyond aesthetic indications and into therapeutic indications. This option was assigned to ALPHAEON who, as of December 31, 2018, exercised the option by remitting payment directly to Daewoong. For additional information about the Daewoong Agreement, see Item 1 “Business—Daewoong License and Supply Agreement.”

**Acquisition by ALPHAEON and Related Payment Obligations**

In 2013, SCH-AEON, LLC, or SCH, acquired all of our outstanding equity in exchange for membership interests in SCH. In 2014, SCH contributed our equity that it had acquired in 2013 to its operating subsidiary, ALPHAEON. As a result of these transactions, we became a wholly-owned subsidiary of ALPHAEON, which we remained until the completion of our initial public offering in February 2018.

As part of our acquisition by SCH pursuant to a stock purchase agreement, or the Stock Purchase Agreement, ALPHAEON became obligated to make certain payments to SCH for the benefit of certain of our former stockholders, or the Evolus Founders. On December 14, 2017, SCH and ALPHAEON entered into an amendment to the Stock Purchase Agreement, or the Amended Purchase Agreement, whereby we also joined as a contractual party. Pursuant to the Amended Purchase Agreement, ALPHAEON’s existing payment obligations were replaced with revised payment obligations, payable directly to the Evolus Founders. Effective upon the closing of our initial public offering, ALPHAEON immediately and automatically assigned to us and we immediately and automatically accepted and assumed all of ALPHAEON’s payment obligations under the Stock Purchase Agreement, as amended by the Amended Purchase Agreement.

Under the Amended Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million payment upon obtaining FDA approval for Jeuveau™ for the treatment of glabellar lines, which was paid in full in February 2019, (ii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™ within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™ outside of the United States, and (iv) a $20.0 million non-interest bearing promissory note that will mature on the 2.5 year anniversary of the first commercial sale of Jeuveau™ in the United States, or the contingent promissory note. The revised payment obligations set forth in (ii) and (iii) above, will terminate for the quarter following the 10 year anniversary of the first commercial sale of Jeuveau™ in the United States. The fair value of the obligations set forth in items (i), (ii) and (iii) are valued quarterly and are referred to in our financial statements as the “contingent royalty obligation.” Upon completion of our initial public offering, we assumed and agreed to pay the revised payment obligations under the Amended Purchase Agreement. At the closing of our initial public offering, the outstanding related party borrowings from ALPHAEON were set-off and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations we assumed from ALPHAEON, the fair value of which, immediately prior to our initial public offering date or February 12, 2018, was $55.7 million. In addition, pursuant to the Amended Purchase Agreement, in February 2019 upon FDA approval, we paid one-time bonuses to certain of our current and

former employees aggregating to approximately $1.6 million, including a one-time bonus of $0.7 million paid to Rui Avelar, M.D., our Chief Medical Officer and Head of Research & Development.

**Our Relationship with ALPHAEON Corporation**

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

In January 2018, we entered into a services agreement with ALPHAEON, or the services agreement, which became effective in connection with our initial public offering. The services agreement sets forth certain terms between ALPHAEON and us that govern the respective responsibilities and obligations between ALPHAEON and us, as it relates to the services to be performed between us. The fees charged for any services rendered pursuant to the services agreement are the actual cost incurred by ALPHAEON or us, as the case may be, in providing the services for the relevant period.

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

Prior to February 12, 2018, we incurred obligations to ALPHAEON for the research and development expenses it incurred on our behalf, which included both external and internal expenses as well as general and administrative support services. External research and development expenses included costs for CROs to conduct nonclinical and clinical studies on our product candidate, costs to acquire and evaluate clinical study data such as investigator grants, patient screening fees and laboratory work, and fees paid to consultants. Internal development expenses included costs for the work that ALPHAEON's research and development employees perform for us.

**Financial Overview**

Our historical financial statements for the periods prior to our initial public offering on February 12, 2018 have been prepared on a standalone basis and are derived from ALPHAEON's consolidated financial statements and accounting records in conformity with U.S. generally accepted accounting principles, or GAAP. Our financial statements reflect our financial position, results of operations, stockholders' equity (deficit), and cash flows as our business was operated as part of ALPHAEON prior to the separation. The financial statements include the allocation of certain assets and liabilities that had historically been held at the ALPHAEON corporate level but which were specifically identifiable or allocable to us.

The financial results reflect amounts attributable to our business, including the costs that ALPHAEON incurred for the development and commercialization of Jeuveau™ and costs and expenses under the Daewoong Agreement. Management believes that the allocations and results are reasonable for all periods presented. However, allocations may not be indicative of the actual expense we would have incurred had the business operated as an independent company for the periods presented.

The following is a description of the components of our results of operations:

**General and Administrative Expenses**

Our general and administrative expenses consist of salaries and personnel-related costs, including stock-based compensation, for our employees in administrative, commercial and other operating functions. Our general and administrative expenses also include professional fees for accounting, auditing and consulting services, legal services, investor relations, travel and facilities.

As described above, prior to our initial public offering, ALPHAEON charged us for many of the expenses associated with these functions, including the grant of stock-based compensation of ALPHAEON's stock. Pursuant to the services agreement, ALPHAEON provides us and we provide ALPHAEON certain administrative and development support services. For example, we received from ALPHAEON certain general management, communication, intellectual property, human resources, office and information technology services, and we provide general accounting and legal services to ALPHAEON. The amounts to be charged for services rendered pursuant to the services agreement will be the actual cost incurred by ALPHAEON or us, as the case may be, in providing the services for the relevant period. ALPHAEON has historically charged us market rates for the portion of the resources that we use. Since our initial public offering date or February 12, 2018, we have assumed responsibility from ALPHAEON for all of our general and administrative functions.

We anticipate our general and administrative expenses to increase in the future to support our continued development and commercialization of Jeuveau™. Our general and administrative expenses will also increase due to the costs of operating as a public company and may further increase when we are no longer able to rely on certain "emerging growth company" exemptions we are afforded under the Jumpstart Our Business Startups Act of 2012, or the JOBS Act.

**Research and Development Expenses**

Since our inception, we have focused on developing Jeuveau™. Our research and development expenses primarily consist of:

- personnel costs, which include salaries and related expenses for research and development personnel, including expenses related to stock-based compensation granted to personnel in development functions;
- fees paid to clinical study sites and vendors, including CROs, in connection with our clinical studies, costs of acquiring and evaluating clinical study data such as investigator grants, patient screening fees, laboratory work and statistical compilation and analysis, and fees paid to clinical consultants related to the execution of clinical trials;
- expenses to acquire clinical study materials;
- other consulting fees paid to third parties;
- expenses related to compliance with drug development regulatory requirements; and
- travel, facilities, which includes cost associated with rent, maintenance and related facilities costs as well as depreciation and amortization, insurance and other expenses.

We expense our research and development costs as we incur them. Our expenses related to clinical studies are based on estimates of patient enrollment and related expenses at clinical investigator sites as well as estimates for the services received and efforts expended pursuant to contracts with CROs that we may use to conduct and manage our clinical studies on our behalf. We generally accrue expenses related to clinical studies based on contracted amounts applied to the level of patient enrollment and activity. If we modify timelines or contracts based upon changes in the clinical study protocol or scope of work to be performed, we modify our estimates of accrued expenses accordingly on a prospective basis.

Prior to our initial public offering, ALPHAEON historically charged us for many of the expenses associated with these functions, including, among others, costs for CROs to conduct nonclinical and clinical studies on our product candidate, costs to acquire and evaluate clinical study data such as investigator grants, patient screening fees and laboratory work, and fees paid to consultants. ALPHAEON has historically charged us market rates for the portion of the resources that we use. Since our initial public offering date or February 12, 2018, we have assumed responsibility from ALPHAEON for these research and development functions.

We expect our overall research and development expenses to increase if and when we seek to develop future product candidates and pursue regulatory approvals in other jurisdictions.

**Results of Operations**

***Comparison of the Years Ended December 31, 2018 and 2017***

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

| | Year Ended December 31, | | |
|---|---|---|---|
| | 2018 | 2017 | Change |
| Operating expenses: | | | |
| Research and development | $ 6,487 | $ 6,689 | $ (202) |
| General and administrative | 29,146 | 4,819 | 24,327 |
| Revaluation of contingent royalty obligation to Evolus Founders, a related party | 10,500 | — | 10,500 |
| Depreciation and amortization | 9 | 218 | (209) |
| Total operating expenses | 46,142 | 11,726 | 34,416 |
| Loss from operations | (46,142) | (11,726) | (34,416) |
| Other income (expense): | | | |
| Interest income | 203 | — | 203 |
| Interest expense | (863) | (5) | (858) |
| Loss before taxes | (46,802) | (11,731) | (35,071) |
| Provision (benefit) for income taxes | 65 | (7,251) | 7,316 |
| Net loss and comprehensive loss | $ (46,867) | $ (4,480) | $ (42,387) |

***Research and Development***

Research and development expenses decreased by $0.2 million to $6.5 million for the year ended December 31, 2018 from $6.7 million for the year ended December 31, 2017. The decrease was primarily attributable to a reduction of $2.3 million in costs related to research and clinical trials which ended in 2017, and was partially offset by an increase in personnel expenses primarily related to shared-based compensation as we started granting stock-based awards in the first quarter of 2018.

***General and Administrative***

General and administrative expenses increased by $24.3 million to $29.1 million for the year ended December 31, 2018 from $4.8 million for the year ended December 31, 2017. The increase was primarily attributable to higher personnel-related expenses as we built out our corporate and commercial infrastructure, higher accounting and legal expenses primarily related to meeting ongoing public company compliance requirements and other legal matters, as well as higher pre-commercialization expenses in the preparation for our product launch. Personnel-related expenses increased by $12.6 million due to our hiring of additional employees as well as incurring stock-based compensation expenses as we started granting stock-based awards in the first quarter of 2018. The number of general and administrative employees increased to 39 as of December 31, 2018 from 10 as December 31, 2017. We expect that general and administrative expenses will increase due to costs related to the implementation of our commercialization strategy as well as costs related to the ongoing compliance and communication requirements of a public company.

***Revaluation of Contingent Royalty Obligation Payable to Evolus Founders***

Effective upon the closing of our IPO in February 2018, we assumed all of ALPHAEON's payment obligations under the Stock Purchase Agreement, as amended by the Amended Purchase Agreement, including certain royalty obligation payable to Evolus Founders which is recorded at its fair value as of the end of each reporting period. The change of the fair value is primarily driven by assumptions related to revenue forecasts, discount rate, and timing of cash flows. Such change of the fair value is recorded in operating expenses in each period. We incurred no such charge in 2017.

***Provision (Benefit) for Income Taxes***

There was no significant income tax provision or benefit for the year ended December 31, 2018, compared to income tax benefit of $7.3 million for the year ended December 31, 2017. On December 22, 2017, the U.S. Government enacted the Tax Cuts and Jobs Act, or TCJA. The TCJA significantly impacted our effective income tax rate by reducing the U.S. federal corporate tax rate from 35% to 21%. For certain of our deferred tax assets and deferred tax liabilities, we have recorded a provisional decrease in net deferred tax assets of $3.2 million, with a corresponding decrease in the valuation allowance of $9.6 million and a benefit to income tax expense of $6.3 million for the year ended December 31, 2017. Our accounting for the elements of the TCJA is complete as of December 31, 2018 and no adjustments were made to the original provisional estimate.

**Liquidity and Capital Resources**

As of December 31, 2018, we had a cash balance and stockholder's equity of $93.2 million and $84.4 million, respectively.

Prior to our initial public offering and since our acquisition in 2014 by ALPHAEON, we had funded our operations primarily through contributions and related party borrowings from ALPHAEON. We have no revenue, incur operating losses and have an accumulated deficit as a result of ongoing efforts to develop our product Jeuveau™, including conducting nonclinical testing and clinical trials and providing general and administrative support for these operations. As of December 31, 2018, we had an accumulated deficit of $123.0 million and working capital of $89.1 million. We had net losses of $46.9 million and $4.5 million for the years ended December 31, 2018 and 2017, respectively, and we used net cash in operating activities of $25.7 million and $13.2 million for the years ended December 31, 2018 and 2017, respectively. We anticipate that operating losses and net cash used in operating activities will increase over the next few years as we commercialize Jeuveau™.

*Initial Public Offering*

In February 2018, we closed our initial public offering and sold 5,047,514 shares of our common stock at the price of $12.00 per share, inclusive of 47,514 shares of our common stock issued upon the exercise by the underwriters of their option to purchase additional shares. The net proceeds were approximately $56.3 million, after deducting underwriting discounts and commissions, excluding other offering expenses.

*July 2018 Follow-On Public Offering*

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

*Loan and Security Agreement*

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

Upon the earliest to occur of the maturity date, the acceleration of the term loans, or the prepayment of the term loans, we will be required to pay to Oxford a final payment of 5.5% of the full principal amount of the term loans funded, or the final payment. We may elect to prepay all amounts owed prior to the maturity date, provided that a prepayment fee is also paid, which shall be equal to 3.0% of the amount prepaid if the prepayment occurs on or prior to March 15, 2020, 2.0% of the amount prepaid if the prepayment occurs after March 15, 2020 and on or prior to March 15, 2021, or 1.0% of the amount prepaid if the prepayment occurs thereafter, or the Prepayment Fee. If the term loans are accelerated following the

occurrence of an event of default, we will be required to immediately pay to Oxford an amount equal to the sum of all outstanding principal of the term loans plus accrued and unpaid interest thereon through the prepayment date, the final payment, the Prepayment Fee, and all other obligations that are due and payable, including payment of Oxford's expenses and interest at the default rate with respect to any past due amounts.

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

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

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

*Current and Future Capital Requirements*

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

Until such time, if ever, as we can generate substantial product revenue, we expect to finance our cash needs through a combination of equity or debt financings, entering into licensing or collaboration agreements with partners, grants or other sources of financing. Sufficient funds may not be available to us at all or on attractive terms when needed from these sources. To the extent that we raise additional capital through the future sale of equity or debt, the ownership interests of our stockholders will be diluted, and the terms of these securities may include liquidation or other preferences that adversely affect the rights of our existing common stockholders. If we raise additional funds through the issuance of debt securities, these securities could contain covenants that would restrict our operations. We may require additional capital beyond our currently anticipated amounts. If we are unable to obtain additional funding from these or other sources when needed, it may be necessary to significantly reduce our scope of operations and current rate of spending through reductions in staff and delaying, scaling back, or stopping our research and development or sales and marketing activities. Insufficient liquidity may also require us to relinquish rights to our product candidate at an earlier stage of development or on less favorable terms than we would otherwise choose.

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

- the number and characteristics of any additional product candidates we develop or acquire;
- the timing of any cash milestone payments to Daewoong if we successfully achieve certain predetermined milestones;
- our ability to forecast demand for our products, scale our supply to meet that demand and manage working capital effectively

- the cost of manufacturing our product or any future product candidates and any products we successfully commercialize, including costs associated with building our supply chain;
- the cost of commercialization activities for Jeuveau™ or any future product candidates are approved or cleared for sale, including marketing, sales and distribution costs;
- the cost of building a sales force in anticipation of product commercialization, and the productivity of that sales force and the market acceptance of our products;
- our ability to establish and maintain strategic collaborations, licensing or other arrangements and the financial terms of any such agreements that we may enter into;
- any product liability or other lawsuits related to our products;
- the expenses needed to attract and retain skilled personnel;
- the costs associated with being a public company;
- the costs involved in preparing, filing, prosecuting, maintaining, defending and enforcing patent claims, including ongoing litigation costs related to Jeuveau™ and the outcome of this and any other future patent litigation we may be involved in; and
- the timing, receipt and amount of sales of any future approved or cleared products, if any.

**Cash Flows**

The following table summarizes our cash flows for the periods indicated (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Net cash (used in) provided by: | | |
| Operating activities | $ (25,667) | $ (13,222) |
| Investing activities | (9) | — |
| Financing activities | 118,838 | 13,035 |
| Change in cash and restricted cash | 93,162 | (187) |
| Cash and restricted cash, beginning of period | — | 187 |
| Cash, end of period | $ 93,162 | $ — |

**Operating Activities**

Cash used in operating activities in the year ended December 31, 2018 was $25.7 million which primarily resulted from the net loss of $46.9 million, and was partially offset by non-cash charges primarily including stock-based compensation expense of $7.0 million and $10.5 million related to the revaluation of our contingent royalty obligation. The net operating assets and liabilities changed by $3.0 million which was primarily driven by timing of vendor invoice payments.

**Financing Activities**

Cash provided by financing activities during the year ended December 31, 2018 was $118.8 million which primarily resulted from the net proceeds of $56.3 million and $67.7 million received in the initial public offering in February 2018 and the follow-on public offering in July 2018, respectively. These were partially offset by a $5.0 million related-party borrowing payment to ALPHAEON and $1.1 million payment of offering-related costs.

**Indebtedness**

Prior to our initial public offering and since our acquisition by ALPHAEON, ALPHAEON had historically provided us certain services that were not covered under a services agreement, including, without limitation, general and administrative

support services and research and development support services. ALPHAEON had allocated a certain percentage of personnel to perform the services that it provided to us based on its good faith estimate of the required services. These allocated costs have historically increased related-party borrowings. The costs reflect ALPHAEON full-time equivalent, or FTE, rate for the applicable personnel, plus out-of-pocket expenses such as occupancy costs associated with the FTEs allocated to providing us these services. We historically have not recorded a mark-up on the external or internal expenses ALPHAEON allocates to us. All ALPHAEON-provided operating expenses shown in our financial statements were treated as related party borrowings from ALPHAEON to us for year ended December 31, 2017 and for the period between January 1, 2018 and February 11, 2018. After the initial public offering, we no longer rely on ALPHAEON for funding and in connection with the closing of our initial public offering the related party borrowings were settled in full. As of the completion of our initial public offering on February 12, 2018, we assumed from ALPHAEON the revised payment obligations under the Amended Purchase Agreement of $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note).

Upon our initial public offering on February 12, 2018, we were released of the $140.7 million note obligation for all guaranty and security obligations, and the related party receivable from ALPHAEON of $73.7 million was settled, resulting in a capital contribution of $67.0 million. ALPHAEON's security interest in Evolus' assets was also terminated. See Note 4, *Related Party Transactions* for more information.

*Loan and Security Agreement*

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

**Payment Obligations Related to the Acquisition by ALPHAEON**

Under the Amended Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for the Product for the treatment of glabellar lines, (ii) quarterly royalty payments of a low single digit percentage of net sales of the Product within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of the Product outside of the United States, and (iv) a $20.0 million promissory note that will mature on the 2.5 years anniversary of the first commercial sale of the Product in the United States. The revised payment obligations set forth in (ii) and (iii) above will terminate in the quarter following the 10 year anniversary of the first commercial sale of the Product in the United States. As these revised payment obligations are not perpetual, neither Evolus nor ALPHAEON will have the right to terminate any future payments for a one-time lump sum payment. As of December 31, 2018, we recorded an aggregate balance of $67.1 million on our balance sheet for the revised payment obligations and the promissory note owed to the Evolus Founders (comprised of $50.2 million for the contingent royalty obligation and $16.9 million for the contingent promissory note).

Under the Amended Purchase Agreement, in February 2019, Evolus paid one-time bonuses of $1.6 million to certain former and current employees upon FDA approval of the Product, including a one-time bonus of $0.7 million to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development.

We paid the Evolus Founders $9.2 million in February 2019 subsequent to the FDA's approval of our BLA of Jeuveau™.

**License and Supply Agreement with Daewoong**

Pursuant to the Daewoong Agreement, $13.5 million in additional cash consideration is due to Daewoong based upon Evolus' successful completion of certain technical and sales milestones. We paid Daewoong $2.0 million in February 2019 subsequent to the FDA's approval of our BLA of Jeuveau™.

**Off-Balance Sheet Arrangements**

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

**Contractual Obligations and Commitments**

Not applicable.

**Critical Accounting Policies**

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

While our significant accounting policies are more fully described in the notes to our financial statements appearing elsewhere in this Annual Report on Form 10-K, we believe the following accounting policies to be most critical for fully understanding and evaluating our financial condition and results of operations, as these policies relate to the more significant areas involving management's judgments and estimates.

**Contingent Royalty Obligation and Promissory Note Payable to Evolus Founders**

We determine the fair value of the contingent royalty obligation payable to the Evolus Founders under the Amended Purchase Agreement based on significant unobservable inputs using a discounted cash flows method. Changes in the fair value of this contingent royalty obligation are determined each period end and recorded in operating expenses in the statements of operations and comprehensive loss and in the non-current liabilities in the balance sheets. The significant unobservable input assumptions that can significantly change the fair value includes (i) timing of the FDA approval of the Jeuveau™, (ii) projected net revenues during the payment period, (iii) the discount rate, and (iv) the timing of payments.

We also determined the fair value of the contingent promissory note payable at present value using a discount rate for similar rated debt securities and is based on an estimated date that we believe the contingent promissory note will mature. Accretion related to the contingent promissory note is recorded in interest expense of the statements of operations and comprehensive loss with a corresponding increase to the non-current liabilities section of the balance sheets. The fair value of the contingent promissory note could be impacted by changes such as: (i) changes in the discount rate, or (ii) a delay in the first commercial sale of Jeuveau™ in the United States.

**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. We review goodwill for impairment annually and whenever events or changes in circumstances indicate the carrying amount of goodwill may not be recoverable. We perform an annual qualitative assessment of goodwill in the fourth quarter each calendar year to determine if any events or circumstances exist, such as an adverse change in business climate or a decline in the overall industry demand, that would indicate that it would more likely than not reduce the fair value of a reporting unit below its carrying amount, including goodwill. If events or circumstances do not indicate that the fair value of a reporting unit is below its carrying amount, then goodwill is not considered to be impaired and no further testing is required. If further testing is required, we perform a two-step process. The first step involves comparing the fair value of the our reporting unit to its carrying value, including goodwill. If the carrying value of the reporting unit exceeds its fair value, the second step of the test is performed by comparing the carrying value of the goodwill in the reporting unit to its implied fair value. An impairment charge is recognized for the excess of the carrying value of goodwill over its implied fair value. For the purpose of impairment testing, we have determined that there is one reporting unit. There has been no impairment of goodwill for any of the periods presented.

**Intangible Asset**

The intangible asset in our balance sheets represents in-process research & development, or IPR&D, projects acquired that have not yet been completed. The IPR&D asset had an indefinite useful life and was not amortized, but instead tested for impairment. There has been no impairment of long-lived assets for any periods presented. Upon the FDA approval in February 2019, the IPR&D asset is reclassified to a developed technology asset and amortized over its estimated useful live.

**Income Taxes**

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

A valuation allowance is recorded against deferred tax assets, to reduce the net carrying value, when it is more likely than not that some portion or all of a deferred tax asset will not be realized. In making such a determination, we consider 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 we establish or reduce the valuation allowance against the deferred tax assets, the provision for income taxes will increase or decrease, respectively, in the period such determination is made.

Additionally, we recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities based on the technical merits of the position. The tax benefit recognized in the financial statements for a particular tax position is based on the largest benefit that is more likely than not to be realized upon settlement. Accordingly, we establish reserves for uncertain tax positions. We have not recognized interest or penalties in its statement of operations and comprehensive loss.

On December 22, 2017, the U.S. government enacted TCJA. Changes include, but are not limited to, a corporate tax rate decrease from 35% to 21% effective for tax years beginning in 2018. We recognized the income tax effects of the TCJA in our 2017 financial statements in accordance with Staff Accounting Bulletin No. 118, which provides SEC staff guidance for the application of ASC Topic 740, Income Taxes, in the reporting period in which the TCJA was signed into law. As such, our 2017 financial results reflected the provisional income tax effects of the TCJA for which the accounting was incomplete but a reasonable estimate was made. Our accounting for the elements of the TCJA was complete as of December 31, 2018 and no adjustments were made to the original provisional estimate. See Note 8, *Income Taxes* to our financial statements for more information.

We have incurred substantial losses during our history and do not expect to become profitable in the near future, and we may never achieve profitability. To the extent that we continue to generate taxable losses, unused losses will carry forward to offset future taxable income, if any, until such unused losses expire. In addition, we currently don't have a tax sharing arrangement in place with ALPHAEON. Under Section 382 of 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 losses, or NOLs, and other pre-change tax attributes, such as research tax credits, to offset its post-change income may be limited. These federal NOLs and research and development tax credit carryforwards expire at various dates beginning in 2034. We have not conducted an assessment to determine whether there may have been a Section 382 ownership change. If we have experienced a Section 382 ownership change or if we experience a Section 382 ownership change as a result of future changes in our stock ownership, some of which changes are outside of our control, the tax benefits related to the NOLs or research and development tax credit carryforwards may be limited or lost. We may experience ownership changes in the future as a result of subsequent shifts in our stock ownership. As a result, if we earn net taxable income, our ability to use our pre-change NOLs to offset U.S. federal taxable income may be subject to limitations, which could potentially result in increased future tax liability to us. In addition, at the state level, there may be periods during which the use of NOLs is suspended or otherwise limited, which could accelerate or permanently increase state taxes owed. See Note 8, *Income Taxes* to our financial statements for more information.

**Recently Issued and Adopted Accounting Pronouncements**

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

**Item 7A. Quantitative and Qualitative Disclosure About Market Risk.**

Not applicable.

**Item 8. Financial Statements and Supplementary Data.**

**Evolus, Inc.**

**Index to Financial Statements**

## Report of Independent Registered Public Accounting Firm

To the Stockholders and the Board of Directors of Evolus, Inc.

**Opinion on the Financial Statements**

We have audited the accompanying balance sheets of Evolus, Inc. (the Company) as of December 31, 2018 and 2017, the related statements of operations and comprehensive loss, stockholders' equity (deficit) and cash flows for each of the two years in the period ended December 31, 2018, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2018 and 2017, and the results of its operations and its cash flows for each of the two years in the period ended December 31, 2018, in conformity with U.S. generally accepted accounting principles.

**Basis for Opinion**

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Ernst & Young LLP

We have served as the Company's auditor since 2017.

Irvine, California
March 20, 2019

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

| | December 31, | |
|---|---|---|
| | **2018** | **2017** |
| **ASSETS** | | |
| **Current assets** | | |
| Cash | $ 93,162 | $ — |
| Prepaid expenses and other current assets | 1,177 | 185 |
| Related party receivable | — | 72,639 |
| **Total current assets** | 94,339 | 72,824 |
| Intangible asset | 56,076 | 56,076 |
| Goodwill | 21,208 | 21,208 |
| Other assets | 221 | 2,125 |
| **Total assets** | $ 171,844 | $ 152,233 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY (DEFICIT)** | | |
| **Current Liabilities** | | |
| Accounts payable | $ 1,558 | $ 445 |
| Accrued expenses | 3,718 | 977 |
| Related party borrowings | — | 72,639 |
| Note obligation | — | 138,687 |
| **Total current liabilities** | 5,276 | 212,748 |
| Deferred rent | 25 | 38 |
| Contingent royalty obligation payable to Evolus Founders, a related party | 50,200 | — |
| Contingent promissory note payable to Evolus Founders, a related party | 16,904 | — |
| Deferred tax liability | 15,055 | 14,990 |
| **Total liabilities** | 87,460 | 227,776 |
| Commitments and contingencies (Note 5) | | |
| **Stockholders' equity (deficit)** | | |
| Convertible Series A Preferred, $0.00001 par value; no shares authorized; 0 and 1,250,000 shares issued and outstanding at December 31, 2018 and December 31, 2017, respectively | — | — |
| Preferred Stock, $0.00001 par value; 10,000,000 shares authorized; no shares issued and outstanding at December 31, 2018 and December 31, 2017, respectively | — | — |
| Common Stock, $0.00001 par value; 100,000,000 shares authorized; 27,274,991 and 16,527,000 shares issued and outstanding at December 31, 2018 and December 31, 2017, respectively | 1 | — |
| Additional paid-in capital | 207,408 | — |
| Accumulated deficit | (123,025) | (75,543) |
| **Total stockholders' equity (deficit)** | 84,384 | (75,543) |
| **Total liabilities and stockholders' equity (deficit)** | $ 171,844 | $ 152,233 |

See accompanying notes to financial statements.

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

| | Year Ended December 31, | |
|---|---|---|
| | **2018** | **2017** |
| Operating expenses: | | |
| Research and development | $ 6,487 | $ 6,689 |
| General and administrative | 29,146 | 4,819 |
| Revaluation of contingent royalty obligation to Evolus Founders, a related party | 10,500 | — |
| Depreciation and amortization | 9 | 218 |
| Total operating expenses | 46,142 | 11,726 |
| Loss from operations | (46,142) | (11,726) |
| Other income (expense): | | |
| Interest income | 203 | — |
| Interest expense | (863) | (5) |
| Loss before taxes | (46,802) | (11,731) |
| Provision (benefit) for income taxes | 65 | (7,251) |
| Net loss and comprehensive loss | $ (46,867) | $ (4,480) |
| Net loss per share, basic and diluted | $ (1.92) | $ (0.27) |
| Weighted-average shares outstanding used to compute basic and diluted net loss per share | 24,402,368 | 16,527,000 |

See accompanying notes to financial statements.

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

| | Series A Preferred Stock | | Common Stock | | Additional Paid In Capital | Accumulated Deficit | Total |
|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | | | |
| **Balance at December 31, 2016** | 1,250,000 | — | 16,527,000 | — | 59,700 | (66,806) | (7,106) |
| Capital contribution from Parent - stock-based compensation | — | — | — | — | 586 | — | 586 |
| Capital contribution from Parent - therapeutic option right, net of tax | — | — | — | — | 1,505 | — | 1,505 |
| Deemed distribution to Parent - note obligation | — | — | — | — | (61,791) | (4,257) | (66,048) |
| Net loss | — | — | — | — | — | (4,480) | (4,480) |
| **Balance at December 31, 2017** | 1,250,000 | $ — | 16,527,000 | $ — | $ — | $ (75,543) | $ (75,543) |
| Deemed contribution from Parent, increase of related-party receivable | — | — | — | — | 1,051 | — | 1,051 |
| Deemed distribution to Parent, increase of convertible note obligation | — | — | — | — | (1,385) | (615) | (2,000) |
| Capital contribution from Parent, convertible note write-off | — | — | — | — | 66,998 | — | 66,998 |
| Capital contribution from Parent, forgiveness of related party borrowings | — | — | — | — | 13,188 | — | 13,188 |
| Preferred stock conversion upon initial public offering | (1,250,000) | — | 2,065,875 | — | — | — | — |
| Issuance of common stock upon initial public offering, net of issuance costs | — | — | 5,047,514 | 1 | 53,445 | — | 53,446 |
| Issuance of common stock upon follow-on offering, net of issuance costs | — | — | 3,600,000 | — | 67,379 | — | 67,379 |
| Issuance of common stock in connection with the incentive equity plan | — | — | 34,602 | — | (239) | — | (239) |
| Stock-based compensation expense | — | — | — | — | 6,971 | — | 6,971 |
| Net loss | — | — | — | — | — | (46,867) | (46,867) |
| **Balance at December 31, 2018** | — | $ — | 27,274,991 | $ 1 | $ 207,408 | $ (123,025) | $ 84,384 |

See accompanying notes to financial statements.

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

| | Year Ended December 31, | |
|---|---|---|
| | **2018** | **2017** |
| **Cash flows from operating activities** | | |
| Net loss | $ (46,867) | $ (4,480) |
| Adjustments to reconcile net loss to net cash used in operating activities: | | |
| Depreciation and amortization | 9 | 218 |
| Stock-based compensation | 6,971 | 586 |
| Interest expense | 863 | — |
| Deferred income taxes | 65 | (6,255) |
| Tax benefit from therapeutic option right | — | (996) |
| Revaluation of contingent royalty obligation to Evolus Founders, a related party | 10,500 | — |
| Changes in assets and liabilities: | | |
| Prepaid expenses and other current assets | (992) | (160) |
| Accounts payable | 1,275 | (2,432) |
| Accrued expenses | 2,733 | 303 |
| Deferred rent | (13) | (6) |
| Other assets | (211) | — |
| Net cash used in operating activities | (25,667) | (13,222) |
| **Cash flows from investing activities** | | |
| Purchases of property and equipment | (9) | — |
| Net cash used in investing activities | (9) | — |
| **Cash flows from financing activities** | | |
| Proceeds from initial public offering, net of underwriting fees | 56,330 | — |
| Proceeds from follow-on offering, net of underwriting fees | 67,680 | — |
| Related party borrowings | 1,127 | 14,321 |
| Payments on related party borrowings | (5,000) | — |
| Payments for offering costs | (1,060) | (1,286) |
| Tax withholding paid on behalf of employees for stock-based awards | (239) | — |
| Net cash provided by financing activities | 118,838 | 13,035 |
| Change in cash and restricted cash | 93,162 | (187) |
| Cash and restricted cash, beginning of period | — | 187 |
| Cash, end of period | $ 93,162 | $ — |
| | | |
| **Supplemental disclosure of cash flow information** | | |
| Noncash financing activities: | | |
| Related party receivable | $ 73,690 | $ (72,639) |
| Related party borrowings | $ (68,767) | $ — |
| Note obligation | $ (140,688) | $ 138,687 |
| Contingent royalty obligation payable to Evolus Founders, a related party | $ 39,700 | $ — |
| Contingent promissory note payable to Evolus Founders, a related party | $ 16,042 | $ — |
| Capital contribution from Parent, convertible note write-off | $ 66,998 | $ — |
| Capital distribution to Parent | $ — | $ (66,048) |
| Capital contribution from Parent, forgiveness of related party borrowings | $ 13,188 | $ — |
| Capital contribution from Parent - therapeutic option right, net of tax | $ — | $ 1,505 |
| Deferred offering costs accrued, unpaid | $ — | $ (839) |
| Deferred offering costs | $ (2,885) | $ — |
| Accounts payable, paid by Parent | $ (163) | $ — |

See accompanying notes to financial statements.

