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

---

# FORM 10-Q

---

**(Mark One)**

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

**For the quarterly period ended June 30, 2018**

**OR**

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

**For the transition period from to**

**Commission File Number: 001-36754**

---

# EVOFEM BIOSCIENCES, INC.

**(Exact name of registrant as specified in its charter)**

---

| **Delaware** | **20-8527075** |
|---|---|
| **(State or other jurisdiction of incorporation)** | **(IRS Employer Identification No.)** |
| **12400 High Bluff Drive, Suite 600 San Diego, CA 92130 (Address of Principal Executive Offices)** | **92130 (Zip Code)** |

**Registrant's telephone number, including area code: (858) 550-1900**

**Not applicable.**

**(Former name or former address, if changed since last report.)**

---

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

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

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

| | |
|---|---|
| Large accelerated filer ☐ | Accelerated filer ☐ |
| Non-accelerated filer ☐ (Do not check if a smaller reporting company) | Smaller reporting company ☒ |
| | Emerging growth company ☒ |

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

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

The number of shares of the registrant's common stock, $0.0001 par value, outstanding as of July 30, 2018 was 25,804,625.

Table of Contents

## Table of Contents

## FORWARD-LOOKING STATEMENTS

This quarterly report on Form 10-Q (Quarterly Report) contains forward-looking statements that involve substantial risks and uncertainties. All statements, other than statements of historical facts, contained in this Quarterly Report, including statements regarding our strategy, future operations, future financial position, projected costs, prospects, plans and objectives of management, are forward-looking statements. Words such as, but not limited to, "anticipate," "aim," "believe," "contemplate," "continue," "could," "design," "estimate," "expect," "intend," "may," "might," "plan," "predict," "poise," "project," "potential," "suggest," "should," "strategy," "target," "will," "would," and similar expressions or phrases, or the negative of those expressions or phrases, are intended to identify forward-looking statements, although not all forward-looking statements contain these identifying words. Although we believe we have a reasonable basis for each forward-looking statement contained in this Quarterly Report, we caution you that these statements are based on our projections of the future that are subject to known and unknown risks and uncertainties and other factors that may cause our actual results, level of activity, performance or achievements expressed or implied by these forward-looking statements, to differ. These forward-looking statements include, among other things, statements about:

- our projected financial position and estimated cash burn rate;
- our estimates regarding expenses, future revenues and capital requirements;
- our ability to continue as a going concern;
- our need to raise substantial additional capital to fund our operations;
- our ability to develop our lead product candidate, Amphora (L-lactic acid, citric acid, and potassium bitartrate), as a contraceptive;
- the success, cost and timing of our clinical trials;
- our dependence on third parties in the conduct of our clinical trials;
- our ability to obtain the necessary regulatory approvals to market and commercialize Amphora, our bacterial vaginosis (BV) product candidate and any other product candidate we may seek to develop;
- the potential for changes to current regulatory mandates requiring health insurance plans to cover the United States Food and Drug Administration (the FDA)-cleared or approved contraceptive products without cost sharing, our ability to obtain third-party payer coverage and adequate reimbursement, and our reliance on the willingness of patients to pay out-of-pocket absent full or partial third-party payer reimbursement; and
- our ability to expand our organization to accommodate potential growth and our ability to retain and attract key personnel.

Our current product candidates are undergoing clinical development and have not been approved by the FDA or the European Commission. These product candidates have not been, nor may they ever be, approved by any regulatory agency or competent authority nor marketed anywhere in the world.

We may not actually achieve the plans, intentions or expectations disclosed in our forward-looking statements, and you should not place undue reliance on our forward-looking statements. All forward-looking statements are qualified in their entirety by this cautionary statement. You should read this Quarterly Report and the documents that we have filed as exhibits to this Quarterly Report and incorporated by reference herein completely and with the understanding that our actual future results may be materially different from the plans, intentions and expectations disclosed in the forward-looking statements we make. You should also carefully read the risk factors described under Item 1A of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 as filed with the SEC on May 14, 2018 and are advised to consult any further disclosures we make on related subjects in our subsequent Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, press releases and our website. Moreover, we operate in a very competitive and rapidly changing environment. New risks emerge from time to time. It is not possible for our management to predict all risks, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements we may make. The forward-looking statements contained in this Quarterly Report are made as of the date of this Quarterly Report, and we do not assume any obligation to update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by applicable law.

**PART I. FINANCIAL INFORMATION**
**ITEM 1. Financial Statements**

**EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED BALANCE SHEETS**

(Unaudited)
(In thousands, except par value and share data)

| | June 30, 2018 | December 31, 2017 |
|---|---|---|
| **Assets** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 22,788 | $ 1,211 |
| Restricted cash | 554 | 490 |
| Prepaid and other current assets | 1,133 | 653 |
| Total current assets | 24,475 | 2,354 |
| Property and equipment, net | 717 | 848 |
| Other noncurrent assets | 977 | 750 |
| Total assets | $ 26,169 | $ 3,952 |
| **Liabilities, convertible preferred stock and stockholders' equity (deficit)** | | |
| Current liabilities: | | |
| Accounts payable | $ 7,998 | $ 8,999 |
| Accrued expenses | 11,104 | 12,086 |
| Accrued compensation | 1,738 | 2,392 |
| Series D 2X liquidation preference | — | 79,870 |
| Total current liabilities | 20,840 | 103,347 |
| Deferred rent | 71 | 114 |
| Other noncurrent liabilities | — | 166 |
| Total liabilities | 20,911 | 103,627 |
| Commitments and contingencies (Note 6) | | |
| Preferred stock, $0.0001 par value; 5,000,000 and 57,501,624 shares authorized at June 30, 2018 and December 31, 2017, respectively: | | |
| Series A convertible preferred stock, no shares issued and outstanding at June 30, 2018, and 12,618,279 shares issued and outstanding at December 31, 2017 | — | 23,848 |
| Series B convertible preferred stock, no shares issued and outstanding at June 30, 2018, and 13,801,318 shares issued and outstanding at December 31, 2017 | — | 43,616 |
| Series C-1 convertible preferred stock, no shares issued and outstanding at June 30, 2018, and 8,558,686 shares issued and outstanding at December 31, 2017 | — | 34,382 |
| Series C convertible preferred stock, no shares issued and outstanding at June 30, 2018, and 5,037,784 shares issued and outstanding at December 31, 2017 | — | 19,469 |
| Series D redeemable convertible preferred stock, no shares issued and outstanding at June 30, 2018, and 80 shares issued and outstanding at December 31, 2017 | — | 68,556 |
| Stockholders' equity (deficit): | | |
| Common stock, $0.0001 par value; 300,000,000 and 4,051,137 shares authorized at June 30, 2018 and December 31, 2017, respectively; 25,199,511 and 2,082,053 shares issued and outstanding at June 30, 2018 and December 31, 2017, respectively | 3 | 81 |
| Additional paid-in capital | 404,989 | 17,650 |
| Accumulated deficit | (399,734) | (307,277) |
| Total stockholders' equity (deficit) | 5,258 | (289,546) |
| Total liabilities, convertible preferred stock and stockholders' equity (deficit) | $ 26,169 | $ 3,952 |

See accompanying notes to the condensed consolidated financial statements (unaudited).

**EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS**

(Unaudited)
(In thousands, except share and per share data)

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | **2018** | **2017** | **2018** | **2017** |
| **Operating expenses:** | | | | |
| Research and development | $ 11,833 | $ 4,078 | $ 23,792 | $ 6,060 |
| General and administrative | 11,409 | 2,280 | 20,436 | 5,211 |
| Total operating expenses | 23,242 | 6,358 | 44,228 | 11,271 |
| Loss from operations | (23,242) | (6,358) | (44,228) | (11,271) |
| Other income (expense): | | | | |
| Interest income | 32 | 32 | 62 | 63 |
| Other (expense) income, net | (32) | 64 | (82) | 30 |
| Loss on issuance of warrants | — | — | (47,920) | — |
| Change in fair value of Series D 2X liquidation preference | — | (250) | (130) | (600) |
| Total other expense, net | — | (154) | (48,070) | (507) |
| Loss before income tax | (23,242) | (6,512) | (92,298) | (11,778) |
| Income tax expense | (2) | — | (2) | (3) |
| Net loss | (23,244) | (6,512) | (92,300) | (11,781) |
| Accretion of Series D redeemable convertible preferred stock dividends | — | (897) | (66) | (1,785) |
| Net loss attributable to common stockholders | $ (23,244) | $ (7,409) | $ (92,366) | $ (13,566) |
| Net loss per share attributable to common stockholders, basic and diluted | $ (1.11) | $ (3.78) | $ (5.15) | $ (6.92) |
| Weighted-average shares used to compute net loss attributable to common stockholders, basic and diluted | 20,868,554 | 1,959,904 | 17,937,788 | 1,959,904 |

See accompanying notes to condensed consolidated financial statements (unaudited).

Table of Contents

**EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED STOCK AND STOCKHOLDERS' EQUITY (DEFICIT)**

(Unaudited)
(In thousands, except share data)

| | Series A Convertible Preferred Stock | | Series B Convertible Preferred Stock | | Series C-1 Convertible Preferred Stock | | Series C Convertible Preferred Stock | | Series D Redeemable Convertible Preferred Stock | | Common Stock | | Additional Paid-in Capital | Accumulated Deficit | Total Stockholders' Equity (Deficit) |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | Shares | Amount | | | |
| Balance at December 31, 2017 | 12,618,279 | $23,848 | 13,801,318 | $43,616 | 8,558,686 | $34,382 | 5,037,784 | $19,469 | 80 | $68,556 | 81,119,014 | $ 81 | $ 17,650 | $ (307,277) | $ (289,546) |
| Conversion of convertible preferred stock into Private Evofem common stock (par value $0.001), excluding Series D (see Note 8) | (12,618,279) | (23,848) | (13,801,318) | (43,616) | (8,558,686) | (34,382) | (5,037,784) | (19,469) | — | — | 40,016,067 | 40 | 121,275 | — | 121,315 |
| Cancellation of restricted stock awards (see Note 11) | — | — | — | — | — | — | — | — | — | — | (4,759,091) | (5) | 5 | — | — |
| Issuance of Private Evofem common stock (par value $0.001) upon cashless exercise of Invesco Warrants (see Note 10) | — | — | — | — | — | — | — | — | — | — | 154,593,455 | 155 | 47,765 | — | 47,920 |
| Exchange of 270,969,445 Private Evofem common stock (par value $0.001) for 6,955,456 shares of Neothetics' common stock (par value $0.0001) (see Note 3) | — | — | — | — | — | — | — | — | — | — | (264,013,989) | (270) | 270 | — | — |
| Accretion and payment of Series D dividends (see Note 8) | — | — | — | — | — | — | — | — | — | 66 | — | — | (66) | (157) | (223) |
| Conversion of Series D dividends and Series D (see Note 8) | — | — | — | — | — | — | — | — | (80) | (5,226) | 6,878,989 | 1 | 5,225 | — | 5,226 |
| Redemption of Series D 2X liquidation preference upon conversion of Series D (see Note 8) | — | — | — | — | — | — | — | — | — | — | — | — | 80,000 | — | 80,000 |
| Deemed contribution upon conversion of Series D (see Note 8) | — | — | — | — | — | — | — | — | — | (49,334) | — | — | 49,334 | — | 49,334 |
| Issuance of common stock and WIM Warrants (see Note 8) | — | — | — | — | — | — | — | — | — | (14,062) | 3 | — | 14,062 | — | 14,062 |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Private placement of common stock (see Note 3) | — | — | — | — | — | — | — | — | — | — | 1,614,289 | — | 20,000 | — | 20,000 |
| Record pre-merger Neothetics' stockholders' equity and elimination of Neothetics' historical accumulated deficit (see Note 3) | — | — | — | — | — | — | — | — | — | — | 2,308,430 | — | 1,946 | — | 1,946 |
| Issuance of common stock, pre-funded warrants and common warrants in connection with the Offering, net of underwriting discounts, commissions and offering costs (see Note 9) | — | — | — | — | — | — | — | — | — | — | 7,436,171 | 1 | 36,130 | — | 36,131 |
| Issuance of common stock - exercise of stock options | — | — | — | — | — | — | — | — | — | — | 6,173 | — | 42 | — | 42 |
| Stock-based compensation | — | — | — | — | — | — | — | — | — | — | — | — | 11,351 | — | 11,351 |
| Net loss | — | — | — | — | — | — | — | — | — | — | — | — | — | (92,300) | (92,300) |
| **Balance at June 30, 2018** | **—** | **$ —** | **—** | **$ —** | **—** | **$ —** | **—** | **$ —** | **—** | **$ —** | **25,199,511** | **$ 3** | **$ 404,989** | **$ (399,734)** | **$ 5,258** |

See accompanying notes to condensed consolidated financial statements (unaudited).

**EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES**

**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Unaudited)
(In thousands)

| | Six Months Ended June 30, | |
|---|---|---|
| | **2018** | **2017** |
| **Cash flows from operating activities:** | | |
| Net loss | $ (92,300) | $ (11,781) |
| Adjustments to reconcile net loss to net cash, cash equivalents and restricted cash used in operating activities: | | |
| Loss on issuance of warrants | 47,920 | — |
| Change in fair value of Series D 2X liquidation preference | 130 | 600 |
| Stock-based compensation | 11,351 | 431 |
| Depreciation and amortization | 131 | 113 |
| Changes in operating assets and liabilities: | | |
| Prepaid and other assets | (465) | 55 |
| Accounts payable | (1,757) | 958 |
| Accrued expenses and other liabilities | (1,249) | 151 |
| Accrued compensation | (879) | (58) |
| Deferred rent, net of current portion | (207) | (11) |
| Net cash, cash equivalents and restricted cash used in operating activities | (37,325) | (9,542) |
| **Cash flows from investing activities:** | | |
| Proceeds from sale of Softcup line of business | 250 | 250 |
| Cash acquired in connection with the Merger | 1,900 | — |
| Net cash, cash equivalents and restricted cash provided by investing activities | 2,150 | 250 |
| **Cash flows from financing activities:** | | |
| Proceeds from issuance of common stock - private placement | 20,000 | — |
| Proceeds from issuance of common stock, pre-funded warrants and common warrants in connection with the Offering, net of underwriting discounts and commissions | 37,542 | — |
| Proceeds from issuance of common stock - exercise of stock options | 42 | — |
| Payment of cash dividends for Series D redeemable convertible preferred stock | (157) | — |
| Cash paid for offering costs | (611) | (648) |
| Net cash, cash equivalents and restricted cash provided by (used in) financing activities | 56,816 | (648) |
| **Net change in cash, cash equivalents and restricted cash** | 21,641 | (9,940) |
| **Cash, cash equivalents and restricted cash, beginning of period** | 1,701 | 11,487 |
| **Cash, cash equivalents and restricted cash, end of period** | $ 23,342 | $ 1,547 |
| **Supplemental disclosure of noncash investing and financing activities:** | | |
| Net assets acquired in connection with the Merger | $ 46 | $ — |
| Public offering costs included in accounts payable and accrued expenses | $ 800 | $ 26 |
| Conversion of convertible preferred stock into common stock (excluding Series D) | $ 121,315 | $ — |
| Conversion of Series D redeemable convertible preferred stock into common stock | $ 68,622 | $ — |
| Redemption of Series D 2X liquidation preference upon conversion of Series D redeemable convertible preferred stock into common stock | $ 80,000 | $ — |

See accompanying notes to condensed consolidated financial statements (unaudited).

**EVOFEM BIOSCIENCES, INC. AND SUBSIDIARIES**

**NOTES TO UNAUDITED CONDENSED CONSOLIDATED FINANCIAL STATEMENTS**

## 1. Description of Business and Basis of Presentation

***Merger***

On January 17, 2018, Neothetics, Inc., a Delaware corporation, now known as Evofem Biosciences, Inc. (the Company), completed its merger with privately-held Evofem Biosciences Operations, Inc. (Private Evofem), or the Merger; in accordance with the terms of the Agreement and Plan of Merger and Reorganization, dated October 17, 2017 (the Merger Agreement), whereby Nobelli Merger Sub, Inc., a Delaware corporation and wholly-owned subsidiary of Neothetics, merged with and into Private Evofem, with Private Evofem surviving as Neothetics' wholly-owned subsidiary.

In connection with the Merger, Neothetics filed a certificate of amendment to the amended and restated certificate of incorporation to, among other things, affect a 6:1 reverse stock split of its common stock (the Reverse Stock Split) and change its name from "Neothetics, Inc." to "Evofem Biosciences, Inc." Both the name change and the Reverse Stock Split were effective on January 17, 2018 (the Closing Date). Shares of the Company's common stock commenced trading on The Nasdaq Capital Market under the ticker symbol "EVFM" as of January 18, 2018. See discussions of the transactions in connection with the Merger at Note 3- Merger Transactions.

Evofem Biosciences, Inc.'s operations include those of its wholly-owned subsidiaries, Evofem Inc. (Evofem Inc.), a Delaware corporation, Evofem North America, Inc., a Delaware corporation (ENA), Evofem Limited, LLC, a Delaware limited liability company and Evofem Ltd., a limited company registered in England and Wales and those of its partially owned subsidiary, Evolution Pharma, a Dutch limited partnership (EP) with 99% of the outstanding partnership interests held by Evofem Inc. and 1% of the outstanding partnership interests held by Evofem Limited, LLC. Evofem Limited, LLC and Evofem Ltd. are currently inactive.

Unless otherwise noted, (i) references in this report to "Evofem" and the "Company" refer to Evofem Biosciences, Inc. and its subsidiaries following the closing of the Merger on the Closing Date, (ii) references to "Private Evofem" refer to Evofem Biosciences Operations, Inc. and its subsidiaries prior to the closing the Merger on the Closing Date, (iii) references to "Neothetics" refer to Neothetics, Inc. and its subsidiaries prior to the closing of the Merger on the Closing Date, and (iv) references to share amounts, figures (other than exchange ratios) and other information have been adjusted to reflect the Reverse Stock Split.

***Description of Business***

Evofem is a San Diego-based clinical-stage biopharmaceutical company committed to developing and commercializing innovative products to address unmet needs in women's sexual and reproductive health. Evofem leverages its proprietary Multi-purpose Prevention Technology (MPT) vaginal gel to develop product candidates for multiple indications, including contraception, sexually transmitted infections (STIs), and recurrent bacterial vaginosis (BV).

Evofem's MPT vaginal gel technology is an acid-buffering vaginal gel with bioadhesive properties, designed to maintain an optimal vaginal pH of 3.5 to 4.5. This vaginal pH range is inhospitable to spermatozoa, as well as certain viral and bacterial pathogens associated with STIs, and it is integral to the survival of healthy bacteria in the vagina.

Evofem's lead product candidate, Amphora® (L-lactic Acid, citric acid, and potassium bitartrate) is a hormone-free, on demand, woman-controlled vaginal gel currently in a Phase 3 clinical trial as a contraceptive and in a Phase 2b trial for the prevention of urogenital chlamydia and gonorrhea in women. Evofem's pipeline also includes an MPT vaginal gel product candidate for the reduction of recurrent BV. The Company is planning a Phase 2b clinical trial in this indication, building on favorable results of a recently-completed a Phase 1 trial.

***Basis of Presentation and Principles and Consolidation***

Since Private Evofem was determined to be the accounting acquirer in connection with the Merger, it recorded Neothetics' assets and liabilities at fair value as of the Closing Date. Therefore, for periods prior to the Merger, the condensed consolidated financial statements were prepared on a stand-alone basis for Private Evofem and did not include the combined entities' financial position. Subsequent to the Merger, the condensed consolidated financial statements as of and for the six months ended June 30, 2018 included Neothetics' assets and liabilities.

The Company prepared the unaudited interim condensed consolidated financial statements included in this Quarterly Report in accordance with accounting principles generally accepted in the U.S. (GAAP) for interim financial information and the rules and regulations of the Securities and Exchange Commission (SEC) related to quarterly reports on Form 10-Q.

The Company's financial statements are presented on a consolidated basis, which include the accounts of the Company and its wholly-owned subsidiaries. Intercompany accounts and transactions have been eliminated in consolidation. The unaudited interim condensed consolidated financial statements do not include all information and disclosures required by GAAP for annual audited financial statements and should be read in conjunction with the Private Evofem's consolidated financial statements and notes thereto for the year ended December 31, 2017 included in its Current Report on Form 8-K/A as filed with the SEC on April 6, 2018 (the 2017 Audited Financial Statements).

The unaudited interim condensed consolidated financial statements included in this report have been prepared on the same basis as the Company's audited consolidated financial statements and include all adjustments (consisting only of normal recurring adjustments) necessary for a fair statement of the financial position, results of operations, cash flows, and statement of convertible preferred stock and stockholders' equity (deficit) for the periods presented. The results for the three and six months ended June 30, 2018 are not necessarily indicative of the results expected for the full year. The condensed consolidated balance sheet as of December 31, 2017 was derived from the 2017 Audited Financial Statements.

***Risks, Uncertainties and Going Concern***

The Company's principal operations have been related to research and development, including development of the Company's lead product candidate, Amphora, as well as raising capital, recruiting personnel and establishing a corporate infrastructure. The Company has incurred operating losses and negative cash flows from operating activities since inception. As described in Note 9- Public Offering, the Company received net proceeds of approximately $37.5 million, net of the underwriting discounts and commissions, but before deducting the estimated offering costs, from a public offering which closed on May 24, 2018. As of June 30, 2018, the Company had cash and cash equivalents of $22.8 million, working capital of $3.6 million and an accumulated deficit of $399.7 million. The Company anticipates it will continue to incur net losses into the foreseeable future.

The Company is subject to risks common to other life science companies in the development stage including, but not limited to, uncertainty of product development and commercialization, lack of marketing and sales history, development by its competitors of new technological innovations, dependence on key personnel, market acceptance of products, product liability, protection of proprietary technology, ability to raise additional financing, and compliance with U.S. Food and Drug Administration (FDA) and other government regulations. If the Company does not successfully commercialize any product candidates, it will be unable to generate recurring product revenue or achieve profitability. Management's plans to meet its short- and long-term operating cash flow requirements include obtaining additional funding.

The Company anticipates it will continue to incur net losses for the foreseeable future and incur additional costs associated with being a public company. Research and development expenses are expected to increase for the foreseeable future due to the Company's ongoing confirmatory Phase 3 clinical trial for Amphora for the prevention of pregnancy, the ongoing Phase 2b clinical trial for prevention of chlamydia and gonorrhea, and planned clinical trials for the BV product candidate. According to management estimates, liquidity resources as of June 30, 2018 are not sufficient to maintain its planned level of operations for the next 12 months.

In addition, the uncertainties associated with the Company's ability to (i) obtain additional equity financing on terms that are favorable to Evofem, (ii) enter into collaborative agreements with strategic partners and (iii) succeed in the future operations, raise substantial doubt about the Company's ability to continue as a going concern. The financial statements have been prepared on a going concern basis, which contemplates the realization of assets and settlement of liabilities, in the normal course of business, and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets or amounts and classification of liabilities that may result from the outcome of this uncertainty.

If the Company is not able to obtain the required funding in the near term, through equity financings or other means, or is unable to obtain funding on terms favorable to the Company, this will have a material adverse effect on its operations and strategic development plan for future growth. If the Company cannot successfully raise additional funding and implement its strategic development plan, the Company may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these could materially and adversely affect its liquidity, financial condition and business prospects and the Company would not be able to continue as a going concern. If the Company is unable to continue as a going concern, it may have to liquidate its assets and may receive less than the value at which those assets are carried on the financial statements. The Company may obtain additional financing in the future through the issuance of its common stock from other equity or debt financings or through collaborations or partnerships with other companies.

**2. Summary of Significant Accounting Policies**

*Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and the notes thereto.

On an ongoing basis, Management evaluates its estimates related to, but not limited to, the useful lives of property and equipment, the recoverability of long-lived assets, preclinical and clinical trial accruals, the measurement of the Series D 2X liquidation preference, assumptions used in estimating the fair value of warrants issued in connection with the Merger and common warrants in connection with a public offering closed on May 24, 2018 as more described in Note 9- Public Offering, assumptions used in estimating the fair value of stock-based compensation expense and other contingencies. The Company's assumptions regarding the measurement of the Series D 2X liquidation preference and stock-based compensation are more fully described in Note 5 — Fair Value of Financial Instruments and Note 11 — Stock-based Compensation, respectively. The Company bases its estimates on historical experience and other market-specific or other relevant assumptions that it believes to be reasonable under the circumstances and adjusts when facts and circumstances dictate. The estimates are the basis for making judgments about the carrying values of assets and liabilities and recorded expenses that are not readily apparent from other sources. As future events and their effects cannot be determined with precision, actual results may materially differ from those estimates or assumptions.

*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 views its operations and manages its business in one operating segment.

*Concentrations of Credit Risk*

Financial instruments that potentially subject the Company to significant concentrations of credit risk consist primarily of cash, cash equivalents and restricted cash. Deposits in the Company's checking and time deposit accounts are maintained in federally insured financial institutions in excess of federally insured limits. The Company invests in funds through a major U.S. bank and is exposed to credit risk in the event of default to the extent of amounts recorded on the consolidated balance sheets.

The Company has not experienced any losses in such accounts and believes it is not exposed to significant concentrations of credit risk on its cash, cash equivalents and restricted cash balances due to the financial position of the depository institutions in which these deposits are held.

*Significant Accounting Policies*

The Company's significant accounting policies are more fully described in Note 2 to the 2017 Audited Financial Statements. There have been no changes to the significant accounting policies during the first six months of fiscal year 2018.

*Cash, Cash Equivalents and Restricted Cash*

Cash and cash equivalents consists of readily available cash in checking and money market accounts. Restricted cash consists of cash held in monthly time deposit accounts, which are collateral for the Company's credit cards and facility leases.

The following table provides a reconciliation of cash, cash equivalents and restricted cash, reported within the condensed consolidated statements of cash flows (in thousands):

| | Six Months Ended June 30, | |
|---|---|---|
| | **2018** | **2017** |
| Cash and cash equivalents | $ 22,788 | $ 1,027 |
| Restricted cash | 554 | 520 |
| Total cash, cash equivalents and restricted cash presented in the condensed consolidated statements of cash flows | $ 23,342 | $ 1,547 |

*Net Loss Per Share*

Basic net loss per common share is calculated by dividing the net loss attributable to common stockholders by the weighted-average number of common shares outstanding during the period, without consideration for potentially dilutive

securities. Diluted net loss per share is computed by dividing the net loss attributable to common stockholders by the weighted-average number of common shares and potentially dilutive securities outstanding for the period determined using the treasury-stock and if-converted methods. For purposes of the diluted net loss per share calculation, potentially dilutive securities are excluded from the calculation of diluted net loss per share because their effect would be anti-dilutive and therefore, basic and diluted net loss per share were the same for all periods presented. Potentially dilutive securities excluded from the calculation of diluted net loss per share are summarized in the table below. For the three and six months ended June 30, 2017, the shares in the table have been adjusted to reflect the conversion of Series A, B, C-1, and C convertible preferred stock and Series D redeemable convertible preferred stock (Series D) into common stock as fully described in Note 8- Convertible Preferred Stock, and the Reverse Stock Split.

| | Three and Six Months Ended June 30, | |
|---|---|---|
| | 2018 | 2017 |
| Convertible preferred stock | — | 1,027,079 |
| Series D redeemable convertible preferred stock | — | 5,159,240 |
| Unvested restricted common stock subject to repurchase | — | 122,149 |
| Unvested restricted stock units | — | 2,566 |
| Options to purchase common stock | 3,573,640 | 160,363 |
| Warrants to purchase common stock | 4,775,886 | — |
| Total | 8,349,526 | 6,471,397 |

*Recently Adopted Accounting Pronouncements*

The Company qualifies as an "emerging growth company" (EGC) pursuant to the provisions of the Jumpstart Our Business Startups (JOBS) Act. Section 7(a)(2)(B) of the Securities Act of 1933, as amended, permits EGCs to defer compliance with new or revised accounting standards until non-issuers are required to comply with such standards. However, the Company elected not to take advantage of the extended transition period for implementation of new or revised financial accounting standards, and as a result, the Company will comply with new or revised accounting standards on the relevant dates on which adoption of such standards is required for non-emerging growth companies.

In May 2014, the Financial Accounting Standards Board (FASB) issued Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)* (ASU No. 2014-09), which amends the existing accounting standards for revenue recognition. ASU No. 2014-09 is based on principles that govern the recognition of revenue at an amount an entity expects to be entitled when products are transferred to customers. The new standard as amended by ASU No. 2015-14, ASU No. 2016-10 and ASU No. 2016-12 was effective for the Company beginning January 1, 2018. The Company adopted the new standard using the full retrospective approach, which did not have an impact on the Company's financial position or results of operations as the Company is pre-revenue and does not anticipate generating any significant revenue prior to 2020.

In May 2017, the FASB issued ASU No. 2017-09, *Compensation—Stock Compensation (Topic 718): Scope of Modification Accounting* (ASU No. 2017-09), which clarifies when to account for a change to the terms or conditions of a share-based payment award as a modification. Under the new guidance, modification accounting is required only if the fair value, the vesting conditions, or the classification of the award (as equity or liability) changes as a result of the change in terms or conditions. ASU No. 2017-09 was effective for the Company beginning January 1, 2018. The adoption of this new standard did not have a material impact on the Company's financial position or results of operations.

*Recently Issued Accounting Pronouncements — Not Yet Adopted*

In February 2016, the FASB issued ASU No. 2016-02, *Leases (Topic 842)* (ASU No. 2016-02), which changes the presentation of assets and liabilities relating to leases. The core principle of ASU No. 2016-02 is that a lessee should recognize the assets and liabilities that arise from leases. All leases create an asset and a liability for the lessee in accordance with FASB Concepts Statement No. 6, *Elements of Financial Statements*, and, therefore, recognition of those lease assets and lease liabilities represents an improvement over previous GAAP, which did not require lease assets and lease liabilities to be recognized for most leases. The new standard as amended by ASU No. 2018-01, ASU No. 2018-10 and ASU No. 2018-11 will be effective for the Company beginning January 1, 2019. The Company's sublease for office space under a noncancelable lease agreement entered into effective January 30, 2015 (the 2015 Lease) as a lessee and sublease with WomanCare Global Trading, Inc. (the WCG Sublease) as a lessor will both expire in 2020 (see Note 6 — Commitments and Contingencies for more details) and be subject to the provisions of this new standard. While the Company continues to evaluate the impact of this new standard as a lessee and a sublessor on its consolidated financial statements, the Company currently expects the primary impact will be to record right-of-use assets and lease liabilities for the 2015 Lease as a lessee and rent receivable for the WCG Sublease as a lessor in the consolidated balance sheets.

In June 2018, the FASB issued ASU No. 2018-07, *Compensation- Stock Compensation (Topic 718*) (ASU No. 2018-07), which expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from non-employees that are currently covered under Accounting Standards Codification (ASC) 505-50*, Equity-Equity-Based Payments to Non-employees.* ASU No. 2018-07 will be effective for the Company beginning January 1, 2019. Early adoption is permitted. The Company is in the process of evaluating the impact of this standard on its consolidated financial statements.

**3. Merger Transactions**

As described in Note 1- Description of Business and Basis of Presentation, Private Evofem merged with Neothetics effective on the Closing Date. The Merger was accounted for as a reverse recapitalization with Private Evofem treated as the accounting acquirer pursuant to ASC 805- *Business Combinations.* Under reverse recapitalization accounting, the accounting acquirer shall measure the identifiable assets acquired, the liabilities assumed, and any noncontrolling interest in the acquiree at their acquisition-date fair values.

The following transactions were completed with the Merger and recorded by the Company:

- Recorded Neothetics' assets, liabilities and stockholders' equity at fair value as of the Closing Date, including $1.9 million cash and cash equivalents, $0.5 million prepaids and other current assets, $0.4 million current and noncurrent liabilities and $1.9 million common stock (Neothetics had 2,308,430 shares of common stock outstanding as of the Closing Date on a post-split basis at par value of $0.0001 per share) and additional paid-in capital (including the reclassification of Neothetics' historical accumulated deficit into additional paid-in capital);

- Converted each share of Private Evofem's capital stock including its Series A convertible preferred stock, Series B convertible preferred stock, Series C-1 convertible preferred stock and Series C convertible preferred stock into Private Evofem's common stock on a one-for-one basis for an aggregate of 40,016,067 shares. Upon such conversion, reclassified the net proceeds from Private Evofem's issuance of these preferred stocks to common stock at Private Evofem's par value and additional paid-in capital, net of par value;

- Cancelled 4,759,091 shares of Private Evofem's unvested restricted common stock at Private Evofem's par value on a pre-split basis;

- Issued warrants for the purchase up to an aggregate of 155,081,982 shares of Private Evofem's common stock to funds affiliated with Invesco Ltd. (the Invesco Warrants), which were immediately net exercised on a cashless basis for 154,593,455 shares of Private Evofem's common stock;

- Exchanged 270,969,445 shares of Private Evofem's common stock for 41,732,794 shares of Neothetics' common stock on a pre-split basis at the common stock exchange ratio of 0.1540, subject to adjustment for the Reverse Stock Split (or 6,955,456 shares on a post-split basis). These shares, together with the shares converted from the 80 shares of Private Evofem Series D discussed below, accounted for an aggregate 87% ownership in Neothetics upon closing of the Merger;

- Converted 80 shares of Private Evofem's Series D into 41,273,941 shares of Neothetics' common stock on a pre-split basis (or 6,878,989 on a post-split basis), including:

    i. Adjustment for the final change in fair value of Private Evofem's Series D 2X liquidation preference;

    ii. Redemption of the Series D 2X liquidation preference upon conversion;

    iii. Private Evofem's Series D Warrant Rights were assumed by Neothetics and exchanged for three shares of the Company's common stock and warrants for the purchase of 2,000,000 shares of the Company's common stock (the WIM Warrants). The Company recorded the fair value of the WIM Warrants and related capital contribution upon issuance of the WIM Warrants; and

    iv. Recording cash dividends between January 6, 2018 and the Closing Date, which was paid upon closing of the Merger to Woodford Investment Management Ltd (WIM).

- Sold 1,614,289 shares of the Company's common stock in a private placement for gross proceeds of $20.0 million;
- Neothetics affected the Reverse Stock Split, and thus the Company adjusted common stock and additional paid-in capital associated with shares issued in connection with the Merger due to the 6:1 reverse stock split; and

- Neothetics assumed Private Evofem's 2012 Equity Incentive Plan and each outstanding stock option issued thereunder was converted into the right to purchase the number of shares of Neothetics' common stock equal to approximately 0.1540, subject to adjustment for the Reverse Stock Split, multiplied by the number of shares of Private Evofem's common stock issuable upon exercise of the option to purchase shares of Private Evofem's common stock.

## 4. Balance Sheet Details

***Prepaid and Other Current Assets***

Prepaid and other current assets consist of the following (in thousands):

| | June 30, 2018 | December 31, 2017 |
|---|---|---|
| Flex note receivable (1) | $ 250 | $ 250 |
| Other receivable from related parties | 155 | 17 |
| Clinical supplies | 90 | 119 |
| Insurance | 270 | 96 |
| Rent | 63 | 63 |
| Research and development costs | 138 | 30 |
| Other | 167 | 78 |
| Total | $ 1,133 | $ 653 |

(1) In June 2016, Private Evofem's board of directors committed to a plan to sell its Softcup line of business (Softcup) and re-direct its available cash resources to further develop Amphora. In July 2016, the Company entered into an Asset Purchase Agreement with The Flex Company (Flex), whereby Flex would acquire certain assets and assume certain liabilities associated with Softcup. Total consideration for the Softcup sale was $1.9 million, with $0.6 million received in cash at closing and the remaining $1.3 million due and payable under a note in favor of the Company (the Flex Note) through January 1, 2021 (the Maturity Date). The Flex Note bears simple interest at a rate of 5.0% per annum on the remaining principal amount outstanding. An annual principal payment of approximately $0.3 million and the annual accrued and unpaid interest are payable each January 1, beginning in 2017 through the Maturity Date.

The Flex Note is secured by the Softcup assets and has been recorded at present value. The Company's incremental borrowing rate and the stated interest rate of the Flex Note are materially consistent.

***Property and Equipment, Net***

Property and equipment, net, consists of the following (in thousands):

| | Useful Life | June 30, 2018 | December 31, 2017 |
|---|---|---|---|
| Research equipment | 5 years | $ 639 | $ 639 |
| Computer equipment and software | 3 years | 6 | 6 |
| Office furniture | 5 years | 205 | 205 |
| Leasehold improvements | 5 years or less | 340 | 340 |
| | | 1,190 | 1,190 |
| Less: accumulated depreciation and amortization | | (473) | (342) |
| Total, net | | $ 717 | $ 848 |

Depreciation expense was $65,000 for both the three months ended June 30, 2018 and 2017, and $0.1 million for both the six months ended June 30, 2018 and 2017.

***Other Noncurrent Assets***

Other noncurrent assets consist of the following (in thousands):

| | June 30, 2018 | December 31, 2017 |
|---|---|---|
| Flex note receivable, net of current portion | $ 500 | $ 750 |
| Prepaid Directors & Officers insurance | 477 | — |
| Total | $ 977 | $ 750 |

***Accrued Expenses***

Accrued expenses consist of the following (in thousands):

| | June 30, 2018 | December 31, 2017 |
|---|---|---|
| Clinical studies | $ 9,227 | $ 8,789 |
| Sublicense fees | 1,117 | 2,000 |
| Public offering costs | 176 | 135 |
| Board of directors' fees and related expenses | 50 | 247 |
| Legal and other professional fees | 239 | 727 |
| Other | 295 | 188 |
| Total | $ 11,104 | $ 12,086 |

## 5. Fair Value of Financial Instruments

The fair values of the Company's assets and liabilities, including the money market fund and Series D 2X liquidation preference, measured on a recurring basis are summarized in the following tables, as applicable (in thousands):

| | June 30, 2018 | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|---|---|---|---|---|
| Money market fund (1) | $ 62 | $ 62 | $ — | $ — |
| Total assets | $ 62 | $ 62 | $ — | $ — |

(1) Included as a component of cash and cash equivalents on the accompany condensed consolidated balance sheet.

| | December 31, 2017 | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|---|---|---|---|---|
| Series D 2X liquidation preference | $ (79,870) | $ — | $ — | $ (79,870) |
| Total liabilities | $ (79,870) | $ — | $ — | $ (79,870) |

Series D 2X liquidation preference is stated at fair value and is considered a Level 3 input because the fair value measurement is based, in part, on significant inputs not observed in the market. The Company determined the fair value of Series D 2X liquidation preference as described below.

The following table summarizes the changes in Level 3 financial liabilities measured at fair value on a recurring basis for the six months ended June 30, 2018 (in thousands). There were no activities for the three months ended June 30, 2018.

| | Series D 2X Liquidation Preference Liability |
|---|---|
| Balance at December 31, 2017 | $ 79,870 |
| Change in fair value of Series D 2X liquidation preference | 130 |
| Redemption of Series D 2X liquidation preference upon conversion of Series D | (80,000) |
| Balance at June 30, 2018 | $ — |

*Series D 2X Liquidation Preference*

As described in the Note 2 to the 2017 Audited Financial Statements, the Company's issuance of Series D resulted in the identification of an embedded derivative that required bifurcation and liability accounting at fair value. See the *Series D Redeemable Convertible Preferred Stock* discussion in Note 8 — Convertible Preferred Stock for the terms of the Series D.