**Evolus, Inc.**

**Notes to Financial Statements**

## Note 1. Organization

***Organization and Description of Business***

Evolus, Inc., ("Evolus" or the "Company") is a performance beauty company with a customer-centric approach focused on delivering breakthrough products in the self-pay aesthetic market. On February 1, 2019, the U.S. Food and Drug Administration ("FDA") approved the Company's first product Jeuveau™ (the "Product"). The Product is a proprietary 900 kDa purified botulinum toxin type A formulation indicated for the temporary improvement in the appearance of moderate to severe glabellar lines, also known as "frown lines," in adults. The Company is headquartered in Newport Beach, California.

In January 2018, the Company's board of directors and its then-sole stockholder approved an amendment to the Company's amended and restated certificate of incorporation to effect a split of shares of the Company's common stock on a 1.6527-for-1 basis (the "Stock Split"). The Company's then-outstanding shares of convertible Series A preferred stock ("Series A preferred stock"), the par value of the common stock, and the authorized shares of the common stock were not adjusted as a result of the Stock Split. All issued and outstanding shares of common stock, stock options, restricted stock units and related per share amounts contained in the financial statements have been retroactively adjusted to reflect this Stock Split for all periods presented. The Stock Split was effected on January 26, 2018.

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

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

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

As of December 31, 2018, ALPHAEON, which is majority-owned by SCH-AEON, LLC ("SCH"), owns 56.0% of the Company's outstanding shares of common stock.

***Liquidity and Financial Condition***

The accompanying financial statements have been prepared on a basis that assumes that the Company will continue as a going concern, and do not include any adjustments that may result from the outcome of this uncertainty. This basis of accounting contemplates the recovery of the Company's assets and the satisfaction of the Company's liabilities and commitments in the normal course of business and does not include any adjustments to reflect the possible future effects of the recoverability and classification of recorded asset amounts or amounts and classification of liabilities that might be necessary should the Company be unable to continue as a going concern. The Company incurred operating losses of $46.9 million and $4.5 million for the years ended December 31, 2018 and 2017, respectively. Additionally, the Company used $25.7 million and $13.2 million in cash for operations in the years ended December 31, 2018 and 2017, respectively. Management expects operating losses and negative cash flows to continue for at least the next 12 months. As of

December 31, 2018, the Company had $93.2 million in cash and has an accumulated deficit of $123.0 million. On March 15, 2019, the Company entered into a term loan facility of up to $100 million (see Note 11, *Subsequent Events*).

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

The Company believes that its current capital resources will be sufficient to fund operations through at least the next twelve months based on the expected cash burn rate. The Company may be required to raise additional capital to fund future operations through the sale of its equity securities, incurring debt, entering into licensing or collaboration agreements with partners, grants or other sources of financing. Sufficient funds may not be available to the Company at all or on attractive terms when needed from equity or debt financings. If the Company is unable to obtain additional funding from these or other sources when needed, or to the extent needed, it may be necessary to significantly reduce its current rate of spending through reductions in staff and delaying, scaling back, or stopping certain research and development programs and other operational goals.

**Note 2. Summary of Significant Accounting Policies**

***Basis of Presentation***

The accompanying financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP"). The financial statements for the periods prior to the Company's IPO have been prepared on a standalone basis and are derived from ALPHAEON's consolidated financial statements and accounting records and included an allocation of certain assets and liabilities that have historically been held at the ALPHAEON corporate level but which were specifically identifiable or allocable to the Company. . These results reflect amounts attributable to the Company's business, including the costs ALPHAEON incurred for the development and commercialization of the Product and costs and expenses under the License and Supply Agreement (the "Daewoong Agreement") entered into with Daewoong Pharmaceuticals Co., Ltd. ("Daewoong"), a South Korean pharmaceutical manufacturer, in September 2013, as further described below in Note 5, C*ommitments and Contingencies*.

Prior to the Company's IPO, ALPHAEON charged the Company external and internal administrative and research and development expenses that ALPHAEON incurred on the Company's behalf. External research and development expenses charged to the Company included costs for contract research organizations ("CROs"), costs to conduct nonclinical and clinical studies on the Product, costs to acquire and evaluate clinical study data such as investigator grants, patient screening fees and laboratory work, and fees paid to consultants. ALPHAEON charged these costs to the Company at the same amount that ALPHAEON incurred such cost. Internal development expenses included costs for the work that ALPHAEON development employees perform for the Company. ALPHAEON charged the Company a full-time equivalent ("FTE") rate that covers personnel-related expenses, including salaries and benefits, plus an allocation of facility-related expenses, including rent, utilities, depreciation, insurance and property taxes, for those research and development employees who work either directly or indirectly on the development of the Company's drugs and certain administrative employees. ALPHAEON calculated the facility-related expenses to the Company based on a percentage of aggregate expenses incurred at ALPHAEON. ALPHAEON calculated depreciation expense of property and equipment using the straight-line method over the estimated useful lives of its assets of 3 to 5 years.

As a result, the Company historically incurred related party borrowings from ALPHAEON for its share of the internal and external expenses for each of these functions based on the Company's relative use of each function, plus an allocation of facility-related expenses. The Company's management believes that the allocation and results were reasonable. As of December 31, 2018, the Company did not have any accounts receivable or payable with ALPHAEON pursuant to the Services Agreement or otherwise.

The Company has calculated its income tax amounts using a separate return methodology and has presented these amounts as if it were a separate taxpayer from ALPHAEON in each jurisdiction for each period the Company presented. Subsequent

to the IPO, the Company will prepare a stand-alone tax return. As of December 31, 2018 and 2017, the Company did not have a tax sharing agreement with ALPHAEON.

***Acquisition***

The accounting for acquisitions requires extensive use of estimates and judgments to measure the fair value of the identifiable tangible and intangible assets acquired, including in-process research and development ("IPR&D"), and liabilities assumed. Additionally, the Company must determine whether an acquired entity is considered to be a business or a set of net assets, because the excess of the purchase price over the fair value of net assets acquired can only be recognized as goodwill in a business combination.

Evolus was formed in November 2012 for the purposes of developing the Product for distribution and sale. In October 2013, in a Stock Purchase Agreement, SCH acquired all of the Company's outstanding equity in exchange for 15,000 Class AA units of SCH and 15,000 Class D units of SCH, which resulted in SCH obtaining a controlling financial interest in Evolus. Prior to the transaction with SCH, Evolus had executed a License and Supply Agreement with Daewoong and thereby secured exclusive rights to license and distribute the Product for aesthetic indications in the United States and certain other international markets, as well as non-exclusive rights to distribute in Japan (see Note 4, *Related Party Transactions*). The acquisition of the Company, which represented a business combination by SCH, was to provide SCH and ALPHAEON access to the license held by Evolus to develop, produce and market clinical neurotoxins.

In a series of related transactions in 2013, SCH acquired all of the Company's outstanding equity in exchange for membership interests in SCH. In 2014, SCH contributed equity that it had acquired in 2013 to ALPHAEON. As a result of these transactions, the Company became a wholly-owned subsidiary of ALPHAEON. The Company remained a wholly-owned subsidiary of ALPHAEON until the completion of the IPO.

SCH elected to apply push-down accounting pursuant to the guidance in ASC 805, *Business Combinations*. Accordingly, the financial statements reflect the new basis of accounting established by SCH when SCH obtained control of the Company in October 2013. The assets acquired and liabilities assumed in connection with the acquisition were recognized based on their estimated fair values at the acquisition date. The determination of estimated fair values requires significant estimates and assumptions including, but not limited to, determining the timing and estimated costs to complete the in-process projects, projecting regulatory approvals, estimating future cash flows and developing appropriate discount rates. The estimated fair values assigned to the assets acquired and liabilities assumed were based on reasonable assumptions.

In connection with the acquisition, SCH and ALPHAEON entered into a stock purchase agreement (the "Stock Purchase Agreement") pursuant to which they were obligated to make certain contingent payments to the Evolus Founders. However, since Evolus did not have an obligation associated with the contingent consideration arrangement prior to the Company's IPO, no amounts were recognized in the Company's financial statements for the contingent royalty obligation arrangement between SCH and ALPHAEON, and the Evolus Founders. As described in Note 4, *Related Party Transactions*, on December 14, 2017, SCH and ALPHAEON entered into an amendment to the Stock Purchase Agreement (the "Amended Purchase Agreement"), and the Company joined as a contractual party. Upon the closing of the IPO on February 12, 2018, ALPHAEON immediately and automatically assigned to the Company its payment obligations under the Amended Purchase Agreement. These payment obligations are referred to as the "contingent royalty obligation payable to Evolus Founders, a related party" and the "contingent promissory note payable to Evolus Founders, a related party" in the accompanying balance sheets. Certain of the Evolus Founders from whom SCH purchased its equity interests include individuals previously employed by the Company in operational roles, including J. Christopher Marmo, Ph.D., the Company's former Chief Operating Officer. Mr. Marmo was retained as a consultant to the Company until December 2018.

***Use of Estimates***

The preparation of financial statements in conformity with GAAP requires management to make estimates, judgments, and assumptions that affect the amounts reported in the financial statements and disclosures made in the accompanying notes. Actual results could materially differ from those estimates, judgments, and assumptions. Management considers many factors in selecting appropriate financial accounting policies and controls and in developing the estimates and assumptions that are used in the preparation of these financial statements.

Management must apply significant judgment in this process. In addition, other factors may affect estimates, including expected business and operational changes, sensitivity and volatility associated with the assumptions used in developing estimates, and whether historical trends are expected to be representative of future trends. The estimation process often may yield a range of potentially reasonable estimates of the ultimate future outcomes, and management must select an amount that falls within that range of reasonable estimates.

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

***Risks and Uncertainties***

Although it has received the regulatory approval from the FDA and Health Canada, the Company has not commenced principal operations in the form of commercialized Product sales. The Product also requires regulatory approval from the European Medicines Agency and other similar regulatory authorities prior to commercial sales in the related jurisdictions. The Product and any future product candidates of the Company may not receive necessary approvals in the jurisdictions where approval is sought. If the Company is denied approval or approval is delayed, it may have a material adverse impact on the Company's business and its financial statements.

The Company is subject to risks common to early stage companies in the pharmaceutical industry including, but not limited to, dependency on the clinical and commercial success of the Product and any future product candidates, ability to obtain regulatory approval of the Product and any future product candidates in the jurisdictions where approval is sought, the need for substantial additional financing to achieve its goals, uncertainty of broad adoption of its approved products, if any, by physicians and patients, significant competition and untested manufacturing capabilities.

The Company relies on Daewoong, our exclusive and sole supplier, to manufacture the Product. Any termination or loss of significant rights, including exclusivity, under the Daewoong Agreement would materially and adversely affect the Company's commercialization of the Product.

***Segment Reporting***

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

***Fair Value of Financial Instruments***

Fair value is defined as the exchange price that would be received for an asset or an exit price paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs.

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

- Level 1—Unadjusted quoted prices in active markets that are accessible at the measurement date for identical, unrestricted assets or liabilities;
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities in active markets; quoted prices in markets that are not active; or other inputs that are observable,

either directly or indirectly, or can be corroborated by observable market data for substantially the full term of the asset or liability; and

- Level 3—Prices or valuation techniques that require inputs that are unobservable that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

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

***Goodwill***

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

***Intangible Asset***

The intangible asset in the accompanying balance sheets represents IPR&D projects acquired that have not yet been completed. IPR&D assets with indefinite useful lives are not amortized, but instead tested for impairment until the successful completion and commercialization or abandonment of the associated research and development efforts, at which point the IPR&D assets are either amortized over their estimated useful lives or written-off immediately. There has been no impairment of long-lived assets for any periods presented.

***Deferred Offering Costs***

Deferred offering costs, which primarily consisted of direct incremental legal and accounting fees relating to the IPO or Follow-On Offering, are capitalized until such time as the offering closes. During the year ended December 31, 2018, approximately $3.2 million of deferred offering costs were offset against proceeds from the sale of registered equity securities in the Company's IPO and Follow-On Offering. As of December 31, 2018, the Company did not capitalize any deferred offering costs. As of December 31, 2017, $2.1 million of deferred offering costs were capitalized and included in "*Other assets*" in the accompanying balance sheet.

***Joint and Several Liability Arrangements***

The Company measures obligations resulting from joint and several liability arrangements as the sum of the amount that the Company has (i) agreed to pay on the basis of its arrangement among its co-obligors, and (ii) any additional amounts that the Company expects to pay on behalf of its co-obligors. The determination of the "best estimate" from within the range of amounts that might be paid involves substantial judgment by the Company's management. These estimates are subject to periodic revisions at each period as the joint and several liability is re-measured.

**Evolus, Inc.**

**Notes to Financial Statements**

***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. There were no reimbursements of research and development expenses during the years ended December 31, 2018 and 2017.

At each financial reporting date, the Company accrues and expenses the estimated costs of clinical trial activities performed by third parties, including clinical research organizations and other service providers, based upon estimates of the work completed over the life of the individual study in accordance with associated agreements. The Company determines these estimates based upon a review of the agreements, data collected by internal and external personnel regarding the progress or stage of completion of trials or services. This progress or stage of completion of trials or services is monitored pursuant to contracts with clinical research organizations and other service providers. The agreed-upon fee to be paid for such services is based upon facts and circumstances known to the Company at each financial reporting date. If the actual performance of activities varies from the assumptions used in the estimates, the accruals are adjusted accordingly. There have been no material adjustments to the Company's prior period accrued estimates for clinical trial activities through December 31, 2018.

***Contingent Payment Obligation Payable to the Evolus Founders, a Related Party***

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

***Contingent Promissory Note Payable to Evolus Founders, a Related Party***

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

***Stock-Based Compensation***

The Company recognizes stock-based compensation expense for employees and members of the Board of Directors based on the fair value at the date of grant. The fair value of equity awards that are expected to vest is amortized on a straight-line basis over the requisite service period. Stock-based compensation expense recognized is net of actual forfeitures, when they occur.

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

Compensation cost related to the grant of awards to the Company's employees is recognized as an increase to additional paid-in capital in the balance sheets and in the general and administrative or research and development expenses in the statements of operations and comprehensive loss.

Prior to the IPO, the ALPHAEON common stock awards were valued at fair value on the date of grant and that fair value was recognized over the requisite service period. Estimates were used to determine the fair value of these awards, as shares of ALPHAEON's common stock are not publicly traded. ALPHAEON common stock awards are subject to specified vesting

schedules and requirements. The Company estimated the fair value of each ALPHAEON option on the date of grant using the Black-Scholes model. Stock-based compensation expense is allocated to the Company over the required service period over which these ALPHAEON common stock awards and options would vest and is based upon the relative percentage of time utilized by ALPHAEON employees on Company matters. These ALPHAEON awards were recognized as a capital contribution which was recorded in the statement of stockholder's equity (deficit) and a corresponding entry was recorded in the accompanying statements of operations and comprehensive loss.

***Income Taxes***

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

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

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

The Company is required to file federal and state income tax returns in the United States and various other state jurisdictions. The preparation of these income tax returns requires the Company to interpret the applicable tax laws and regulations in effect in such jurisdictions, which could affect the amount of tax paid by the Company. An amount is accrued for the estimate of additional tax liability, including interest and penalties, for any uncertain tax positions taken or expected to be taken in an income tax return. The Company reviews and updates the accrual for uncertain tax positions as more definitive information becomes available.

The Company's income tax returns are based on calculations and assumptions that are subject to examination by the Internal Revenue Service and other tax authorities. In addition, the calculation of the Company's tax liabilities involves dealing with uncertainties in the application of complex tax regulations. The Company recognizes liabilities for uncertain tax positions based on a two-step process. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained on audit, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon settlement. While the Company believes it has appropriate support for the positions taken on its tax returns, the Company regularly assesses the potential outcomes of examinations by tax authorities in determining the adequacy of its provision for income taxes. The Company continually assesses the likelihood and amount of potential revisions and adjusts the income tax provision, income taxes payable and deferred taxes in the period in which the facts that give rise to a revision become known.

***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, excluding the effects of common stock equivalents such as convertible preferred stock and stock options outstanding. Diluted net loss per share is calculated in accordance with the treasury stock method and reflects the potential dilution that would occur if securities or other contracts to issued common stock were exercised or converted to common stock. Dilutive common share equivalents are comprised of convertible preferred stock and stock options outstanding during the period, but are excluded if their impact is anti-dilutive. Because the impact of these items is 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 years ended December 31, 2018 and 2017.

***Recent Accounting Pronouncements***

In November 2018, the FASB issued Accounting Standards Update, or ASU, No. 2018-18, *Clarifying the Interaction between Topic 808 and Topic 606*, which requires transactions in collaborative arrangements to be accounted for under ASC 606, *Revenue from Contracts with Customers* if the counter-party is a customer for a good or service that is a distinct unit of account. The amendments also preclude entities from presenting consideration from transactions with a collaborator that is not a customer together with revenue recognized from contracts with customers. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2020. Early adoption is permitted, including in any interim period. The Company is currently evaluating the impact that the adoption of this guidance will have on its financial statements and related disclosures.

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

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

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

In July 2018, the FASB issued ASU No. 2018-09, *Codification Improvements*, which clarifies certain amendments to guidance that may have been incorrectly or inconsistently applied by certain entities and includes Amendments to Subtopic 718-740*, Compensation - Stock Compensation - Income Taxes*. The guidance in paragraph 718-740-35-2, as amended by the amendments in ASU 2016-09, Compensation - Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting, is unclear on whether an entity should recognize excess tax benefits (or tax deficiencies) for compensation expense that is taken on the entity's tax return. The amendment to paragraph 718-740-35-2 in this ASU clarifies that an entity should recognize excess tax benefits in the period in which the amount of deduction is determined. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2019. The Company is in the process of determining the effects the adoption will have on its financial statements.

**Evolus, Inc.**

**Notes to Financial Statements**

In June 2018, the FASB issued ASU No. 2018-07, *Compensation—Stock Compensation (Topic 718): Improvements to Nonemployee Share-based Payment Accounting* ("ASU 2018-07") which amends the financial reporting for stock-based payments issued to nonemployees and also expands the scope of ASC 718, *Compensation - Stock Compensation* to also include stock-based payments issued to nonemployees for goods and services. The amendment substantially aligns accounting for stock-based payments to employees and nonemployees. The Company early adopted the guidance in the quarter ended December 31, 2018. The adoption did not have a material impact on the Company's financial statements.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation—Stock Compensation (Topic 718)* ("ASU 2017-09") which amends the scope of modification accounting for stock-based payment arrangements. The amendment provides guidance about which changes to the terms or conditions of a stock-based payment award require an entity to apply modification accounting. ASU 2017-09 is effective for fiscal years beginning after December 15, 2017, and interim periods within those years. Early adoption is permitted. The Company adopted this guidance effective January 1, 2018 and this guidance did not have a material impact on its financial statements.

In January 2017, the Financial Accounting Standards Board, or the FASB, issued Accounting Standards Update, or ASU, No. 2017-04, *Intangibles—Goodwill and Other (Topic 350*): *Simplifying the Test for Goodwill Impairment*. This standard simplifies the accounting for goodwill impairment by removing step two of the goodwill impairment test, which requires a hypothetical purchase price allocation. A goodwill impairment will be the amount by which a reporting unit's carrying amount, including goodwill, exceeds its fair value. The impairment charge will be limited to the amount of goodwill allocated to that reporting unit. ASU 2017-04 is effective for us beginning January 1, 2020. The standard requires prospective application. Early adoption is permitted. The Company is evaluating the effect of this standard on its financial statements and related disclosures as well as whether to early adopt the new guidance.

In January 2017, the FASB issued ASU 2017-01, *Business Combinations (Topic 805)*: *Clarifying the Definition of a Business*, which clarifies when transactions should be accounted for as acquisitions (or disposals) of assets or business. ASU 2017-01 is effective for us beginning January 1, 2019. Early adoption is permitted for transactions not previously reported in issued financial statements. The Company is evaluating the effect of this standard on its financial statements and related disclosures.

In February 2016, the FASB issued ASU 2016-02 and its related amendments which introduced *Leases (Topic 842)*, a new comprehensive lease accounting model that supersedes the current lease guidance under *Leases, (Topic 840)*. The new accounting standard requires lessees to recognize right-of-use assets and corresponding lease liabilities for all leases with lease terms of greater than twelve months. It also changes the definition of a lease and expands the disclosure requirements of lease arrangements. In July 2018, the FASB added a transition option for implementation that allows companies to continue to use the legacy guidance in ASC 840, Leases, including its disclosure requirements, in the comparative periods presented in the year of adoption. The new accounting standard will be effective for the Company starting in the first quarter of fiscal 2019. The Company will elect the transition package of three practical expedients permitted under the transition guidance and will elect the optional transition method that allows for a cumulative-effect adjustment in the period of adoption, without a restatement of prior periods. Further, the Company will elect a short-term lease exception policy, permitting the Company to not apply the recognition requirements of this standard to short-term leases (i.e. leases with terms of 12 months or less) and an accounting policy to account for lease and non-lease components as a single component for certain classes of assets. As a result of the adoption, the Company will record right-of-use assets and liabilities and the corresponding deferred tax assets and liabilities on its balance sheet as of January 1, 2019, primarily associated with its operating leases. The Company is also finalizing the impact of the standard to its accounting policies, processes, disclosures, and internal control over financial reporting.

In June 2016, the FASB issued ASU No. 2016-13, *Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"), which modifies the measurement and recognition of credit losses for most financial assets and certain other instruments. The new standard requires the use of forward-looking expected credit loss models based on historical experience, current conditions, and reasonable and supportable forecasts that affect the collectability of the reported amount, which may result in earlier recognition of credit losses under the new standard. The guidance is effective for interim and annual reporting periods during the year ending December 31, 2020. We are in the process of reviewing credit loss models to assess the impact of the adoption of the standard on the financial statements.

**Evolus, Inc.**

**Notes to Financial Statements**

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

## Note 3. Goodwill and Intangible Asset

Goodwill and an intangible asset were established as a result of the application of push-down accounting in connection with the acquisition of the Company by SCH in October 2013, as described in Note 2*, Summary of Significant Accounting Policies*. The purchase price was $56.3 million, the excess of which over the fair value of net assets acquired was recognized as goodwill of $21.2 million. Goodwill recognized in connection with the acquisition is not deductible for tax purposes. The net assets acquired as of the acquisition date comprised solely of IPR&D valued at $56.1 million and a deferred tax liability of $20.9 million, which represented the difference between the book and tax basis related to the IPR&D asset.

The IPR&D asset related to the development of the Product in clinical trials in the United States as of the acquisition date. As of December 31, 2018 and 2017, the carrying value of the IPR&D, included in intangible asset in the balance sheets, was $56.1 million. As of December 31, 2018 and 2017, the carrying value of goodwill in the accompanying balance sheets was $21.2 million.

The estimated fair value of the IPR&D asset on the acquisition date was determined using a discounted cash flow model using an income approach (the multiple-period excess earnings method). Significant assumptions used in the valuation included projected future cash flows, projected costs, a weighted average cost of capital and appropriate discount rates.

The IPR&D recognized represents the license and associated distribution rights to develop the Product and the ability to pursue new indications and is subject to the success of clinical studies. As part of the transaction, $13.5 million in additional cash consideration is due to Daewoong based upon Evolus' successful completion of certain technical and sales milestones. The fair value of the milestones was recorded by the Company as an element of the acquired IPR&D at the acquisition date.

Through 2018 the IPR&D asset is classified as an indefinite-lived intangible asset. With the recent FDA approval of Jeuveau, the IPR&D is no longer considered an indefinite-lived asset and amortization of the asset will commence in 2019.

## Note 4. Related Party Transactions

***Services with ALPHAEON***

Prior to the Company's IPO and since the Company's acquisition in 2014 by ALPHAEON, the Company had funded its operations primarily through contributions and related party borrowings from ALPHAEON. ALPHAEON has historically provided Evolus certain services, including, without limitation, research and development, general and administrative support services and support services. ALPHAEON had historically allocated a certain percentage of personnel to perform the services that it provides to the Company based on its good faith estimate of the required services. These allocated costs reflect the ALPHAEON FTE rate for the applicable personnel, plus out-of-pocket expenses such as occupancy costs associated with the FTEs allocated to providing Evolus these services. Evolus historically had not paid a mark-up on the external or internal expenses ALPHAEON allocated to it. Prior to February 12, 2018, all research and development, general and administrative, and other support services expenses shown in the Company's financial statements for 2018 and 2017 excluding stock-based compensation which is treated as a capital contribution, were treated as related party borrowings from ALPHAEON.

In January 2018, the Company entered into the Services Agreement with ALPHAEON, which became effective upon the Company's IPO. The Services Agreement sets forth certain agreements between ALPHAEON and the Company that governs the respective responsibilities and obligations between ALPHAEON and the Company as it relates to the services to be performed between them. The Services Agreement has a one year term and thereafter will renew for successive one year terms unless sooner terminated by either party. The Company or ALPHAEON may terminate the Services Agreement upon sixty days' notice to the other party. In accordance with the Services Agreement, the Company paid ALPHAEON $5.0 million during the first quarter of 2018, subsequent to the IPO.

As of December 31, 2018, Evolus had no related party accounts receivable or payable with ALPHAEON. As of December 31, 2017, Evolus had related party accounts receivable and related party borrowings of $72.6 million with ALPHAEON, respectively.

**Evolus, Inc.**

**Notes to Financial Statements**

The following table summarizes the amounts that were allocated from ALPHAEON prior to the IPO, and included in Evolus' general and administrative expenses as disclosed in the accompanying statements of operations and comprehensive loss for the following periods (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Compensation & Benefits | $ 184 | $ 1,174 |
| Third party service fees | 84 | 700 |
| Stock-based compensation | 30 | 551 |
| Facility related expenses | 80 | 1,134 |
| Other | 5 | 347 |
| | $ 383 | $ 3,906 |

After completion of the Company's IPO on February 12, 2018, ALPHAEON did not incur any administrative or research and development expenses on the Company's behalf.

***Note Obligation***

In 2016, ALPHAEON entered into two separate debt transactions: (i) a convertible note with one of its stockholders, also a related party (the "Bridge Note") with a principal amount of $2.5 million and (ii) a Secured Convertible Note Purchase Agreement (the "Purchase Agreement") pursuant to which ALPHAEON could issue up to an aggregate of $55.0 million ("Note Facility" and together with the Bridge Note, the "Notes"). The Notes have substantially similar terms and accrue simple interest at a rate of ten percent (10%) per annum, subject to adjustment pursuant to terms of the Notes. The Notes may be paid at a redemption price equal to 2.5 times the face amount of the Note less any prepayment of principal and any principal amount of the Notes that may convert into shares of ALPHAEON on (i) maturity in December 2018, (ii) a required prepayment event, or (iii) prepayment at any time at ALPHAEON's election. Upon the occurrence of certain corporate events at ALPHAEON, at the election of the holder, the Notes will convert into a variable number of shares of ALPHAEON with an aggregate fair value equaling the principal value of the Notes or such Notes will continue to maturity as unsecured promissory notes with a reduced interest rate.

ALPHAEON's obligations under the Notes are secured by a first priority lien and security interest in substantially all of ALPHAEON's assets, including all of the shares of the Company's capital stock held by ALPHAEON, which as of December 31, 2017 represented all of the Company's outstanding capital stock, as collateral for the holders of the Notes.

In April 2017, ALPHAEON amended and restated the Purchase Agreement (the "Amended and Restated Secured Note Purchase Agreement") with the Note holders to amend and restate the terms of the Purchase Agreement and the outstanding Notes and form of Notes to be issued. In addition, the Purchase Agreement was amended and restated to, among other things, set forth the terms for the issuance of up to an additional $30.0 million in principal amount of Notes. Concurrent with the Amended and Restated Secured Note Purchase Agreement, the Company also executed two substantially similar guaranty and security agreements (the "Guaranty Agreements"), with the holders of the Notes. Pursuant to the Guaranty Agreements, the Company absolutely, unconditionally and irrevocably guaranteed, as primary obligor and not merely as surety, the full and punctual payment when due, whether at stated maturity or earlier, by reason of acceleration all the obligations of the Notes. In addition, pursuant to the Guaranty Agreements, the Company agreed to a first priority lien and security interest in and to all its right, title and interest in the assets of the Company. As a result of executing the Guaranty Agreements, there was no requirement that the holders of the Notes first seek payment from ALPHAEON. Instead, they may demand payment from the Company, from ALPHAEON or from both simultaneously.

The Amended and Restated Secured Note Purchase Agreement and Guaranty Agreements stipulate that any payment by the Company under their terms shall result in a dollar-for-dollar offset and reduction in the amount of related party loans owed by the Company to ALPHAEON. The Guaranty Agreements will terminate upon the earlier of (i) the date on which all secured

obligations under the Guaranty Agreements have been paid and performed in full and (ii) the date on which the entire outstanding principal amount of the Notes has been either converted into equity or unsecured notes pursuant to the terms of the Notes.

Concurrent with the execution of the Guaranty Agreements with the holders of the Notes in April 2017, the Company jointly and severally agreed to pay the redemption amount of 2.5 times the principal amount of the Notes upon maturity if not paid by ALPHAEON. As a co-obligor to these Notes, the Company applied the accounting guidance provided in ASC 405-40, *Obligations Resulting from Joint and Several Liability Arrangements*. This guidance requires companies to measure obligations resulting from joint and several liability arrangements as the sum of the amount that the entity has (i) agreed to pay on the basis of its arrangement with its co-obligors and (ii) any additional amount that the entity expects to pay on behalf of its co-obligors.

The Company initially recorded a liability and corresponding deemed distribution to ALPHAEON as a reduction to additional paid-in-capital in equity in April 2017 to reflect the joint and several liability. These amounts were subsequently adjusted to reflect changes in the balance of the Note obligation. As the Company and ALPHAEON had not agreed to what portion of this joint and several liability each would pay, the Company developed a range of amounts that it expected to pay under the Guaranty Agreements and selected the amount from within that range that it determined to be the best estimate, which equaled $138.7 million as of December 31, 2017 (2.5 times the outstanding principal amount of the Notes as of that date), representing the total principal amount due to the Note holders upon redemption of the Notes at maturity.

On December 14, 2017, the Company and ALPHAEON entered into amendments with the holder of the convertible bridge note, and with the collateral agent for the holders of the convertible promissory notes. Under the terms of the amendment it was agreed that the Company's guaranty of the Notes and the security interest in the Company's assets would terminate effective upon the closing of the IPO.

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

As provided for within the Amended and Restated Secured Note Purchase Agreement and Guaranty Agreements, in conjunction with its recognition of the joint and several liability, the Company also recorded a receivable from ALPHAEON, which equals the current balance of the amounts it owed to ALPHAEON under its related party borrowing arrangements. No amounts were paid under this joint and several liability by the Company in the year ended December 31, 2017. The difference between the amount of the joint and several liability and the related party receivable of $66.1 million in the year ended December 31, 2017, was recorded as a deemed distribution to ALPHAEON, in stockholders' equity (deficit) to additional paid-in capital in the period the transaction with the related party was made. Approximately $4.3 million in excess of the then additional paid-in capital balance was recorded in accumulated deficit as of December 31, 2017. In January 2018 immediately prior to its IPO, the Company recorded an increase of $1.1 million in the receivable from ALPHAEON with a corresponding increase in additional paid-in capital. The related party receivable balance increased to $73.7 million immediately prior to the IPO.

As of February 12, 2018, the Company was released of the $140.7 million note obligation for all guaranty and security obligations under the Guaranty Agreements, and the related party receivable from ALPHAEON of $73.7 million was settled, resulting in a capital contribution of $67.0 million. ALPHAEON's security interest in Evolus' assets was also terminated. See Note 9, *Stockholders' Equity (Deficit)-Equity Related Transactions*, for more information regarding equity transactions that occurred in connection with the IPO.

**Evolus, Inc.**

**Notes to Financial Statements**

***Evolus Founders***

Certain of the Evolus Founders from whom SCH purchased its equity interests include individuals who were previously employed by the Company in operational roles, including J. Christopher Marmo, Ph.D., the Company's former Chief Operating Officer and consultant to the Company through December 31, 2018.

**Payment Obligations Related to the Acquisition by ALPHAEON**

In connection with the acquisition by SCH and ALPHAEON, as described in Note 2, *Summary of Significant Accounting Policies*, the Evolus Founders were issued Class D units of SCH which contained certain rights and privileges that provide the Evolus Founders with a 10% economic interest in Evolus. The original payment obligations included (i) a $10.0 million up-front payment upon obtaining FDA approval for the Product for the treatment of glabellar lines, (ii) perpetual quarterly royalties of a mid-teen percentage of net sales of the Product within the United States and (iii) a high-single digit percentages of net sales of the Product outside of the United States. As these future royalty streams are perpetual, ALPHAEON had the right under the Stock Purchase Agreement to terminate any future payments for a one-time lump sum payment to SCH of $145.0 million.

On December 14, 2017, SCH and ALPHAEON entered into the Amended Purchase Agreement, whereby Evolus also joined as a contractual party. Pursuant to the Amended Purchase Agreement, ALPHAEON's existing payment obligations were replaced with revised payment obligations, payable directly to the Evolus Founders, to be distributed to them ratably in accordance with their previous respective percentage ownership in Series A preferred stock, and in exchange for the cancellation of the Class D units of SCH. Pursuant to the Amended Purchase Agreement, effective upon the closing of the IPO, ALPHAEON immediately and automatically assigned to Evolus and Evolus immediately and automatically accepted and assumed all of ALPHAEON's payment obligations under the Stock Purchase Agreement, as amended by the Amended Purchase Agreement.