In connection with the Merger, Private Evofem converted 80 shares of Series D into Neothetics' common stock. To determine the final fair value of the Series D 2X liquidation preference, the Company utilized a hybrid valuation model that considers the probability of achieving certain exit scenarios, the Company's cost of capital, the estimated period the Series D

2X liquidation preference would be outstanding, consideration received for the instrument with the Series D 2X liquidation preference and at what price and changes, if any, in the fair value of the underlying instrument to the Series D 2X liquidation preference. At December 31, 2017, the most significant assumption was the probability of occurrence, which was concluded to be high, and as a result the fair value as of December 31, 2017 approximated the final redemption value. The valuations resulted in a concluded fair value of the Series D 2X liquidation preference of $80.0 million as of the Closing Date, which was reclassified from a Series D 2X liquidation preference to additional paid-in capital upon the conversion into Neothetics' common stock.

The change in fair value of the Series D 2X liquidation preference for the three months ended June 30, 2017 was $0.2 million, and $0.1 million and $0.6 million for the six months ended June 30, 2018 and 2017, respectively. There was no such change for the three months ended June 30, 2018 as the Series D was converted into common stock in connection with the Merger.

**6. Commitments and Contingencies**

*Operating Leases*

In November 2009, Private Evofem entered into a lease for office space under a noncancelable lease agreement that expired in March 2017 (the UTC Lease), as amended. Through January 2015, Private Evofem shared this office space with Cosmederm Biosciences, Inc. (Cosmederm) when Private Evofem assigned its rights and obligations under the UTC Lease to Cosmederm. Effective February 27, 2017, Private Evofem entered into a lease termination agreement (the UTC Lease Termination) with Cosmederm and the landlord for the UTC Lease. In March 2017, Private Evofem paid $55,000 of an early termination fee directly to Cosmederm who remitted the fee to the landlord, and derecognized the security deposit receivable from the landlord and payable to Cosmederm. Upon execution of the UTC Lease Termination, Private Evofem was relieved of all obligations under the UTC Lease.

Effective January 30, 2015, Private Evofem entered into the 2015 Lease that expires in March 2020. The sublease provides for two renewal periods of five years each, but the sub-lessor is not expected to renew its lease. In lieu of paying a security deposit directly to the sub-lessor, the Company maintains a time deposit in favor of the sub-lessor (the Deposit), which is included in restricted cash in the condensed consolidated balance sheets. During months 13 through 58 of the 2015 Lease term, subject to certain restrictions, approximately $5,000 of the Deposit may be released each month through November 2019 and approximately $66,000 of the Deposit may be released each month between December 2019 and March 2020. As of June 30, 2018 and December 31, 2017, restricted cash maintained as collateral for the Company’s Deposit was $0.4 million for both periods.

Concurrent with the execution of the 2015 Lease, Private Evofem entered into the WCG Sublease with WomanCare Global Trading, Inc. (WCGT) whereby WCGT agreed to sublease approximately 25% (subject to annual adjustment), as amended, of the Company’s office space. The Company remains the primary obligor under the WCG Sublease and records all sublease income as a reduction of rent expense in the condensed consolidated statements of operations. WCGT paid an initial security deposit of approximately $0.3 million (the WCG Security Deposit). Effective April 1, 2018, the WCG Sublease was reassigned from WCGT to WCG Cares, whereby WCG Cares agreed to pay the Company 20% of the overall lease payment under the 2015 Lease. All terms and conditions remain the same as the original WCG Sublease. As of December 31, 2017, the WCG Security Deposit totaled approximately $0.2 million, which was included in accrued expenses and other noncurrent liabilities in the condensed consolidated balance sheet and was repaid to WCGT in June 2018. There were $40,000 and $57,000 of sublease payments received from WCGT during the three months ended June 30, 2018 and 2017, respectively, and $40,000 and $85,000 of sublease payments received during the six months ended June 30, 2018 and 2017, respectively.

On January 20, 2015, Neothetics entered into a non-cancelable operating lease with LJ Gateway Office LLC (LJ Gateway Lease) for its facilities, which expires in March 2020. In connection with the LJ Gateway Lease, Neothetics issued a stand-by letter of credit in lieu of a security deposit. On January 31, 2017, Neothetics entered into an Eleventh Amendment to the LJ Gateway Lease (the Lease Amendment), which provided Neothetics with additional office space located at Suite No. 250. Concurrent with the Lease Amendment, Neothetics entered into a sublease providing for the sublease of additional office space (Suite 270). Upon the occurrence of the sublessee retaining possession of the original premises in February 2017, the sublessee received rent abatement for months one, three, and four as well as a discount of 50% off the base rent for months five through nine. The sublessee paid Neothetics a base rent of $27,768 for the second month’s rent and $30,317 security deposit. The base rent will increase by three percent on each annual anniversary. The Company has recorded the rental income collected or accrued under the sublease as a reduction of rent expense. As of June 30, 2018 and December 31, 2017, restricted cash maintained as collateral for LJ Gateway Lease's security deposit was $0.1 million.

In December 2017, Neothetics entered into the Twelfth Amendment to the LJ Gateway Lease, whereby upon the mutual execution and delivery of a new lease between LJ Gateway Office LLC’s affiliate and the sublessee and upon the occurrence of the sublessee vacating their subleased space, LJ Gateway Office LLC and Neothetics agreed that the LJ Gateway Lease with

respect to the Suite 270 office space shall be terminated. In June 2018, the LJ Gateway Lease was terminated. Upon termination, the Company repaid the sublessee $30,317 security deposit.

Rent expense was $0.1 million and $0.2 million for the three months ended June 30, 2018 and 2017, respectively, and $0.3 million and $0.4 million for the six months ended June 30, 2018 and 2017, respectively. Rent expense is recognized on a straight-line basis over the term of the lease. Accordingly, rent expense recognized in excess of rent paid is accounted for as deferred rent in the condensed consolidated balance sheets, of which the current portion is included in accrued expenses in the condensed consolidated balance sheets.

As of June 30, 2018, future minimum lease commitments under the above mentioned operating leases, together with sublease income, are as follows (in thousands):

| | Operating Leases | Sublease Income | Net |
|---|---|---|---|
| Year ending December 31, 2018 | $ 374 | $ (75) | $ 299 |
| Year ending December 31, 2019 | 777 | (155) | 622 |
| Year ending December 31, 2020 | 201 | (40) | 161 |
| Total | $ 1,352 | $ (270) | $ 1,082 |

*Contingencies*

From time to time the Company may be involved in various lawsuits, legal proceedings or claims that arise in the ordinary course of business. There were no claims or actions pending against the Company as of June 30, 2018 and December 31, 2017, which Management believes would have, individually or in the aggregate, a material adverse effect on its business, liquidity, financial position, results of operations or cash flows. However, litigation is subject to inherent uncertainties and an adverse result in these or other matters may arise from time to time that may harm the Company's business.

*Intellectual Property Rights*

In 2014, Private Evofem entered into an amended and restated license agreement with Rush University (the Rush License Agreement) pursuant to which Rush University granted Private Evofem an exclusive, worldwide license of certain patents and know-how, related to its MPT vaginal gel authorizing Private Evofem to make, distribute and commercialize products and processes for any and all therapeutic, prophylactic and/or diagnostic uses, including, without limitation, use for female vaginal health and/or contraception.

The Company may be obligated to pay an earned royalty based upon a percentage of net sales in the range of mid-single digits. Commencing on January 1 of year three after a product has received regulatory approval and has been introduced to market, the Company may become obligated to pay minimum annual royalties, to the extent the earned royalty or sublicensing fees, as applicable, do not exceed the minimum annual royalties.

In October 2015, the Company's subsidiaries, ENA and EP entered into separate sublicense agreements (the Sublicenses) with WomanCare Global Trading CIC (WCGCIC) for a contraceptive vaginal ring. In August 2016, ENA, EP and WCGCIC entered into a side letter to modify the timing of the 2016 and 2017 payments due under the Sublicenses. On an aggregate basis, consideration under the Sublicenses consisted of (i) payments or potential payments to the licensor of (a) an upfront payment of $10.0 million, (b) potential regulatory and commercial milestone payments up to $32.0 million, (c) potential royalty payments on net product sales and (d) potential royalty payments on net sales of an equivalent generic product and (ii) $5.0 million in annual sublicense fees through October 1, 2019 to WCGCIC. In December 2016, under the terms of the Sublicenses, ENA and EP provided 90-days written notice of termination of the Sublicenses to WCGCIC, which period concluded on March 28, 2017.

As of June 30, 2018 and December 31, 2017, the Company had accrued sublicense fees of approximately $1.1 million and $2.0 million, respectively, which are included in accrued expenses in the condensed consolidated balance sheets. The Company is responsible for making interest payments to WomanCare Global International (WCGI) for unpaid sublicense fees. As of June 30, 2018 and December 31, 2017, accrued interest expense on unpaid sublicense fees totaled $0.1 million for both periods. See Note 7 – Related-party Transactions for a summary of the Company's transactions with WCGCIC and WCGI and related entities.

**7. Related-party Transactions**

*Consulting Agreements*

Effective April 1, 2016, Private Evofem entered into a one-year consulting agreement (the 2016 Consulting Agreement) with Thomas Lynch, the chairman of the Company's board of directors. Pursuant to the 2016 Consulting Agreement, Mr. Lynch provides consulting services with respect to investor relations and business development activities as requested from time to time. Pursuant to the 2016 Consulting Agreement, Mr. Lynch (i) received compensation of approximately $0.4 million, including $0.1 million related to his board services, (ii) received a stock option for the purchase of 150,000 shares of the Private Evofem's common stock with an exercise price of $1.19 per share on a pre-split basis, which vest over a one-year period through March 1, 2017 and (iii) was issued a restricted stock unit for the rights to 100,000 shares of the Private Evofem's common stock (RSU) on a pre-split basis. Upon completion of the Merger, Mr. Lynch's vested stock option was converted into an option to purchase up to 3,850 shares of the Company's common stock with an exercise price of $46.36 per share. In addition upon closing of the Merger, Mr. Lynch agreed to cancel all of his unvested restricted stock units received pursuant to the 2016 Consulting Agreement. See *Restricted Stock Units* discussion in Note 11 — Stock-based Compensation for the accounting treatment for Mr. Lynch's restricted stock units granted in 2016.

In August 2017, Private Evofem and Mr. Lynch entered into a two-year consulting agreement (the 2017 Consulting Agreement), which was effective as of April 1, 2017. This 2017 Consulting Agreement provides for (i) annual compensation of $0.4 million, including $0.1 million related to his board services and (ii) a stock option for the purchase of 250,000 shares of Private Evofem's common stock on a pre-split basis that vests quarterly through March 31, 2018, which remained unissued at the time of the Merger. On March 12, 2018, the Company issued a stock option for the purchase of 225,000 shares of the Company's common stock in lieu of the unissued stock option pursuant to the 2017 Consulting Agreement, of which 125,000 vested on the grant date and the remaining shares shall vest in a series of twelve successive equal monthly installments upon completion of each additional month of service measured from April 1, 2018. The option was awarded in connection with Mr. Lynch's consulting services for the Company for the fiscal years 2016 to 2018. This option was granted under the Amended and Restated 2014 Plan, which was approved at the Company's annual meeting held on May 8, 2018. See "Contingent Options" discussion in Note 11 - Stock-based Compensation.

Consulting fees incurred under the 2016 and 2017 Consulting Agreements were approximately $70,000 for both the three months ended June 30, 2018 and 2017, and $0.1 million for both the six months ended June 30, 2018 and 2017. As of June 30, 2018, there was no accrued compensation owed to Mr. Lynch.

*Transactions with WCGI and Related Entities (collectively WCG entities)*

In 2009, Saundra Pelletier founded WomanCare Global International, a non-profit organization registered in England and Wales (WCGI) and became WCGI's chief executive officer. In February 2013, Private Evofem and WCGI formed an alliance (the WCGI Alliance) and Ms. Pelletier also became Private Evofem's chief executive officer. Concurrent with the forming of the WCGI Alliance, Private Evofem and WCGI entered into (i) a service agreement to which the companies shared resources and employees and (ii) a three-year grant agreement under which the Private Evofem provided funding of $4.0 million per year to WCGI.

As more fully described in Note 6 — Commitments and Contingencies, (i) effective in February 2015, Private Evofem and WCGT, a WCGI subsidiary, entered into a sublease for office space, which was terminated and reassigned to WCG Cares effective April 1, 2018, and (ii) in October 2015, (a) Private Evofem, through its wholly-owned subsidiaries, entered into two sublicense agreements whereby Private Evofem was responsible for paying $5.0 million in annual sublicense fees, net of amounts paid under the grant agreement during 2015, to WCGCIC, also a WCGI affiliate, and (b) the service and grant agreements were cancelled. Sublicense fees are included in research and development expenses in the condensed consolidated statements of operations.

In early 2015, Private Evofem became the corporate sponsor of WCGI's "Then Who Will" educational campaign, which ended in late 2017. During the three and six months ended June 30, 2017, corporate support payments to vendors performing services for the "Then Who Will" campaign on behalf of WCGI totaled approximately $0.1 million and $0.2 million, respectively, which were included in general and administrative expenses in the condensed consolidated statements of operations. There were no such payments during the three and six months ended June 30, 2018.

Effective January 2016, Private Evofem and WCGI entered into a shared-services agreement (the SSA), which replaced the prior service agreement. Under the terms of the SSA, Private Evofem and WCGI cross charge the other company's services provided by each entity on behalf of the other. The SSA also allows for netting of due to and due from shared-services fees. Through December 31, 2016, Ms. Pelletier was being paid directly by each WCGI and Private Evofem. As of January 1, 2017,

Ms. Pelletier was no longer paid directly by WCGI and was subject to Private Evofem's SSA. Services provided under the SSA on behalf of WCGI totaled approximately $0.2 million for the three months ended June 30, 2017, and $0.1 million and $0.5 million for the six months ended June 30, 2018 and 2017, respectively. There were no such services provided for the three months ended June 30, 2018. As of June 30, 2018 and December 31, 2017, net shared-services due to the Company totaled zero and approximately $13,000, respectively.

The following table summarizes receivables, payables, payments and expenses related to the Company's transactions with WCGI related entities as of and for the six months ended June 30, 2018 and 2017, respectively (in thousands):

| | 2018 | 2017 |
|---|---|---|
| Receivables | $ — | $ 79 |
| Payables | $ 1,252 | $ 2,021 |
| Payments | $ 883 | $ 1,018 |
| Operating and Interest expense | $ 59 | $ 26 |

*Transactions with WCG Cares*

In 2013, WCG Cares, a 501(c)(3) nonprofit organization was incorporated under the laws of the State of California. Its primary purpose is to directly engage in and/or fund the development and implementation of programs that promote reproductive health, education, research and increased access to high-quality, innovative and affordable reproductive healthcare and healthcare products around the world. Since May 2018, Ms. Pelletier has served as a director of the Board of WCG Cares, and she served as the Chair of the Board of WCG Cares from November 2017 to May 2018 and as the Chief Executive Officer and President of WGC Cares from 2013 to November 2017. Mr. Justin J. File also served as WCG Cares' Chief Financial Officer from November 2017 to May 2018. Dr. Kelly Culwell has served as WCG Cares' Chief Medical Officer since November 2017. See shared-services agreement discussion below.

The Company agreed to be a corporate sponsor of WCG Cares' U.S. education campaign, the Tryst Network, which officially launched in February 2018. The Company paid WCG Cares a one-time payment of $0.3 million in March 2018 in connection with this corporate sponsorship of the Tryst Network. During the second quarter of 2018, the Company ceased being the corporate sponsor of the Tryst Network. As of June 30, 2018 and December 31, 2017, accrued Tryst-related costs totaled zero and $0.2 million, respectively.

In March 2018, the Company and WCG Cares entered a shared-services agreement (the Cares Shared Services Agreement). Under the terms of the Cares Shared Services Agreement, the Company and WCG Cares cross charge services provided by each entity (or its subsidiaries) on behalf of the other. The Cares Shared Services Agreement also allows for netting of due to and due from shared-services fees. As of June 30, 2018, net shared-services due to the Company totaled approximately $37,000.

*Variable Interest Entity Considerations*

Due to shared management and numerous agreements between the Company and WCGI and the Company and WCG Cares, management reviewed its relationship with both WCGI and its subsidiaries and WCG Cares in accordance with the authoritative guidance for variable interest entities within ASC 810 - Consolidation. The Company concluded that due to WCGI's and WCG Cares' status as not-for-profit entities, the scope exception from qualifying as a variable interest entity was met and, therefore, the Company is not required to consolidate WCGI or WCG Cares.

**8. Convertible Preferred Stock**

Immediately prior to the Merger, as more fully descried in Note 1- Description of Business and Basis of Presentation, each share of Private Evofem's capital stock (other than Private Evofem's Series D), including its Series A convertible preferred stock, Series B convertible preferred stock, Series C-1 convertible preferred stock and Series C convertible preferred stock was converted to Private Evofem's common stock on a one-for-one basis for an aggregate of 40,016,067 shares. Immediately following the Merger, Private Evofem's common stock was then exchanged for approximately 0.1540 shares of Neothetics' common stock. In addition, each share of Private Evofem's Series D was converted into approximately 515,924 shares of Neothetics' common stock for an aggregate of 41,273,941 shares on a pre-split basis. As of June 30, 2018, no shares of convertible preferred stock were issued and outstanding.

Dividends on the Series D were payable (i) upon conversion, (ii) redemption or (iii) liquidation. As such, although the Company's board of directors has not declared dividends, the Company accrues dividends on the Series D. Upon closing of the Merger, the Company paid cash dividends of $0.2 million for the accrued dividends only for the period of January 6, 2018 to the Closing Date and the accrued and unpaid dividends of $5.2 million as of December 31, 2017 were reclassified to additional paid-in capital upon conversion of 80 shares of Series D into common stock.

The designated, issued and outstanding shares of convertible preferred stock, by series, as of December 31, 2017 were as follows (aggregate liquidation amount and proceeds, net of issuance costs, in thousands):

| | Shares Designated | Original Issue Price | Shares Issued and Outstanding | Common Stock Equivalents (1) | Aggregate Liquidation Amount | Proceeds, Net of Issuance Costs |
|---|---|---|---|---|---|---|
| Series A | 12,768,492 | $ 1.9579445 | 12,618,279 | 12,618,279 | $ 24,706 | $ 23,848 |
| Series B | 31,034,696 | $ 3.2222 | 13,801,318 | 13,801,318 | 44,471 | 43,616 |
| Series C-1 | 8,660,572 | $ 3.97 | 8,558,686 | 8,558,686 | 33,978 | 34,382 |
| Series C | 5,037,784 | $ 3.97 | 5,037,784 | 5,037,784 | 20,000 | 19,469 |
| Series D (2)(3) | 80 | $ 500,000 | 80 | | 85,160 | 39,739 |
| Total | 57,501,624 | | 40,016,147 | | $ 208,315 | $ 161,054 |

(1) The Series D shares were convertible into shares in the next equity financing (either preferred or common) at a 50% discount to the fair value price per share of the shares to be issued in the next financing, therefore, the Series D common stock equivalents and the totals for common stock equivalents have been left blank.

(2) Aggregate liquidation amount included accrued and unpaid dividends of $5.2 million as of December 31, 2017.

(3) Proceeds, net of issuance costs, included $35.0 million in cash and $5.0 million from the conversion of the Amended Cosmederm Note (see more discussions below) less issuance costs of approximately $0.3 million. This line excluded the Series D 2X liquidation preference net issuance price of $18.2 million, the loss on the issuance of Series D of $35.2 million, loss on extinguishment of related-party note payable of $6.7 million and accrued Series D dividends of $5.2 million.

Private Evofem and Cosmederm entered a promissory note during 2015, which was amended in July 2016 in conjunction with the Private Evofem's Series D financing (the Amended Cosmederm Note). Cosmederm assigned the Amended Cosmederm Note with the then outstanding principal balance of $10.0 million to WIM. As a condition to closing the Private Evofem's Series D, WIM immediately converted $5.0 million of the Amended Cosmederm Note into 10 shares of the Private Evofem's Series D and cancelled the remaining $5.0 million.

*Series D*

In July 2016, Private Evofem entered into a Series D purchase agreement with WIM, which was subsequently amended in July 2017 to increase the number of authorized preferred stock for issuance (as amended, the Series D SPA). The Series D SPA authorized the issuance and sale of an aggregate of 80 shares of Series D, which was sold at an issuance price per share of $500,000. WIM also received the right to receive warrant shares to be determined in the next equity financing (Warrant Rights). See *Warrant Rights* discussion below.

*Warrant Rights*

The Warrant Rights issued in connection with the issuance of Series D in 2016 and 2017 were convertible into warrants to purchase up to that number of equity securities to be issued in the next equity financing of Private Evofem equal to (i) seventy-five percent (75.0)% of the purchase price paid for the Series D (or $30.0 million), divided by (ii) the per share price of the equity securities issued to the new investors in such next equity financing. The exercise price of the warrants will equal the per share price of the equity securities to be issued in the next equity financing and the warrants were to expire seven years from the closing of such next equity financing. The Warrant Rights are inseparable from the Series D. As of December 31, 2017, Private Evofem had not completed a next equity financing and, therefore, the Warrant Rights remained outstanding.

Additionally, Private Evofem determined that since the exercise price of the warrants to be received by WIM is equal to the fair value of the shares for which the warrant would have become exercisable at issuance, there was *de minimis* value associated with the Warrant Rights and, therefore, Private Evofem did not record a warrant liability for the Warrant Rights as of December 31, 2017.

Upon completion of the Merger, Private Evofem's Series D Warrant Rights were assumed by Neothetics and exchanged for an aggregate of three shares of the Company's common stock and the WIM Warrants to purchase up to 2,000,000 shares of the Company's common stock and the three shares issued in connection with the WIM Warrants may not be separately transferred. The WIM Warrants will become exercisable on January 17, 2019 and shall remain exercisable until the earlier of January 18, 2022 or immediately prior to the completion of an acceleration event, as defined, and have an exercise price of $8.35 per share.

The Company determined that the WIM Warrants are free standing financial instruments and equity classified in accordance with ASC 480— *Distinguish Liabilities from Equity.* To determine the fair value of the WIM Warrants, the Company utilized the Black-Scholes-Merton (BSM) option-pricing model, where the warrants exercise price was determined based on a Monte Carlo simulation. The valuations resulted in a concluded fair value of the WIM Warrants of $14.1 million as of January 18, 2018, which was recorded as additional paid-in capital in the condensed consolidated balance sheet.

**9. Public Offering**

On May 24, 2018, the Company completed an underwritten public offering (the Offering), whereby the Company issued 7,436,171 shares of common stock at a public offering price of $4.69 per share and pre-funded warrants to purchase 1,063,829 shares of common stock at a public offering price of $4.68 per warrant and an exercise price of $0.01 per share. Each share of common stock and pre-funded warrant was issued together with a common warrant to purchase one-fifth of a share of the Company's common stock at a public offering price of $0.01 per warrant and an exercise price of $7.50 per share. An aggregate of 8,500,000 common warrants were issued in connection with the Offering and are exercisable to purchase an aggregate of 1,700,000 shares of common stock. The common warrants issued to the three funds affiliated with WIM that participated in the Offering were issued as a unit with one share of common stock (an aggregate of three "Unit Shares"). Except with respect to the Unit Shares, the shares of common stock, pre-funded warrants and common warrants are separately transferable. The Company determined that the pre-funded warrants and common warrants are free standing financial instruments and equity classified in accordance with ASC 480- *Distinguish Liabilities from Equity*.

The Company received net proceeds of approximately $37.5 million, net of the underwriting discounts and commissions, but before deducting the estimated offering costs of $1.4 million. The estimated offering costs were recorded as contra additional-paid in capital in the condensed consolidated balance sheet. The common stock and warrants issued in the Offering were registered pursuant to a registration statement on Form S-1 filed with the SEC on May 16, 2018 and declared effective on May 21, 2018.

On June 26, 2018, the Company issued an additional 912 common warrants to purchase approximately 182 shares of common stock upon an underwriters' exercise of their overallotment option. The offering price and exercise price were the same as the common warrants issued on May 24, 2018. The net proceeds received from this issuance were immaterial.

The Company intends to use the net proceeds from the Offering to fund its ongoing clinical trials of Amphora vaginal gel for the prevention of pregnancy and for the prevention of urogenital transmission of chlamydia and gonorrhea in women, respectively, as well as for general corporate purposes, funding working capital needs and any necessary capital expenditures.

**10. Stockholders' Equity (Deficit)**

*Warrants*

As of June 30, 2018, warrants to purchase approximately 4,775,886 shares of the Company's common stock remain outstanding at a weighted average exercise price of $6.30 per share. These warrants include:

- WIM Warrants to purchase up to 2,000,000 shares of common stock as described in Note 8- Convertible Preferred Stock, which will become exercisable on January 17, 2019 and shall remain exercisable for four years unless there is a completion of an acceleration event as defined by the WIM Warrants agreements;
- Warrants to purchase 11,875 shares of common stock that were issued prior to the Merger, which were exercisable as of June 30, 2018 and shall remain exercisable until 2020, 2022 and 2024;
- Pre-funded warrants to purchase 1,063,829 shares of common stock in the Offering as described in Note 9- Public Offering, which were exercisable on May 24, 2018 and shall remain exercisable until shares are exercised;
- Common warrants to purchase 1,700,000 shares of common stock in the Offering, which were exercisable on May 24, 2018 and shall remain exercisable for seven years; and
- Common warrants to purchase approximately 182 shares of common stock upon exercise of the underwriter's overallotment option, which were exercisable on June 26, 2018 and shall remain exercisable for seven years.

*Common Stock*

Effective January 17, 2018 and in connection with the Merger, the Company amended and restated its certificate of incorporation, under which the Company is authorized to issue up to 300,000,000 shares of common stock, $0.0001 par value per share, and 5,000,000 shares of preferred stock, $0.0001 par value per share.

On January 17, 2018, immediately prior to the closing of the Merger, Private Evofem issued the Invesco Warrants for the purchase up to an aggregate of 155,081,982 shares of the Private Evofem's common stock, par value $0.001 per share, which were immediately net exercised on a cashless basis for 154,593,455 shares of Private Evofem's common stock. These shares of

Private Evofem's common stock were then converted into the right to receive shares of Neothetics' common stock upon completion of the Merger at the common stock exchange ratio of 0.1540, subject to adjustment for the Reverse Stock Split. The Company determined that the Invesco Warrants are free standing financial instruments and equity classified in accordance with ASC 480— *Distinguish Liabilities from Equity.* The Company had an external valuation completed as of January 17, 2018 with a concluded fair value of $47.9 million using the BSM option-pricing model, which was recorded as a loss on the issuance of Invesco Warrants within other income (expense) in the condensed consolidated statement of operations, with corresponding entries to common stock par value for the shares issued and additional paid-in capital in the condensed consolidated balance sheet. See Note 3- Merger Transactions for more descriptions of the transactions completed in connection with the Merger.