Under the Amended Purchase Agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for the Product for the treatment of glabellar lines, (ii) quarterly royalty payments of a low single digit percentage of net sales of the Product within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of the Product outside of the United States, and (iv) a $20.0 million promissory note that will mature on the 2.5 years anniversary of the first commercial sale of the Product in the United States. The revised payment obligations set forth in (ii) and (iii) above will terminate in the quarter following the 10 year anniversary of the first commercial sale of the Product in the United States. As these revised payment obligations are not perpetual, neither Evolus nor ALPHAEON will have the right to terminate any future payments for a one-time lump sum payment. Under the Amended Purchase Agreement, the Company recorded the fair value of all revised payment obligations and the promissory note owed to the Evolus Founders was $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note) as of February 12, 2018. See Note 6, *Fair Value Measurements* for more information about the Company's accounting thereof. In addition, the outstanding related party borrowings from ALPHAEON were set-off and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations Evolus assumed from ALPHAEON, the fair value of which, as of February 12, 2018, was $55.7 million.

Under the Amended Purchase Agreement, Evolus agreed to make one-time bonuses of $1.6 million to certain of its former and current employees upon FDA approval of the Product, including a one-time bonus of $0.7 million payable to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development.

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

In addition, upon a change-of-control of Evolus, all unpaid principal will become immediately due and payable. Under the terms of the promissory note, a change-of-control is defined as (i) the sale of all or substantially all of Evolus' assets, (ii) the

exclusive license of the Product or the business related to the Product to a third-party (other than a sublicense under the Daewoong Agreement), or (iii) any merger, consolidation, or acquisition of Evolus, except a merger, consolidation, or acquisition of Evolus in which the holders of capital stock of Evolus immediately prior to such merger, consolidation, or acquisition hold at least 50% of the voting power of the capital stock of Evolus or the surviving entity. Notwithstanding the foregoing, the promissory note expressly provides that neither the IPO or any merger with or acquisition by ALPHAEON or any of its subsidiaries or affiliates constitutes a change-of-control.

As of December 31, 2018, the Company determined the fair value of the contingent royalty obligation payable to the Evolus Founders, a related party, was $50.2 million and recorded a revaluation charge of $10.5 million for the year ended December 31, 2018 in the accompanying statements of operations and comprehensive loss. The charges were driven by changes in assumptions relating to the timing of cash flows and the discount rate. The Company will revalue the contingent royalty obligation payable to the Evolus Founders, a related party, at each reporting period. See Note 6, *Fair Value Measurements* for more information.

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

***Exclusive Distribution and Supply Agreement with Clarion Medical Technologies Inc.***

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

Under the Distribution Agreement, if the Company did not receive approval from Health Canada to promote and sell the Product in Canada prior to October 31, 2018, the Company was obligated to pay liquidated damages to Clarion in the amount of $1.0 million within 30 days of December 31, 2018, which damages would not reduce the Unwinding Fee. In August 2018, the Company received approval from Health Canada to promote and sell the Product. Accordingly, the Company has concluded that no obligation exists and no liability has been recorded as of December 31, 2018. No amounts have been paid towards the Unwinding Fee as of December 31, 2018.

***Therapeutic Option Letter Agreement***

On December 18, 2017, the Company entered into a therapeutic option letter agreement with ALPHAEON whereby certain rights to the therapeutic indications of the Product under the Daewoong Agreement were transferred by the Company to ALPHAEON. The Company recorded this transaction as a reduction of $2.5 million in the related party borrowings and a non-cash capital contribution from ALPHAEON, in additional paid-in capital on the balance sheets as of December 31, 2017. Once exercised, the rights to the therapeutic indications shall be solely in the control of ALPHAEON. As of December 31, 2018, the right to exercise the therapeutic option was exercised by ALPHAEON, which remitted the exercise price directly to Daewoong.

**Note 5. Commitments and Contingencies**

***Operating Lease***

Total rental expense for the years ended December 31, 2018 and 2017 was $0.3 million and $0.2 million, respectively. As of December 31, 2018, annual future minimum payments under the operating lease agreements with non-cancelable terms greater than one year are as follows (in thousands):

| **Year Ending December 31,** | | |
|---|---|---|
| 2019 | $ | 890 |
| 2020 | | 139 |
| 2021 | | 0 |
| | $ | 1,029 |

***Purchase Commitments***

As of December 31, 2018, the Company has entered into commitments to purchase services and products for an aggregate amount of approximately $6.7 million, including $3.5 million from Daewoong. Certain purchase obligations or milestone payments have been excluded because they are contingent upon the occurrence of future events, including receipt of governmental approvals and our future sales in various jurisdictions, and we do not know the timing of such potential obligations with certainty.

***FDA Milestone Payments***

In connection with the Daewoong Agreement, as described in detail below, the Company is obligated to make future milestone payments for certain confidential development and commercial milestones associated with the Product.

***License and Supply Agreement***

In October 2013, Evolus entered into the Daewoong Agreement with Daewoong. Pursuant to the Daewoong Agreement, the Company has an exclusive distribution license to the Product from Daewoong for aesthetic indications in the United States, European Union, Canada, Australia, Russia, Commonwealth of Independent States, and South Africa, as well as co-exclusive distribution rights with Daewoong in Japan. The Product will be manufactured by Daewoong in a recently constructed facility in South Korea. The Company also has the option to negotiate first with Daewoong to secure a distribution license for any product that Daewoong directly or indirectly develops or commercializes that is classified as an injectable botulinum toxin (other than the Product) in a territory covered by the Daewoong Agreement.

The Company held an option to obtain the therapeutic rights to the Product in its licensed territories which was held in trust for ALPHAEON during the fourth quarter of 2017 for a $2.5 million reduction in related party borrowings. In September 2018, ALPHAEON exercised the right to obtain the therapeutic option to the Product and remitted the option exercise price directly to Daewoong.

The Daewoong Agreement also includes certain minimum annual purchases the Company is required to make in order to maintain the exclusivity of the license. The Company may, however, meet these minimum purchase obligations by achieving certain market share in its covered territories. These potential minimum purchase obligations are contingent upon the occurrence of future events, including receipt of governmental approvals and the Company's future market share in various jurisdictions, which have not yet been obtained as of December 31, 2018.

***Legal Proceedings***

The Company, from time to time, is involved in various litigation matters or regulatory encounters arising in the ordinary course of business that could result in unasserted or asserted claims or litigation. The Company is not subject to any currently pending legal matters or claims that would have a material adverse effect on its accompanying financial position, results of operations or cash flows.

In the normal course of business, the Company enters into contracts and agreements that contain a variety of representations and warranties and provide for general indemnifications. The Company's exposure under these agreements is unknown because it involves claims that may be made against the Company in the future, but have not yet been made. The Company accrues a liability for such matters when it is probable that future expenditures will be made and such expenditures can be reasonably estimated. No amounts were accrued as of December 31, 2018 and 2017.

***Medytox Litigation***

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

***Citizen Petition***

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

***ITC Case***

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

an exclusion order which would bar imports of the Product into the United States and a cease and desist order which would bar sales and marketing of the Product within the United Sates either of which would adversely affect our ability to carry our out our business and which would have an adverse effect on our business, financial position, results of operations, or cash flows and could also result in reputational harm. Any of these consequences could adversely affect our business and results of operations.

## Note 6. Fair Value Measurements

The carrying amounts of cash, accounts payable, and accrued liabilities are considered to be representative of their respective fair values because of the short-term nature of those instruments.

***Financial Instruments Not Recorded at Fair Value on a Recurring Basis***

At December 31, 2018, the Company had a $20.0 million contingent promissory note payable under the Amended Purchase Agreement to the Evolus Founders, that will mature 2.5 years after the anniversary date of the first commercial sale of the Product in the United States. Accretion related to the contingent promissory note is recorded in interest expense in the statements of operations and comprehensive loss with a corresponding increase to the non-current liabilities in the balance sheets. The Company measures the fair value of this contingent promissory note at present value based on Level 2 inputs, using a discount rate for similar rated debt securities and is based on an estimated date that the Company believes the contingent promissory note will mature. The fair value of the contingent promissory note could be impacted by changes such as: (i) changes in the discount rate assumed, or (ii) a delay in the first commercial sale of the Product in the United States.

The Company assumed the liability concurrent with its IPO in February 2018 and therefore, did not carry a contingent promissory note payable balance at December 31, 2017. The following table (in thousands) presents the difference between the carrying balance and the fair value of the contingent promissory note payable to the Evolus founders, a related party:

| | As of December 31, 2018 | |
|---|---|---|
| | Carrying Balance | Fair Value |
| Contingent promissory note payable to Evolus Founders, a related party | $ 16,904 | $ 17,181 |

***Financial Instruments Recorded at Fair Value on a Recurring Basis***

The following table (in thousands) presents the major security types the Company held at December 31, 2018, that are measured at fair value on a recurring basis. The Company did not hold any major security types that required a fair value measurement on a recurring basis at December 31, 2017.

| | | Year Ended December 31, | |
|---|---|---|---|
| | Fair Value Hierarchy | 2018 | 2017 |
| Contingent royalty obligation payable to Evolus Founders, a related party | Level 3 | $ 50,200 | $ — |

The Company determines the fair value of the contingent royalty obligation payable to a related party based on Level 3 inputs using a discounted cash flows method. Changes in the fair value of this contingent royalty obligation are determined each period end and recorded in the operating expenses in the statements of operations and comprehensive loss and in non-current liabilities in the balance sheets. The significant unobservable input assumptions that can significantly change the fair value includes (i) timing of the FDA approval of the Product, (ii) projected and timing of net revenues during the payment period, which will terminate for the quarter following the 10 year anniversary of the first commercial sale of the Product in the United States, (iii) the discount rate, and (iv) the timing of payments. During the year ended December 31, 2018, the Company utilized discount rates ranging from 18% to 25%, reflecting changes in the Company's risk profile. Net revenue projections were also updated to reflect changes in the timing of expected regulatory approval and commercialization.

The following table (in thousands) shows a reconciliation of the beginning and ending fair value measurements of the contingent royalty obligation payable to a related party for year ended December 31, 2018:

**Evolus, Inc.**

**Notes to Financial Statements**

| | Year Ended December 31, 2018 |
|---|---|
| Fair value, beginning of period | $ — |
| Assumption of the royalty obligation payable to Evolus Founders, a related party | 39,700 |
| Change in fair value recorded in operating expenses | 10,500 |
| Fair value, end of period | $ 50,200 |

## Note 7. Accrued Expenses

Accrued expenses consisted of the following (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Payroll and related benefits | $ 2,577 | $ 109 |
| Professional services and related expenses | 931 | 868 |
| Other | 210 | — |
| | $ 3,718 | $ 977 |

## Note 8. Income Taxes

The Company's loss before income taxes was entirely generated from its U.S. operations. The current and deferred expense is as follows (in thousands):

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Current provision: | | |
| Federal | $ — | $ (775) |
| State | — | (221) |
| Total current benefit | — | (996) |
| Deferred (benefit) provision: | | |
| Federal | 44 | (6,276) |
| State | 21 | 21 |
| Total deferred provision (benefit) | 65 | (6,255) |
| Total provision (benefit) for income taxes | $ 65 | $ (7,251) |

As of December 31, 2018 and 2017, the Company has federal and state net operating loss ("NOL") carryforwards of $99.8 million and $72.6 million, respectively, which will begin to expire in year 2034. NOL carryforwards generated by the Company have been included in the consolidated and unitary income tax returns of ALPHAEON. As of December 31, 2018 and 2017, the Company has federal research and development ("R&D") credit carryforwards of $1.2 million and $1.0 million, respectively, which will begin to expire in 2034. The Company also has California R&D credit carryforwards of $1.2 million and $1.1 million, respectively, which has an indefinite carryforward period. Deferred tax assets in the accompanying financial statements are presented as if the Company filed separate income tax returns. Accordingly, the NOL and the R&D credit carryforwards allocable to the Company based on ALPHAEON's consolidated and unitary income tax returns may ultimately differ from those presented in the financial statements on a separate return methodology.

In general, if the Company experiences a greater than 50 percentage point aggregate change in ownership of certain significant stockholders over a three-year period (a "Section 382 ownership change"), utilization of its pre-change NOL carryforwards and the R&D credit carryforwards is subject to an annual limitation under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, and similar state laws. The annual limitation generally is determined by multiplying the value of the Company's stock at the time of such ownership change, subject to certain adjustments, by the applicable long-term tax-exempt rate. Such limitations may result in expiration of a portion of the NOL carryforwards and R&D credit carryforwards before utilization and may be material. As of December 31, 2018, the Company has not

determined to what extent a potential ownership change will impact the annual limitation that may be placed on the Company's utilization of its NOL carryovers and R&D credit carryforwards.

The components of deferred tax assets and liabilities were as follows (in thousands):

| | As of December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Deferred income tax assets: | | |
| Net operating losses | $ 29,782 | $ 21,657 |
| Promissory note - debt discount | 108 | — |
| Accrued compensation | 648 | — |
| Stock compensation | 1,552 | 292 |
| Research and development credit carryforwards | 2,436 | 2,109 |
| Deferred rent | 7 | 11 |
| Intangible asset | 3 | 3 |
| Valuation allowance | (34,536) | (24,072) |
| Total deferred income tax assets | — | — |
| Deferred income tax liabilities: | | |
| Intangible amortization | (15,055) | (14,990) |
| Total deferred income tax liabilities | (15,055) | (14,990) |
| Net deferred income taxes | $ (15,055) | $ (14,990) |

The Company recorded deferred tax assets of $34.5 million and $24.1 million as of December 31, 2018 and 2017, respectively, which have been fully offset by a valuation allowance. The valuation allowance increased by $10.5 million during 2018 primarily driven by the current year operating loss.

A reconciliation of the difference between the provision (benefit) for income taxes and income taxes at the statutory U.S. federal income tax rate is as follows (in thousands):

| | As of December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Income tax at statutory rate | $ (9,828) | $ (3,988) |
| State income taxes, net of Federal benefit | 16 | (132) |
| Research and development tax credit | (175) | (145) |
| Change in Federal tax rate due to tax reform | — | 3,221 |
| Stock compensation | 416 | 338 |
| Promissory note - debt discount | 105 | — |
| Revaluation of contingent royalty obligation | 2,205 | — |
| Meals and entertainment | 17 | 3 |
| Valuation allowance | 7,309 | (6,548) |
| Income tax provision (benefit) | $ 65 | $ (7,251) |

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows (in thousands):

| | As of December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Beginning balance | $ 2,109 | $ 1,812 |
| Increases to current year tax positions | 326 | 297 |
| Ending balance | $ 2,435 | $ 2,109 |

The Company has considered the amounts and probabilities of the outcomes that can be realized upon ultimate settlement with the tax authorities and determined unrecognized tax benefits primarily related to credits should be established as noted in the summary rollforward above. The Company's effective income tax rate would not be impacted if the unrecognized tax benefits are recognized. Additional amounts in the summary rollforward could impact the Company's effective tax rate if it did not maintain a full valuation allowance on its net deferred tax assets. The Company does not expect its unrecognized tax benefits to change significantly over the next 12 months.

The Company's policy is to recognize interest expense and penalties related to income tax matters as a component of income tax expense. There were no accrued interest and penalties associated with uncertain tax positions as of December 31, 2018 and 2017. The Company's tax returns for all years since inception are open for audit.

In December 2017, the Tax Cuts and Jobs Act (the "TCJA") was enacted. The TCJA includes a number of changes to existing U.S. tax laws that impact the company, most notably a reduction of the U.S. corporate income tax rate from 35% to 21% for tax years beginning after December 31, 2017. The TCJA also provides for the acceleration of depreciation for certain assets placed in service after September 27, 2017 as well as prospective changes beginning in 2018, including additional limitations on executive compensation, limitations on the deductibility of interest and capitalization of research and development expenditures.

The Company measures deferred tax assets and liabilities using enacted tax rates that will apply in the years in which the temporary differences are expected to be recovered or paid.

While there were no changes in the net deferred tax assets, the Company has recorded a decrease in the valuation allowance of $9.6 million, and a reduction in the net deferred tax liability and a benefit to income tax expense of $6.3 million for the year ended December 31, 2017.

The TCJA no longer allows deductions for compensation in excess of $1 million for certain employees, even if paid as commissions or performance based compensation. It also subjects the principal executive officer, principal financial officer and three other highest paid officers to the limitation and once the individual becomes a covered person, the individual will remain a covered person for all future years.

The company recognized the income tax effects of the TCJA in its 2017 financial statements in accordance with Staff Accounting Bulletin No. 118, which provides SEC staff guidance for the application of ASC Topic 740, Income Taxes, in the reporting period in which the TCJA was signed into law. As such, the Company's 2017 financial results reflected the provisional income tax effects of the TCJA for which the accounting was incomplete but a reasonable estimate was made. The Company's accounting for the elements of the TCJA was complete as of December 31, 2018 and no adjustments were made to the original provisional estimate.

**Note 9. Stockholders' Equity (Deficit)**

On February 12, 2018, the Company completed its IPO of 5,047,514 shares of common stock, which included the exercise by the underwriters of their option to purchase 47,514 additional shares of common stock, for net proceeds of $56.3 million, after deducting underwriting discounts and commissions, excluding other offering costs.

In July 2018, the Company completed the Follow-On Offering in which the Company sold 3,600,000 shares of its common stock, which included the exercise in full by the underwriters of their option to purchase an additional 600,000 shares of

common stock in August 2018, at a price to the public of $20.00 per share. The Company received net proceeds of approximately $67.7 million from the Follow-On Offering, after deducting underwriting discounts and commissions, and excluding other offering expenses.

***Convertible Series A Preferred Stock***

At December 31, 2017, the Company had 2,500,000 shares of Series A preferred stock authorized, of which 1,250,000 were issued or outstanding. ALPHAEON, as the previous sole holder of Series A preferred stock prior to the IPO, had certain dividends, conversion, redemption, voting, protective, and liquidation preferences. The number of shares of common stock to which a preferred stockholder was entitled was the product obtained by multiplying the Series A preferred stock conversion rate by the number of shares of preferred stock being converted, subject to adjustments as provided in the amended and restated certificate of incorporation.

In connection with the IPO, all shares of Series A preferred stock were converted into 2,065,875 shares of common stock. In addition, the Company also amended and restated its certificate of incorporation. As a result, shares of Series A convertible preferred stock were canceled, with none authorized, issued or outstanding as of December 31, 2018.

***Preferred Stock***

In connection with the completion of its IPO, the Company also amended and restated its certificate of incorporation to provide for 10,000,000 authorized shares of preferred stock with a par value of $0.00001 per share. At December 31, 2018, the Company had 10,000,000 shares of preferred stock authorized, of which none were issued and outstanding.

***Common Stock***

In connection with the completion of its IPO, the Company also amended and restated its certificate of incorporation to provide for 100,000,000 authorized shares of common stock with a par value of $0.00001 per share. At December 31, 2018, the Company had 100,000,000 shares of common stock authorized, of which 27,274,991 were issued and outstanding.

***Equity Related Transactions***

As of February 12, 2018, the Company assumed from ALPHAEON the revised payment obligations under the Amended Purchase Agreement of $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note at that date). See Note 6, *Fair Value Measurements* for more information. Pursuant to the Amended Purchase Agreement, ALPHAEON agreed to offset and reduce the amount of related party borrowings by the estimated value of the revised payment obligations on a dollar-for-dollar basis and pursuant to the Services Agreement. Additionally, the Company paid $5.0 million to ALPHAEON in satisfaction of a portion of the outstanding related party borrowings (see Note 4, *Related Party Transactions*). The remaining balance of related party borrowings of $13.2 million was recharacterized as a capital contribution from ALPHAEON pursuant to the Services Agreement.

***2017 Omnibus Incentive Plan and Stock-based Compensation Allocation***

On November 21, 2017, the board of directors and the then-sole stockholder of the Company approved the Company's 2017 Omnibus Incentive Plan (the "Plan"). The Plan provides for the grant of incentive options to employees of the Company, and for the grant of nonstatutory options, restricted stock awards, restricted stock unit awards, stock appreciation rights, performance stock awards and other forms of stock compensation to the Company's employees, including officers, directors, consultants and employees of the Company. The maximum number of shares of common stock that may be issued under the Plan is 4,361,291 shares, plus an annual increase on each anniversary of November 21, 2017 equal to 4% of the total issued and outstanding shares of the Company's common stock as of such anniversary (or such lesser number of shares as may be determined by the Company's board of directors). On November 21, 2018, an additional 1,091,000 were reserved under the evergreen provision of the Plan. As of December 31, 2018, the Company reserved an aggregate of 1,888,484 shares of common stock for future issuance under the Plan.

***Stock-Based Award Activity and Balances***

The fair value of restricted stock units ("RSUs") is estimated at the Company's grant date common share price. Options are granted at exercise prices based on the Company's grant date common share price. The RSUs and options generally vest over a two- to four-year period. There have been no awards with performance conditions and no awards with market conditions. The options generally have a contractual term of ten years. The Black-Scholes option pricing model has various inputs, including the grant date common share price, exercise price, risk-free interest rate, volatility, expected life and dividend yield. The Company records share-based compensation expense net of actual forfeitures. 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 significant assumptions used in the Black-Scholes option-pricing are as follows:

- *Determining Fair Value of the underlying common stock.* For options awards granted after the completion of the Company's IPO, the fair value for its underlying common stock was determined using the fair value of the grant date price as reported on the Nasdaq Global Select Market. Since the Company's common stock was not traded in a public stock market exchange prior to the Company's IPO, prior to such date the Board of Directors considered numerous factors including new business and economic developments affecting the Company and independent appraisals, when appropriate, to determine the fair value of the Company's common stock. Independent appraisal reports were prepared using conventional valuation techniques, such as discounted cash flow analyses, from which a discount factor for lack of marketability was applied. This determination of the fair value of the common stock was performed on a contemporaneous basis. Prior to the Company's initial public offering, the Board of Directors determined the Company's common stock fair market value on as needed basis.

- *Expected Volatility.* The Company has limited data regarding company-specific historical or implied volatility of its share price. Consequently, the Company estimates its volatility based on the average historical volatility of the stock price from a set of peer companies, since our shares do not have sufficient trading history. Management considers factors such as stage of life cycle, competitors, size, market capitalization and financial leverage in the selection of similar entities.

- *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 for exercise and post-vesting employment or contractual termination behavior after its common stock has been publicly traded. 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 on U.S. Treasury zero-coupon issues with a term approximately equal to the expected life of the option being valued.

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

**Evolus, Inc.**

**Notes to Financial Statements**

The Company did not grant stock options, restricted stock units, or restricted stock awards during the year ended December 31, 2017. The weighted-averages for key assumptions used in determining the fair value of stock options granted were as follows:

| | Year Ended December 31, | |
|---|---|---|
| | **2018** | **2017** |
| Volatility | 57.76% | —% |
| Risk-free interest rate | 2.65% | —% |
| Expected life in years | 6.24 | — |
| Dividend yield rate | —% | —% |

A summary of stock option activity under the Plan for the year ended December 31, 2018, is presented below:

| | **Stock Options** | **Weighted Average Exercise Per Share** | **Weighted Average Remaining Contractual Terms (Years)** | **Aggregate Intrinsic Value (in thousands)** |
|---|---|---|---|---|
| Outstanding, December 31, 2017 | — | $ — | — | $ — |
| Granted | 3,840,724 | 11.68 | 9.33 | 8,632 |
| Exercised | — | — | — | — |
| Cancelled/forfeited | (582,923) | 9.98 | 9.02 | (1,513) |
| Outstanding, December 31, 2018 | 3,257,801 | $ 11.99 | 9.26 | $ 7,119 |
| Exercisable, December 31, 2018 | — | $ — | — | $ — |

The aggregate intrinsic value is calculated as the difference between the exercise price of the underlying awards and the Company's common stock for those awards that have an exercise price below the estimated fair value at December 31, 2018.

During the year ended December 31, 2018, the Company recorded expense of $4.1 million related to stock options. As of December 31, 2018, there was $18.9 million of total unrecognized compensation cost, net of actual forfeitures, related to stock option based compensation arrangements granted under the Plan. The cost is expected to be recognized over a weighted-average period of 3.3 years.

A summary of the status of the Company's nonvested options as of and changes during the year ended December 31, 2018, are presented below:

| | **Stock Options** | **Weighted-Average Grant Date Fair Value** |
|---|---|---|
| Outstanding, December 31, 2017 | — | $ — |
| Granted | 3,840,724 | 11.68 |
| Cancelled/forfeited | (582,923) | 9.98 |
| Outstanding, December 31, 2018 | 3,257,801 | $ 11.99 |

A summary of restricted stock unit activity under the Plan for the year ended December 31, 2018, is presented below:

| | Restricted Stock Units | Weighted Average Grant Date Fair Value |
|---|---|---|
| Outstanding, December 31, 2017 | — | $ — |
| Granted | 321,516 | 14.38 |
| Vested | (34,602) | 9.98 |
| Forfeited | (15,510) | 9.98 |
| Outstanding, December 31, 2018 | 271,404 | $ 15.19 |

During the year ended December 31, 2018, the Company recorded expense of $1.3 million related to restricted stock units. As of December 31, 2018, there was $2.8 million of total unrecognized compensation cost, net of actual forfeitures, related to stock option based compensation arrangements granted under the Plan. The cost is expected to be recognized over a weighted-average period of 1.9 years.

The following table summarizes stock-based compensation expense (in thousands) amounts recorded in the accompanying statements of operations and comprehensive loss pursuant to the Plan in 2018 and allocated to Evolus by ALPHAEON in 2017:

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| General and administrative | $ 5,570 | $ 551 |
| Research and development | 1,401 | 35 |
| | $ 6,971 | $ 586 |

***Separation of Service with the Former President and Chief Executive Officer***

In May 2018, the Company entered into a separation agreement (the "Separation Agreement") with its then President and Chief Executive Officer, Murthy Simhambhatla, Ph.D. Pursuant to the Separation Agreement, the Company modified previously granted stock options resulting in an incremental vesting of 100,424 stock options and related stock-based compensation expense of $0.5 million. As part of the Separation Agreement, the Company issued 34,602 shares of common stock net of tax withholding for vested restricted stock units. An additional 50,112 shares of common stock were immediately vested and will be issued in February 2020. Stock-based compensation expense relating to the issuance of common stock and accelerated vesting was approximately $1.0 million. The aforementioned non-cash charges are reflected in general and administrative on the statements of operations and comprehensive loss for the year ended December 31, 2018.

**Evolus, Inc.**

**Notes to Financial Statements**

**Note 10. Net Loss per Share Attributable to Common Stockholders**

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

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Net loss | $ (46,867) | $ (4,480) |
| Net loss per share, basic and diluted | $ (1.92) | $ (0.27) |
| Weighted-average shares outstanding used to compute basic and diluted net loss per share | 24,402,368 | 16,527,000 |

The Company incurred a net loss for the year ended December 31, 2018 and 2017, and, accordingly, the Company did not include the following dilutive common equivalent shares:

| | Year Ended December 31, | |
|---|---|---|
| | 2018 | 2017 |
| Common stock options | 3,257,801 | — |
| Unvested restricted stock units | 221,292 | — |
| | 3,479,093 | — |

**Note 11. Subsequent Events**

On February 1, 2019, the FDA granted approval of the Company's BLA for the Product. In February 2019, pursuant to the Amended Purchase Agreement, the Company paid a $9.2 million milestone payment to the Evolus Founders and one-time bonuses of $1.6 million to certain former and current employees, including a one-time bonus of $0.7 million payable to Rui Avelar, M.D., Evolus' Chief Medical Officer and Head of Research & Development. In addition, pursuant to the Daewoong Agreement, the Company paid Daewoong a $2.0 million milestone payment in February 2019.

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

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

The credit facility also includes events of default, the occurrence and continuation of which could cause interest to be charged at a default interest rate equal to the applicable rate plus 5.0% and Oxford, as collateral agent, with the right to exercise remedies against the Company and the collateral securing the credit facility, including foreclosure against the property securing the credit facility, including its cash.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.**

**Evaluation of Disclosure Controls and Procedures**

Our management, under the supervision and with the participation of our Chief Executive Officer and our Chief Financial Officer, our principal executive and principal financial officers, respectively, conducted 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) under the Exchange Act of 1934, as amended, as of the end of the period covered by this Annual Report on Form 10-K. Based on this evaluation, our Chief Executive Officer and our Chief Financial Officer have concluded that our disclosure controls and procedures were effective (a) to ensure that information that we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and (b) to include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in reports filed or submitted under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

**Management's Annual Report on Internal Control over Financial Reporting**

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of senior management, including our Chief Executive Officer and Chief Financial Officer, we evaluated the effectiveness of our internal control over financial reporting based on the framework in *Internal Control-Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Based on the evaluation under that framework and applicable SEC rules, our management concluded that our internal control over financial reporting was effective as of December 31, 2018.

This Annual Report on Form 10-K does not include an attestation report of our registered public accounting firm on our internal control over financial reporting due to an exemption established pursuant to the JOBS Act for "emerging growth companies."

**Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting identified in connection with the evaluation required by Rule 13a-15(d) and 15d-15(d) of the Exchange Act that occurred during the quarter ended December 31, 2018 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Inherent Limitations of Internal Controls**

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls over financial reporting will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management overriding of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

**Item 9B. Other Information.**

None.

**Evolus, Inc.**

**Notes to Financial Statements**

**Item 10. Directors, Executive Officers and Corporate Governance.**

**Executive Officers and Directors**

The following table sets forth certain information regarding our current executive officers and directors, including their ages, as of December 31, 2018:

| Name | Age | Position(s) |
|---|---|---|
| ***Executive Officers and Director*** | | |
| David Moatazedi | 41 | President, Chief Executive Officer and Director |
| Lauren Silvernail | 60 | Chief Financial Officer and Executive Vice President, Corporate Development |
| Rui Avelar, M.D. | 56 | Chief Medical Officer and Head of Research and Development |
| Michael Jafar | 38 | Chief Marketing Officer |
| ***Non-Employee Directors*** | | |
| Vikram Malik | 56 | Chairman of the Board of Directors |
| Simone Blank | 55 | Director |
| Bosun Hau | 40 | Director |
| Kristine Romine, M.D. | 54 | Director |
| Robert Hayman | 59 | Director |
| David Gill | 64 | Director |

***Executive Officers and Directors***

***David Moatazedi***, has served as our President, Chief Executive Officer and as a member of our board of directors, since May 2018. Prior to that time, Mr. Moatazedi was the Senior Vice President at Allergan, Inc., or Allergan, and division head of the U.S. Medical Aesthetics division, which includes facial aesthetics, plastic surgery, regenerative medicine, body contouring, and skin care products from March 2016 to May 2018. Since March 2017, Mr. Moatazedi has served as a member of the board of directors of Obalon Therapeutics, Inc., a public medical device company focused on developing and commercializing medical devices to treat obese and overweight people by facilitating weight loss. Mr. Moatazedi has worked in various leadership capacities within Allergan since March 2005, including as Vice President, Sales and Marketing of the U.S. Facial Aesthetics division from August 2014 to March 2016 and Vice President, Sales and Market of the U.S. Plastic Surgery division from February 2013 to August 2014. Prior to Allergan, Mr. Moatazedi was a district manager at Novartis Pharmaceuticals for the Dermatology division. Mr. Moatazedi holds an M.B.A. from Pepperdine University and a B.A. from California State University, Long Beach.

***Lauren Silvernail***, has served as our Chief Financial Officer and Executive Vice President, Corporate Development since May 2018. Prior to that time, Mrs. Silvernail served as the Chief Financial Officer and Chief Business Officer of Revance Therapeutics, Inc., or Revance, a pharmaceutical research and development company, from December 2015 to May 2018 and as Revance's Chief Financial Officer and Executive Vice President, Corporate Development from March 2013 to December 2015. From 2003 to 2012, Mrs. Silvernail was Chief Financial Officer and Vice President of Corporate Development at ISTA Pharmaceuticals, Inc., a pharmaceutical research and development company. From 1995 to 2003, Mrs. Silvernail served in various operating and corporate development positions with Allergan, including Vice President, Business Development. Prior to joining Allergan, Mrs. Silvernail worked at Glenwood Ventures, an investment firm, as a General Partner. She currently serves on the board of directors and the audit and compensation committees of Nicox S.A. Mrs. Silvernail holds a B.A. in Biophysics from the University of California, Berkeley and an M.B.A. from the Anderson Graduate School of Management at the University of California, Los Angeles.

***Rui Avelar, M.D.***, has served as our Chief Medical Officer since January 2014 and was appointed our Head of Research and Development in August 2018. From January 2014 to February 2018, Dr. Avelar also served as the Chief Medical Officer of ALPHAEON. From March 2011 to December 2013, he served as Chief Medical Officer of Allergan Medical, where he was responsible for clinical development, clinical operations, safety, medical writing, biostatistics and regulatory matters. Dr. Avelar holds a M.D. from the University of Toronto and has received training accreditation in Sports Medicine from the Canadian Academy of Sports Medicine.

***Michael Jafar***, has served as our Chief Marketing Officer since June 2018. From April 2017 to June 2018, he served as Vice President, Medical Aesthetics at Allergan. Mr. Jafar has worked in various leadership capacities within Allergan since March 2003, including as Associate Vice President, Strategic Marketing and Communications of the Medical Aesthetics division from May 2015 to April 2017 and roles as Senior Director of Marketing for aesthetic products such as SkinMedica, Latisse and Juvederm from October 2011 to May 2015. Mr. Jafar holds an M.B.A. from the University of Southern California and a B.B.A. from the University of San Diego.

***Non-Employee Directors***

***Vikram Malik***, has served as a member and the Chairman of our board of directors since January 2018. Mr. Malik has served as a member of ALPHAEON's board of directors since April 2014. Since May 2013, Mr. Malik has served as the Managing Partner of SCH. From August 2011 to May 2013, Mr. Malik served as Vice Chairman, Investment Banking for Deutsche Bank Securities, Inc. From November 2010 to August 2011, Mr. Malik served as a Managing Director in the Healthcare Corporate and Investment Banking Group of Merrill Lynch, Pierce, Fenner & Smith Incorporated. From June 2000 to November 2010, Mr. Malik served as the Managing Director of Banc of America Securities, LLC. Mr. Malik received a B.A. in Economics from Delhi University and an M.B.A. from Boston University Graduate School of Management. We believe Mr. Malik's extensive experience in the investment banking and financial services industry, as well as his role at SCH, qualifies him to serve on our board of directors.

***Simone Blank***, has served as a member of our board of directors since January 2018. Ms. Blank has served as the chairman of the board of directors of ALPHAEON since July 2016. Ms. Blank is also the co-owner of Dental Innovations BVBA, the collateral agent for the holders of the convertible promissory notes issued by ALPHAEON. Since 2013, Ms. Blank has served as a member of the board of directors of several private healthcare companies. From May 2006 to October 2013, Ms. Blank served as a member of the board of directors of Sirona Dental Systems Inc., or Sirona, a dental technology manufacturer previously listed on Nasdaq. From July 1999 to October 2013, Ms. Blank served as Executive Vice President and Chief Financial Officer of Sirona. Prior to July 1999, Ms. Blank was an engagement manager in the merger and acquisition transaction group of PricewaterhouseCoopers after having gained global financial experience as a certified public accountant and tax advisor. Ms. Blank received a M.Sc. in Economics from the University of Duisburg, Germany. We believe Ms. Blank's extensive business and leadership experience qualifies her to serve on our board of directors.

***Bosun Hau***, has served as a member of our board of directors since January 2018. Mr. Hau has served as a member of ALPHAEON's board of directors since May 2016. Since February 2018, Mr. Hau has served as a director of Cellular Biomedicine Group, Inc. Since October 2015, Mr. Hau has served as a Managing Director and Partner of Sailing Capital. From August 2009 to October 2015, Mr. Hau served as a Partner of MVM Life Science Partners LLP. From July 2004 to August 2007, Mr. Hau served as an equity research analyst covering the medical device and pharmaceutical industries for JP Morgan Securities, Inc. and Prudential Securities, Inc. Since 2009, Mr. Hau has served as a member of the board of directors of several private biotechnology, specialty pharmaceutical and medical device companies. Mr. Hau received a B.S. in Molecular and Cellular Biology, a B.S.H.S. in Physiological Sciences and a B.A. in Psychology from the University of Arizona, an M.Sc. in Biotechnology from Johns Hopkins University and an M.B.A in Finance and Health Management from the Wharton School at the University of Pennsylvania. We believe Mr. Hau's extensive experience in the venture capital, private equity and financial services industries qualifies him to serve on our board of directors.

***Kristine Romine, M.D.***, has served as a member of our board of directors since January 2018. From April 2017 to February 2018, Dr. Romine served as a member of ALPHAEON's board of directors. In July 2003, Dr. Romine founded and has since served as the Chief Executive Officer of Camelback Dermatology & Skin Surgery in Phoenix, Arizona. Dr. Romine holds a B.S. in Biology from the University of Arizona and an M.D. from the Medical College of Wisconsin. We believe Dr. Romine's extensive experience in the dermatology industry qualifies her to serve on our board of directors.

***Robert Hayman***, has served as a member of our board of directors since January 2018. From April 2014 to February 2018, Mr. Hayman served as a member of ALPHAEON's board of directors. Since 2011, Mr. Hayman has served as the owner and Chief Executive Officer of Hayman Properties, a real estate investment and development business. Since 2015, Mr. Hayman has served as Principal and Chief Executive Officer of Perimetrics, LLC, a dental diagnostic service company. Since April 2008, Mr. Hayman served as Principal at Common Sense Concepts, LLC, a dental device development company. From 1993 to February 2008, Mr. Hayman served as the co-founder, Chief Executive Officer and Chairman of Discus Dental, Inc. Mr. Hayman attended the masters degree program in Psychology at Pepperdine University, and received a B.S. in Business Administration from Boston University. We believe Mr. Hayman's extensive business and leadership experience qualifies him to serve on our board of directors.

***David Gill***, has served as a member of our board of directors since February 2018. Mr. Gill has served as a member of the board of directors and audit committee chairman of Strata Skin Sciences since June 2018 and Y-mAbs Therapeutics, Inc.

since December 2017. Mr. Gill has served as a member of the board of directors and audit committee chairman of Histogenics Corporation since 2015. Since 2012, Mr. Gill has also served as a member of the board of directors and audit committee chairman of Melinta Therapeutics (formerly known as Cempra, Inc.). From May to November 2015, Mr. Gill served as the President and Chief Financial Officer of EndoChoice, Inc., a medical device company focused on gastrointestinal disease. Mr. Gill joined EndoChoice, Inc. as Chief Financial Officer in August 2014 and was subsequently appointed President in 2015. From February 2011 to August 2013, he served as the Chief Financial Officer of INC Research, now known as Syneos Health, a clinical research organization. Mr. Gill holds a B.S. in Accounting from Wake Forest University and an M.B.A. from Emory University, and is a certified public accountant (inactive). We believe that Mr. Gill's extensive experience as an executive in the life sciences industry and his prior service as a senior-level executive in mature life sciences companies qualifies him to serve on our board of directors.

***Family Relationships***

There are no family relationships among any of our directors or executive officers.

**Board Composition**

Our business and affairs are organized under the direction of our board of directors, which currently consists of seven directors. The primary responsibilities of our board of directors are to provide oversight, strategic guidance, counseling and direction to our management. Our board of directors meets on a regular basis.

Our certificate of incorporation divides our board of directors into three classes, with staggered three-year terms, as follows:

- Class I, which consists of David Gill and Robert Hayman, whose terms will expire at our annual meeting of stockholders to be held in 2019;
- Class II, which consists of Simone Blank and Bosun Hau, and whose terms will expire at our annual meeting of stockholders to be held in 2020; and
- Class III, which consists of David Moatazedi, Vikram Malik and Kristine Romine, M.D., whose terms will expire at our annual meeting of stockholders to be held in 2021.

At each annual meeting of stockholders to be held after the initial classification, the successors to directors whose terms then expire will serve until the third annual meeting following their election and until their successors are duly elected and qualified. The authorized number of directors may be changed only by resolution of our board of directors. Any additional directorships resulting from an increase in the number of directors will be distributed between the three classes so that, as nearly as possible, each class will consist of one-third of the directors. This classification of our board of directors may have the effect of delaying or preventing changes in our control or management. From and after the date on which ALPHAEON no longer beneficially owns a majority of the voting power of all of the then-outstanding shares of our capital stock, our directors may only be removed for cause by the affirmative vote of the holders of at least 66 2/3% of our voting stock.

**Board Committees**

Our board of directors has established an audit committee, a compensation committee, and a nominating and corporate governance committee.

Each committee operates under a charter that has been approved by our board of directors. Copies of each committee's charter are posted on the Investor Relations section of our website, which is located at www.evolus.com. Each committee has the composition and responsibilities described below. Our board of directors may from time to time establish other committees.

**Audit Committee**

Our audit committee consists of David Gill, Bosun Hau and Robert Hayman. Mr. Gill is the chair of the audit committee. Our board of directors has determined that each of the members of our audit committee satisfies the Nasdaq Marketplace Rules and SEC independence requirements. The functions of this committee include, among other things:

- evaluating the performance, independence and qualifications of our independent registered public accounting firm and determining whether to retain our existing independent registered public accounting firm or engage a new independent registered public accounting firm;

- reviewing and approving the engagement of our independent registered public accounting firm to perform audit services and any permissible non-audit services;
- reviewing our annual and quarterly financial statements and reports, including the disclosures contained under the caption "Management's Discussion and Analysis of Financial Condition and Results of Operations," and discussing the statements and reports with our independent registered public accounting firm and management;
- reviewing with our independent registered public accounting firm and management significant issues that arise regarding accounting principles and financial statement presentation and matters concerning the scope, adequacy and effectiveness of our financial controls;
- reviewing and approving related party transactions;
- reviewing our major financial risk exposures, including the guidelines and policies to govern the process by which risk assessment and risk management is implemented; and
- reviewing and evaluating on an annual basis the performance of the audit committee, including compliance of the audit committee with its charter.

Our board of directors has determined that Mr. Gill qualifies as an audit committee financial expert within the meaning of SEC regulations and meets the financial sophistication requirements of the Nasdaq Marketplace Rules. In making this determination, our board of directors has considered Mr. Gill's extensive financial experience and business background. Both our independent registered public accounting firm and management periodically meet privately with our audit committee.

**Code of Conduct**

Our board of directors has adopted a code of conduct that applies to all of our employees, officers and directors, including those officers responsible for financial reporting, which is available on our website, which is located at www.evolus.com. Any amendments to the code, or any waivers of its requirements, will be disclosed on our website.

**Section 16(a) Beneficial Ownership Reporting Compliance**

Section 16(a) of the Exchange Act requires our directors, executive officers and beneficial owners of more than 10% of our common stock to file reports of holdings and transactions in our common stock and our other securities with the SEC. To our knowledge, based solely upon the review of copies of such reports furnished to us and written representations that no other reports were required during fiscal year 2018, all of our officers, directors and beneficial owners of more than 10% of our common stock have complied with all applicable Section 16(a) filing requirements, except that one late Form 4 was filed for Kristine Romine, M.D. due to an administrative error.

**Item 11. Executive Compensation.**

Our named executive officers for the year ended December 31, 2018 are:

- David Moatazedi, our President and Chief Executive Officer;
- Murthy Simhambhatla Ph.D., our former President and Chief Executive Officer;
- Lauren Silvernail, our Chief Financial Officer and Executive Vice President, Corporate Development; and
- Michael Jafar, our Chief Marketing Officer.

This discussion may contain forward-looking statements that are based on our current plans, considerations, expectations and determinations regarding future compensation programs. Actual compensation programs that we adopt in the future differ materially from the currently planned programs summarized in this discussion.

As noted above, we are an "emerging growth company," as that term is used in the JOBS Act, and have elected to comply with the reduced compensation disclosure requirements available to emerging growth companies under the JOBS Act.

**Summary Compensation Table**

The following table sets forth total compensation paid to our named executive officers for the fiscal years ended December 31, 2018 and 2017.

| Name and Principal Position | Year | Salary | Bonus[1] | Stock Awards[2] | Option Awards[2] | All Other Compensation | Total |
|---|---|---|---|---|---|---|---|
| David Moatazedi | 2018 | $ 361,731 [3] | $ 436,644 [4] | $ — | $ 4,995,803 | $ — | $ 5,794,178 |
| President and Chief Executive Officer | 2017 | $ — | $ — | $ — | $ — | $ — | $ — |
| Murthy Simhambhatla | 2018 | $ 251,923 [5] | $ — | $ 1,202,688 | $ 4,916,369 | $ 464,304 [6] | $ 6,835,284 |
| Former President and Chief Executive Officer | 2017 | $ 500,000 | $ — | $ — | $ — | $ — | $ 500,000 |
| Lauren Silvernail | 2018 | $ 253,365 [7] | $ 101,068 | $ 673,200 | $ 2,604,260 | $ 25,000 [8] | $ 3,656,893 |
| Chief Financial Officer and Executive Vice President, Corporate Development | 2017 | $ — | $ — | $ — | $ — | $ — | $ — |
| Michael Jafar | 2018 | $ 187,096 [9] | $ 324,482 [10] | $ 1,416,000 | $ 1,976,580 | $ 25,000 [8] | $ 3,929,158 |
| Chief Marketing Officer | 2017 | $ — | $ — | $ — | $ — | $ — | $ — |

(1) Reflects bonuses earned by Messrs. Moatazedi and Jafar and Ms. Silvernail with respect to achievements during the fiscal year ended December 31, 2018, which were paid in February 2019. Each of the bonuses paid is based on 100% achievement of key performance indicators applicable to the respective named executive officers, as determined by our board of directors.

(2) Represents the aggregate grant date fair value of stock and option awards granted during 2018, computed in accordance with FASB ASC Topic 718. See Note 9, *Stockholders' Equity (Deficit)* to our financial statements included elsewhere in this Annual Report on Form 10-K for a discussion of the assumptions we made in determining the grant date fair value of our stock and option awards.

(3) Pursuant to the Moatazedi employment agreement, which is defined below, Mr. Moatazedi is entitled to an annualized base salary of $550,000. Mr. Moatazedi was appointed our President and Chief Executive Officer in May 2018. As a result, we paid Mr. Moatazedi a base salary of $361,731 for the fiscal year ended December 31, 2018, which represents his prorated base salary from May 2018 to December 2018.

(4) As consideration for entering into the Moatazedi employment agreement, Mr. Moatazedi received a $75,000 signing bonus in May 2018.

(5) Mr. Simhambhatla's employment ended with us in May 2018. The 2018 salary reported reflects the pro rata portion of Mr. Simhambhatla's annual salary of $500,000 from January 1, 2018 through the end of his employment.

(6) Represents amounts paid pursuant to the Separation Agreement, as defined below, as a result of which Mr. Simhambhatla received (i) continuation of base salary through December 31, 2018, and (ii) a lump sum cash payment of $193,151 (representing a prorated portion of Mr. Simhambhalta's 2018 annual cash bonus). The terms of the Separation Agreement are described in more detail below under "-Potential Payments upon Termination or Change in Control."

(7) Pursuant to the Silvernail employment agreement, which is defined below, Mrs. Silvernail is entitled to an annualized base salary of $425,000. Mrs. Silvernail was appointed our Chief Financial Officer and Executive Vice President, Corporate Development in May 2018. As a result, we paid Mrs. Silvernail a base salary of $253,365 for the fiscal year ended December 31, 2018, which represents her prorated base salary from May 2018 to December 2018.

(8) Reflects a one-time payment of $25,000 for relocation expenses.

(9) Pursuant to the Jafar employment agreement, which is defined below, Mr. Jafar is entitled to an annualized base salary of $345,000. Mr. Jafar was appointed our Chief Marketing Officer in June 2018. As a result, we paid Mr. Jafar a base salary of $187,096 for the fiscal year ended December 31, 2018, which represents his prorated base salary from June 2018 to December 2018.

(10) As consideration for entering into the Jafar employment agreement, Mr. Jafar received a $250,000 signing bonus paid in July 2018.

**Annual Base Salary**

The annual base salaries of our named executive officers will generally be determined and approved at the beginning of each year, or, if later, in connection with the commencement of employment of the executive, by our board of directors or our compensation committee. The table below sets forth the base salary for each of our executive officers for 2018.

| Name | 2018 Base Salary | |
|---|---|---|
| David Moatazedi | $ | 550,000 |
| Lauren Silvernail | $ | 425,000 |
| Michael Jafar | $ | 345,000 |

**Bonus Compensation**

Each of our named executive officers serving at the end of 2018 was eligible to receive a discretionary annual bonus equal to a percentage of his or her salary (100% for Mr. Moatazedi, 40% for Ms. Silvernail and 40% for Mr. Jafar) based on the achievement of key performance indicators determined by our board of directors. In May 2018, we paid a signing bonus of $75,000 to Mr. Moatazedi and a signing bonus of $250,000 to Mr. Jafar.

**Equity-Based Incentive Awards**

Our equity-based incentive awards are designed to align our interests and the interests of our current and future stockholders with those of our employees and consultants, including our named executive officers. Our board of directors is responsible for approving equity grants.

We may grant equity awards at such times as our board of directors determines appropriate. We will grant all equity compensation awards pursuant to the 2017 plan. The terms of the 2017 plan are described below under "—Equity Compensation Plan."

**Agreements with Our Named Executive Officers**

Below is a description of our employment agreements with Mr. Moatazedi, Mrs. Silvernail and Mr. Jafar. As of the date hereof, each of our named executive officers' employment is "at will" and may be terminated at any time, subject to the severance benefits to which our named executive officers may be eligible for as further described below. Prior to his

separation, we were also party to an employment agreement with Mr. Simhambhalta, which we previously filed as an exhibit to the Registration Statement in connection with our initial public offering. Mr. Simhambhalta's employment agreement was superseded in its entirety by the terms of the Separation Agreement between Mr. Simhambhalta and us, as described below under "—Potential Payments upon Termination or Change in Control." The terms of the Separation Agreement inform the compensation reflected in the compensation tables set forth in this section.

*Employment Agreement with Mr. Moatazedi*

We entered into an employment agreement with Mr. Moatazedi in May 2018, or the Moatazedi employment agreement, under which Mr. Moatazedi serves as our President and Chief Executive Officer. The Moatazedi employment agreement provides that Mr. Moatazedi is an at-will employee, sets forth his initial annual base salary of $550,000, and his eligibility to participate in our employee benefit plans and programs, as in effect from time to time. Mr. Moatazedi also received a signing bonus of $75,000 as consideration for entering into the Moatazedi employment agreement.

Under the Moatazedi employment agreement, Mr. Moatazedi is entitled to participate in our annual discretionary incentive plan, under which Mr. Moatazedi may receive an annual incentive bonus of up to 100% of his annual base salary, subject to achievement of key performance indicators, as determined by our board of directors in consultation with Mr. Moatazedi.

The Moatazedi employment agreement further grants Mr. Moatazedi an option to purchase 1,182,019 shares of our common stock in accordance with the terms of the 2017 plan. The shares subject to the option will vest over a period of four years, with 1/4th of the shares subject to the option vesting annually on the anniversary of May 6, 2018, provided Mr. Moatazedi remains in continuous service on each vesting date, subject to accelerated vesting in certain events, including certain terminations of Mr. Moatazedi or upon certain changes of control of our company. Subject to certain conditions, the option will have an exercise price per share equal to $7.28, the last reported sale price of our common stock on the Nasdaq Global Market on May 4, 2018.

Further, under the Moatazedi employment agreement, if we terminate Mr. Moatazedi's employment without "cause" (as defined in the Moatazedi employment agreement), or if Mr. Moatazedi resigns from his employment for "good reason" (as defined in the Moatazedi employment agreement), Mr. Moatazedi will be entitled to a cash severance payment in an amount equal to twelve months of base salary plus his pro-rata share of his annual bonus for the year in which the termination occurred, and accelerated vesting on a portion of his outstanding equity awards (or, if such termination occurs in connection with or following a "change in control" (as defined in the 2017 plan), all outstanding equity awards). All severance payments and benefits are conditioned upon the execution by Mr. Moatazedi of a general release of claims in favor of our company.

*Employment Agreement with Mrs. Silvernail*

We entered into an employment agreement with Mrs. Silvernail in May 2018, or the Silvernail employment agreement, under which Mrs. Silvernail serves as our Chief Financial Officer and Executive Vice President, Corporate Development. The Silvernail employment agreement provides that Mrs. Silvernail is an at-will employee, sets forth her initial annual base salary of $425,000, and her eligibility to participate in our employee benefit plans and programs, as in effect from time to time. Mrs. Silvernail also received a one-time payment of $25,000 for relocation expenses.

Under the Silvernail employment agreement, Mrs. Silvernail is entitled to participate in our annual discretionary incentive plan, under which Mrs. Silvernail may receive an annual incentive bonus of up to 40% of her annual base salary, subject to achievement of key performance indicators, as determined by our board of directors.

The Silvernail employment agreement further grants Mrs. Silvernail an option to purchase 200,000 shares of our common stock in accordance with the terms of the 2017 plan. The shares subject to the option will vest over a period of four years, with 1/4th of the shares subject to the option vesting annually on the anniversary of May 25, 2018, provided Mrs. Silvernail remains in continuous service on each vesting date, subject to accelerated vesting in certain events, including certain terminations of Mrs. Silvernail or upon certain changes of control of our company. Subject to certain conditions, the option will have an exercise price per share equal to $22.44, the last reported sale price of our common stock on the Nasdaq Global Market on May 25, 2018.

Mrs. Silvernail was also granted 30,000 restricted stock units in accordance with the 2017 plan. The restricted stock units will vest over a period of four years, with 1/4th of the shares subject to the award vesting annually on the anniversary of May 29, 2018, provided Mrs. Silvernail remains in continuous service on each vesting date, subject to accelerated vesting in certain

events, including certain terminations of Mrs. Silvernail or upon certain changes of control of our company. Each restricted stock unit represents a contingent right to receive one share of our common stock.

Further, subject to certain exceptions, under the Silvernail employment agreement, if we terminate Mrs. Silvernail's employment without "cause" (as defined in the Silvernail employment agreement), or if Mrs. Silvernail resigns from her employment for "good reason" (as defined in the Silvernail employment agreement), Mrs. Silvernail will be entitled to a cash severance payment in an amount equal to six months of base salary plus her pro-rata share of her annual bonus for the year in which the termination occurred, and accelerated vesting on a portion of her outstanding equity awards. If such termination or resignation occurs within 12 months after a "change in control" (as defined in the 2017 plan) then Mrs. Silvernail will be entitled to a cash severance payment in an amount equal to 12 months of base salary plus her pro-rata share of her annual bonus for the year in which the termination occurs, and accelerated vesting on all outstanding equity awards. All severance payments and benefits are conditioned upon the execution by Mrs. Silvernail of a general release of claims in favor of our company.

*Employment Agreement with Mr. Jafar*

We entered into an employment agreement with Mr. Jafar in June 2018, or the Jafar employment agreement, under which Mr. Jafar serves as our Chief Marketing Officer. The Jafar employment agreement provides that Mr. Jafar is an at-will employee, sets forth his initial annual base salary of $345,000, and his eligibility to participate in our employee benefit plans and programs, as in effect from time to time. Mr. Jafar received a signing bonus of $250,000 as consideration for entering into the Jafar employment agreement. Mr. Jafar also received a one-time payment of $25,000 for relocation expenses.

Under the Jafar employment agreement, Mr. Jafar is entitled to participate in our annual discretionary incentive plan, under which Mr. Jafar may receive an annual incentive bonus of up to 40% of his annual base salary, subject to achievement of key performance indicators, as determined by our board of directors.

The Jafar employment agreement further grants Mr. Jafar an option to purchase 120,000 shares of our common stock in accordance with the terms of the 2017 plan. The shares subject to the option will vest over a period of four years, with 1/4th of the shares subject to the option vesting annually on the anniversary of June 18, 2018, provided Mr. Jafar remains in continuous service on each vesting date, subject to accelerated vesting in certain events, including certain terminations of Mr. Jafar or upon certain changes of control of our company. Subject to certain conditions, the option will have an exercise price per share equal to $28.32, the last reported sale price of our common stock on the Nasdaq Global Market on June 15, 2018.

Mr. Jafar was also granted 50,000 restricted stock units in accordance with the 2017 plan. The restricted stock units will vest over a period of four years, with 1/4th of the shares subject to the award vesting annually on the anniversary of June 18, 2018, provided Mr. Jafar remains in continuous service on each vesting date, subject to accelerated vesting in certain events, including certain terminations of Mr. Jafar or upon certain changes of control of our company. Each restricted stock unit represents a contingent right to receive one share of our common stock.

Further, subject to certain exceptions, under the Jafar employment agreement, if we terminate Mr. Jafar's employment without "cause" (as defined in the Jafar employment agreement), or if Mr. Jafar resigns from his employment for "good reason" (as defined in the Jafar employment agreement), Mr. Jafar will be entitled to a cash severance payment in an amount equal to six months of base salary plus his pro-rata share of his annual bonus for the year in which the termination occurred. If such termination or resignation occurs within 12 months after a "change in control" (as defined in the 2017 plan) then Mr. Jafar will be entitled to a cash severance payment in an amount equal to 12 months of base salary plus his pro-rata share of his annual bonus for the year in which the termination occurs, and accelerated vesting on all outstanding equity awards. All severance payments and benefits are conditioned upon the execution by Mr. Jafar of a general release of claims in favor of our company.

**Potential Payments upon Termination or Change in Control**

Our named executive officers will be entitled to receive certain payments and benefits upon termination of their respective employment with our company, as described above under the section entitled "—Agreements with Our Named Executive Officers."

On May 5, 2018, Mr. Simhambhalta notified us of his resignation as President and Chief Executive Officer, and as a member of our board of directors, effective as of May 6, 2018. In connection with Mr. Simhambhalta's resignation, we entered into a General Release of Claims Agreement with Mr. Simhambhalta on May 10, 2018, or the Separation Agreement, setting forth

the terms of Mr. Simhambhalta's separation, which occurred on May 21, 2018, or the Separation Date. Pursuant to the terms of the Separation Agreement, in satisfaction of any and all obligations under his employment agreement, Mr. Simhambhalta will receive the following severance payments: (i) 12 months of base salary, which will be paid periodically pursuant our regularly scheduled pay periods and subject to customary payroll deductions, (ii) a lump sum cash payment of $193,151 (representing a prorated portion of Mr. Simhambhalta's 2018 annual cash bonus), which we paid to Mr. Simhambhalta on the Separation Date, subject to customary payroll deductions, (iii) the continuation of health benefits through the end of the 12-month anniversary of the Separation Date, and (iv) reimbursement of any business expenses submitted in accordance with our expense reimbursement policy.

In addition, the stock options previously awarded to Mr. Simhambhalta remained outstanding on the Separation Date and will continue to become exercisable as though Mr. Simhambhatla remained in service for 12 months after the Separation Date. All vested stock options held by Mr. Simhambhatla will be exercisable at any time prior to February 6, 2020. Further, the earning and payment of the restricted stock units previously awarded to Mr. Simhambhalta will continue in accordance with the schedule in his award agreement as though he had remained in service.

**Outstanding Equity Awards at 2018 Fiscal Year-End**

The following table summarizes, for each of our named executive officers, the number of outstanding equity awards held on December 31, 2018.

| | Option Awards[1] | | | | | | Stock Awards[5] | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | Number of Securities Underlying Unexercised Options | | | | | | |
| Name | Grant Date | Vesting Commencement Date | Exercisable (#) | Unexercisable (#) | Option Exercise Price ($) | Option Expiration Date | Number of shares of stock that have vested (#) | Number of shares of stock that have not vested (#) | Market value of shares of stock that have not vested ($) |
| David Moatazedi<br>*President and Chief Executive Officer* | 5/6/2018 | 5/6/2018 | — | 1,182,019[2] | 7.28 | 5/6/2028 | — | — | $— |
| Lauren Silvernail<br>*Chief Financial Officer and Executive Vice President, Corporate Development* | 5/29/2018 | 5/29/2018 | — | 200,000[3] | 22.44 | 5/29/2028 | — | 30,000[3] | $357,000 |
| Michael Jafar<br>*Chief Marketing Officer* | 6/18/2018 | 6/18/2018 | — | 120,000[4] | 28.32 | 6/18/2028 | — | 50,000[4] | $595,000 |

(1) All of the equity awards set forth above have been granted under the 2017 plan. The terms of the 2017 plan are described below under "—Equity Compensation Plan."

(2) One-fourth of the shares subject to the option will vest annually on the first four anniversaries of May 6, 2018, subject to continuous service through each vesting date.

(3) One-fourth of the shares subject to the award will vest annually on the first four anniversaries of May 29, 2018, subject to continuous service through each vesting date.

(4) One-fourth of the shares subject to the award will vest annually on the first four anniversaries of June 18, 2018, subject to continuous service through each vesting date.

(5) Reflects restricted stock units, each of which represents a contingent right to receive one share of our common stock.

**Perquisites and Health and Welfare Benefits**

Our named executive officers are eligible to receive employee benefits, including medical, dental, vision, group life, disability and accidental death and dismemberment insurance, in each case on the same basis as all of our other employees.

Other than one-time payments of $25,000 to each of Mrs. Silvernail and Mr. Jafar for relocation expenses, we do not provide perquisites or personal benefits to our named executive officers. Our board of directors may elect to adopt qualified or non-qualified benefit plans in the future if it determines that doing so is in our best interests.

**Equity Compensation Plan**

Our board of directors and our then-sole stockholder approved and adopted the 2017 plan, effective November 21, 2017. Under the 2017 plan, we may grant cash and equity incentive awards to eligible service providers in order to attract, motivate and retain the talent for which we compete. The material terms of the 2017 plan are summarized below. The plan is scheduled to terminate November 21, 2027, but may be terminated earlier by our board of directors, as described below.

*Stock Awards*. The 2017 plan provides for the grant of incentive stock options, or ISOs, nonstatutory stock options, stock appreciation rights, restricted stock awards, restricted stock units and other stock-based awards. ISOs may be granted only to employees. All other awards may be granted to our and our affiliates' employees, non-employee directors, consultants and other service providers.

*Administration, Amendment and Termination*. The 2017 plan is administered by our board of directors or a committee of our board of directors designated by our board of directors to administer the 2017 plan. Our board of directors has retained the right to exercise the authority of any committee that it appoints to administer the 2017 plan to the extent consistent with applicable law and the applicable requirements of any stock exchange.

Subject to the terms of the 2017 plan, the plan administrator has the authority (i) to grant and amend awards, which includes determining the type, form, terms and conditions and number of shares subject to any award, (ii) to interpret any provision of the 2017 plan, any award or any award agreement and (iii) to make all determinations and decisions necessary for the administration of the 2017 plan. All determinations and decisions by the plan administrator under the 2017 plan are in its sole discretion and are final and binding.

*Securities to be Offered*. The 2017 plan provides for awards based on shares of our common stock. Subject to adjustment as described below, the total number of shares authorized to be awarded under the 2017 plan may not exceed 4,361,291 (all of which will be available for grant as ISOs), plus an annual increase on each anniversary of November 21, 2017 equal to 4% of the total issued and outstanding shares of our common stock as of such anniversary (or such lesser number of shares as may be determined by our board of directors). Shares issued under the 2017 plan may consist in whole or in part of authorized but unissued shares, treasury shares or shares purchased on the open market or otherwise, all as determined by our company from time to time.

Any award settled in cash will not be counted as issued shares for any purpose under the 2017 plan. If any award expires, or is terminated, surrendered or forfeited, the unissued shares covered by the award will again be available for the grant of awards. If shares issued pursuant to the 2017 plan are repurchased by, or are surrendered or forfeited to our company, at no more than cost, those shares will again be available for the grant of awards. If shares issuable upon exercise, vesting or settlement of an award or shares owned by a grantee are surrendered or tendered to our company in payment of the purchase price of an award or any taxes required to be withheld for an award, those surrendered or tendered shares will again be available for the grant of awards.

Substitute awards will not be counted against the number of shares available for the grant of awards under the 2017 plan.

*Eligibility*. Eligibility to participate in the 2017 plan is limited to such of our and our affiliates' employees, officers, non-employee directors, consultants and advisors as determined from time to time by the plan administrator.

*Stock Options*. The 2017 plan provides for the grant of options to purchase shares of common stock at exercise prices, and subject to terms, conditions and limitations, determined by the plan administrator and set forth in an option agreement delivered to the optionee.

An option that the 2017 plan administrator intends to be an "incentive stock option" as defined in Section 422 of the Code, or an ISO, will be granted only to our employees and will be subject to and be construed consistently with the requirements of Section 422 of the Code. An option that does not qualify as an ISO is referred to as a "non-qualified stock option."

*Stock Appreciation Rights*. The 2017 plan provides for the grant of stock appreciation rights, or SARs, which may be awarded either alone or in tandem with, or as a component of, other awards. The applicable award agreement will include information about the terms and conditions under which a SAR will be exercisable, including any performance requirements. A SAR confers on the participant a right to receive, upon exercise, a payment of the excess of (i) the fair market value of one share of our stock on the date of exercise over (ii) the grant price of the SAR as determined by the plan administrator (which will be equal to at least the fair market value on the grant date).

*Restricted Stock Awards*. The 2017 plan provides for the grant of restricted stock awards. In general, a restricted stock award is an award of actual shares of common stock issued in the participant's name that are subject to certain vesting requirements and that we may hold until the applicable vesting date, at which time the shares are released to the participant. Alternatively, at the discretion of the plan administrator, we may issue a restricted stock certificate bearing the legends required by applicable securities laws.

The plan administrator will determine the terms and conditions of any restricted stock award, which will be set forth in the restricted stock agreement delivered to the participant. A restricted stock award holder will have all the rights of a stockholder with respect to such shares, including voting and dividend rights, subject, however, to the restrictions and conditions specified in the restricted stock agreement.

*Restricted Stock Units*. The 2017 plan provides for the grant of restricted stock units, or RSUs. An RSU represents the right to receive one share of common stock upon the applicable vesting date, but no share is actually issued until vesting. An RSU may be settled in cash rather than stock to the extent provided in the applicable award agreement.

The plan administrator will determine the terms and conditions of any RSUs granted under the 2017 plan. In general, a holder of RSUs will not have any rights of a stockholder but the plan administrator may provide that the holder is entitled to receive dividend equivalent rights.

*Stock-Based Performance Awards*. The 2017 plan provides for the grant of awards based on various performance conditions as may be specified by the plan administrator. Settlement of performance awards may be in cash, shares, other awards or other property, in the discretion of the plan administrator. The plan administrator may reduce the amount of a settlement otherwise to be made in connection with performance awards.

*Other Stock-Based Awards*. The plan administrator may grant other stock-based awards, either alone or in addition to or in conjunction with other awards under the 2017 plan, based upon the common stock, having terms and conditions as the plan administrator may determine.

*Transferability of Awards*. A participant may not assign or transfer an award under the 2017 plan, except by will or as permitted under the laws of descent and distribution. During a participant's lifetime, only the participant personally (or his or her personal representative) may exercise rights under the 2017 plan. However, if authorized by the applicable award agreement, a participant may transfer, not for value, all or part of an award (other than an ISO) to certain family members, in accordance with the terms of the 2017 plan. After a permitted transfer, the award will continue to be subject to the same terms and conditions as it was before the transfer. Subsequent transfers of the award are only permitted if made to another family member as described above.

*Rights as Stockholder*. Unless an applicable award agreement states otherwise, a 2017 plan participant will have no rights as a stockholder with respect to any shares covered by an award until he or she becomes the record holder of the shares.