On May 24, 2018, the Company issued 7,436,171 shares of common stock upon closing of the Offering as described in Note 9- Public Offering.

*At the Market Program*

On December 1, 2015, Neothetics entered into a Controlled Equity Offering Sales Agreement (Sales Agreement) with Cantor Fitzgerald, as a sales agent pursuant to which Neothetics may offer and sell from time to time, through Cantor Fitzgerald shares of Neothetics' common stock, par value $0.0001 per share, having an aggregate offering price of up to $20.0 million. The minimum share price for this Controlled Equity Offering is selected at the discretion of the Company's board of directors. Through June 30, 2018, no shares of common stock have been sold pursuant to this Sales Agreement.

*Common Stock Reserved for Future Issuance*

Common stock reserved for future issuance is as follows in common equivalent shares as of June 30, 2018:

| | |
|---|---|
| Common stock issuable upon the exercise of stock options outstanding | 3,573,640 |
| Common stock issuable upon the exercise of common stock warrants | 4,775,886 |
| Common stock available for future issuance under the 2014 ESPP | 118,825 |
| Common stock available for future issuance under the Amended and Restated 2014 Plan | 1,833,192 |
| Total common stock reserved for future issuance | 10,301,543 |

**11. Stock-based Compensation**

***Equity Incentive Plans***

In September 2012, Private Evofem adopted the 2012 Equity Incentive Plan (the 2012 Plan) that provides for the issuance of restricted stock awards, restricted stock units, or non-qualified and incentive common stock options to its employees, non-employee directors and consultants, from its authorized shares. In general, the options expire ten years from the date of grant and generally vest either (i) over a four-year period, with 25% exercisable at the end of one year from the employee's hire date and the balance vesting ratably thereafter or (ii) over a three-year period, with 25% exercisable at the grant date and the balance vesting ratably thereafter. Upon completion of the Merger, Private Evofem's 2012 Plan was assumed by Neothetics and awards outstanding under the 2012 Plan became awards for Neothetics' common stock. Effective as of the Merger, no further awards may be issued under the 2012 Plan.

On September 15, 2014, Neothetics' board of directors adopted, and stockholders approved, the Equity Incentive Plan (the 2014 Plan). On March 9, 2018, the Company's board of directors approved, subject to stockholder approval, and recommended its stockholders approve at the annual meeting held on May 8, 2018, the amendment and restatement of the 2014 Plan (the Amended and Restated 2014 Plan), that, among other things, would increase the number of authorized shares under the 2014 Plan from 749,305 to an aggregate of 5,300,000 shares. Such stockholder approval was obtained on May 8, 2018. As of June 30, 2018, there were 1,833,192 shares available to grant under the Amended and Restated 2014 Plan.

***Stock Options***

The following table summarizes stock-based compensation expense related to stock options granted to employees and non-employee directors included in the condensed consolidated statements of operations as follows (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2018 | 2017 | 2018 | 2017 |
| Research and development | $ 2,365 | $ 43 | $ 2,595 | $ 90 |
| General and administrative | 8,298 | 169 | 8,756 | 341 |
| Total | $ 10,663 | $ 212 | $ 11,351 | $ 431 |

There were 134,375 and 1,283 shares of stock options granted during the three months ended June 30, 2018 and 2017, respectively, and 3,270,405 and 7,928 shares of stock options granted during the six months ended June 30, 2018 and 2017, respectively. The stock options granted in March 2018 to purchase up to an aggregate of 3,136,030 shares of common stock were granted under the Amended and Restated 2014 Plan approved by the Company's board of directors on March 9, 2018, and were subject to the Company obtaining the requisite stockholder approval (the "Contingent Options"). Such stockholder approval of the Amended and Restated 2014 Plan was obtained on May 8, 2018.

In connection with the Merger, all Neothetics' remaining employees were terminated without cause and Neothetics entered into Separation and Release Agreements with these employees. The Separation and Release Agreements entitled employees full acceleration of all unvested stock options granted under the 2014 Plan and extension of the exercise period for all options held by employees to the earlier of (i) the expiration of the stock option pursuant to its terms or (ii) March 31, 2019. The Company applied share-based payment modification accounting in accordance with ASC 718 — *Compensation — Stock Compensation and* determined the incremental value of the modification to the awards resulting from the extension of the exercise period was $0.2 million.

The Contingent Options were granted with vesting terms that varied from those general terms as described above. A majority of Contingent Options had vested as of June 30, 2018, and as a result a significant amount of stock-based compensation expense was recognized during the three months ended June 30, 2018. As of June 30, 2018, unrecognized stock-based compensation expense for employees, non-employee directors and consultants stock options was approximately $6.4 million, which the Company expects to recognize over a weighted-average remaining period of 1.3 years, assuming all unvested options become fully vested.

*Summary of Assumptions*

The fair value of stock-based compensation for stock options granted to employees, non-employee directors and consultants was estimated on the date of grant using the BSM option pricing model based on the following weighted-average assumptions for options granted during the three and six months ended June 30, 2018 and 2017.

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2018 | 2017 | 2018 | 2017 |
| Expected volatility | 86.8% | 90.6% | 85.9% | 90.9% |
| Risk-free interest rate | 2.8% | 1.9% | 2.8% | 2.2% |
| Expected dividend yield | —% | —% | —% | —% |
| Expected term (years) | 5.8 | 6.0 | 5.4 | 5.7 |

*Expected volatility.* The expected volatility assumption is based on volatilities of a peer group of similar companies whose share prices are publicly available. The peer group was developed based on companies in the biotechnology industry.

*Risk-free interest rate.* The risk-free interest rate assumption is based on observed interest rates appropriate for the expected term of the stock option grants.

*Expected dividend yield.* The expected dividend yield assumption is based on the fact that the Company has never paid cash dividends and has no present intention to pay cash dividends.

*Expected term.* The expected term represents the period options are expected to be outstanding. Because the Company does not have historical exercise behavior, it determines the expected term assumption using the practical expedient as provided for under ASC 718 — *Compensation — Stock Compensation*, which is the midpoint between the requisite service period and the contractual term of the option.

***Restricted Stock Awards***

In September 2016, under the 2012 Equity Incentive Plan, Private Evofem issued an aggregate of 4,759,091 shares of restricted stock on a pre-split basis to members of management (the RSAs) with vesting terms subject to the completion of an initial public offering (IPO) by Private Evofem. Upon closing of the Merger, as more fully described in Note 1 – Description of Business and Basis of Presentation, the members of management agreed to cancel their restricted stock awards. As a result, all 4,759,091 shares of unvested RSAs on a pre-split basis were cancelled during the three months ended March 31, 2018, and there was no unrecognized stock-based compensation expense related to the RSAs.

***Restricted Stock Units***

In October 2016, as previously described in Note 7 — Related-party Transactions, Private Evofem issued a restricted stock unit for the right to 100,000 shares of Private Evofem's common stock on a pre-split basis to the chairman of the Company's board of directors (the RSUs). Upon closing of the Merger, the chairman agreed to cancel his RSUs. As a result, all 100,000 shares of unvested RSUs on a pre-split basis were cancelled during the three months ended March 31, 2018, and there was no unrecognized stock-based compensation expense related to the RSUs.

***Employee Stock Purchase Plan***

In November 2014, Neothetics adopted the 2014 Employee Stock Purchase Plan (the ESPP), which enables eligible employees to purchase shares of its common stock using their after-tax payroll deductions of up to 15% of their eligible compensation, subject to certain restrictions.

The ESPP initially authorized the issuance of 28,333 shares of common stock pursuant to purchase rights granted to employees. The number of shares of common stock reserved for issuance automatically increased on January 1, 2015 and will continue to increase on each January 1 thereafter through January 1, 2024, by the smaller of (a) 1.0% of the total issued and outstanding shares on the preceding December 31, and (b) a number of shares determined by the board of directors of Neothetics. The ESPP is intended to qualify as an employee stock purchase plan within the meaning of Section 423 of the Internal Revenue Code of 1986, as amended (the Code).

The fair value of shares issued to employees under the ESPP is estimated using a BSM option-pricing model, which requires the use of subjective and complex assumptions, including (a) the expected stock price volatility, (b) the calculation of the expected term of the award, (c) the risk-free interest rate and (d) the expected dividend yield.

Following completion of the Merger, there was no enrollment in the ESPP. During the three and six months ended June 30, 2018 and 2017, there were no shares of common stock purchased under the ESPP.

**12. Subsequent Events**

On July 2, 2018, under the Amended and Restated 2014 Plan, the Company issued an aggregate of 1,230,399 shares of RSAs to its executive management team, of which, 10,000 shares will vest based on certain performance conditions, 70,000 shares will vest in two equal installments on October 16, 2018 and 2019 upon completion of the grantee's services for the Company, and the remainder were immediately vested on the grant date. The non performance-based RSAs were valued at the fair value on the grant date and the associated expenses were fully recognized on the grant date. For the performance-based RSAs, (i) the fair value of the award was determined on the grant date, (ii) the Company assessed the probability of the individual milestone under the award being achieved and (iii) the fair value of the shares subject to the milestone is expensed over the implicit service period commencing once management believes the performance criteria is probable of being met. In addition, the Company issued 75,000 shares of RSUs to the chairman of the Company's board of directors in consideration for certain consulting services provided to the Company in connection with the 2016 Consulting Agreement. The RSUs were fully vested on the grant date.

On July 24, 2018, upon the recommendation by the Compensation Committee, the Board of Directors adopted the Evofem Biosciences, Inc. 2018 Inducement Equity Incentive Plan (the Inducement Plan), pursuant to which the Company reserved 250,000 shares for the issuance of equity awards under the Inducement Plan. The only persons eligible to receive awards under the Inducement Plan are individuals who satisfy the standards for inducement grants under Nasdaq Marketplace Rule 5635(c)(4) - that is, generally, a person not previously an employee or director of the Company, or following a bona fide period of non-employment, as an inducement material to the individual's entering into employment with the Company.

On July 31, 2018, the Compensation Committee, with the authorization of the Board of Directors, approved a total of 1,135,020 shares of stock options to be granted to the Company's employees, non-employee directors and consultants under the Amended and Restated 2014 Plan. In addition, on July 31, 2018, the Compensation Committee, with the authorization of the Board of Directors, approved one-time, discretionary cash bonus awards, or the Discretionary Bonuses, to (i) Saundra Pelletier, our President and Chief Executive Officer, in the approximate net amount of $50,000, (ii) Justin J. File, our Chief Financial Officer, in the approximate net amount of $20,000, (iii) Kelly Culwell, M.D., our Chief Medical Officer, in the approximate net amount of $20,000 and (iv) Russ Barrans, our Chief Commercial Officer, in the approximate net amount of $20,000. The Discretionary Bonuses were paid such that each recipient received the above amounts net of applicable tax withholdings.

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

*The terms "we," "us," "our," "Evofem" or the "Company" refer collectively to Evofem Biosciences, Inc. and its wholly-owned subsidiaries, unless otherwise stated. All information presented in this Quarterly Report on Form 10-Q (Quarterly Report) is based on our fiscal year. Unless otherwise stated, references to particular years, quarters, months or periods refer to our fiscal years ending December 31 and the associated quarters, months and periods of those fiscal years.*

*The following discussion and analysis of our financial condition and results of operations should be read in conjunction with our condensed consolidated financial statements and the corresponding notes included elsewhere in this Quarterly Report. For additional context with which to understand our financial condition and results of operations, see the audited consolidated financial statements and accompanying notes contained therein as of December 31, 2017 and 2016 and related notes in our Current Report on Form 8-K/A as filed with the SEC on April 6, 2018 (the 2017 Audited Financial Statements). This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. The actual results may differ materially from those anticipated in these forward-looking statements as a result of certain factors, including, but not limited to, those set forth under Item 1A of our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 as filed with the SEC on May 14, 2018. Unless otherwise defined in this section, the defined terms in this section have the meanings set forth in the 2017 Audited Financial Statements.*

***Overview***

We are a San Diego-based clinical-stage biopharmaceutical company committed to developing and commercializing innovative products to address unmet needs in women's sexual and reproductive health. We are currently developing product candidates for contraception, sexually transmitted infections (STIs), and bacterial vaginosis (BV).

Our lead product candidate, Amphora (L-lactic acid, citric acid, and potassium bitartrate) is currently being developed for three potential indications: as a contraceptive, for the prevention of urogenital *chlamydia trachomatis* infection (chlamydia) in women and for the prevention of urogenital *Neisseria gonorrhoeae* infection (gonorrhea) in women. Amphora is in a confirmatory Phase 3 clinical trial for contraception and in a Phase 2b clinical trial for prevention of chlamydia and gonorrhea.

Our confirmatory, Phase 3 clinical trial for Amphora as a contraceptive is an open-label, single-arm trial in 1,400 women in the United States. We expect to report top-line results from this trial in late 2018 and, if positive, to resubmit the New Drug Application (NDA) to the United States Food and Drug Administration (FDA) in the first half of 2019. Subject to acceptance and timely approval of the NDA by the FDA, we plan to commercialize Amphora in early 2020.

We are also conducting a Phase 2b clinical trial of Amphora for the prevention of certain STIs in women. The primary endpoint of this trial is prevention of chlamydia and the secondary endpoint is prevention of gonorrhea. We envision our STI program as developing label expansion opportunities to further differentiate Amphora from other contraceptive products in the market.