*Withholding for Payment of Taxes*. We may deduct from payments of any kind otherwise due to a 2017 plan participant any federal, state or local taxes of any kind required by law to be withheld in connection with the vesting of or other lapse of restrictions applicable to an award or upon the issuance of any shares of stock upon the exercise of an option or pursuant to an award.

*Effect of Certain Transactions*. If (i) the number of outstanding shares of our common stock is increased or decreased or the shares are changed into or exchanged for a different number or kind of shares or other securities of our company on account of any recapitalization, reclassification, stock split, reverse split, combination of shares, exchange of shares, stock dividend or other distribution payable in capital stock, or other increase or decrease in shares effected without receipt of consideration by

our company or (ii) there occurs any spin-off, split-up, extraordinary cash dividend or other distribution of assets by our company, then (a) the number and kind of shares for which grants of 2017 plan awards may be made, (b) the number and kind of shares for which outstanding awards may be exercised or settled and (c) the performance goals relating to outstanding awards, will all be equitably adjusted by our company. In addition, in the event of any increase or decease in the number of outstanding shares or other transaction described in clause (ii) above, the number and kind of shares for which 2017 plan awards are outstanding and the option price per share of outstanding options will be equitably adjusted.

Unless otherwise provided in an award agreement, in the event of a corporate transaction (i.e., a reorganization, merger, statutory share exchange, consolidation, sale of all or substantially all of our company's assets, acquisition of assets or stock of another entity by our company, or other corporate transaction involving our company or any of our affiliates), the 2017 plan and awards under it will continue in effect in accordance with their terms, except that after a corporate transaction either (i) each outstanding award will be treated as provided for in the corporate transaction agreement or (ii) if not covered in the corporate transaction agreement, each grantee will be entitled to receive for each share of common stock under the grantee's awards (upon exercise or payment or transfer in respect of those awards), the same consideration that each of our common stockholders was entitled to receive in the corporate transaction for one share, except that such consideration will remain subject to all of the terms and conditions (including performance criteria) that were applicable to the awards before the corporate transaction. Treatment of 2017 plan awards upon a corporate transaction may include cancellation and liquidation of stock options and SARs (including for $0 if the options or SARs are underwater at the time of the corporate transaction).

*Change in Control*. In the event of a "change in control" (as defined in the 2017 plan), either of the following provisions will apply to 2017 plan awards outstanding at the time, depending on whether, and the extent to which, awards are assumed, converted or replaced by the resulting entity in the change in control (and unless otherwise provided in the applicable award agreement):

(1) If awards are not assumed, converted or replaced by the resulting entity in the change in control, then those awards will become fully exercisable and all restrictions on the awards will lapse, except for performance awards, for which the target payout opportunities attainable will be deemed to have been fully earned as of the change in control based upon the greater of (a) an assumed achievement of all relevant performance goals at the "target" level or (b) the actual level of achievement of all relevant performance goals against target as of our fiscal quarter end preceding the change in control.

(2) If awards are assumed, converted or replaced by the resulting entity in the change in control, if, within 24 months after the change in control, the grantee is involuntarily terminated, then the grantee's awards will become fully exercisable and all restrictions on the awards will lapse, except for performance awards, for which the target payout opportunities attainable will be deemed to have been fully earned as of the involuntary termination based upon the greater of (a) an assumed achievement of all relevant performance goals at the "target" level, or (b) the actual level of achievement of all relevant performance goals against target as of our fiscal quarter end preceding the change in control.

*Amendment and Termination*. The plan administrator may amend, suspend or terminate the 2017 plan as to any awards that have not been made. No amendment, suspension or termination of the 2017 plan may, without participant consent, materially impair rights or obligations under any outstanding award. The plan administrator may amend, modify or supplement the terms of any outstanding award, including modification of awards to foreign nationals or individuals who are employed outside the United States to recognize differences in local law, tax policy or custom.

**Director Compensation**

The table below summarizes the compensation paid by us to our directors for the fiscal year ended December 31, 2018.

| Name | Fees Earned or Paid in Cash ($) | Option Awards($)[1][2] | Total ($) |
|---|---|---|---|
| Simone Blank | $ 44,167 | $ 110,318 | $ 154,485 |
| David Gill | $ 46,375 | $ 102,032 | $ 148,407 |
| Bosun Hau | $ 44,167 | $ 110,318 | $ 154,485 |
| Robert Hayman | $ 39,750 | $ 110,318 | $ 150,068 |
| Vikram Malik | $ 48,583 | $ 110,318 | $ 158,901 |
| David Moatazedi[3] | $ — | $ — | $ — |
| Kristine Romine, M.D. | $ 39,750 | $ 110,318 | $ 150,068 |

(1) Represents the aggregate grant date fair value of option awards granted during 2018, computed in accordance with FASB ASC Topic 718. See footnotes to our financial statements included elsewhere in this Annual Report on Form 10-K for a discussion of the assumptions we made in determining the grant date fair value of our option awards.

(2) The options reflected in the above table constitute the aggregate number of stock awards and stock options outstanding for each nonemployee director at the end of 2018.

(3) Mr. Moatazedi does not receive additional compensation for services rendered as a director on our board of directors.

**Compensation Committee Interlocks and Insider Participation**

Our compensation committee, consisting of Simone Blank, Vikram Malik, and David Gill, makes decisions relating to compensation of our executive officers, and none of the members of our compensation committee is, or ever has been, an officer or employee of ours nor had any relationship requiring disclosure by us under any paragraph of Item 404 of Regulation S-K of the SEC. None of our executive officers currently serve on the compensation committee or the board of directors of any other entity that has one or more executive officers serving as a member of our board of directors or compensation committee.

**Item 12. Security Ownership of Certain of Beneficial Owners and Management and Related Stockholder Matters.**

The following table sets forth information regarding beneficial ownership of our capital stock, as of February 28, 2019, by:

- each person, or group of affiliated persons, known by us to beneficially own more than 5% of our outstanding shares of common stock;
- each of our directors;
- each of our named executive officers; and
- all of our executive officers and directors as a group.

Information with respect to beneficial ownership has been furnished by each director, officer or beneficial owner of more than 5% of our outstanding shares of common stock. We have determined beneficial ownership in accordance with the rules of the SEC. These rules generally attribute beneficial ownership of securities to persons who possess sole or shared voting power or investment power with respect to those securities. In addition, the rules include shares of common stock issuable pursuant to the exercise of stock options that are either immediately exercisable or exercisable within 60 days of March 23, 2018. These shares are deemed to be outstanding and beneficially owned by the person holding those options for the purpose of computing the percentage ownership of that person, but they are not treated as outstanding for the purpose of computing the percentage ownership of any other person. Unless otherwise indicated, the persons or entities identified in this table have sole voting and investment power with respect to all shares shown as beneficially owned by them, subject to applicable community property laws.

The percentage of beneficial ownership in the table below is based on 27,274,991 shares of common stock deemed to be outstanding as of February 28, 2019.

Except as otherwise noted below, the address for each person or entity listed in the table is c/o Evolus, Inc., 520 Newport Center Drive, Suite 1200, Newport Beach, California 92660.

| Name and address of beneficial owner | Shares Beneficially Owned | Percentage of Shares Beneficially Owned |
|---|---|---|
| **Officers and Directors** | | |
| David Moatazedi | — | —% |
| Lauren Silvernail | — | —% |
| Murthy Simhambhatla, Ph.D.(1) | 206,758 | * |
| Michael Jafar | 13,000 | * |
| Vikram Malik(2) | 29,579 | * |
| Simone Blank(2)(3) | 308,203 | 1.1% |
| Bosun Hau(2) | 23,219 | * |
| Kristine Romine, M.D.(2)(4) | 54,886 | * |
| Robert Hayman(2) | 13,179 | * |
| David Gill(5) | 17,973 | * |
| All executive officers and directors as a group (11 persons) | 716,722 | 2.6% |
| **Greater than 5% Holders** | | |
| ALPHAEON Corporation(6) | 15,268,987 | 56.0% |
| Wellington Management Group LLP(7) | 1,523,292 | 5.6% |

* Less than 1%

(1) Includes options to purchase 172,156 shares of common stock exercisable within 60 days of February 28, 2019.

(2) Includes options to purchase 13,179 shares of common stock exercisable within 60 days of February 28, 2019.

(3) Includes 295,024 shares of common stock held by Dental Innovations BVBA ("DI"). As a shareholder of DI, Ms. Blank may be deemed to share voting and dispositive power over the shares of DI. Ms. Blank disclaims beneficial ownership of the reported securities except to the extent of her pecuniary interest therein.

(4) Includes 1,360 shares of common stock held by Ms. Romine's son who shares the same household.

(5) Includes options to purchase 14,973 shares of common stock exercisable within 60 days of February 28, 2019.

(6) The address of ALPHAEON is 4040 MacArthur Blvd., Suite 210, Newport Beach, California 92660. ALPHAEON's voting and investment decisions are made by its board of directors which, as of the date of this Annual Report on Form 10-K, consists of Simone Blank, Jost Fischer, Juliet Tammenoms Bakker, Bosun Hau, Robert Grant, Vikram Malik and Richard Taketa. These members of ALPHAEON's board of directors may be deemed to share voting, investment or dispositive power over the shares held by ALPHAEON.

(7) The ownership information disclosed above is based solely on the Schedule 13G report that Wellington Management Group LLP filed with the SEC on February 12, 2019 in its capacity as an investment adviser. According to the Schedule 13G report, Wellington Management Group LLP has shared voting power over 1,416,141 shares covered by the report and shared dispositive power over 1,523,292 shares covered by the report.

**Changes in Control**

In 2016, ALPHAEON entered into two substantially similar pledge and security agreements with DI and Longitude, respectively. Pursuant to the pledge and security agreements, ALPHAEON pledged and granted to DI, as collateral agent for several debt holders, and Longitude a continuing first priority lien and security interest in and to all of ALPHAEON's right, title and interest in, among other items, securities and all other investment property held by ALPHAEON, including ALPHAEON's entire ownership of our capital stock, or the collateral. The collateral secures the payment and performance of the obligations of ALPHAEON under the convertible promissory notes and convertible bridge note issued by ALPHAEON and other related agreements. Upon certain events of default, DI and Longitude may take possession, hold, collect, sell, lease, deliver, grant options to purchase or otherwise retain, liquidate or dispose of all or any portion of the collateral. In the event DI or Longitude exercises such rights, upon an event of default, a change-of-control of our company may result.

**Securities Authorized for Issuance under Equity Compensation Plan**

As of December 31, 2018, we had one equity compensation plan, our 2017 plan, which was approved by our board of directors and our then-sole stockholder on November 21, 2017.

| Plan Category | Number of securities to be issued upon exercise of outstanding options, warrants and rights (a) | Weighted-average exercise price of outstanding options, warrants and rights (b) | Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a)) (c) |
|---|---|---|---|
| Equity compensation plans approved by security holders | 3,257,801 | $11.99 | 5,452,291 |
| Equity compensation plans not approved by security holders | — | — | — |

**Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The following includes a summary of transactions since January 1, 2017, and each currently proposed transaction to which we have been or are a party, in which the amount involved in the transaction exceeded or will exceed $120,000, and in which any of our directors, director nominees, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock, or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than compensation arrangements for our directors and executive officers, which are described in Item 11 "Executive Compensation."

**Relationship with ALPHAEON Corporation**

Prior to the completion of our initial public offering in February 2018, we were a wholly-owned subsidiary of ALPHAEON and an indirectly owned subsidiary, through ALPHAEON, of SCH. As of December 31, 2018, ALPHAEON, owns 56.0% of our outstanding shares of common stock, and as a result, ALPHAEON has significant control of our business, including pursuant to the agreements described below.

In connection with our initial public offering, we and ALPHAEON entered into certain agreements that provide a framework for our ongoing relationship with ALPHAEON following the completion of our initial public offering. Of the agreements summarized below, the material agreements are filed as exhibits to this Annual Report on Form 10-K, and the summaries of these agreements set forth the terms of the agreements that we believe are material. These summaries are qualified in their entirety by reference to the full text of such agreements.

*Contribution Agreement and Related Agreements*

On October 3, 2013, we entered into a contribution agreement with SCH, the Evolus contributors, and J. Christopher Marmo, Ph.D. as the Evolus contributors' representative, or the contribution agreement, which was amended in 2014, 2015 and 2016. Pursuant to the contribution agreement, the Evolus contributors contributed to SCH 16,527,000 shares of our common stock, and 1,250,000 shares of our Series A preferred stock (or 2,065,875 shares of our common stock on an as-converted basis), constituting all of our then outstanding capital stock. As consideration, the Evolus contributors received membership interests in SCH. In addition, under the contribution agreement, the Evolus contributors had the option to require SCH to sell to ALPHAEON 1,652,700 shares of our common stock and 125,000 shares of our Series A preferred stock (or 206,587 shares of our common stock on an as-converted basis), which option was exercised in full in 2014. We refer to this option as the Evolus contributors' put option.

Prior to the exercise of the Evolus contributors' put option, SCH and ALPHAEON entered into a contribution agreement on March 28, 2014 whereby SCH contributed 90% of the then outstanding shares of our common stock and 90% of the outstanding shares of our Series A preferred stock to ALPHAEON. In exchange, ALPHAEON issued shares of its equity to SCH.

As a result of the exercise of the contributors' put option, SCH and ALPHAEON entered into a stock purchase agreement. Under the stock purchase agreement, SCH sold and ALPHAEON purchased 10% of the then outstanding shares of our common stock and 10% of the then outstanding shares of our Series A preferred stock. As consideration, ALPHAEON agreed to make certain lump sum and royalty payments to SCH, or the payment obligations, which are ultimately allocable to the Evolus contributors. The payment obligations include (i) a $10.0 million up-front payment upon obtaining FDA approval for Jeuveau™ for the treatment of glabellar lines, (ii) perpetual quarterly royalties of a mid-teen percentage of net sales of Jeuveau™ within the United States and (iii) a high-single digit percentages of net sales of Jeuveau™ outside of the United States. As these future royalty streams were perpetual, ALPHAEON had the right under the stock purchase agreement to terminate any future payments for a one-time lump sum payment to SCH of $145.0 million.

As a result of the transactions contemplated by the foregoing agreements, ALPHAEON held 16,527,000 shares of our common stock and 1,250,000 shares of our Series A preferred stock (or 2,065,875 shares of our common stock on an as-converted basis), representing all of the outstanding shares of our capital stock. In connection with our initial public offering, all of our issued and outstanding shares of Series A preferred stock converted into 2,065,875 shares of our common stock.

On December 14, 2017, SCH and ALPHAEON entered into an amendment to the stock purchase agreement, or the amended purchase agreement, whereby we have also joined as a contractual party. Pursuant to the amended purchase agreement, ALPHAEON's existing payment obligations were replaced with revised payment obligations, payable directly to the Evolus contributors, to be distributed to them ratably in accordance with their previous respective percentage ownership in our Series A preferred stock, and in exchange for the cancellation of the Class D units of SCH. Pursuant to the amended purchase

agreement, effective upon the closing of our initial public offering, ALPHAEON immediately and automatically assigned to us and we immediately and automatically accepted and assumed all of ALPHAEON's payment obligations under the stock purchase agreement, as amended by the amended purchase agreement.

Under the amended purchase agreement, the revised payment obligations consist of (i) an approximately $9.2 million up-front payment upon obtaining FDA approval for Jeuveau™ for the treatment of glabellar lines, (ii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™ within the United States, (iii) quarterly royalty payments of a low single digit percentage of net sales of Jeuveau™ outside of the United States, and (iv) a $20.0 million promissory note that will mature on the 2.5 year anniversary of the first commercial sale of Jeuveau™ in the United States. The revised payment obligations set forth in (iii) and (iv) above will terminate for the quarter following the 10 year anniversary of the first commercial sale of Jeuveau™ in the United States. As these revised payment obligations are not perpetual, neither we nor ALPHAEON will have the right to terminate any future payments for a one-time lump sum payment. Under the amended purchase agreement, the estimated value of all revised payment obligations and the promissory note owed to the Evolus contributors was $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note) as of February 12, 2018. In addition, under the amended purchase agreement, we agreed to make one-time bonuses to certain of our employees aggregating approximately $1.6 million pursuant to the respective terms of their offer letters, including a one-time bonus of $700,000 payable to Rui Avelar, M.D., our Chief Medical Officer, which was previously payable out of amounts owed to the contributors under the original stock purchase agreement. On February 1, 2019, the FDA granted approval of our BLA for the Product. In February 2019, we paid the $9.2 million milestone payment to the Evolus Founders and one-time bonuses of $1.6 million to certain former and current employees as described above.

Under the terms of the promissory note, ALPHAEON was the borrower prior to the closing of our initial public offering, and we became the borrower after the closing of our initial public offering. Under the promissory note, we will pay to J. Christopher Marmo, Ph.D. as the representative of the Evolus contributors, or the holder, $20.0 million representing the aggregate principal amount upon maturity of the promissory note. No interest will accrue on the promissory note. We will have the right to prepay the promissory note, in whole or in part, at any time and from time to time without penalty. Upon an event of default under the promissory note, all unpaid principal will become immediately due and payable at the option of the holder. An event of default will occur under the terms of the promissory note upon any of the following events: (i) we fail to meet the obligations to make the required payments thereunder, (ii) we make an assignment for the benefit of creditors, (iii) we commence any bankruptcy proceeding, (iv) we materially breach the stock purchase agreement or tax indemnity agreement, which is defined below, and such breach is not cured within 30 days, or (v) when ALPHAEON was the borrower, there occurs an event of default under the Notes, which is defined below, that is not cured during the applicable cure period or waived by the noteholders, and such noteholders have exercised their rights to foreclose on the collateral securing the Notes under ALPHAEON's pledge of its assets, as discussed further below. No event of default was triggered or payment by ALPHAEON was made under the promissory note prior to the closing of our initial public offering.

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

Further, under the amended purchase agreement, we, ALPHAEON and SCH agreed to terminate the non-competition provision set forth in the contribution agreement, pursuant to which the Evolus contributors were prohibited, subject to limited exceptions, for a period of 5 years, from engaging in any business relating to the development, license, commercialization of, or performing any services or supervisory functions for persons or entities engaged in any business related to, a neurotoxin or neuromodulator.

Upon completion of our initial public offering, we assumed and agreed to pay the revised payment obligations under the amended purchase agreement. At the closing of our initial public offering, the outstanding related party borrowings from ALPHAEON were set-off and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations we assumed from ALPHAEON, the estimated value of which, as of February 12, 2018, was $55.7 million (comprised of $39.7 million related to the contingent royalty obligation and $16.0 million related to the contingent promissory note).

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

*Guaranty of ALPHAEON's Convertible Notes and Intercreditor Agreement*

ALPHAEON was, as of December 31, 2017, the borrower under (i) certain convertible promissory notes issued by ALPHAEON for an aggregate principal amount of approximately $53.0 million, or the convertible promissory notes, and (ii) a certain convertible bridge note issued by ALPHAEON to Longitude for a principal amount of $2.5 million, or the convertible bridge note, collectively, the Notes. Kristine Romine, M.D., a member of our board of directors, DI, and Alpha International Investment Ltd., or Alpha, each hold one or more convertible promissory notes. Simone Blank, a member of our board of directors, is the co-owner of DI. Bosun Hau, a member of our board of directors, is employed by an entity affiliated with Alpha. In April 2017, we agreed to unconditionally guaranty ALPHAEON's obligations under the Notes and we granted to Longitude, as the holder of the convertible bridge note, and DI, as collateral agent for the holders of the convertible promissory notes, a first priority lien and security interest in substantially all of our assets pursuant to separate guaranty and security agreements, or the Evolus security agreements. We refer to the ALPHAEON security agreements and the Evolus security agreements collectively as the convertible notes security agreements. In April 2017, we, as guarantor, also entered into an amended and restated intercreditor agreement with ALPHAEON, as borrower, Longitude, as the holder of the convertible bridge note, and DI, as collateral agent for the holders of the convertible promissory notes, or the intercreditor agreement. The intercreditor agreement sets forth certain rights of Longitude and DI in connection with the convertible bridge note, the convertible promissory notes and the collateral pledged pursuant to the convertible notes security agreements. ALPHAEON's obligations under the Notes are secured by a first priority lien and security interest in substantially all of ALPHAEON's assets, including all of the shares of our capital stock, granted by ALPHAEON to DI, as collateral agent for the holders of the convertible promissory notes, and Longitude, as the holder of the convertible bridge note, pursuant to separate pledge and security agreements, or the ALPHAEON security agreements. On December 14, 2017, ALPHAEON entered into an amendment to the amended and restated secured convertible note purchase agreement, or the amendment, pursuant to which it issued the convertible promissory notes, in order to permit ALPHAEON to issue an additional $3.3 million of convertible promissory notes.

On December 14, 2017, we and ALPHAEON entered into amendments with each of Longitude, as the holder of the convertible bridge note, and DI, as collateral agent for the holders of the convertible promissory notes. Pursuant to these amendments, we obtained a release of our guaranty and a termination of the security interest in our assets and the Evolus security agreements, effective immediately upon the completion of our initial public offering. ALPHAEON's obligations under the ALPHAEON security agreements remained outstanding following the completion of our initial public offering.

We initially recorded a liability and corresponding deemed distribution to ALPHAEON as a reduction to additional paid-in-capital in equity in April 2017 to reflect the joint and several liability. These amounts were subsequently adjusted to reflect changes in the balance of the Notes obligation. As we and ALPHAEON had not agreed to what portion of this joint and several liability each would pay, we developed a range of amounts that it expected to pay under the Guaranty Agreements and selected the amount from within that range that it determined to be the best estimate, which equaled $138.7 million as of December 31, 2017 (2.5 times the outstanding principal amount of the Notes as of that date), representing the total principal amount due to the Note holders upon redemption of the Notes at maturity.

On December 14, 2017, we and ALPHAEON entered into amendments with the holder of the convertible bridge note, and with the collateral agent for the holders of the convertible promissory notes. Under the terms of the amendment it was agreed that our guaranty of the Notes and the security interest in our assets would terminate effective upon the closing of the IPO.

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

As provided for within the Amended and Restated Secured Note Purchase Agreement and Guaranty Agreements, in conjunction with its recognition of the joint and several liability, we also recorded a receivable from ALPHAEON, which equals the current balance of the amounts it owed to ALPHAEON under its related party borrowing arrangements. No amounts were paid under this joint and several liability by us in the year ended December 31, 2017. The difference between the amount of the joint and several liability and the related party receivable of $66.1 million in the year ended December 31, 2017, was recorded as a deemed distribution to ALPHAEON, in stockholders' equity (deficit) to additional paid-in capital in the period the transaction with the related party was made. Approximately $4.3 million in excess of the then additional paid-in capital balance was recorded in accumulated deficit as of December 31, 2017. In January 2018 immediately prior to our IPO, we recorded an increase of $1.1 million in the receivable from ALPHAEON with a corresponding increase in additional paid-in capital. The related party receivable balance increased to $73.7 million immediately prior to the IPO.

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

*Stockholder Agreement*

On December 14, 2017, we entered into a stockholder agreement with ALPHAEON, DI, as collateral agent, and Longitude. The stockholder agreement provides ALPHAEON with certain registration rights, and upon an event of default by ALPHAEON under the Notes, the registration rights granted to ALPHAEON under the stockholder agreement will immediately and automatically be assigned in full to DI and Longitude with respect to any registrable securities held by DI and Longitude.

At any time beginning 180 days after February 7, 2018, ALPHAEON may request that we register for resale all or a portion of its shares of common stock. ALPHAEON may also request that we file an automatic shelf registration statement on Form S-3 that covers the registrable securities requested to be registered, to the extent we are eligible to do so. Depending on certain conditions, and in addition to other exclusions, we may defer a demand registration for up to 90 days in any twelve-month period.

In the event that we propose to register any of our securities under the Securities Act, either for our account or for the account of our other security holders, ALPHAEON is entitled to certain piggyback registration rights allowing it to include its shares in the registration, subject to certain marketing and other limitations. As a result, whenever we propose to file a registration statement under the Securities Act, ALPHAEON is entitled to notice of the registration.

The stockholder agreement provides that we must pay all registration expenses (other than the underwriting discounts and commissions) in connection with effecting any demand registration or shelf registration. The stockholder agreement contains customary indemnification and contribution provisions by us for the benefit of ALPHAEON and its affiliates and, in limited situations, by ALPHAEON for the benefit of us and any underwriters with respect to written information furnished to us by ALPHAEON and stated by ALPHAEON to be specifically included in any registration statement, prospectus or related document.

The registration rights remain in effect with respect to any shares covered by the stockholder agreement until (i) all such shares have been sold pursuant to an effective registration statement under the Securities Act, or (ii) such time as Rule 144 or another similar exemption under the Securities Act is available for the sale of all of the shares without limitation during a three-month period without registration.

*Services Agreement*

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

Pursuant to the services agreement, ALPHAEON provides us, and we provide ALPHAEON, as the case may be, certain administrative and development support services. For example, we receive from ALPHAEON certain general management, communication, intellectual property, human resources, office and information technology services, and we provide general accounting and legal services to ALPHAEON. In addition, pursuant to the services agreement, in 2018 we subleased from ALPHAEON all or part of its lease for its headquarters encompassing approximately 3,639 square feet of space, as certain of our executive, legal and financial personnel were formerly located at ALPHAEON's headquarters.

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

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

The services agreement became effective upon the completion of our initial public offering and will have a one year term. Thereafter, the services agreement will renew for successive one year terms unless sooner terminated by either party. We or ALPHAEON may terminate the services agreement upon sixty days' notice to the other party.

We also reimburse ALPHAEON for compensation expenses and amounts due under employment agreements for individuals employed by ALPHAEON who worked full time for us, including J. Christopher Marmo, our former Chief Operating Officer.

*Therapeutic Option Letter Agreement*

On December 18, 2017, we entered the therapeutic agreement, relating to certain rights to the therapeutic indications of botulinum toxin products under the Daewoong Agreement. Pursuant to the Daewoong Agreement, we received an option to expand the permitted uses of botulinum toxin products to cover all therapeutic uses in the covered territories and Japan, or the therapeutic option. Pursuant to the Daewoong Agreement, we may exercise the therapeutic option for a confidential exercise price, or the therapeutic option fee, upon thirty days' notice to Daewoong. The therapeutic option expired December 31, 2018.

However, pursuant to the therapeutic agreement, we have agreed not to sell, sub-license or otherwise dispose in whole or in part the therapeutic option or the rights underlying the therapeutic option and we will hold the therapeutic option and the underlying rights in trust for ALPHAEON. We further agreed not to develop or make plans to develop any therapeutic indications for botulinum toxin products. In exchange for and as of the date of the therapeutic agreement, ALPHAEON reduced the related party borrowings owed by us by the amount of $2.5 million. Once exercised, the rights to the therapeutic indications shall be solely in the control of ALPHAEON. As of December 31, 2018, the right to exercise the therapeutic option was exercised by ALPHAEON, which remitted the exercise price directly to Daewoong.

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

*Outstanding Payable - Related Party Borrowings*

As of December 31, 2018 and December 31, 2017, we owed ALPHAEON $0.0 million and $72.6 million, respectively, representing related party borrowings from ALPHAEON as consideration for certain expenses incurred on our behalf, including research and development expenses, general and administrative support services and development support services.

To satisfy all outstanding related party borrowings from ALPHAEON through the closing of our initial public offering (inclusive of amounts that have been offset pursuant to the therapeutic agreement), we remunerated ALPHAEON through three methods, each of which was agreed upon by ALPHAEON and our company. First, pursuant to the amended purchase agreement, upon the completion of our initial public offering, we assumed and agreed to pay the revised payment obligations under the amended purchase agreement, and the outstanding related party borrowings from ALPHAEON was offset and reduced, on a dollar-for-dollar basis, taking into account the then-fair value of all payment obligations we assume from ALPHAEON, the estimated value of which, as of February 12, 2018, was $55.7 million. Second, pursuant to the services agreement, upon the completion of our initial public offering, we paid ALPHAEON $5.0 million from the proceeds of our initial public offering. Third, pursuant to the services agreement, the remaining balance of related party borrowings, after taking into account the offset and reduction of the then-fair value of all payment obligations we assumed from ALPHAEON under the amended purchase agreement, and the payment of $5.0 million, each upon completion of our initial public offering, was re-characterized as a capital contribution of ALPHAEON. As a result of these three methods, we are no longer indebted to ALPHAEON.

*Exclusive Distribution and Supply Agreement with Clarion Medical Technologies Inc.*

On November 30, 2017, we entered into an exclusive distribution and supply agreement, or the distribution agreement, with Clarion Medical Technologies Inc., or Clarion. The distribution agreement provides terms pursuant to which we will exclusively supply our product to Clarion in Canada. Clarion was previously a wholly-owned subsidiary of ALPHAEON. However, pursuant to previous agreements among ALPHAEON, Clarion, and previous equity holders of Clarion, the previous equity holders of Clarion had the option, and have exercised such option, to unwind ALPHAEON's acquisition of Clarion. As a result, ALPHAEON and SCH, jointly and severally owe the equity holders of Clarion an unwinding fee of $9.6 million, or the unwinding fee. We have agreed that the unwinding fee will be reduced, on a dollar-for-dollar basis, pursuant to the terms of the distribution agreement. The distribution agreement sets forth that a portion of the proceeds received from each unit of product purchased by Clarion shall be paid directly to the previous equity holders of Clarion, and will reduce, on a dollar-for-dollar basis, the amount of the unwinding fee ALPHAEON owes. We are not contractually obligated to pay the unwinding fee to the previous equity holders of Clarion. In the event that the distribution agreement is terminated or if we fail to provide product to Clarion in Canada, ALPHAEON and SCH will remain jointly and severally liable to the previous equity holders of Clarion for the balance of the unwinding fee. In addition, if ALPHAEON or SCH repays the unwinding fee in full at any time, the agreement may be terminated by us or if continued, we will no longer utilize a portion of the proceeds received from the sale of each unit of product to reduce the unwinding fee and will thereafter realize the full proceeds of each sale of a unit of product to Clarion. No portion of any amount of the unwinding fee that is paid through the distribution agreement will reduce our related party borrowings from ALPHAEON.

Under the Distribution Agreement, if the Company did not receive approval from Health Canada to promote and sell the product in Canada prior to October 31, 2018, the Company was obligated to pay liquidated damages to Clarion in the amount of $1.0 million within 30 days of December 31, 2018, which damages would not reduce the Unwinding Fee. In August 2018, the Company received approval from Health Canada to promote and sell the product. As of December 31, 2018, no amounts have been paid towards the Unwinding Fee.

In addition, ALPHAEON and SCH have agreed with Clarion to pay the unpaid amount of the unwinding fee on December 31, 2022, if demanded by the previous equity holders of Clarion.

The distribution agreement will terminate upon the earlier of the fifth anniversary of the approval of our NDS from Health Canada for the product, or at such time the unwinding fee is paid in full. Thereafter, the distribution agreement may be renewed by mutual agreement of the parties. We or Clarion may terminate the distribution agreement if the other party materially breaches without cure for sixty days or becomes insolvent, seeks protection under any bankruptcy proceeding, or such proceeding is instituted against the other party and not dismissed within sixty days.

*Employment of David Moatazedi's Brother-In-Law*

Since September 2018, we have employed Mr. Moatazedi's brother-in-law as a Marketing Manager and Analyst. He receives compensation commensurate with his level of experience and other employees having similar responsibilities. His offer letter provides for a base salary of $130,000 on an annual basis, a bonus of up to 15% of base salary depending on achievement of certain company and individual performance metrics, an option to purchase up to 5,000 shares of common stock on our standard form of Stock Option Agreement as well as participation in our general employee welfare programs. The total salary paid to Mr. Moatazedi's brother-in-law for 2018 was approximately $39,000. He also receive an option to purchase

5,000 shares of common stock and a bonus for 2018 performance, paid in February 2019 of approximately $5,000. He is not considered an officer under Section 16 of the Exchange Act and does not report directly to Mr. Moatazedi.

*Consulting and Services Arrangement with David Moatazedi's Brother-in-Law*

Since 2018, we have engaged in IT consulting firm that is owned by another one of Mr. Moatazedi's brothers-in-law to provide consulting services, including direct consulting by the brother-in-law, and certain general IT services. The total amount paid to the IT consulting firm in 2018 was approximately $119,000, and the firm will continue to provide services in 2019.

**Indemnification Agreements**

We have entered into separate indemnification agreements with our directors and officers. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request.

**Policies and Procedures for Transactions with Related Persons**

Pursuant to the charter of our audit committee, our audit committee is responsible for reviewing, approving and ratifying in advance any "related person transactions." For purposes of the charter of our audit committee only, a "related person transaction" is a transaction, arrangement or relationship (or any series of similar transactions, arrangements or relationships) in which we and any "related person" are participants and had or will have a direct or indirect material interest, involving an amount that exceeds $120,000. A "related person" is any executive officer, director or a holder of more than 5% of any class of our equity, including any of their immediate family members and any entity owned or controlled by such persons.

In considering related person transactions, our audit committee will take into account, among other factors it deems appropriate, whether the related person transaction is on terms no less favorable than terms generally available to an unaffiliated third person under the same or similar circumstances and the extent of the related person's interest in the transaction. In the event a director has an interest in the proposed related person transaction, the director must recuse himself or herself from the deliberations and approval.

Our audit committee will review, on an annual basis, the previously approved related person transactions that are continuous in nature to determine whether such transactions should continue.

**Director Independence**

Our board of directors has undertaken a review of the independence of each director and considered whether each director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. As a result of this review, our board of directors determined that Messrs. Hau, Hayman and Gill, and Dr. Romine are "independent directors" as defined under the Nasdaq Marketplace Rules. In making these determinations, our board of directors reviewed and discussed information provided by the directors and us with regard to each director's business and personal activities and relationships as they may relate to us and our management, including the beneficial ownership of our capital stock by each non-employee director and the transactions involving them described in this Annual Report on Form 10-K.

As ALPHAEON continues to control a majority of the voting power of our outstanding common stock, we are a "controlled company" for purposes of the Nasdaq Marketplace Rules. As a controlled company, the Nasdaq Marketplace Rules provide an exemption from the obligation to comply with certain corporate governance requirements, including the requirements:

- that a majority of the board of directors consists of independent directors;
- that we have a nominating and corporate governance committee that is comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- that we have a compensation committee that is comprised entirely of independent directors with a written charter addressing the committee's purpose and responsibilities.

As set forth below, we intend to rely on the Nasdaq Marketplace Rules independence requirements applicable to "controlled companies" for the constitution of our compensation committee and nominating and corporate governance committee. The following is a summary of our aforementioned board of director committees:

*Audit Committee*

Our audit committee consists of David Gill, who is the chair of the committee, Bosun Hau and Robert Hayman. Our board of directors has determined that each of the members of our audit committee satisfies the Nasdaq Marketplace Rules and SEC independence requirements.

*Compensation Committee*

Our compensation committee consists of Simone Blank, who is the chair of the committee, Vikram Malik and David Gill. Our board of directors has determined that each of the members of our compensation committee is an outside director, as defined pursuant to Section 162(m) of the Code, and satisfies the Nasdaq Marketplace Rules independence requirements applicable to "controlled companies" and is a "non-employee director" as defined in Rule 16b-3 promulgated under the Exchange Act.

*Nominating and Corporate Governance Committee*

Our nominating and corporate governance committee consists of Bosun Hau, who is the chair of the committee, Simone Blank, Vikram Malik and Kristine Romine, M.D. Our board of directors has determined that each of the members of the nominating and corporate governance committee satisfies the Nasdaq Marketplace Rules independence requirements applicable to "controlled companies."

**Item 14. Principal Accounting Fees and Services.**

**Fees Paid to the Independent Registered Public Accounting Firm**

The following table sets forth the aggregate fees for professional service provided by our independent registered public accounting firm, Ernst & Young LLP, for the years ended December 31, 2018 and 2017:

| | 2018 | 2017 |
|---|---|---|
| Audit Fees[1] | $ 855,000 | $ 635,000 |
| Audit-related fees | 2,000 | — |
| Total fees | $ 857,000 | $ 635,000 |

(1) Audit Fees consist of the fees for professional services rendered for the audit of our annual financial statements, review of our quarterly financial statements, filing of our registration statements, including our Registration Statement on Form S-1 related to our initial public offering and follow-on offering, and accounting consultations for which we have engaged Ernst & Young LLP.

**Pre-Approval Policies and Procedures**

In connection with our initial public offering, we adopted a policy under which our audit committee must pre-approve all audit and permissible non-audit services to be provided by our independent registered public accounting firm. These services may include audit services, audit-related services, tax services and other services. Pre-approval would generally be requested annually, with any pre-approval detailed as to the particular service, which must be classified in one of the four categories of services listed above. Our audit committee may also, on a case-by-case basis, pre-approve particular services that are not contained in the annual pre-approval request. In connection with this pre-approval policy, our audit committee also considers whether the categories of pre-approved services are consistent with the rules on accountant independence of the SEC and the Public Company Accounting Oversight Board.

In addition, in the event time constraints require pre-approval prior to our audit committee's next scheduled meeting, our audit committee has authorized its chairperson to pre-approve services. Engagements so pre-approved are to be reported to our audit committee at its next scheduled meeting.

**Item 15. Exhibits, Financial Statement Schedules.**

**(a)** The following documents are filed as part of this Annual Report on Form 10-K:

**(1) Financial Statements.** See Item 8 "Financial Statements and Supplemental Information" elsewhere in this Annual Report on Form 10-K.

**(2) Financial Statement Schedules.** None. Financial statement schedules have been omitted because they are not applicable.

**(3) Exhibits.** The following exhibits are filed (or incorporated by reference herein) as part of this Annual Report on Form 10-K:

**EXHIBIT INDEX**

| | | Incorporated by Reference | | | | |
|---|---|---|---|---|---|---|
| **Exhibit Number** | **Exhibit Title** | **Form** | **File No.** | **Exhibit** | **Filing Date** | **Filed Herewith (x)** |
| 2.1† | Contribution Agreement, dated as of October 3, 2013, by and among Strathspey Crown Holdings, LLC, the Registrant, the Shareholders of the Registrant, and J. Christopher Marmo, as the Shareholders' Representative, as amended on September 22, 2014, November 3, 2015, February 15, 2016 and April 14, 2016. | S-1 | 333-222478 | 2.1 | 1/9/18 | |
| 3.1 | Amended and Restated Certificate of Incorporation. | 8-K | 001-38381 | 3.1 | 2/12/18 | |
| 3.2 | Amended and Restated Bylaws. | 8-K | 001-38381 | 3.2 | 2/12/18 | |
| 4.1 | Specimen certificate evidencing shares of common stock of the Registrant. | S-1/A | 333-222478 | 4.1 | 1/25/18 | |
| 4.2 | Stockholders' Agreement, dated as of December 14, 2017, by and among ALPHAEON Corporation, Dental Innovations BVBA, Longitude Venture Partners II, L.P. and the Registrant. | S-1 | 333-222478 | 4.2 | 1/9/18 | |
| 10.1† | Stock Purchase Agreement, dated as of September 30, 2014, by and between Strathspey Crown Holdings, LLC and ALPHAEON Corporation. | S-1 | 333-222478 | 10.1 | 1/9/18 | |
| 10.2† | Amendment to Stock Purchase Agreement, dated as of September 30, 2014, by and between Strathspey Crown Holdings, LLC and ALPHAEON Corporation. | S-1 | 333-222478 | 10.2 | 1/9/18 | |
| 10.3† | License and Supply Agreement, dated as of September 30, 2013, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant. | S-1 | 333-222478 | 10.3 | 1/9/18 | |
| 10.4† | First Amendment to License and Supply Agreement, dated as of February 26, 2014, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant. | S-1 | 333-222478 | 10.4 | 1/9/18 | |
| 10.5† | Second Amendment to License and Supply Agreement, dated as of July 15, 2014, by and between Daewoong Pharmaceutical Co., Ltd. and the Registrant. | S-1 | 333-222478 | 10.5 | 1/9/18 | |
| 10.6+ | 2017 Omnibus Incentive Plan. | S-1 | 333-222478 | 10.6 | 1/9/18 | |
| 10.7+ | Form of Option Award Agreement under 2017 Omnibus Incentive Plan. | S-1 | 333-222478 | 10.7 | 1/9/18 | |
| 10.8+ | Form of Dueling Option Award Agreement under 2017 Omnibus Incentive Plan. | S-1 | 333-222478 | 10.8 | 1/9/18 | |
| 10.9+ | Form of Restricted Shares Award Agreement under 2017 Omnibus Incentive Plan. | S-1 | 333-222478 | 10.9 | 1/9/18 | |
| 10.10+ | Form of RSU Award Agreement under 2017 Omnibus Incentive Plan. | S-1 | 333-222478 | 10.10 | 1/9/18 | |

| | | | | | |
|---|---|---|---|---|---|
| 10.11+ | Form of Indemnification Agreement by and between the Registrant and its directors and officers. | S-1/A | 333-222478 | 10.11 | 1/25/18 |
| 10.12 | Services Agreement, dated as of January 23, 2018, by and between ALPHAEON Corporation and the Registrant. | S-1/A | 333-222478 | 10.12 | 1/25/18 |
| 10.13 | Lease, dated February 5, 2015, by and between J. Carol Duncan and the Registrant. | S-1 | 333-222478 | 10.13 | 1/9/18 |
| 10.14 | Amended and Restated Intercreditor Agreement, amended and restated as of April 19, 2017, by and among Longitude Venture Partners II, L.P., Dental Innovations BVBA, ALPHAEON Corporation and the Registrant. | S-1 | 333-222478 | 10.14 | 1/9/18 |
| 10.15 | First Amendment to Amended and Restated Intercreditor Agreement, dated as of December 14, 2017, by and among Longitude Venture Partners II, L.P., Dental Innovations BVBA, ALPHAEON Corporation and the Registrant. | S-1 | 333-222478 | 10.15 | 1/9/18 |
| 10.16 | Guaranty and Security Agreement, dated as of April 19, 2017, by and between Dental Innovations BVBA and the Registrant. | S-1 | 333-222478 | 10.16 | 1/9/18 |
| 10.17 | Amendment to Guaranty and Security Agreement, dated as of December 14, 2017, by and between Dental Innovations BVBA and the Registrant. | S-1 | 333-222478 | 10.17 | 1/9/18 |
| 10.18 | Guaranty and Security Agreement, dated as of April 19, 2017, by and between Longitude Venture Partners II, L.P. and the Registrant. | S-1 | 333-222478 | 10.18 | 1/9/18 |
| 10.19 | Amendment to Guaranty and Security Agreement, dated as of December 14, 2017, by and between Longitude Venture Partners II, L.P. and the Registrant. | S-1 | 333-222478 | 10.19 | 1/9/18 |
| 10.20† | Second Amendment to Stock Purchase Agreement, dated as of December 14, 2017, by and among SCH-AEON, LLC (f/k/a Strathspey Crown Holdings, LLC), ALPHAEON Corporation, the Registrant and J. Christopher Marmo, as Contributors' Representative, and acknowledged by the parties listed as Contributors on the signature pages thereto. | S-1 | 333-222478 | 10.20 | 1/9/18 |
| 10.21 | Tax Indemnity Agreement, dated as of December 14, 2017, by and among the Registrant, J. Christopher Marmo, as the Contributors' Representative and each of the individuals listed on the signature pages thereto. | S-1 | 333-222478 | 10.21 | 1/9/18 |
| 10.22† | Exclusive Distribution and Supply Agreement, dated as of November 30, 2017, by and between Clarion Medical Technologies Inc. and the Registrant. | S-1 | 333-222478 | 10.22 | 1/9/18 |
| 10.23† | Therapeutic Option Letter Agreement, dated December 18, 2017, by and between ALPHAEON Corporation and the Registrant. | S-1 | 333-222478 | 10.23 | 1/9/18 |
| 10.24 | Subordination Agreement, dated as of December 14, 2017, by and among Dental Innovations BVBA, Longitude Venture Partners II, L.P., ALPHAEON Corporation, the Registrant and J. Christopher Marmo, as Contributors' Representative, and acknowledged by ALPHAEON Corporation and the Registrant. | S-1 | 333-222478 | 10.24 | 1/9/18 |
| 10.25 | Subordination Agreement, dated as of December 14, 2017, by and among Dental Innovations BVBA, Longitude Venture Partners II, L.P., ALPHAEON Corporation and SCH-AEON, LLC (formerly known as Strathspey Crown Holdings, LLC), and acknowledged by ALPHAEON Corporation and the Registrant. | S-1 | 333-222478 | 10.25 | 1/9/18 |
| 10.26+ | Employment Agreement, by and between Murthy Simhambhatla and the Registrant, effective as of February 12, 2018. | S-1/A | 333-222478 | 10.26 | 1/25/18 |

| | | | | | | |
|---|---|---|---|---|---|---|
| 10.27+ | Separation Agreement and General Release of Claims, dated as of May 10, 2018, by and between Murthy Simhambhatla and the Registrant | S-1 | 333-226186 | 10.28 | 7/16/18 | |
| 10.28+ | Employment Agreement, dated as of May 6, 2018, by and between David Moatazedi and the Registrant. | S-1 | 333-226186 | 10.29 | 7/16/18 | |
| 10.29+ | Employment Agreement, dated as of May 29, 2018, by and between Lauren Silvernail and the Registrant. | S-1 | 333-226186 | 10.30 | 7/16/18 | |
| 10.30+ | Employment Agreement, dated as of June 18, 2018, by and between Michael Jafar and the Registrant. | S-1 | 333-226186 | 10.31 | 7/16/18 | |
| 10.31+ | Employment Agreement, dated August 15, 2018, by and between Rui Avelar and the Registrant. | | | | | X |
| 10.32+ | Separation Agreement and General Release of Claims, dated as of August 28, 2018, by and between J. Christopher Marmo and the Registrant | | | | | X |
| 10.33 | Sublease, dated as of November 7, 2018, by and between Acacia Research Corporation and the Registrant | | | | | X |
| 21.1 | List of Subsidiaries. | S-1 | 333-222478 | 21.1 | 1/9/18 | |
| 23.1 | Consent of Ernst & Young LLP, independent registered public accounting firm. | | | | | X |
| 24.1 | Power of Attorney (included on signature page). | | | | | 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# | Certifications of Principal Executive Officer and Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | | | | | X |
| 101.INS* | XBRL Instance Document. | | | | | X |
| 101.SCH* | XBRL Taxonomy Extension Schema Document. | | | | | X |
| 101.CAL* | XBRL Taxonomy Extension Calculation Linkbase Document. | | | | | X |
| 101.DEF* | XBRL Taxonomy Extension Definition Linkbase Document. | | | | | X |
| 101.LAB* | XBRL Taxonomy Extension Label Linkbase Document. | | | | | X |
| 101.PRE* | XBRL Taxonomy Extension Presentation Linkbase Document. | | | | | X |

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+ Indicates management contract or compensatory plan.

† The Registrant has omitted and filed separately with the Securities and Exchange Commission portions of the exhibit pursuant to a confidential treatment request under Rule 406 promulgated under the Securities Act of 1933, as amended, or the Securities Act.

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

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

**Item 16. Form 10-K Summary.**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) 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, on March 20, 2019.

**EVOLUS, INC.**

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

## POWER OF ATTORNEY

The undersigned directors and officers of Evolus, Inc. constitute and appoint David Moatazedi and Lauren P. Silvernail, and each of them, as their true and lawful attorneys and agents with power of substitution, to do any and all acts and things in our name and behalf in our capacities as directors and officers and to execute any and all instruments for us and in our names in the capacities indicated below, which said attorneys and agents may deem necessary or advisable to enable said corporation to comply with the Securities Exchange Act of 1934, as amended, and any rules, regulations and requirements of the Securities and Exchange Commission, in connection with this Annual Report on Form 10-K, including specifically but without limitation, power and authority to sign for us or any of us in our names in the capacities indicated below, any and all amendments hereto; and we do hereby ratify and confirm all that said attorneys and agents shall do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

| Signature | Title | Date |
|---|---|---|
| /s/ David Moatazedi<br>David Moatazedi | President, Chief Executive Officer and Member of the Board of Directors (Principal Executive Officer) | March 20, 2019 |
| /s/ Lauren P. Silvernail<br>Lauren P. Silvernail | Chief Financial Officer and Executive Vice President of Corporate Development (Principal Financial and Accounting Officer) | March 20, 2019 |
| /s/ Vikram Malik<br>Vikram Malik | Chairman of the Board of Directors | March 20, 2019 |
| /s/ Simone Blank<br>Simone Blank | Director | March 20, 2019 |
| /s/ Bosun Hau<br>Bosun Hau | Director | March 20, 2019 |
| /s/ Kristine Romine, M.D.<br>Kristine Romine, M.D. | Director | March 20, 2019 |

| Signature | Title | Date |
| --- | --- | --- |
| /s/ Robert Hayman<br>Robert Hayman | Director | March 20, 2019 |
| /s/ David Gill<br>David Gill | Director | March 20, 2019 |

**EMPLOYMENT AGREEMENT**

This Employment Agreement (this "**Agreement**") is between **Evolus, Inc.,** a Delaware corporation (the "**Company**"), and **Rui Avelar,** an individual ("**Employee**.") This Agreement is entered into effective as of August 15, 2018 (the "**Effective Date")**. This Agreement amends and restates the terms of the Transfer Letter, dated January 22, 2018, between Employee and the Company (the "Transfer Letter").

1. POSITION AND RESPONSIBILITIES

a. Position. Employee shall be employed by the Company to render services to the Company in the position of Chief Medical Officer and Head of Research & Development of the Company. Employee shall report directly to the President and Chief Executive Officer (the "**CEO**"). Employee shall use his good faith efforts to perform such duties and responsibilities and shall have such authorities as are normally related to such positions in accordance with the standards of the industry and any additional duties of an executive nature the CEO now or hereafter assigns to Employee consistent with his position as the Company's Chief Medical Officer and Head of R&D. The principal place of Employee's employment under this Agreement shall be Santa Barbara, California, it being understood that periodically Employee shall also be required to work at the Company's offices in Orange County, California (collectively, "**Company Offices**").

b. Other Activities. During his employment with the Company, Employee shall (i) devote substantially all of Employee's business time and energy to the performance of Employee's duties for the Company and (ii) hold no other employment.

2. COMPENSATION AND BENEFITS

a. Base Salary. In consideration of the services to be rendered under this Agreement, the Company shall pay Employee a salary at the rate of Four Hundred Thousand ($400,000) per year ("**Base Salary**"). The Base Salary shall be paid in accordance with the Company's regularly established payroll practice. Employee's Base Salary shall be reviewed from time to time (not less frequently than annually commencing in 2019) in accordance with the established procedures of the Company for adjusting salaries for similarly situated employees and may be increased, but not decreased in the sole discretion of the Board.

b. Annual Bonus. Beginning as of the Effective Date, Employee's target opportunity for his annual incentive bonus, as determined by the Board in its reasonable discretion (the "**Annual Bonus**") will be equal to 40% of the Base Salary based on 100% achievement of key performance indicators for Employee and the Company as determined by the Board in its sole discretion and communicated to Employee (i) for the year that includes the Effective Date, on or before the 90th day following the Effective Date, and (ii) for each succeeding performance year, on or before the 90th day of each year. The terms of any written Annual Bonus plan developed by the Board shall govern any Annual Bonus that may be paid. Any Annual Bonus shall be paid in all events within two and one-half months after the end of the year in which such Annual Bonus becomes earned, *provided* that no Annual Bonus shall be considered earned or payable

unless, subject to Section 5(b), Employee has remained continuously employed through the payment date of the Annual Bonus

c. FDA Milestone Bonus. Employee shall continue to be eligible for a one-time bonus of $700,000.00 related to the U.S. Food and Drug Administration approval of the Company's Botulinum Toxin product candidate as outlined in the Transfer Letter.

d. Equity. Employee shall be eligible to participate in the Company's 2017 Omnibus Incentive Plan on the same terms and conditions as other similarly situated senior executives of the Company, in accordance with the Plan, as may be amended from time to time.

e. Benefits. Employee shall be eligible to participate in the benefits made generally available by the Company to its other senior executives, in accordance with the benefit plans established by the Company, and as may be amended from time to time in the Company's sole discretion.

f. Vacation. Employee's vacation and other paid time off shall be governed by the Company's usual policies applicable to senior management employees.

g. Expenses. The Company shall reimburse Employee for reasonable business expenses incurred, and for any other approved expenses incurred, in the performance of Employee's duties hereunder in accordance with the Company's customary expense reimbursement guidelines.

h. Employment Policy. As an employee of the Company, Employee shall be subject to and abide by the Company's policies, procedures, practices, rules and regulations as adopted or as amended from time to time in the Company's sole discretion.

i. Indemnification. Employee shall be covered under a directors' and officers' liability insurance policy paid for by the Company both during and after (while there remains any potential liability to Employee) the termination of Employee's employment to the extent that the Company maintains such a liability insurance policy now or in the future for its active officers and directors. In addition, concurrently herewith the Company and Employee are entering into an Indemnification Agreement.

3. AT-WILL EMPLOYMENT; TERMINATION BY COMPANY

a. Termination for Cause. Employee's employment under this Agreement shall commence on the Effective Date and shall continue indefinitely for no specific term. The Company may terminate Employee's employment with the Company at will at any time upon written notice, with or without Cause or advance notice, for any reason or no reason at all, notwithstanding anything to the contrary contained in or arising from any statements, policies or practices of the Company relating to the employment, discipline or termination of its employees. For purposes of this Agreement, "Cause" shall mean any of the following: (a) the commission of any act of fraud, embezzlement or willful dishonesty by Employee which adversely affects the business of the Company; (b) any unauthorized use or disclosure by Employee of confidential

information or trade secrets of the Company; (c) the refusal or omission by Employee to perform any lawful duties properly required of his under this Agreement, provided that any such failure or refusal has been communicated to Employee in writing and Employee has been provided a reasonable opportunity to correct it, if correction is possible; (d) any act or omission by Employee involving malfeasance or gross negligence in the performance of Employee's duties to, or material deviation from any of the policies or directives of, the Company, provided, however, that in the case of deviations from policies or directives, (i) the Company must give Employee notice of such deviations within thirty (30) days of the Company becoming aware of such an occurrence, (ii) Employee must be given thirty (30) days to cure or correct the deviation, if curable, and (iii) Employee may only be terminated if the deviation remains uncured after thirty (30) days, if curable, following written notice and upon the approval of the Board of Directors; (e) conduct on the part of Employee which constitutes the breach of any statutory or common law duty of loyalty to the Company; or (f) any illegal act by Employee which the Board determines adversely affects the business of the Company, or any felony committed by Employee, as evidenced by conviction thereof.

b. Termination upon Death. Employee's employment under this Agreement shall terminate automatically upon Employee's death.

4. TERMINATION BY EMPLOYEE

Employee may terminate employment with the Company at any time upon written notice for any reason or no reason at all, with or without Good Reason. For purposes of this Agreement, "**Good Reason"** shall mean any of the following which is not corrected by the Company within thirty (30) days after the Company has received written notice from Employee referring to this Section 4 and specifying the circumstances purportedly constituting Good Reason and the correction sought (such notice to be given within thirty (30) days after the occurrence of such circumstance): (a) a material diminution in Employee's title, duties, authorities, or responsibilities; (b) a material reduction in Employee's Base Salary or Annual Bonus opportunity; (c) requiring Employee to relocate his principal place of business more than 30 miles outside of the Santa Barbara County, California (excluding reasonable amounts of time that Employee will work at the Company's offices in Orange County, California); or (d) a material breach by the Company of any provision of this Agreement or any other agreement between the Company and Employee. Notwithstanding the foregoing, a termination of Employee's employment with the Company shall not constitute a termination for Good Reason unless such termination occurs not more than ninety (90) days following the initial existence of the condition claimed to constitute good reason.

5. TERMINATION OBLIGATIONS

a. Termination of Employment. Employee's right to compensation and benefits under this Agreement, if any, upon termination of employment shall be determined in accordance with this **Section 5**.

b. All Terminations of Employment. Upon any termination of employment, Employee shall be entitled to prompt and full payment of all earned but unpaid Base Salary, accrued but unused vacation, and any Annual Bonus that has become fully earned and payable

under this Agreement for the year preceding the year in which the date of termination occurs, regardless of whether the payment date of the Annual Bonus for the preceding year is scheduled to occur after Employee's termination date (collectively, the **"Accrued Benefits"**). Except as provided in Section 5(c), Employee's rights following a termination of employment with respect to any benefits, incentives or awards provided to Employee pursuant to the terms of any plan, program or arrangement sponsored or maintained by the Company, whether tax-qualified or not, which are not specifically addressed herein, shall be subject to the terms of such plan, program or arrangement, and this Agreement shall have no effect upon such terms except as specifically provided herein. Employee's rights following a termination of employment with respect to the Stock Option and any other stock option or equity-based award that may be hereafter granted to Employee shall be governed by the applicable award agreement. Company acknowledges that any rights Employee may have to indemnification for actions taken as an officer or director under Company's charter, other arrangements and its insurance policies shall not be forfeited or terminated with respect to any actions or omissions prior to any termination of employment.

c. Termination of Employment by Company without Cause or by Employee for Good Reason. If the Company terminates Employee's employment under this Agreement for any reason other than Cause, or Employee terminates his employment under this Agreement for Good Reason, and Employee enters into a release as provided in Section 5(e) (a "**Qualified Termination**"), then in addition to the Accrued Benefits, Employee shall be entitled to (i) a gross amount, minus appropriate withholding and payroll deductions, equal to (a) in the case of a Qualified Termination that occurs in connection with or within 12 months after Change in Control (as such term is defined in the Plan), 12 months of Employee's then current Base Salary, payable in a lump sum within 60 days of Employee's execution of a mutually agreeable release, or (b) in the case of any other Qualified Termination, 6 months of Employee's then current Base Salary, payable in equal installments through the Company's regular payroll over the 6 month period following the Employee's date of termination, plus the continuation of health benefits for 6 months; and (ii) a gross amount equal to the Annual Bonus (if any) that Employee would have earned for the calendar year in which the termination of his employment occurs based on the target level of achievement, pro-rated based on the number of full months Employee was employed in that calendar year of his employment, minus appropriate withholding and payroll deductions, payable at the time the Company normally pays Annual Bonuses after the close of the fiscal year in which Employee's employment terminates.

d. Other Terminations. Upon termination of Employee's employment by Company for **Cause** or by Employee for any reason other than **Good Reason**, Employee shall be entitled only to the compensation and benefits provided in Section 5(b) and no severance compensation and benefits.

e. Release. Any and all amounts payable and benefits or additional rights provided pursuant to this Agreement upon a termination of employment beyond the Accrued Benefits (including any post-termination benefits or amounts under this Agreement) shall only be payable if Employee delivers to the Company and does not revoke a general release of claims in favor of the Company in the form acceptable to the Company, *provided* such release does not purport to: (i) revoke any of the rights provided pursuant to this Agreement or rights to continued indemnification for actions taken as an officer or director prior to the termination of

employment; or (ii) impose upon Employee any new or additional restrictive covenants that do not otherwise survive the termination of Employee's employment. Such release must be executed and delivered (and no longer subject to revocation, if applicable) within 45 days following the termination of employment (or such longer period to the extent required by law). Any payments of severance that would otherwise be made during the period before the release becomes effective (i.e., not more than 52 days after the date of termination of employment) shall instead be made on the first regular payroll date after the date the release becomes effective.

f. Resignation and Cooperation. Upon any termination of employment, Employee shall be deemed to have resigned from all offices and directorships then held with the Company, including any such positions with its subsidiaries. Following a termination of employment, Employee shall cooperate reasonably in the orderly transfer of his duties to other employees. Employee shall also reasonably (after taking into account Employee's post-termination responsibilities and obligations) cooperate with the Company in the defense of any action brought by any third party against the Company that relates to Employee's employment by the Company.

g. Continuing Obligations. Employee understands and agrees that Employee's obligations under **Sections 5**, **6**, and **7** herein (including the exhibits and schedules described therein) shall survive a termination of employment and the termination of this Agreement.

6. INVENTIONS AND PROPRIETARY INFORMATION; PROHIBITION ON THIRD PARTY INFORMATION

Employee agrees to sign and be bound by the terms of the Company's standard employee proprietary information and invention assignment agreement.

7. ARBITRATION

Employee agrees to sign and be bound by the terms of the Company's standard employee Arbitration Agreement.

8. ATTORNEYS' FEES AND COSTS

In any dispute arising from or relating to this Agreement or Employee's hiring, employment, compensation, benefits, or termination, the prevailing party shall be entitled to recover its attorneys' fees and costs.

9. AMENDMENTS; WAIVERS; REMEDIES

This Agreement may not be amended or waived except by a writing signed by Employee and by a duty authorized representative of the Company other than Employee. Failure to exercise any right under this Agreement shall not constitute a waiver of such right. Any waiver of any breach of this Agreement shall not operate as a waiver of any subsequent breaches. All rights or remedies specified for a party herein shall be cumulative and in addition to all other rights and remedies of the party hereunder or under applicable law.

10. ASSIGNMENT; BINDING EFFECT

a. Assignment. The performance of Employee is personal hereunder, and Employee agrees that Employee shall have no right to assign and shall not assign or purport to assign any rights or obligations under this Agreement. This Agreement may be assigned or transferred by the Company; and nothing in this Agreement shall prevent the consolidation, merger or sale of the Company or a sale of any or all or substantially all of its assets.

b. Binding Effect. Subject to the foregoing restriction on assignment by Employee, this Agreement shall inure to the benefit of and be binding upon each of the parties; the affiliates, officers, directors, agents, successors and assigns of the Company; and the heirs, devisees, spouses, legal representatives and successors of Employee.

11. NOTICES

All notices or other communications required or permitted hereunder shall be made in writing and shall be deemed to have been duly given if delivered: (a) by hand; (b) by a nationally recognized overnight courier service; or (c) by United States first class registered or certified mail, return receipt requested, to the principal address of the other party, as set forth below. The date of notice shall be deemed to be the earlier of (i) actual receipt of notice by any permitted means, or (ii) five business days following dispatch by overnight delivery service or the United States Mail. Employee shall be obligated to notify the Company in writing of any change in Employee's address. Notice of change of address shall be effective only when done in accordance with this paragraph.

Company's Notice Address:

17901 Von Karman Ave., Suite 150
Irvine, CA 92614 Attention: Legal

Employee's Notice: to Employee at his address on file in the Company's payroll records

12. SEVERABILITY

If any provision of this Agreement shall be held by a court or arbitrator to be invalid, unenforceable or void, such provision shall be enforced to the fullest extent permitted by law, and the remainder of this Agreement shall remain in full force and effect. In the event that the time period or scope of any provision is declared by a court or arbitrator of competent jurisdiction to exceed the maximum time period or scope that such court or arbitrator deems enforceable, then such court or arbitrator shall reduce the time period or scope to the maximum time period or scope permitted by law.

13. TAX MATTERS

a. Withholding. Any and all amounts payable under this Agreement or otherwise shall be subject to, and the Company may withhold from such amounts, any federal, state, local or other taxes as may be required to be withheld pursuant to any applicable law or regulation.

b. Section 409A Compliance.

(i) The intent of the parties hereto is that payments and benefits under this Agreement be exempt from (to the extent possible) Section 409A ("**Section 409A**") of the Internal Revenue Code of 1986 and the regulations and guidance promulgated thereunder, as amended (collectively, the "**Code**") and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted to be in compliance therewith. To the extent that any provision hereof is modified in order to comply with Section 409A, such modification shall be made in good faith and shall, to the maximum extent reasonably possible, maintain the original intent and economic benefit to the parties hereto of the applicable provision without violating the provisions of Section 409A.

(ii) A termination of employment shall not be deemed to have occurred for purposes of any provision of this Agreement providing for the payment of any amounts or benefits that constitute "nonqualified deferred compensation" under Section 409A upon or following a termination of employment unless such termination is also a "separation from service" within the meaning of Section 409A and, for purposes of any such provision of this Agreement, references to a "termination," "termination of employment" or like terms shall mean "separation from service."

(iii) To the extent that reimbursements or other in-kind benefits under this Agreement constitute "nonqualified deferred compensation" for purposes of Section 409A, (A) all expenses or other reimbursements hereunder shall be made on or prior to the last day of the taxable year following the taxable year in which such expenses were incurred by Employee, (B) any right to reimbursement or in- kind benefits shall not be subject to liquidation or exchange for another benefit and (C) no such reimbursement, expenses eligible for reimbursement or in-kind benefits provided in any taxable year shall in any way affect the expenses eligible for reimbursement, or in-kind benefits to be provided, in any other taxable year.

(iv) For purposes of Section 409A, Employee's right to receive any installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate and distinct payments. Whenever a payment under this Agreement specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be at the sole discretion of the Board.

(v) Notwithstanding any other provision of this Agreement to the contrary, in no event shall any payment under this Agreement that constitutes "nonqualified deferred compensation" for purposes of Section 409A be subject to offset by any other amount unless otherwise permitted by Section 409A.

(vi) Notwithstanding any other provision of this Agreement, to the extent required to avoid the imposition of tax, penalties or interest under Section 409A, amounts that would otherwise be payable and benefits that would otherwise be provided under this Agreement during the six-month period immediately following a termination of employment shall instead be paid on the first payroll date after the six (6)-month anniversary of the termination of employment (or Employee's death, if earlier).

c. Section 280G.

(i) Notwithstanding anything contained in this Agreement to the contrary, to the extent that the payments and benefits provided under this Agreement and benefits provided to, or for the benefit of, Employee under any other Company plan or agreement (such payments or benefits are collectively referred to as the "Benefits") would be subject to the excise tax (the "Excise Tax") imposed under Section 4999 of the Code, the Benefits shall be reduced (but not below zero) if and to the extent that a reduction in the Benefits would result in Employee retaining a larger amount, on an after-tax basis (taking into account federal, state and local income taxes and the Excise Tax), than if Employee received all of the Benefits (such reduced amount is referred to hereinafter as the "Limited Benefit Amount"). Unless Employee shall have given prior written notice specifying a different order to the Company to effectuate the Limited Benefit Amount, any such notice consistent with the requirements of Section 409A of the Code to avoid the imputation of any tax, penalty or interest thereunder, the Company shall reduce or eliminate the Benefits by first reducing or eliminating amounts which are payable from any cash severance, then from any payment in respect of an equity award that is not covered by Treas. Reg. Section 1.280G-1 Q/A-24(b) or (c), then from any payment in respect of an equity award that is covered by Treas. Reg. Section 1.280G-1 Q/A-24(c), in each case in reverse order beginning with payments or benefits which are to be paid the farthest in time from the Determination (as defined below). Any notice given by Employee pursuant to the preceding sentence shall take precedence over the provisions of any other plan, arrangement or agreement governing Employee's rights and entitlements to any benefits or compensation.

(ii) A determination as to whether the Benefits shall be reduced to the Limited Benefit Amount pursuant to this Agreement and the amount of such Limited Benefit Amount shall be made by the Company's independent public accountants or another certified public accounting firm or executive compensation consulting firm of national reputation designated by the Company and acceptable to Employee (the "**Firm**") at the Company's expense. The Firm shall provide its determination (the "**Determination**"), together with detailed supporting calculations and documentation to the Company and Employee within ten (10) business days of the date of termination of Employee's employment, if applicable, or such other time as reasonably requested by the Company or Employee.