In addition, our pipeline includes a Multi-purpose Prevention Technology (MPT) vaginal gel product candidate for the treatment of recurrent BV. In a recently completed Phase 1 dose-finding trial for this product candidate, the highest dose formulation of our BV product candidate (5-gram) reduced vaginal pH for up to seven days following a single administration.

Since inception, we have devoted substantially all our efforts on developing product candidates leveraging our MPT vaginal gel technology, including conducting preclinical and clinical trials and providing general and administrative support for these operations. We do not have any approved products and have not generated any revenue from product sales. Although our lead product candidate, Amphora, is in a later stage of clinical development, it has not yet been approved for use as a contraceptive or any other targeted indications. Additionally, Amphora and our BV product candidate are still in early stage clinical development for the prevention of certain STIs and for recurrent BV, respectively. We do not currently expect to generate any significant revenues prior to 2020. To finance our current strategic plans, including the conduct of ongoing and future clinical trials, further research and development and anticipated pre-commercialization activities in 2019, we will require significant additional capital. Assuming we have sufficient liquidity, we will incur significantly higher costs in the foreseeable future.

***Merger***

As described in Note 1 - Description of Business and Basis of Presentation, on January 17, 2018 (the Closing Date), Neothetics, now known as Evofem Biosciences, Inc., completed its merger with privately-held Evofem Biosciences Operations, Inc. (Private Evofem), or the Merger; in accordance with the terms of the agreement and plan of merger and reorganization, dated October 17, 2017. Since Private Evofem was determined to be the accounting acquirer in connection with the Merger, it recorded Neothetics' assets and liabilities at fair value as of the Closing Date. To reflect the close of the Merger, we recorded the following items:

- Recorded the issuance of 154,593,455 shares of Private Evofem's common stock upon the cashless exercise of warrants (the Invesco Warrants) issued to funds affiliated with Invesco Ltd., immediately prior to the closing of the Merger and recognized the fair value of the Invesco Warrants upon issuance.

- Reclassified the net proceeds from Private Evofem's issuance of an aggregate of 40,016,067 shares of Private Evofem's convertible preferred stock to common stock and additional paid-in capital, net of par value, upon conversion to Private Evofem common stock immediately prior to the closing of the Merger.
- Recognized the exchange of 270,969,445 shares of Private Evofem common stock and 80 shares of Private Evofem Series D redeemable convertible preferred stock (Series D) outstanding immediately prior to the closing of the Merger for 83,006,735 shares of Neothetics' common stock in exchange for 87% ownership in Neothetics upon closing of the Merger.
- Adjusted for the final change in fair value of Private Evofem's Series D 2X liquidation preference and reclassified the Series D 2X liquidation preference upon conversion of 80 shares of Private Evofem's Series D to additional paid-in capital.
- Recorded the fair value of the warrants issued to funds affiliated with Woodford Investment Management Ltd (WIM) to purchase up to 2,000,000 shares of the Company's common stock (the WIM Warrants) and related capital contribution upon issuance of the WIM Warrants.
- Recorded cash dividends between January 6, 2018 and the Closing Date, paid upon closing of the Merger to WIM.
- Recorded $20.0 million in proceeds from the sale of our common stock in a private placement completed immediately after the closing of the Merger (the Private Placement).
- Adjusted common stock and additional paid-in capital associated with shares issued in the Merger and Private Placement due to the 6:1 reverse stock split.

We historically have funded our operations primarily through sales of our common stock, convertible preferred stock, related-party advances and a note payable from Cosmederm Biosciences, Inc. (a prior related party).

***Public Offering***

On May 24, 2018, the Company completed an underwritten public offering (the Offering), whereby the Company issued 7,436,171 shares of common stock at a public offering price of $4.69 per share and pre-funded warrants to purchase 1,063,829 shares of common stock at a public offering price of $4.68 per warrant and an exercise price of $0.01 per share. Each share of common stock and pre-funded warrant was issued together with a common warrant to purchase one-fifth of a share of the Company's common stock at a public offering price of $0.01 per warrant and an exercise price of $7.50 per share. An aggregate of 8,500,000 common warrants were issued in connection with the Offering and are exercisable to purchase an aggregate of 1,700,000 shares of common stock.

The Company received net proceeds of approximately $37.5 million, net of the underwriting discounts and commissions, but before deducting the estimated offering costs of $1.4 million.

On June 26, 2018, the Company issued an additional 912 common warrants to purchase approximately 182 shares of common stock upon an underwriters' exercise of their overallotment option. The offering price and exercise price were the same as the common warrants issued on May 24, 2018. The net proceeds received from this issuance were immaterial.

**Financial Operations Overview**

***Revenue***

To date, we have not generated any revenue from our lead product candidate, Amphora. We do not expect to generate any revenue from any product candidates we develop unless and until we obtain regulatory approval and commercialize our products or enter into collaborative agreements with third parties. In the future, if Amphora is approved for commercial sale in the United States, we may generate revenue from product sales. Outside of the United States, we expect to out-license commercialization rights to Amphora to global pharmaceutical companies or other qualified potential partners or enter into collaborations for the commercialization and distribution of Amphora, from which we may generate licensing revenue. We do not expect to commercialize Amphora before 2020, if ever.

***Operating Expenses***

*Research and development expenses*

Our research and development expenses primarily consist of costs associated with the preclinical and clinical development of our product candidates. Our research and development expenses include:

- external development expenses incurred under arrangements with third parties, such as fees paid to contract research organizations (CROs) relating to our clinical trials, costs of acquiring and evaluating clinical trial data such as investigator grants, patient screening fees, laboratory work and statistical compilation and analysis, and fees paid to consultants and our scientific advisory board;
- costs to acquire, develop and manufacture clinical trial materials, including fees paid to contract manufacturers;
- payments related to licensed products and technologies;
- costs related to compliance with drug development regulatory requirements;
- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense; and
- facilities, depreciation and other allocated expenses, which include direct and allocated expenses for rent and maintenance of facilities, depreciation of leasehold improvements and equipment, and research and other supplies.

We expense internal and third-party research and development as incurred.

The following table summarizes research and development expenses by product candidate (in thousands):

| | Three Months Ended June 30, | | Six Months Ended June 30, | |
|---|---|---|---|---|
| | 2018 | 2017 | 2018 | 2017 |
| **Allocated third-party development expenses:** | | | | |
| Amphora, as a contraceptive | $ 5,419 | $ 2,783 | $ 14,903 | $ 3,738 |
| Chlamydia/gonorrhea | 2,538 | 232 | 3,072 | 253 |
| Bacterial vaginosis | 220 | 116 | 431 | 321 |
| **Total allocated third-party development expenses** | 8,177 | 3,131 | 18,406 | 4,312 |
| **Unallocated internal research and development expenses:** | | | | |
| Stock-based compensation expenses | 2,365 | 43 | 2,595 | 90 |
| Payroll related expenses | 674 | 689 | 1,532 | 1,277 |
| Other | 617 | 215 | 1,259 | 381 |
| **Total unallocated internal research and development expenses** | 3,656 | 947 | 5,386 | 1,748 |
| **Total research and development expenses** | $ 11,833 | $ 4,078 | $ 23,792 | $ 6,060 |

Completion dates and costs for our clinical development programs can vary significantly for each current and any future product candidates and are difficult to predict. Therefore, we cannot estimate with any degree of certainty the aggregate costs we will incur regarding the development of our product candidates. We anticipate we will make determinations as to which

programs and product candidates to pursue as well as the most appropriate funding allocations for each program and product candidate on an ongoing basis in response to the results of ongoing and future clinical trials, regulatory developments, and our ongoing assessments as to each current or future product candidates' commercial potential. We will need to raise substantial additional capital in the future to complete clinical development for our current and future product candidates. We may enter into collaborative agreements in the future to conduct clinical trials and gain regulatory approval of our product candidates, particularly in markets outside of the United States. We cannot forecast which product candidates may be subject to future collaborations, when such arrangements will be secured, if at all, and to what degree such arrangements would affect our development plans and overall capital requirements.

The costs of clinical trials may vary significantly over the life of a program owing to the following:

- per patient trial costs;
- the number of sites included in the trials;
- the length of time required to enroll eligible patients;
- the number of patients that participate in the trials;
- the number of doses that patients receive;
- potential additional safety monitoring or other studies requested by regulatory agencies;
- the phase of development of the product candidate; and
- the efficacy and safety profile of the product candidate.

*General and administrative expenses*

Our general and administrative expenses consist primarily of salaries, benefits, travel, business development expense, stock-based compensation expense, and other related costs for our employees and consultants in executive, administrative, finance and human resource functions. Other general and administrative expenses include facility-related costs not otherwise included in research and development and professional fees for accounting, auditing, tax and legal fees, and other costs associated with obtaining and maintaining our patent portfolio, and conducting commercial assessments for our product candidates.

We expect our general and administrative expenses to increase as we hire additional personnel to support the growth of our business and as a result of being a publicly-traded company.

***Other Income (Expense)***

Other income (expense) consists primarily of loss on issuance of warrants and the change in fair value of the Series D 2X liquidation preference, which for each share of Series D is equal to two times the issuance price per share of Series D, plus accrued and unpaid dividends, and became payable upon the closing of the Merger.

Loss on issuance of warrants was recognized upon issuance of warrants as they were determined as free-standing equity-classified financial instruments. These warrants were the Invesco Warrants issued in connection with the Merger.

The Series D 2X liquidation preference expired at the Closing Date, at which time the final fair value of the Series D 2X liquidation preference was estimated. The final change in fair value of the Series D 2X liquidation preference of $0.1 million was recognized within change in fair value of the Series D 2X liquidation preference within the condensed consolidated statements of operations. Additionally, the Series D 2X liquidation preference was reclassified to additional paid-in capital within the condensed consolidated balance sheets. Prior to the closing of the Merger, the Series D 2X liquidation preference was revalued at each reporting date and changes in fair value were recognized as increases in or decreases to other income (expense).

***Results of Operations***

***Three Months Ended June 30, 2018 Compared to Three Months Ended June 30, 2017 (in thousands):***

*Research and development expenses*

| | Three Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| Research and development | $ 11,833 | $ 4,078 | $ 7,755 | 190% |

The overall increase in research and development expenses was primarily due to a $5.3 million increase in clinical trial costs related to our confirmatory Phase 3 clinical trial for Amphora for the prevention of pregnancy and our Phase 2b clinical trial for prevention of chlamydia, both of which commenced enrollment in the second half of 2017, and a $2.3 million increase stock-based compensation associated with the Contingent Options granted in March 2018.

*General and administrative expenses*

| | Three Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| General and administrative | $ 11,409 | $ 2,280 | $ 9,129 | 400% |

The overall increase in general and administrative expenses was primarily due to a $8.7 million increase in personnel costs mainly attributable to a $0.5 million increase in salaries and bonus expense from increased headcount and a $8.1 million increase in stock-based compensation associated with the Contingent Options granted in March 2018 as well as options granted to employees and non-employee directors during the second quarter of 2018. In addition, there was a $0.3 million increase in professional fees related to audit and legal fees associated with requirements as a public company. These increases were partially offset by a $0.2 million decrease in public relations and market research related expenses.

*Change in fair value of Series D 2X liquidation preference*

| | Three Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| Change in fair value of Series D 2X liquidation preference | $ — | $ (250) | $ 250 | (100)% |

As described in Note 3- Merger Transactions, the Company converted all 80 shares issued and outstanding Series D into Neothetics' common stock in January 2018 and recognized a change in fair value of the Series D 2X liquidation preference upon a final valuation during the three months ended March 31, 2018. Therefore, there was no such change in fair value for the three months ended June 30, 2018.

***Six Months Ended June 30, 2018 Compared to Six Months Ended June 30, 2017 (in thousands):***

*Research and development expenses*

| | Six Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| Research and development | $ 23,792 | $ 6,060 | $ 17,732 | 293% |

The overall increase in research and development expenses was primarily due to a $14.4 million increase in clinical trial costs related to our confirmatory Phase 3 clinical trial for Amphora for the prevention of pregnancy and our Phase 2b clinical trial for prevention of chlamydia and gonorrhea, both of which commenced enrollment in the second half of 2017, a $2.3 million increase in stock-based compensation associated with the Contingent Options granted in March 2018, a $0.2 million increase in stock-based compensation associated with a modification to a Neothetics employee's outstanding options, and a $0.4 million increase in costs incurred for outside services associated with clinical trial activities.

*General and administrative expenses*

| | Six Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| General and administrative | $ 20,436 | $ 5,211 | $ 15,225 | 292% |

The overall increase in general and administrative expenses was primarily due to a $9.5 million increase in personnel costs, including a $1.0 million increase in salaries and bonus expense from increased headcount and a $8.4 million increase in stock-based compensation related to Contingent Options granted in March 2018 as well as stock options granted to employees and non-employee directors during the second quarter of 2018 ($8.1 million), a modification to Neothetics employees' outstanding options ($0.2 million) and the acceleration of vesting for outstanding options granted to Private Evofem's non-employees directors ($0.1 million). In addition, there was a $4.9 million increase in professional services and personnel costs mainly attributable to the one-time costs associated with the Merger, a $0.5 million increase in costs incurred for various outside services associated with requirements as a public company and a $0.3 million increase in business insurance. These increases were partially offset by a $0.5 million decrease in public relations and market research related expenses.