14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15. INTERPRETATION

This Agreement shall be construed as a whole, according to its fair meaning, and not in favor of or against any party. Sections and section headings contained in this Agreement are for reference purposes only and shall not affect in any manner the meaning or interpretation of this Agreement. Whenever the context requires, references to the singular shall include the plural and the plural the singular.

16. OBLIGATIONS SURVIVE TERMINATION OF EMPLOYMENT

Each party agrees that any and all of such party's obligations under this Agreement, including any agreement contemplated hereby, shall survive a termination of employment.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and the signature pages may be transmitted by pdf or electronic means, each of which shall be deemed an original of this Agreement, but all of which together shall constitute one and the same instrument.

18. AUTHORITY

Each party represents and warrants that such party has the right, power and authority to enter into and execute this Agreement and to perform and discharge all of the obligations hereunder; and that this Agreement constitutes the valid and legally binding agreement and obligation of such party and is enforceable in accordance with its terms.

19. ENTIRE AGREEMENT

This Agreement is intended to be the final, complete and exclusive statement of the terms of Employee's employment by the Company and may not be contradicted by evidence of any prior or contemporaneous statements or agreements, except for agreements specifically referenced herein (including the agreements referenced in **Sections 6** and **7** above). To the extent that the practices, policies or procedures of the Company, now or in the future, apply to Employee and are inconsistent with the terms of this Agreement, the provisions of this Agreement shall control. Any subsequent change in Employee's duties, position or compensation shall not affect the validity or scope of this Agreement.

20. EMPLOYEE ACKNOWLEDGEMENT

EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS HAD THE OPPORTUNITY TO CONSULT LEGAL COUNSEL CONCERNING THIS AGREEMENT, THAT EMPLOYEE HAS READ AND UNDERSTANDS THE AGREEMENT, THAT EMPLOYEE IS FULLY AWARE OF ITS LEGAL EFFECT AND THAT EMPLOYEE HAS ENTERED INTO IT FREELY BASED ON EMPLOYEE'S OWN JUDGMENT AND NOT ON ANY REPRESENTATIONS OR PROMISES OTHER THAN THOSE CONTAINED IN THIS AGREEMENT.

*[The remainder of this page has intentionally been left blank. The signature page follows on the next page.]*

By signing below, each of the parties hereto acknowledges and agrees to all of the terms of this Employment Agreement, effective as of the Effective Date.

**Rui Avelar ("Employee")**

Sign name: /s/ Rui Avelar

**EVOLUS, INC., a Delaware Corporation (the "Company")**

Sign name: /s/ David Moatazedi

Print name: David Moatazedi

Title: President and Chief Executive Officer

**SEPARATION AGREEMENT AND GENERAL RELEASE OF CLAIMS**

This Separation Agreement and General Release of Claims ("Agreement") is made an entered into by and between J. Christopher Marmo (hereafter "Employee") and each of ALPHAEON Corporation ("ALPHAEON") and Evolus, Inc. ("Evolus" and collectively with ALPHAEON on behalf of themselves, their parents, their subsidiaries, and other corporate affiliates, collectively referred to as the, the "Employer Group"). By signing this Agreement, the Employee and the Employer Group acknowledge that they have reached a final binding agreement as to the circumstances surrounding Employee's separation from employment with the Employer Group under an Employment Agreement originally dated as of October 3, 2013 between Employee and SCH-AEON, LLC (f/k/a Strathspey Crown Holdings, LLC) which agreement was assigned in full to ALPHAEON. Each of Employee and Employer Group acknowledges that this document contains the entire agreement with respect to the subject matter hereof:

1. Separation. Employee's employment status with the Employer Group will cease effective August 15, 2018 (the "Separation Date").

2. Return of Property. Employee warrants and represents that on the Separation Date he will return all Employer Group property, including identification cards or badges, access codes or devices, keys, laptops, computers, telephones, mobile phones, hand-held electronic devices, credit cards, electronically stored documents or files, physical files, and any other Employer Group property in the Employee's possession. After the Separation Date, the Employer Group, may, but is not required to, allow Employee use of certain equipment for purposes of fulfilling certain consulting services; any such use shall be subject to the Company's terms and conditions.

3. Severance. In exchange for my entering into and not revoking this Agreement:

(a) ALPHAEON will pay Employee, after the Separation Date, and Evolus shall reimburse ALPHAEON, a severance amount equal to (i) six (6) months of base salary which will be paid periodically pursuant to ALPHAEON's regularly scheduled pay periods and subject to customary payroll deductions (ii) $190,096.96 (representing Employee's pro-rata annual bonus for the year ending December 31, 2018 prorated as of Employee's Separation Date) which will be paid in a lump sum no later than March 15, 2019 and subject to customary payroll deductions (collectively, the "Severance Amount");

(b) ALPHAEON will provide, and Evolus shall reimburse ALPHAEON for, continuation of Employee's health benefits through the end of the six-month anniversary of my Separation Date;

(c) ALPHAEON will provide, and Evolus shall reimburse ALPHAEON for, payment to Employee with respect to all business expenses submitted in accordance with the Employer Group's expense reimbursement policies; and

(d) Evolus and Employee will enter into the Consulting Agreement in the form attached as Exhibit A hereto (the "Consulting Agreement").

4. General Releases,

4.1 Release of Employer Group. In return for the promises in Section 3 above, Employee, on his own behalf, and on behalf of his heirs, grantees, agents, representatives, devisees, trustees, assigns, assignors, attorneys, and any other entities or persons in which Employee has an interest (collectively "Releasors") hereby release and forever discharge the Employer Group and each of their respective past and present agents, employees, representatives, officers, directors, members, managers, attorneys, accountants, insurers, advisors, consultants, assigns, successors, heirs, predecessors in interest, joint ventures, affiliates, subsidiaries, parents, and commonly-controlled entities (collectively "Releasees") from all liabilities, causes of action, charges, complaints, suits, claims, obligations, costs, losses, damages, rights, judgments, attorneys' fees, expenses, bonds, bills, penalties, fines, and all other legal responsibilities of any form whatsoever, whether known or unknown, whether suspected or unsuspected, whether fixed or contingent, liquidated or unliquidated that Employee had or may claim to have against any of the Releasees, including Employer Group, up through and including the date Employee executed this Agreement, including any and all claims arising under any theory of law, whether common, constitutional, statutory or other of any jurisdiction, foreign or domestic, whether known or unknown, whether in law or in equity, which Employee had or may claim to have against Employer Group or any of the other Releasees. This general release is intended to have the broadest possible application and releases any tort, contract, common law, constitutional, statutory, and other type of claim Employee had or may claim to have against Employer Group and/or any of the other Releasees. This general release also includes, but is not limited to, (i) all claims of any kind related to Employee's employment with, compensation by and separation from Employer Group, as well as (ii) all claims relating to any acts or omissions occurring prior to or on the date of this Agreement between Employee and Employer Group as well as between Employee and any of the other Releasees. Releasors specifically release, among other things, claims under all applicable state and federal laws of any kind, including, but not limited to, any claims based on age, sex, pregnancy, race, color, national origin, marital status, religion, veteran status, disability, sexual orientation, medical condition, or other anti-discrimination laws of any type, including, without limitation, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act (Title 29, United States Code, Sections 621, et seq.) ("ADEA"), the Americans with Disabilities Act, the Fair Labor Standards Act, the Family Medical Leave Act, the California Fair Employment and Housing Act, the California Workers' Compensation Act, the California Labor Code, including sections 200, et seq., 970 and 132a, the California Civil Code, and the California Constitution, any other federal or state statutory claims of any kind whatsoever, and all common law claims of any kind, whether arising in tort or contract. If any governmental agency should assume jurisdiction over any claim, charge or complaint arising out of Employee's employment with Employer Group, Releasors also waive the right to recover damages or any other remedy as a result of such claim, charge, or complaint. Employee acknowledges and agrees that, following the payment of the Severance Amount and delivery of any other benefits set forth in Section 2 of this Agreement, Employer Group as well as all of the other Releasees have no other liabilities or obligations to Employee of any kind or nature whatsoever and the Releasors, including, without limitation, owe Employee no liabilities or obligations in connection with or relating to Employee's employment with Employer Group. Employee represents and warrants that Employee is not a plaintiff or party to any suit, arbitration, action, or administrative proceeding in which Employer Group or any of the other Releasees is a party. Employee also agrees and promises that Employee will not file any suit, arbitration, action, or administrative claim, charge or any other type of action against Employer Group or any of the other Releasees asserting any of the matters released herein. Employee further agrees not to prosecute, nor allow to be prosecuted on Employee's behalf, in any administrative agency, whether state or federal, or in any court, whether state or federal, any claim or demand of any type related to the matters released herein, it being the intention of Employee that with the execution of this release, Employer Group and all of the other Releasees

will be absolutely, unconditionally and forever discharged of and from all liabilities and obligations to Employee and the other Releasors, except as set forth in Section 3 of this Agreement. Notwithstanding any provision hereof to the contrary, neither Employee nor any of the Releasors is releasing, and this Agreement shall not be construed to release, any claims Employee or any of the Releasors have or may have in respect of (a) obligations of the Employer Group to perform this Agreement, (b) obligations of ALPHAEON and Evolus pursuant to the Stock Purchase Agreement, dated as of September 30, 2014 (the "Stock Purchase Agreement"), as amended by that certain Amendment to Stock Purchase Agreement (undated) ("First Amendment") and that certain Second Amendment to Stock Purchase Agreement dated as of December 14, 2017 ("Second Amendment"), to which Employee is a party, and the Promissory Note (as defined in the Second Amendment), as each maybe amended in accordance with the terms thereof, or (c) obligations of ALPHAEON and Evolus pursuant to the Tax Indemnity Agreement dated as of December 14, 2017 ("Tax Indemnity Agreement"), to which Employee is a party, as it may be amended in accordance with the terms thereof.

4.2 Representations and Warranties of Employer Group. Employer Group represents and warrants that

a. to its knowledge, each of the (i) Stock Purchase Agreement as amended by the First Amendment and the Second Amendment, (ii) Promissory Note (as defined in the Second Amendment), and (iii) Tax Indemnity Agreement (collectively, "Employer Group Arrangements") remains in full force and effect on the date hereof in accordance with its terms,

b. Employee's separation from Employer Group and entry into this Agreement and the Consulting Agreement will not terminate, impair, or adversely impact (i) any rights of Employee under any of the Employer Group Arrangements, (ii) obligations of Employer Group to Employee under any of the Employer Group Arrangements, and (iii) any of the Employer Group Arrangements.

5. Release of Age Discrimination Claims. Employee understands that the general release in Section 4 above includes a waiver of any and all rights and claims Employee had or may claim to have against Employer Group as well as any of the other Releasees, including any rights and claims which Employee may claim to have arising under the ADEA. Employee admits that this Agreement satisfies the requirements of 29 U.S.C. § 626(f). Employee also acknowledges and agrees that Employee has read and understands the terms of this Agreement. Employee represents that Employee has been advised in writing by this Agreement to consult with an attorney of his choosing regarding the waiver of rights and claims under the ADEA. Employee also acknowledges that Employee has obtained and considered such legal counsel as Employee deems necessary, such that Employee is entering into this Agreement freely, knowingly, and voluntarily. Employee further acknowledges that Employee has been given at least twenty-one (21) days in which to consider whether or not to enter into this Agreement. Employee understands that, at Employee's option, Employee may elect not to use the full 21-day period. Employee also understands that this Agreement shall not become enforceable until eight (8) days after Employee has executed this Agreement. If Employee does not revoke his acceptance within the seven (7) day period after this Agreement is executed by Employee, Employee understands this Agreement shall become binding and enforceable on the eighth day. Employee further understands that Employee is not waiving any rights or claims under the ADEA that may arise after the effective date of this Agreement.

6. Waiver. Employee understands and agrees that all of Employee's rights under California Civil Code Section 1542 are expressly waived. Employee understands that Section 1542 provides as follows:

> **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT A CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Employee understands that waiving Employee's rights under Civil Code Section 1542 means that even if Employee should eventually suffer some damage arising out of his employment and/or separation from employment with Employer Group or any of the other Releasees, that Employee will not be able to make any claims for those damages, even as to claims which may now exist, but which Employee does not know exist, and which if known would have affected Employee's decision to sign this Agreement. Employee acknowledges that the discovery of facts or law different from, or in addition to, the facts or law that Employee knows or believes to be true with respect to the claims released in this Agreement and agrees, nonetheless, that this Agreement and the releases contained in it shall be and remain effective in all respects notwithstanding such different or additional facts or the discovery of them. Employee further declares and represents that Employee intends this Agreement to be complete and not subject to any claim of mistake, and that the releases herein express full and complete releases by Employee and the other Releasors, and that Employee intends that the general release by Employee herein shall be final and complete with respect to Employer Group as well as all other Releasees. Employee has executed this Agreement with the full knowledge that the general release in Section 4 combined with Employee's waiver of any rights under Civil Code Section 1542 cover all possible claims against Employer Group and any of the other Releasees, to the fullest extent permitted by law.

7. No Assignment. Employee warrants and represents that Employee has not assigned or transferred to any person any released matter or any right to the payment or other consideration provided by this Agreement. Employee agrees to defend, indemnify and hold Employer Group and any of the other Releasees harmless from any and all claims based on or in connection with or arising out of any such assignment or transfer made, purported or claimed.

8. No Wrongdoing. Employee understands that, by signing this Agreement, Employer Group does not admit any wrongdoing and makes no admission that it or any of the other Releasees has engaged, or is now engaging, in any unlawful conduct. Employee is also admitting no wrongdoing by signing this Agreement. Employer Group and Employee agree that this Agreement may never be treated as an admission of liability by any party for any purpose. Employer Group and Employee also agree that no use of this Agreement or any comments made by either party during the discussions or negotiations regarding this Agreement will be used by a party or their representatives in connection with any subsequent legal action except for an action to enforce this Agreement.

9. Confidential Information. Employee understands that obligations under any confidentiality agreement signed by Employee during his employment with Employer Group remain in effect

and survive the termination of Employee's employment with Employer Group, provided that, Employer Group agrees as follows:

a. The following information shall not be deemed to be confidential or proprietary information of Employer Group under any confidential agreement signed during my employment: (i) information known to Employee prior to its disclosure by Employer Group; (ii) information that is or that thereafter becomes generally known or part of the public domain without breach of or violation by Employee of any such confidentiality agreement; or (iii) information that was received by or disclosed to Employee from a third party that did not owe an obligation of confidentiality to Employer Group. Accordingly, Employer Group's use or disclosure of the foregoing information shall not be deemed a breach or violation of any confidentiality agreement signed by Employee during his employment with Employer Group.

b. To the extent any confidentiality agreement entered into by Employee and Employer Group conflicts with or is contrary to the terms and conditions set forth in this Section 9, any such confidentiality agreement is hereby deemed automatically amended, modified, and superseded accordingly.

10. Confidentiality of Agreement. Employee agrees that the terms and conditions of this Agreement are strictly confidential and shall not be discussed, disclosed or revealed by Employee to any third party, except to Employee's attorneys, tax advisors, and spouse, and except insofar as Employee is compelled by law to disclose it. When releasing this information to any such person, Employee agrees to advise the person receiving the information of its confidential nature.

11. Non-Disparagement. In addition to any other non-disparagement agreement to which Employee may be bound, Employee expressly agrees that Employee will not in any way disparage or otherwise cause to be published or disseminated any negative statements, remarks, comments or information regarding Employer Group or any of the other Releasees. Notwithstanding the foregoing, Employee shall not be restrained or prohibited, and it shall not be a breach of this Agreement by Employee if Employee makes any statements in any letters, legal filings or other related documents or proceedings in each case in connection with or arising out of the pursuit of a claim that Employee has not released under this Agreement.

12. General. Employee acknowledges that Employee has carefully read and fully understands the nature of this Agreement, that Employee has been advised to consult with an attorney of his choosing before executing this Agreement, that Employee has had the opportunity to consider this Agreement, and that all of Employee's questions concerning this Agreement have been answered to his satisfaction. Employee also agrees that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement. The provisions of this Agreement together with the exhibits hereto set forth the entire agreement between Employee and Employer Group concerning Employee's severance pay and benefits and Employee's termination of employment. Any other contrary promises, written or oral, are replaced by this Agreement, and are no longer effective unless they are contained in this document or are expressly deemed to survive the cessation of Employee's employment with Employer Group in accordance with the terms of the written document in which they are contained. The validity, interpretation and performance of this Agreement shall be construed and interpreted according to the laws of the State of California. Any action arising out of or relating to this Agreement shall be conducted before the Judicial Arbitration and Mediation Service (JAMS) before a single arbitrator. If the parties are unable to agree on an arbitrator, JAMS shall select the arbitrator. Arbitration shall be located in the County

of Orange, State of California. This Agreement may be executed via facsimile and/or email, and in two or more counterparts, each of which taken together shall constitute one and the same instrument.

13. Attorneys' Fees. In the event that any proceeding or action is brought by either party to enforce or interpret the terms of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover its costs of suit, including reasonable attorney's fees.

14. Representations and Warranties.

14.1. This Agreement in all respects has been voluntarily and knowingly entered into by Employee.

14.2. Employee had an opportunity to seek legal advice from legal counsel of Employee's choice with respect to the advisability of executing this Agreement

14.3 Employee has made such investigation of the facts pertaining to this Agreement as Employee deems necessary.

14.4 The terms of this Agreement are the result of negotiations between Employee and Employer Group, and are entered into in good faith by Employee and Employer Group in accordance with California law.

14.5 This Agreement has been carefully read by Employee and the contents hereof are known and understood by Employee.

14.6 Employee acknowledges and agrees that upon being paid the final payment of salary on the Separation Date, Employee has been paid all compensation, other than the Annual Bonus referred to in Section 3(a)(ii) of the Agreement which shall be paid on or prior to March 15, 2019, to which Employee is entitled in connection with his employment with the Employer Group, including wages, vacation pay, and bonuses up to and including the Separation Date. All such payments will be less appropriate withholdings.

15. Limitations. Notwithstanding the foregoing, Employee understands the following:

15.1 Nothing contained in this Agreement precludes Employee from filing a charge of discrimination with the United States Equal Employment Opportunity Commission ("EEOC") or any state fair employment practices agency ("FEPA) or participating in an investigation by the EEOC or any FEPA, but Employee will not be entitled to any monetary or other relief from the EEOC or any FEPA on the basis of or in connection with such charge or investigation, or from any Court as a result of litigation brought on the basis of or in connection with such charge or investigation;

15.2 Nothing in this Agreement prohibits, or is intended in any manner to prohibit, Employee from reporting a possible violation of federal or state law or regulation to any governmental agency or entity, including but not limited to the Department of Justice, the Securities and Exchange Commission, the Congress, and any agency Inspector General, or making other disclosures that are protected under whistleblower provisions of federal or state law or regulation. Employee does not need the prior authorization of Employer Group to make any such reports or disclosures, and Employee is not required to notify Employer Group that Employee has made such reports or disclosures. Nothing in

this Agreement limits Employee's ability to receive a whistleblower or other award from a governmental agency or entity for information provided to such an agency or entity.

15.3 Nothing in this Agreement or any other agreement or policy of Employer Group is intended to interfere with or restrain the immunity provided under 18 U.S.C. § 1833(b) for confidential disclosures of trade secrets to government officials, or lawyers, solely for the purpose of reporting or investigating a suspected violation of law; or in a sealed filing in court or other proceeding.

[*remainder of page intentionally left blank; signature page follows*.]

*** * * * IMPORTANT NOTICE * * * ***

EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS BEEN GIVEN THE OPPORTUNITY TO CONSIDER THIS AGREEMENT FOR 21 DAYS. SHOULD EMPLOYEE DECIDE NOT TO USE THE FULL 21 DAYS, EMPLOYEE KNOWINGLY AND VOLUNTARILY WAIVES ANY CLAIMS THAT EMPLOYEE WAS NOT IN FACT GIVEN THAT PERIOD OF TIME OR DID NOT USE THE ENTIRE 21 DAYS TO CONSULT AN ATTORNEY AND/OR CONSIDER THIS AGREEMENT. EMPLOYEE ACKNOWLEDGES AND UNDERSTANDS THAT FOR A PERIOD OF SEVEN (7) DAYS FOLLOWING EMPLOYEE'S EXECUTION OF THIS AGREEMENT, EMPLOYEE MAY REVOKE THIS AGREEMENT AND RELEASE, AND THE RELEASE SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL THIS SEVEN (7) DAY REVOCATION PERIOD HAS EXPIRED. IF EMPLOYEE DOES NOT REVOKE THIS AGREEMENT AND THE RELEASE IN THE TIME FRAME SPECIFIED, THIS AGREEMENT AND RELEASE SHALL BE DEEMED TO BE EFFECTIVE AT 12:01 A.M. ON THE EIGHTH DAY AFTER EMPLOYEE EXECUTED THE SAME. CM (Initials)

If Employee does not sign this Agreement or if Employee revokes this Agreement within the seven (7) day revocation period noted above or if Employer Group does not execute this Agreement, Employer Group will not, and has no obligation to, provide Employee with any of the benefits listed in Section 3 of the Agreement, including, but not necessarily limited, to any Severance Amount and health insurance coverage. Rather, Employee will receive only those benefits and compensation to which Employee is already entitled under Employer Group policy to which Employee is subject. If Employee elects not to sign this Agreement, such action will not alter or affect Employee's ultimate separation from employment with Employer Group, which will still occur effective as of the Separation Date.

In exchange for the mutual promises contained in this Agreement, the parties execute this Agreement as of the date set forth below.

**Employee**: J. Christopher Marmo

Dated: August 28, 2018 /s/ J. Christopher Marmo

**Employer Group**:

ALPHAEON Corporation

Dated: August 28, 2018 /s/ Vikram Malik

Evolus, Inc.

Dated: August 28, 2018 /s/ David Moatazedi

**EXHIBIT A**

**CONSULTING AGREEMENT**

THIS CONSULTING AGREEMENT for independent Consultant consulting services ("Agreement") by and between Evolus, Inc., ("COMPANY") and J. Christopher Marmo (the "Consultant").

1. Consulting Services. Consultant shall provide COMPANY with the services described on Schedule 1, as well as other services as may be requested from time to time by COMPANY (the "Services"). Except as otherwise provided in any specific project assignment, Consultant will have exclusive control over the manner and means of performing the Services, including the choice of place and time. Consultant will provide, at Consultant's own expense, a place of work and all equipment, tools and other materials necessary to complete the Services; however, to the extent necessary to facilitate performance of the Services, Client may, in its discretion, make its equipment or facilities available to Consultant at Consultant's request. While on the COMPANY's premises, Consultant agrees to comply with COMPANY's then-current access rules and procedures, including those related to safety, security and confidentiality. Consultant agrees and acknowledges that Consultant has no expectation of privacy with respect to COMPANY's telecommunications, networking or information processing systems (including stored computer files, email messages and voice messages) and that Consultant's activities, including the sending or receiving of any files or messages, on or using those systems may be monitored, and the contents of such files and messages may be reviewed and disclosed, at any time, without notice.

2. Independent Consultant Relationship/Conflicts. Consultant shall have the full power, authority, and discretion to select the means, manner, and method of performing the Services hereunder without detail, control or direction from COMPANY or its officers or directors. Consultant shall not be considered an employee of COMPANY for any purposes and they shall not be entitled to participate in any employee benefit plans sponsored or maintained by COMPANY. During the term of this Agreement, the Consultant shall disclose in writing to COMPANY any actual conflict that Consultant may have in performing the Services hereunder. For purposes of this Agreement, "actual conflict" shall not include any confidentiality or non-disclosure agreements that Consultant enters into with another person or entity, or discussions with other companies about business or employment opportunities.

3. Term. The Consultant shall commence providing Services on August __, 2018 (the "Effective Date"), and shall continue to do so until the COMPANY obtains U.S. Food and Drug Administration approval for its botulinum toxin type A product candidate or the Agreement is terminated by either party pursuant to Section 4 of this Agreement. This Agreement may be extended by mutual written agreement of both parties.

4. Termination. Either Consultant or the Company may terminate this Agreement prior to its expiration by providing: (a) prior to February 1, 2019, two (2) weeks advanced notice, or (b) After February 1, 2019, one (1) week advanced notice to the other party of its intention to terminate this Agreement. For purposes of this Agreement, email notification shall be deemed to be written notice.

5. Payment. In consideration of the Services, the Consultant will be paid $500 per hour to be paid on a bi-weekly basis. The Consultant shall not receive any additional benefits or compensation for consulting services, except for the reimbursement of expenses. Consultant shall document all hours dedicated to the Services and provide such documentation on a bi-weekly basis.

6. Expenses. Consultant shall not incur any expenses without prior written approval of COMPANY. Unless otherwise agreed to by the parties, all normal and customary business expenses incurred by Consultant under this Agreement shall be paid by Consultant, and reimbursed, if such expenses are pre-approved in writing by the COMPANY, by COMPANY upon a showing of evidence of such expenses that is reasonably acceptable to the Company.

7. Consultant Responsible for Taxes. The Consultant agrees to accept exclusive liability for the payment of taxes due on any amounts paid under this Agreement. Because Consultant is an independent contractor, COMPANY will not withhold or make payments for social security, make unemployment insurance or disability insurance contributions, or obtain workers' compensation insurance on behalf of Consultant. Consultant is solely responsible for, and will file, on a timely basis, all tax returns and payments required to be filed with, or made to, any federal, state or local tax authority with respect to the performance of Services and receipt of fees under this Agreement. Consultant is solely responsible for, and must maintain adequate records of, expenses incurred in the course of performing Services under this Agreement. No part of Consultant's compensation will be subject to withholding by COMPANY for the payment of any social security, federal, state or any other employee payroll taxes. COMPANY will regularly report amounts paid to Consultant by filing Form 1099-MISC with the Internal Revenue Service as required by law.

8. Non-Disclosure and Confidentiality Agreement. The Consultant agrees to execute and be bound by the Company's Non-Disclosure and Confidentiality Agreement attached as Exhibit A.

9. Assignment of Work Product; Title. The Consultant agrees to assign and hereby assigns to COMPANY the entire right, title and interest for the entire world in and to all work performed, writings, formulas, designs, models, drawings, photographs, design inventions, other inventions and any information ("Work-Product") developed, made, conceived or reduced to practice by the Consultant, either solely or jointly with others, specifically for COMPANY during the performance of the Services relating to COMPANY and pursuant to this Agreement or with use of confidential information, materials or facilities of COMPANY received or used by the Consultant during the period in which the Consultant is retained by COMPANY (or any successor) under this Agreement. The Consultant hereby agrees to: (i) promptly disclose to COMPANY all Work-Product made, conceived, reduced to practice or authored by the Consultant in the course of the performance of this Agreement; and (ii) sign, execute and acknowledge any and all documents, and to perform such acts, as may be necessary, useful or convenient for the purpose of securing to COMPANY or its nominees, patent, trademark, or copyright protection throughout the world upon all Work-Product. All Work-Product, and all products purchased by the Consultant pursuant to this Agreement and paid for by COMPANY shall be the exclusive property of COMPANY and shall be delivered to COMPANY upon termination of this Agreement. Consultant hereby irrevocably appoints COMPANY as Consultant's attorney-in-fact for the purpose of executing such documents on Consultant's behalf, which appointment is coupled with an interest. If Consultant has any rights, including without limitation "artist's rights" or "moral rights," in the Work Product that cannot

be assigned, Consultant hereby unconditionally and irrevocably grants to COMPANY an exclusive (even as to Consultant), worldwide, fully paid and royalty-free, irrevocable, perpetual license, with rights to sublicense through multiple tiers of sublicensees, to use, reproduce, distribute, create derivative works of, publicly perform and publicly display the Work Product in any medium or format, whether now known or later developed. In the event that Consultant has any rights in the Work Product that cannot be assigned or licensed, Consultant unconditionally and irrevocably waives the enforcement of such rights, and all claims and causes of action of any kind against COMPANY or COMPANY's customers.

10. Representations and Warranties. Consultant represents and warrants that: (a) the Services shall be performed in a professional manner and in material accordance with the industry standards, (b) to his knowledge, Consultant has the right and unrestricted ability to assign the ownership of Work Product to COMPANY as set forth in Section 9 (including without limitation the right to assign the ownership of any Work Product created by Consultant's employees or contractors), (c) neither the Work Product nor any element thereof will infringe upon or misappropriate any copyright, patent, trademark, trade secret, right of publicity or privacy, or any other proprietary right of any person, whether contractual, statutory or common law, (d) Consultant will comply with all applicable federal, state, local and foreign laws governing self-employed individuals, including laws requiring the payment of taxes, such as income and employment taxes, and social security, disability, and other contributions. Consultant agrees to indemnify and hold COMPANY harmless from any and all damages, costs, claims, expenses or other liability (including reasonable attorneys' fees) arising from or relating to the breach or alleged breach by Consultant of the representations and warranties set forth in this Section 11.

1. Arbitration, Choice of Law. This Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the parties hereunder shall be construed and enforced in accordance with, and governed by, the laws of the State of California without regard to principles of conflict of laws. In the event of a dispute, the parties agree to binding arbitration in Orange County, California under the Rules of Comprehensive Arbitration before the Judicial Arbitration and Mediation Service ("JAMS"). The prevailing party shall be entitled to recover reasonable attorney fees and costs.

2. Severability. If any provision of this Agreement or the application thereof is held invalid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and, to this end, the provisions of this Agreement are declared to be severable.

3. Personal Performance. Due to the personal nature of the services to be rendered by the Consultant, the Consultant may not assign this Agreement in whole or in part. Any attempt to make such an assignment shall be void. The Company may assign all or a portion of its rights and liabilities under this Agreement to a subsidiary, an affiliate or a successor to all or a substantial portion of its business and assets without the necessity of consent from the Consultant. Subject to the foregoing, this Agreement will inure to the benefit of and be binding upon each of the heirs, assigns and successors of the respective parties.

4. Advice of Counsel. In entering into this Agreement, the parties recognize that this Agreement is a legally binding contract and acknowledge and agree that each party has had the opportunity to consult with legal counsel of its choice.

5. Entire Agreement. This agreement together with the Separation Agreement constitutes and contains the entire Agreement and final understanding between the parties covering the Services provided by the Consultant. It is intended by the parties as a complete and exclusive statement of the terms of their agreement. It supersedes all prior negotiations and agreements, proposed or otherwise, whether written or oral, between the parties concerning consulting services provided by the Consultant. Any representation, promise or agreement not specifically included in this Agreement shall not be binding upon or enforceable against either party. This is a fully integrated document. This Agreement may be modified only with a written instrument duly executed by each of the parties. No person has any authority to make any representation or promise on behalf of any of the parties not set forth herein and this Agreement has not been executed in reliance upon any representations or promises except those contained herein.

6. No Assignment. Consultant shall not assign either in whole or in part any of Consultant's duties or responsibilities hereunder without the written consent of COMPANY, and any attempt of assignment transfer or delegation without such consent shall be void.

7. Written Reports. The Consultant, when directed, shall provide written reports with respect to the Services rendered hereunder.

19. Headings. Headings are used only for ease of reference and are not controlling

20. Counterparts. This Agreement may be executed via facsimile and/or email, and in two or more counterparts, each of which taken together shall constitute one and the same instrument.

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*[Signature page follows.]*

In witness whereof, the parties hereto have executed this Agreement as of the date first above written.

Evolus, Inc.

By /s/ David Moatazedi
Name: David Moatazedi
Its: CEO and President

Notice Address:

Evolus, Inc.
17901 Von Karman Ave., Suite 150
Irvine, CA 92614

Consultant: J. Christopher Marmo

By: /s/ J. Christopher Marmo
Name: J. Christopher Marmo

Notice and E-mail Address: Address on file with the COMPANY

**Schedule 1 to Consulting Agreement**

**SERVICES TO BE PROVIDED BY CONSULTANT**

Consultant shall provide services relating to the Company's business and activities as directed by the Chief Executive Officer of the Company (the "CEO"), or his respective designees, which services are limited to the informational responses (IR) to the FDA regarding the Company's Biologics License Application for its Botulinum Type A toxin and its resubmission.

This consulting work shall be limited to twenty hours per month or less unless the CEO or his designee provides prior written consent.

The Consultant shall provide a report of all hours worked on a bi-weekly basis to the COMPANY.

**Exhibit A**
**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

During the term of the Agreement, the COMPANY may share certain proprietary information with the Consultant in connection with the Services. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**1. Definition of Confidential Information.**

(a) For purposes of this Agreement, "Confidential Information" means any data or information that is proprietary to the COMPANY and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for acquisitions, dispositions, products or services, and investor, customer or supplier lists; (iii) any scientific or technical information, regulatory processes, regulatory inquiries, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, business plans, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; and (v) any other information that should reasonably be recognized as confidential information of the COMPANY. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Consultant acknowledges that the Confidential Information is proprietary to the COMPANY, has been developed and obtained through great efforts by the COMPANY and that the COMPANY regards all of its Confidential Information as trade secrets.

(b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was known by the Consultant prior to receiving the Confidential Information from the COMPANY; (ii) becomes rightfully known to the Consultant from a third-party source not known (after diligent inquiry) by the Consultant to be under an obligation to the COMPANY to maintain confidentiality; (iii) is or becomes publicly available through no fault of or failure to act by the Consultant in breach of this Agreement; (iv) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (v) is or has been independently

developed by employees, consultants or agents of the Consultant without violation of the terms of this Agreement or reference or access to any Confidential Information.

**2. Disclosure of Confidential Information.**

From time to time, the COMPANY may disclose Confidential Information to the Consultant. The Consultant will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein). Each party shall be responsible for any breach of this Agreement by any of their respective Representatives.

**3. Use of Confidential Information.**

The Consultant agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the COMPANY. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Consultant hereunder. Title to the Confidential Information will remain solely in the COMPANY. All use of Confidential Information by the Consultant shall be for the benefit of the COMPANY and any modifications and improvements thereof by the Consultant shall be the sole property of the COMPANY. Nothing contained herein is intended to modify the parties' existing agreement that their discussions in furtherance of a potential business relationship are governed by Federal Rule of Evidence 408.

**4. Compelled Disclosure of Confidential Information.**

Notwithstanding anything in the foregoing to the contrary, the Consultant may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Consultant promptly notifies, to the extent practicable, the COMPANY in writing of such demand for disclosure so that the COMPANY, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Consultant's business (not targeted at the COMPANY), the Consultant may promptly comply with such request provided the Consultant give (if permitted by such regulator) the COMPANY prompt notice of such disclosure. The Consultant agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the COMPANY with respect to any such request for a protective order or

other relief. Notwithstanding the foregoing, if the COMPANY is unable to obtain or does not seek a protective order and the Consultant is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

**5. Term.**

The parties' duty to hold in confidence Confidential Information that was disclosed during the term of the Agreement shall remain in effect indefinitely.

**6. Remedies.**

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to the COMPANY that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the COMPANY shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. The COMPANY shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

**7. Return of Confidential Information.**

The Consultant shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the COMPANY may so request; provided however that the Consultant may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Consultant, with the written consent of the COMPANY may (or in the case of Notes, at the Consultant's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably nonrecoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Consultant supervising the destruction).

**8. Notice of Breach.**

Consultant shall notify the COMPANY immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Consultant or its Representatives, or any other breach of this Agreement by the Consultant or its Representatives, and will cooperate with efforts by the COMPANY to help the COMPANY regain possession of Confidential Information and prevent its further unauthorized use.

# SUBLEASE

THIS SUBLEASE (this "Sublease") is dated for reference purposes November 7, 2018, and is entered into by and between ACACIA RESEARCH CORPORATION, a Delaware corporation ("Sublandlord"), and EVOLUS, INC., a Delaware corporation ("Subtenant").

## Recitals

A. Sublandlord has leased that certain premises located in the building at 520 Newport Center, Newport Beach, California (the "Building"), consisting of Suite 1200 (the "Premises"), with a total of approximately 17,758 rentable square feet, pursuant to that certain Lease dated January 28, 2002, which lease was amended by a First Amendment to Lease dated August 13, 2004, a Second Amendment to Lease dated February 9, 2005, a Third Amendment to Lease dated March 14, 2006, a Fourth Amendment to Lease dated November 9, 2006, a Fifth Amendment to Lease dated September 10, 2007, a Sixth Amendment to Lease dated January 13, 2011, a Seventh Amendment to Lease dated September 17, 2012, an Eighth Amendment to Lease dated February 28, 2013, and a Ninth Amendment to Lease dated June 26, 2014 (collectively, the "Master Lease"), by and between Sublandlord, as Tenant, and THE IRVINE COMPANY LLC, a Delaware limited liability company, as Landlord (herein referred to as "Master Landlord"). Sublandlord and Subtenant acknowledge and agree that a true and correct copy of the Master Lease has been provided to Subtenant and where referenced in this Sublease, the applicable provisions of the Master Lease are hereby incorporated by reference into this Sublease.

B. Sublandlord wishes to sublease to Subtenant, and Subtenant wishes to sublease from Sublandlord, the entirety of the Premises (the "Subleased Premises"), subject to the terms and conditions of this Sublease.

## Agreement

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Sublease, and for other valuable consideration which they hereby acknowledge, the parties agree as follows:

1. **Defined Terms.** Terms used in this Sublease which are not specifically defined herein shall have the meanings set forth in the Master Lease.

2. **Sublease of Premises.** Subtenant agrees to sublease the Subleased Premises from Sublandlord and Sublandlord agrees to sublease the Subleased Premises to Subtenant. This Sublease and Subtenant's rights to the Subleased Premises shall be subject to the terms and provisions of the Master Lease. Sublandlord warrants to Subtenant that (a) the Master Lease has not been amended or modified, and (b) Sublandlord has not received any notice of Default under the Master Lease which has not been cured. So long as Subtenant is not in Default of this Sublease, Subtenant may quietly enjoy the Subleased Premises for the term of this Sublease.

3. **Term.**

(a) This Sublease is contingent upon Master Landlord consenting to this Sublease in accordance with the terms of the Master Lease. This Sublease shall commence on the "Commencement

Date", which shall be the later to occur of (i) the date upon which Master Landlord consents to this Sublease in writing pursuant to that certain Consent to Subletting (the "Consent to Subletting") to be entered into by Master Landlord, Sublandlord and Subtenant (the "Consent Date"), or (ii) Sunday, December 2, 2018 (the "Target Date"), or (iii) the date on which Sublandlord delivers possession of the Subleased Premises to Subtenant. The term of this Sublease (the "Term") shall be from the Commencement Date until Monday, January 20, 2020 (the "Expiration Date").

(b) Notwithstanding the forgoing, in the event Master Landlord has not provided the form of Consent to Subletting to Sublandlord and Subtenant on or before Monday, December 17, 2018 (the "Outside Date"), each of Sublandlord and Subtenant shall have the right to terminate this Sublease by delivering written notice of such termination to the other party, on or after Tuesday, December 18, 2018; provided, however, in the event the Consent to Subletting is ultimately provided by Master Landlord after the Outside Date but before either Sublandlord or Subtenant have delivered a termination notice to the other, such right to terminate shall automatically expire and no longer be available to either of Sublandlord or Subtenant, and this Sublease shall continue as contemplated herein.

(c) If Sublandlord, for any reason whatsoever, cannot deliver possession of the Subleased Premises to Tenant on or before the Target Date, this Sublease shall not be void or voidable nor shall Sublandlord be liable to Subtenant for any resulting loss or damage. However, Subtenant shall not be liable for the payment of any rent until the Commencement Date occurs as provided in Section 3(a) above.

(d) Sublandlord and Subtenant acknowledge and agree that the Expiration Date is intentionally scheduled to be earlier than the date upon which the Master Lease expires, so as to allow Sublandlord time to remove telecommunication cabling and prepare the Subleased Premises for surrender to Master Landlord after Subtenant has vacated, but prior to expiration of the Master Lease. Notwithstanding the foregoing, so long as Subtenant is not in default hereunder, in the event that Subtenant and Master Landlord enter into a new direct lease for the Subleased Premises that will commence immediately following the expiration of the Master Lease, and Master Landlord affirmatively releases Sublandlord in writing from any obligation to remove the telecommunication cabling and any other improvements from the Subleased Premises, Sublandlord and Subtenant shall enter into an amendment to this Sublease to change the Expiration Date to be commensurate with the expiration of the Master Lease.

(e) Notwithstanding the foregoing, this Sublease shall automatically terminate (without liability of Sublandlord to Subtenant therefor) if and when the term of the Master Lease terminates for any reason. Any hold over beyond the termination of this Sublease shall only be permitted (i) with the prior written consent of Sublandlord, which consent may be withheld in Sublandlord's sole discretion, and (ii) in accordance with the provisions of Section 15.1 of the Master Lease, which shall apply to any such hold over.

(f) In the event the Consent Date occurs prior to the Target Date, Sublandlord shall provide Subtenant with a license for non-exclusive, shared access to the Subleased Premises on Saturday, December 1, 2018 (the "Early Access Day"), subject to the following terms and conditions:

(i) Subtenant and Subteant's contractors, subcontractors and employees shall work in harmony and not interfere with Sublandlord and Sublandlord's agents shared use of the Subleased Premises during the Early Access Day, and Subtenant hereby acknowledges that Sublandlord

will likely be in the process of removing Sublandlord's personal property from the Subleased Premises on the Early Access Day;

(ii) In the event Subtenant's entry causes disharmony or interfere with the work being performed by Sublandlord, Sublandlord may notify Subtenant that the Commencement Date is being extended for the one (1) additional day to allow Sublandlord time to complete its moving activities due to any delay caused by Subtenant's entry on the Early Access Date.

(iii) Sublandlord shall permit Subtenant and its agents to enter the Subleased Premises on the Early Access Day, subject to compliance by Subtenant with the terms and conditions of this Sublease and the Master Lease, including, but not limited to, all requirements imposed by Master Landlord on third party contractors, including without limitation the maintenance by Subtenant and its contractors and subcontractors of workers' compensation and public liability and property damage insurance in accordance with the Master Lease, with certificates of such insurance being furnished to Sublandlord and Master Landlord prior to proceeding with any such entry on the Early Access Date;

(iv) The entry shall be deemed to be under all of the provisions of this Sublease except as to the covenant to pay rent; and

(v) Sublandlord shall not be liable in any way for any injury, loss or damage which may occur to any such work being performed by Subtenant, the same being solely at Subtenant's risk.

4. **Insurance Certificates**. Subtenant shall maintain and deliver to Sublandlord certificate(s) of insurance evidencing the insurance required pursuant to Section 10.1 and Exhibit D of the Master Lease.

5. **Rent.**

(a) Commencing on the Commencement Date, Subtenant shall pay monthly base full service gross rent ("Monthly Base Rent") to Sublandlord during the term of this Sublease, without offset, deduction or abatement, which Monthly Base Rent shall be in the amount of Sixty-Five Thousand and No/100 Dollars ($65,000.00). Monthly Base Rent for any partial month at the beginning or the end of the term of this Sublease shall be prorated on the basis of a 30-day month.

(b) In addition to Monthly Base Rent, Subtenant is responsible for the payment of the following: (i) the Parking Charges (as defined in Section 14, below), (ii) the actual expenses incurred by Sublandlord for any additional services requested by Subtenant that are to be provided by Master Landlord (i.e., if Subtenant requests the use of after-hours HVAC, such after-hours HVAC charges and assessments which are charged by Master Landlord to Sublandlord shall be payable to Sublandlord by Subtenant); (iii) any charges permitted by and pursuant to the Sublease or the Master Lease as a result of actions or omissions of the Subtenant; and (iv) any actual and direct expenses Sublandlord incurs by reason of Subtenant's non-performance of its obligations under this Sublease (collectively, "Additional Rent"). All such amounts shall be payable in full by Subtenant as directed by Sublandlord within ten (10) days after submission of a written invoice therefor by Sublandlord to Subtenant, and such obligations shall survive the expiration or earlier termination of this Sublease.

(c) Notwithstanding Subtenant's obligation to pay Additional Rent, Sublandlord and Subtenant hereby acknowledge and agree that Subtenant shall not be responsible for separate payment of Operating Expenses under the Master Lease.

(d) Monthly Base Rent, Additional Rent and all other costs and expenses payable hereunder by Subtenant shall be referred to collectively as "rent." All Monthly Base Rent payments shall be paid to Sublandlord on a monthly basis and are due and payable in advance on the first day of each month. All other rent (including Additional Rent) shall be paid to Sublandlord within ten (10) days after Sublandlord's written demand therefor. Sublandlord may impose a late charge of five percent (5%) of the amount due or $100, whichever is greater, for any rent payment not received on the date due. In addition, all amounts not paid by Subtenant when due shall bear interest at the rate of ten percent (10%) per annum until paid. As a cumulative and non-exclusive remedy, Sublandlord may also treat failure to pay on the first day of a month the Monthly Base Rent payment for such month as a Default by Subtenant, and shall be entitled to any and all remedies for such Default.

6. **First Month's Rent and Security Deposit.** Upon execution of this Sublease, Subtenant shall deliver to Sublandlord (a) one (1) full month of Monthly Base Rent for the first month of the term of this Sublease, and (b) a security deposit in the amount of One Hundred Thirty Thousand and No/100 Dollars ($130,000.00) (the "Security Deposit"). The Security Deposit shall be held by Sublandlord as security for the performance by the Subtenant of its obligations under this Sublease. The Security Deposit shall be retained by the Sublandlord for the entire Term of this Sublease. Upon any breach of Subtenant's obligations under this Sublease, Sublandlord may apply all or a portion of the Security Deposit as full or partial satisfaction of same. If any portion of the Security Deposit is so applied, Subtenant shall deposit with Sublandlord an amount sufficient to restore the Security Deposit to its original amount. So long as Subtenant has satisfied all of its obligations under this Sublease, the Security Deposit shall be returned to the Subtenant within thirty (30) days of the expiration of the Sublease, the return of all keys, fobs and parking transponders to Sublandlord, and the Subleased Premises is vacated in "broom clean" condition, with any such restoration of improvements made by Subtenant completed to the satisfaction of Master Landlord, if so required by Master Landlord in connection with the approval of such improvements to be made by Subtenant.

7. **Condition of the Subleased Premises.** On the Commencement Date, Sublandlord shall deliver the Subleased Premises in substantially the same condition the Subleased Premises are in on the date hereof. Subtenant represents and warrants that Subtenant has inspected the Subleased Premises, and has independently determined that the Subleased Premises are suitable for its intended uses. SUBTENANT ACCEPTS THE SUBLEASED PREMISES "AS IS, WHERE IS," WITHOUT REPRESENTATION OR WARRANTY BY SUBLANDLORD, EXPRESS OR IMPLIED. Sublandlord shall not be required to make any improvements or repairs to the Subleased Premises, or to provide any tenant improvement or other allowance to Subtenant. Subtenant shall have no obligation to make any capital repairs or replacements in the Subleased Premises except to the extent necessary to repair or replace any aspect of the Subleased Premises damaged beyond reasonable wear and tear as a result of any act or omission of Subtenant or its employees, agents, contractors, visitors, licensees or invitees.

8. **Use of the Subleased Premises; Signage.** Subtenant shall use the Subleased Premises only for general office purposes and in compliance with Section 5.1 of the Master Lease. Subject to approval of Master Landlord, which may or may not be provided pursuant to the Master Lease, and solely at the cost and expense of Subtenant, Subtenant shall have the right to (a) have the name of

Subtenant included in the electronic directory of the Building located in the lobby of the Building in place of Sublandlord's listing in such directory, and (b) affix Subtenant's name on the signage maintained adjacent to the entry door of the Premises and/or in the elevator bay on the floor of the Premises, in accordance with the Master Lease. In addition to the indemnities set forth in the Master Lease, Subtenant shall indemnify, defend and hold Sublandlord and Master Landlord harmless from and against any and all claims, losses, damages and expenses, including clean-up costs and reasonable attorneys' fees and expenses, incurred by or asserted against Sublandlord or Master Landlord and arising from or relating to (a) any breach or Default by Subtenant under this Sublease, (b) any act or omission of Subtenant or its employees, agents, contractors, visitors, licensees or invitees, or (c) the introduction or use by Subtenant of hazardous or toxic materials, as such materials may be identified in any federal, state or local law or regulation ("Hazardous Substances") on or about the Subleased Premises, except to the extent such claims, losses, damages and expenses arise from the negligence or willful misconduct of Sublandlord or Master Landlord, or their respective agents, servants or employees. Subtenant hereby assumes all risk of damage to the property of Subtenant in, upon or about the Subleased Premises arising from any cause, and Subtenant hereby waives all claims in respect thereof against Sublandlord and Master Landlord, except for any claims resulting from the negligence or willful misconduct of Sublandlord or Master Landlord, as the case may be. Notwithstanding the foregoing, in no event shall Sublandlord or Master Landlord be liable under any circumstance for a loss of, or injury to Subtenant's business, including, without limitation, lost profits. Subtenant shall not use any Hazardous Substances in, on or about the Subleased Premises in a manner that would constitute a breach or violation of any applicable laws or regulations, or the terms and provisions of the Master Lease. Subtenant shall obtain and maintain, at Subtenant's sole cost, all permits, licenses and approvals required under any applicable laws or regulations for the use, storage or disposal of any Hazardous Substances which are used on or about the Subleased Premises. Following Subtenant's vacation of the Subleased Premises, and prior to the expiration of the term of this Sublease, Subtenant and Sublandlord will conduct an inspection of the Subleased Premises. Subtenant acknowledges that Subtenant shall not have access to nor use of any portion of the roof of the Building.

9. **Alterations.** In addition to, and without limitation of the restrictions and limitations on alterations, additions or improvements as set forth in the Master Lease, Subtenant shall not make any improvements, alterations, additions, changes or modifications to the Subleased Premises (collectively, "Alterations") without the prior written consent of Sublandlord and Master Landlord; provided, however, subject to the terms and conditions of this Section 9, Sublandlord will not unreasonably withhold its consent if Master Landlord grants consent pursuant to the terms and conditions of the Master Lease. In the event Master Landlord approves any Alterations requested by Subtenant, but deems the same to be Alterations that will be Required Removables (as defined below), Sublandlord will not unreasonably withhold its consent to same so long as Subtenant delivers to Sublandlord a supplemental security deposit in an amount reasonably satisfactory to Sublandlord to cover the estimated cost for Subtenant to remove such Required Removables and restore the Subleased Premises to the condition required by Master Landlord upon the expiration of the Master Lease (the "Supplemental Security Deposit"), which Supplemental Security Deposit shall be returned to Subtenant upon Subtenant's removal of such Required Removables and restoration of the Subleased Premises to its previous condition on or prior to the Expiration Date to the satisfaction of Master Landlord. To the extent any such removal or restoration is not performed by Subtenant on or prior to the Expiration Date, Sublandlord shall have the right to perform such removal and restoration and apply all or a portion of the Supplemental Security Deposit to Sublandlord's actual cost and expense incurred in performing such removal and restoration on behalf of Subtenant, and Sublandlord shall return to Subtenant any unapplied portion of the

Supplemental Security Deposit within thirty (30) days after to the Expiration Date, subject to Subtenant also satisfying any hold over liability for failing to timely perform the restoration prior to the Expiration Date. Should Master Landlord consent to Subtenant performing any Alterations work that would necessitate any ancillary Building modification or other expenditure by Master Landlord, then Subtenant shall promptly fund the cost thereof to Master Landlord upon request by Master Landlord. Subtenant shall be responsible for obtaining all required permits for the Alterations and shall perform the work in compliance with all applicable laws, regulations and ordinances with contractors reasonably acceptable to Master Landlord and Sublandlord, and Master Landlord shall be entitled to any supervision fee provided for under the Master Lease. Any request for consent from Sublandlord and Master Landlord shall be made in writing and shall contain architectural plans describing the work in detail reasonably satisfactory to Sublandlord and Master Landlord. Sublandlord and/or Master Landlord may elect to cause their own architects to review Subtenant's architectural plans, and the reasonable cost of that review shall be reimbursed by Subtenant. Should the Alterations proposed by Subtenant and consented to by Sublandlord and Master Landlord change the floor plan of the Subleased Premises, then Subtenant shall, at its expense, furnish Sublandlord and Master Landlord with as-built drawings and CAD disks compatible with Master Landlord's systems. Alterations shall be constructed in a good and workmanlike manner using materials of a quality reasonably approved by Sublandlord and Master Landlord. Unless Sublandlord and Master Landlord otherwise agree in writing, all Alterations affixed to the Subleased Premises, but excluding moveable trade fixtures and furniture, shall become the property of Master Landlord and shall be surrendered with the Subleased Premises at the end of the Term, except that Master Landlord may require Subtenant to remove by the Expiration Date, or sooner termination date of this Sublease, all or any Alterations installed either by Subtenant or by Sublandlord or Master Landlord at Subtenant's request (collectively, the "Required Removables"), and to restore the Subleased Premises to the condition that existed as of the Commencement Date of this Sublease. At the time Subtenant requests approval for any proposed Alterations, Sublandlord shall submit such request to Master Landlord or reasonably cooperate with the submittal of such request by Subtenant directly to Master Landlord and shall advise Subtenant in writing as to which portions of the subject Alterations are Required Removables as required by Master Landlord. In connection with its removal of Required Removables, in addition to delivering the supplemental security to Sublandlord as contemplated above, Subtenant shall repair any damage to the Subleased Premises arising from that removal and shall restore the affected area to its pre-existing condition, reasonable wear and tear excepted.

10. **Maintenance.** Except for those obligations of Master Landlord under the Master Lease, Subtenant shall maintain the Subleased Premises and all property contained therein in good and clean order and condition and in every respect as required by the Master Lease. At the expiration or earlier termination of the term of this Sublease, Subtenant shall surrender the Subleased Premises to Sublandlord in good condition and repair, ordinary wear and tear excepted, and in the condition required for the surrender of same under the provisions of the Master Lease. In addition, and without limitation of the foregoing, Subtenant shall (a) if Master Landlord so requires, remove any Required Removables made by Subtenant to the Subleased Premises and repair any damage caused by such removal, and (b) if Sublandlord shall so request, leave any Alterations made by Subtenant to the Subleased Premises, except for any trade fixtures or personal property installed or placed by Subtenant in the Subleased Premises. Subtenant shall have no obligation to remove any improvements that are located in the Subleased Premises as of the date of this Sublease.

11. **Utilities; Other Costs.** Sublandlord and Subtenant acknowledge and agree that the Monthly Base Rent includes Subtenant's use or consumption of water, electricity, heat and air

conditioning and other utilities supplied to the Subleased Premises. Sublandlord shall have no liability or responsibility for, and there shall be no abatement of rent with respect to any interruption of any utility, telephone or other services to the Premises. Additionally, while Subtenant shall have no liability or responsibility for payment or reimbursement of Sublandlord's monthly share of Operating Expenses as Tenant under the Master Lease, Subtenant shall be responsible for payment of Additional Rent to Sublandlord to the extent Sublandlord incurs additional expense under the Master Lease pursuant to Subtenant's request for after-hour services and/or electric current in excess of that which is furnished to the Premises as part of Tenant's Share of Operating Expenses under the Master Lease. Sublandlord and Subtenant will each use commercially reasonable efforts to coordinate with Master Landlord for the delivery of utilities to be supplied to the Subleased Premises.

12. **Assignment/Subletting.**

(a) Subtenant shall not transfer, assign, encumber or sublet (collectively, "Transfer") all or any portion of the Subleased Premises or its interest under this Sublease, directly or indirectly, by operation of law or otherwise, or permit the Subleased Premises to be occupied by anyone other than Subtenant, without the prior written consent of both Sublandlord and Master Landlord, which consent may be given or withheld in their respective sole discretion.

(b) For purposes of this Sublease, the term "Transfer" shall also include any transfer of shares by sale, assignment, bequest, inheritance, operation of law or other disposition (including such a transfer to or by a receiver or trustee in federal or state bankruptcy, insolvency or other proceeding) resulting in a change in the control of Subtenant or any of its parent companies.

13. **Casualty or Taking.** In the event of any casualty or the exercise or threatened exercise of the power of eminent domain, any rights to damages or compensation relating to any improvements installed by Sublandlord, or which Sublandlord may require remain in the Subleased Premises on termination of this Sublease, shall belong to Sublandlord in all cases, and Subtenant may elect to terminate the Sublease. Any condemnation award for any improvements paid for by Subtenant, to the extent Subtenant has the right to remove same from the Subleased Premises on the termination of the term of this Sublease, may be claimed by Subtenant, subject to any rights of Master Landlord under the Master Lease. Subtenant shall have no obligation to restore any portion of the Premises in the event of any damage, destruction or eminent domain with respect to any portion of the Premises, except in the event any such damage or destruction is a result of any act or omission of Subtenant or its employees, agents, contractors, visitors, licensees or invitees.

14. **Parking.** On the terms and subject to the conditions set forth in the Master Lease, Subtenant may sublease from Sublandlord for the term of this Sublease, up to twenty-three (23) unreserved parking stalls (each, an "Unreserved Stall", and referred to in the Master Lease as a "Parking Pass"), and up to twenty-one (21) reserved parking stalls (each, a "Reserved Stall" and collectively with each Unreserved Stall referred to in this Sublease as a "Parking Stall"), at the rate of $75.00 per Parking Pass per month, and $140.00 per Reserved Stall per month, in addition to the Additional Transponder Costs (as defined below), if any. For the purpose of this Sublease, the "Additional Transponder Costs" shall mean the cost charged by Master Landlord to Sublandlord to issue to Sublandlord, for the use of Subtenant, any additional parking transponders, at the rate charged by Master Landlord for such parking transponders. Subtenant will only be obligated to pay the Additional Transponder Costs in the event Subtenant requests the use of more than thirty-seven (37) Parking Stalls, which amount corresponds to

the number of parking transponders currently in Sublandlord's possession. For clarity, a parking transponder is needed for each Parking Stall, and while Sublandlord has the right to twenty-three (23) Unreserved Stalls and twenty-one (21) Reserved Stalls, as of the date of this Sublease, Sublandlord is only in possession of thirty-seven (37) parking transponders, since Sublandlord is not currently utilizing all of the Parking Stalls allocated under the Master Lease. To Sublandlord's knowledge, Master Landlord currently charges $35.00 for each new parking transponder issued to a tenant in the Building, but the Additional Transponder Costs will be the amount then charged by Master Landlord at the time such transponders are requested by Subtenant. The location of the Parking Stalls is subject to Master Landlord and the terms of the Master Lease. On or before November 15, 2018, Subtenant shall notify Sublandlord in writing as to how many Parking Passes and Reserved Stalls desired by Subtenant for the month during which the Commencement Date occurs, up to the amounts listed above (such requested amount to be referred to collectively as the "Subleased Parking"). The aggregate monthly charges for the Subleased Parking is referred to herein as the "Parking Charges"; provided, however, the Additional Transponder Costs will be a one-time charge per transponder, not a recurring monthly cost. The monthly Parking Charges for the Subleased Parking shall be paid by Subtenant to Sublandlord on the first of the month, in addition to the Monthly Base Rent. To the extent the Commencement Date does not occur on the first of the month, the Parking Charges for the partial initial month of the Term shall be prorated for the number of days in such month, and such prorated Parking Charges shall be paid within five (5) days following the Commencement Date. The monthly Parking Charges are subject to increase in the event parking costs are increased under the Master Lease. To the extent Subtenant desires more parking than the Parking Stalls allocated to Sublandlord pursuant to the Sublease, Sublandlord and Subtenant will each use commercially reasonable efforts to coordinate with Master Landlord for the procurement of additional Parking Spaces for Subtenant's use, subject to availability and the current terms and conditions imposed by Master Landlord on such additional parking. To Sublandlord's knowledge, Master Landlord currently charges $95.00 for each Unreserved Stall.

15. **Use of FF&E.** Sublandlord hereby agrees to leave in the Subleased Premises, for the benefit and use by Subtenant during the Term at no additional cost to Subtenant, those certain items of furniture, fixtures and equipment expressly listed on Exhibit A attached hereto and incorporated herein ("FF&E"). Subtenant hereby agrees to maintain such FF&E in good condition and repair, and not remove such FF&E from the Subleased Premises. Notwithstanding the foregoing, so long as Subtenant is not in default under this Sublease upon the Expiration Date, Subtenant agrees to purchase the FF&E from Sublandlord for One and No/100 Dollar ($1.00) and remove the same from the Subleased Premises on or prior to the Expiration Date.

16. **Default.** Article 14 of the Master Lease is incorporated herein, except that, for the purpose of such incorporation, the term "Lease" shall be deemed to refer to this Sublease, the term "Landlord" shall refer to Sublandlord, and the term "Tenant" shall refer to Subtenant.

17. **Compliance with Terms of Master Lease.** This Sublease is subject to the terms and conditions of the Master Lease and the matters to which the Master Lease are subject and subordinate pursuant to the terms thereof. Except as provided in this Sublease or with respect to provisions of this Sublease which are expressly inconsistent with or which modify the Master Lease, Subtenant and Sublandlord shall comply with and perform all terms, covenants and conditions of the Master Lease as if Subtenant were the "Tenant" thereunder, and as if Sublandlord were the "Landlord" thereunder, including, but not limited to, all indemnity obligations, waivers, covenants and agreements in favor of the Master Landlord contained in the Master Lease, as same may be accruing from and after the

Commencement Date, but Subtenant shall be required to perform such terms, covenants and conditions only to the extent such terms, covenants and conditions relate to the Subleased Premises and to the Sublease Term and to the extent not inconsistent with the terms of this Sublease, and the same shall be incorporated in, and applicable to this Sublease by this reference, and shall inure to the benefit of the Master Landlord as if Sublandlord were "Landlord" under the Master Lease. Sublandlord shall not be required to perform the obligations of the Master Landlord under the Master Lease, and shall have no liability to Subtenant arising from or related to Master Landlord's failure to perform any of their respective obligations under the Master Lease. Notwithstanding anything in this Section 17 to the contrary, Sublandlord shall not be deemed or construed to have undertaken any obligation or liability of the "Landlord" under the Master Lease. Neither Subtenant nor Sublandlord shall take any action, nor consent to or permit any action to be taken by any of such party's employees, agents, contractors, licensees or invitees, that would cause a Default under any provision of the Master Lease. In the event of any conflict between this Sublease and the Master Lease, as between Sublandlord and Subtenant, the terms of this Sublease shall control.

18. **Time of Essence.** Time is of the essence of this Sublease and each of its provisions.

19. **Partial Invalidity.** If any term, provision or condition contained in this Sublease shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such term, provision or condition to persons or circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and each and every other term, provision and condition of this Sublease shall be valid and enforceable to the fullest extent possible permitted by law.

20. **Governing Law.** This Sublease shall be construed and enforced in accordance with the laws of the State of California.

21. **Brokers.** Both parties warrant and represent to each other that no broker has acted as a broker in this transaction except for Allison Schneider Kelly of CBRE as Sublandlord's broker, and Michael Lewis of Hughes Marino as Subtenant's broker, each of which shall be compensated pursuant to a separate agreement. Accordingly, both parties further warrant and represent to each other, except for the brokers identified in the preceding sentence, no brokers are entitled to any commission, finder's fee, compensation, or remuneration of any type, kind, or nature. Each party agrees to indemnify and hold harmless the other party from any and all liability, responsibility, claims, damages, costs, and attorney's fees of any kind or nature incurred or sustained by the indemnified party as the result of the claim by any broker, or any other party or entity for a commission or finder's fee resulting from the activities or actions of the indemnifying party.

22. **Attorneys' Fees.** Should either Sublandlord or Subtenant bring any action in connection with this Sublease, the prevailing party shall be entitled to recover from the other party such costs and reasonable attorneys' fees as may have been incurred, including any and all costs incurred in enforcing, perfecting and executing any judgment. Sublandlord or Subtenant shall each bear their own attorneys' fees and costs with regard to the negotiation and finalization of this Sublease.

23. **Notices.** Any notice required or given under this Sublease shall be in writing to each party at the address as set forth below, by hand delivery, electronic mail, overnight courier, or by certified mail, postage prepaid, return receipt requested, effective upon delivery to the address specified below. The addresses of each party shall be changed by notice given the other party in accordance with the provisions of this Section 23.

To Sublandlord: Prior to Commencement Date:

Acacia Research Corporation
520 Newport Center Drive, Suite 1200
Newport Beach, CA 92660
Attn: Darren Miller
Telephone: (949) 480-8347
E-mail: dmiller@acaciares.com

After to Commencement Date:

Acacia Research Corporation
_____
_____
Attn: Darren Miller
Telephone: (949) 480-8347
E-mail: dmiller@acaciares.com

With a copy at all times to:

Stuart Kane LLP
620 Newport Center, Suite 200
Newport Beach, California 92660
Attn: Josh C. Grushkin
Telephone: 949-791-5151
E-mail: jgrushkin@stuartkane.com

To Subtenant: Prior to Commencement Date:

Evolus, Inc.
17901 Von Karman Ave., Suite 1500
Irvine, California 92614
Attn: Legal
Telephone: _____
E-mail: _____

After Commencement Date:

520 Newport Center Drive, Suite 1200
Newport Beach, CA 92660
Attn: _____
Telephone: _____
E-mail: _____

With a copy at all times to:

_____
_____
_____
Attn: _____
Telephone: _____
E-mail: _____

24. **No Agency**. Neither party shall hold itself out as an agent or affiliate of the other Party and neither Party shall purport to bind the other to any contract or commitment.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first set forth above.

SUBLANDLORD:

ACACIA RESEARCH CORPORATION,
a Delaware corporation

By: /s/ Marc W. Booth
Name: Marc W. Booth
Title: Chief IP Officer

SUBTENANT:

EVOLUS, INC.,
a Delaware corporation

By: /s/ David Moatazedi
Name: David Moatazedi
Title: President & CEO

**EXHIBIT A**

**FF&E to Remain in the Subleased Premises**

[Attached]

**Exhibit 23.1**

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Forms S-8 No. 333-223068 and 333-229184), pertaining to the 2017 Omnibus Incentive Plan of Evolus, Inc. of our report dated March 20, 2019, with respect to the financial statements of Evolus, Inc. included in this Annual Report (Form 10-K) for the year ended December 31, 2018.

/s/ Ernst & Young LLP

Irvine, California
March 20, 2019

**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 Annual Report on Form 10-K of Evolus, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 20, 2019

/s/ David Moatazedi

David Moatazedi

President, Chief Executive Officer and Director

*(Principal Executive Officer)*

**Exhibit 31.2**

**CERTIFICATION PURSUANT TO**
**RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,**
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Lauren Silvernail, certify that:

1. I have reviewed this Annual Report on Form 10-K of Evolus, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) [Omitted pursuant to Exchange Act Rules 13a-14(a) and 15d-15(a)];

   (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 20, 2019

/s/ Lauren Silvernail

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

**Exhibit 32.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER AND CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

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 the Annual Report on Form 10-K of Evolus, Inc. for the fiscal year ended December 31, 2018 fully complies with the requirements of Section 13(a) or Section 15(d) of the Securities Exchange Act of 1934 and that the information contained in such report fairly presents, in all material respects, the financial condition and results of operations of Evolus, Inc.

Date: March 20, 2019

By: /s/ David Moatazedi

David Moatazedi

President and Chief Executive Officer

*(Principal Executive Officer)*

Date: March 20, 2019

By: /s/ Lauren Silvernail

Lauren Silvernail

Chief Financial Officer and Executive Vice President, Corporate Development

*(Principal Financial Officer)*