*Loss on issuance of warrants*

| | Six Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| Loss on issuance of warrants | $ (47,920) | $ — | $ (47,920) | 100% |

As described in Note 10- Stockholders' Equity (Deficit), the Company issued the Invesco Warrants immediately prior to the Closing Date in connection with the Merger, with the Company recognizing the fair value of these warrants as a loss on issuance during the six months ended June 30, 2018. No such activity occurred during the six months ended June 30, 2017.

*Change in fair value of Series D 2X liquidation preference*

| | Six Months Ended June 30, | | 2018 vs. 2017 | |
|---|---|---|---|---|
| | 2018 | 2017 | $ Change | % Change |
| Change in fair value of Series D 2X liquidation preference | $ (130) | $ (600) | $ 470 | (78)% |

As described in Note 5- Fair Value of Financial Instruments, in connection with the Merger the Company recognized a change in fair value of the Series D 2X liquidation preference upon a final valuation before conversion of all 80 shares issued and outstanding Series D into Neothetics' common stock. The valuation model utilized considers the probability of achieving certain exit scenarios, the Company's cost of capital, the estimated period the Series D 2X liquidation preference would be outstanding, consideration received for the instrument with the Series D 2X liquidation preference and at what price and changes, if any, in the fair value of the underlying instrument to the Series D 2X liquidation preference. The variance in change in fair value represents changes in assumptions in the valuation model.

***Liquidity and Capital Resources***

***Overview***

We have incurred losses and negative cash flows from operating activities since inception. As fully described in Note 9- Public Offering, the Company received net proceeds of approximately $37.5 million, net of the underwriting discounts and commissions but before deducting the estimated offering costs, from the Offering, which closed on May 24, 2018. As of June 30, 2018, the Company had $22.8 million in cash and cash equivalents, working capital of $3.6 million and an accumulated deficit of $399.7 million.

We anticipate we will continue to incur net losses for the foreseeable future and incur additional costs associated with being a public company. We expect our research and development expenses will increase for the foreseeable future due to our ongoing clinical trials for Amphora for the prevention of pregnancy and for the prevention of chlamydia and gonorrhea. According to management estimates, liquidity resources as of June 30, 2018 are not sufficient to maintain our planned level of operations for the next 12 months. In addition, the uncertainties associated with our ability to (i) obtain additional equity financing on terms that are favorable to us, (ii) enter into collaborative agreements with strategic partners and (iii) succeed in our future operations, raise substantial doubt about our ability to continue as a going concern.

The opinion of our independent registered public accounting firm on our audited financial statements as of and for the years ended December 31, 2017 and 2016 contains an explanatory paragraph regarding substantial doubt about our ability to continue as a going concern. Future reports on our financial statements may include an explanatory paragraph with respect to our ability to continue as a going concern. Our unaudited condensed consolidated financial statements as of June 30, 2018 and for the three and six months ended June 30, 2018 and 2017 appearing in this Quarterly Report do not include any adjustments relating to the recoverability and classification of recorded asset amounts or amounts of liabilities that might be necessary should we be unable to continue our operations.

If we are not able to obtain the required funding in the near term, through equity financings or other means, or are not able to obtain funding on terms favorable to us, it will have a material adverse effect on our operations and strategic development plan for future growth. If we cannot successfully raise additional funding and implement our strategic development plan, we may be forced to make reductions in spending, extend payment terms with suppliers, liquidate assets where possible, and/or suspend or curtail planned programs. Any of these could materially and adversely affect our liquidity, financial condition and business prospects and we would not be able to continue as a going concern. If we are unable to continue as a going concern, we may have to liquidate our assets and may receive less than the value at which those assets are carried on our financial statements. We may obtain additional financing in the future through the issuance of our common stock from other equity or debt financings or through collaborations or partnerships with other companies.

*At the Market Program*

On December 1, 2015, the Company entered into a Controlled Equity Offering Sales Agreement (the Sales Agreement) with Cantor Fitzgerald, as a sales agent pursuant to which the Company may offer and sell from time to time, through Cantor Fitzgerald, shares of our common stock, par value $0.0001 per share, having an aggregate offering price of up to $20.0 million. The minimum share price for any Sales Agreement is selected at the discretion of the Company's board of directors. No shares of common stock were sold pursuant to this Sales Agreement during the three and six months ended June 30, 2018.

***Summary Statement of Cash Flows***

The following table sets forth a summary of the net cash flow activity for each of the periods set forth below (in thousands):

| | Six Months Ended June 30, | | 2018 vs. 2017 |
|---|---|---|---|
| | 2018 | 2017 | % Change |
| Net cash, cash equivalents and restricted cash used in operating activities | $ (37,325) | $ (9,542) | 291 % |
| Net cash, cash equivalents and restricted cash provided by investing activities | 2,150 | 250 | 760 % |
| Net cash, cash equivalents and restricted cash provided by (used in) financing activities | 56,816 | (648) | (8,868)% |
| Net increase (decrease) in cash, cash equivalents and restricted cash | $ 21,641 | $ (9,940) | (318)% |

*Cash Flows from Operating Activities*. Since inception, the primary use of cash, cash equivalents and restricted cash was to fund further development of our lead product candidate, Amphora, as a contraceptive, as well as potential other indications and to support general and administrative operations.

*Cash Flows from Investing Activities*. Net cash, cash equivalents and restricted cash provided by investing activities for the six months ended June 30, 2018 increased by $1.9 million compared to the same period in 2017 primarily due to cash acquired from Neothetics in connection with the Merger as described in Note 1- Description of Business and Basis of Presentation.

*Cash Flows from Financing Activities*. During the six months ended June 30, 2018, the primary source of cash, cash equivalents and restricted cash was the sale of 1,614,289 shares of the Company's common stock for gross proceeds of $20.0 million in a private placement transaction, the sale of 7,436,171 shares of common stock, pre-funded warrants to purchase 1,063,829 shares of common stock and common warrants to purchase 1,700,000 shares of common stock for net proceeds of $37.5 million in connection with the Offering, offset by $0.6 million payments of offering costs, and a $0.2 million payment of Series D dividends upon conversion of Series D into Neothetics' common stock. During the six months ended June 30, 2017, net cash, cash equivalents and restricted cash used was for the payments of deferred offering costs associated with our abandoned IPO.

***Operating and Capital Expenditure Requirements***

Our future capital requirements are difficult to forecast. We expect to incur additional capital expenditures for serialization equipment to be utilized in the manufacturing of Amphora prior to commercialization, but cannot adequately predict the cost of the equipment in the future or other potential capital expenditure requirements, if any.

We expect research and development expenses to increase for the near future as we advance Amphora as a contraceptive and pursue expanded indications for Amphora through additional clinical development programs. In addition, we expect to incur costs as we make improvements to our manufacturing process. The process of conducting preclinical and clinical trials necessary to obtain regulatory approval is costly and time consuming and we may never succeed in achieving regulatory approval for any of our product candidates. The probability of success for each product candidate will be affected by numerous

factors, including preclinical data, clinical trial data, competition, manufacturing capability and commercial viability. We are responsible for all research and development costs for our programs.

We expect general and administrative expenses to increase as we hire additional personnel to support commercialization of our product candidates, if any. We also anticipate increased expenses related to audit, legal, regulatory, and tax-related services associated with maintaining compliance with stock exchange listing and SEC requirements, directors' and officers' liability insurance premiums, and investor relations-related expenses.

When we believe regulatory approval of a product candidate appears likely, we expect to incur significant costs as we establish a sales and marketing infrastructure for distribution, promotion and sales of our products.

**Off-Balance Sheet Arrangements**

As of June 30, 2018 and December 31, 2017, we do not have any off-balance sheet arrangements, as such term is defined under Item 303 of Regulation S-K, that have or are reasonably likely to have a current or future effect on our financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that is material to investors.

**Other Matters**

***Recently Issued Accounting Pronouncements***

For information with respect to recent accounting pronouncements, see Note 2 —Summary of Significant Accounting Policies to our condensed consolidated financial statements appearing in Part I, Item 1 of this report.

***Critical Accounting Policies***

Our consolidated financial statements have been prepared in accordance with generally accepted accounting principles in the United States. The preparation of consolidated financial statements requires us to make estimates, assumptions and judgments that affect the reported amounts of assets and liabilities and the disclosure of contingent liabilities at the date of the consolidated financial statements and the reported amounts of expenses during the applicable periods. Management bases its estimates, assumptions and judgments, on historical experience and on various other factors it believes to be reasonable under the circumstances. Different estimates, assumptions and judgments may change the estimated used in the preparation of our consolidated financial statements, which, in turn, could materially change our results from those reported. Management evaluates its estimates, assumptions and judgments on an ongoing basis. However, if our assumptions change, we may need to revise our estimates, or take other corrective actions, either of which may also have a material adverse effect on our consolidated statements of operations, liquidity and financial condition. We believe the following critical accounting policies involve significant areas where management applies estimates, assumptions and judgments in the preparation of our consolidated financial statements. See Note 2 to our 2017 Audited Financial Statements for our additional accounting policies.

*Clinical Trial Accruals*

As part of the process of preparing our financial statements, we are required to estimate expenses resulting from our obligations under contracts with vendors, CROs and consultants and under clinical site agreements relating to conducting our clinical trials. The financial terms of these contracts vary and may result in payment flows that do not match the periods over which materials or services are provided under such contracts.

Our objective is to reflect the appropriate clinical trial expenses in our consolidated financial statements by recording those expenses in the period in which services are performed and efforts are expended. We account for these expenses according to the progress of the clinical trial as measured by patient progression and the timing of various aspects of the trial. We determine accrual estimates through financial models and discussions with applicable personnel and outside service providers as to the progress of clinical trials. During a clinical trial, we adjust the clinical expense recognition if actual results differ from estimates. We make estimates of accrued expenses as of each balance sheet date based on the facts and circumstances known at that time. Our clinical trial accruals are partially dependent upon accurate reporting by CROs and other third-party vendors. Although we do not expect estimates to differ materially from actual amounts, our understanding of the status and timing of services performed relative to the actual status and timing of services performed may vary and may result in reporting amounts that are too high or too low for any reporting period. For the three and six months ended June 30, 2018 and 2017, there were no material adjustments to our prior period estimates of accrued expenses for clinical trials.

*Determining Fair Value of Stock Options*

The fair value of the shares of our common stock underlying stock-based awards are estimated on each grant date by our board of directors. Prior to completion of the Merger, to determine the fair value of the common stock underlying option grants, the board of directors considered, among other things, valuations of our common stock prepared by an unrelated valuation firm in accordance with the guidance provided by the American Institute of Certified Public Accountants Practice Guide, Valuation of Privately-Held-Company Equity Securities Issued as Compensation. Given the absence of a public trading market for our common stock prior to completion of the Merger, the board of directors exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our common stock, including our stage of development; progress of our R&D efforts; our operating and financial performance, including levels of available capital resources; the rights, preferences and privileges of our convertible preferred stock relative to those of our common stock; sales of our convertible preferred stock; the valuation of publicly traded companies in our industry, equity market conditions affecting comparable public companies and the lack of marketability of our common stock. We obtained valuations on at least an annual basis or when we determined significant value generating or diminishing internal and/or external events have occurred, which would significantly increase or decrease the fair value of the common stock underlying our stock-based awards. Post-Merger, the fair value of our common stock will be equal to the closing price of our stock.

*Series D 2X Liquidation Preference*

Prior to completion of the Merger, we valued our Series D 2X liquidation preference in accordance with Accounting Standards Codification No. 815 —*Derivatives and Hedging*, using a PWERM, which is sensitive to changes in assumptions regarding the timing of additional financings, potential exit scenarios and revisions in our financial forecast. Changes in any one of the assumptions could have had a material impact on the fair value of the Series D 2X liquidation preference. Our management used the most reliably available information at each valuation date in determining the fair value of the Series D 2X liquidation preference. Due to the nature of the assumptions and the sensitive nature of the PWERM, management could not reliably provide sensitivity analysis around the impact of changes in assumptions utilized in the PWERM used to estimate the fair value of our Series D 2X liquidation preference.

*Fair Value of Series D*

Prior to completion of the Merger, we valued our Series D using a PWERM, which is sensitive to changes in assumptions regarding the timing of additional financings, potential exit scenarios and revisions in our financial forecast. Changes in any one of the assumptions could have had a material impact on the estimated fair value of the Series D. Our management used the most reliably available information at each issuance of Series D to determine the fair value of the Series D. Due to the nature of the assumptions and the sensitive nature of the PWERM, management could not reliably provide sensitivity analysis around the impact of changes in assumptions utilized in the PWERM used to estimate the fair value of our Series D.

*Fair Value of Warrants*

The fair value of the WIM and Invesco Warrants issued in connection with the Merger were determined using the BSM option-pricing model based on the applicable assumptions, which include the warrants exercise price, time to expiration, expected volatility of our peer group, risk-free interest rate and expected dividend.

**ITEM 3. Quantitative and Qualitative Disclosures about Market Risk**

Not applicable.

**ITEM 4. Controls and Procedures**

**Evaluation of Disclosure Controls and Procedures**

Our management, with the participation of our principal executive officer and principal financial officer, has evaluated the effectiveness of our disclosure controls and procedures as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended, as of the end of the period covered by this quarterly report on Form 10-Q. Based on such evaluation, our principal executive officer and principal financial officer has concluded that as of such date, our disclosure controls and procedures were effective.

**Changes in Internal Control over Financial Reporting**

There were no changes in our internal control over financial reporting that occurred during our latest fiscal quarter 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 error 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. Due to 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 override 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.

## PART II. OTHER INFORMATION

**Item 1. Legal Proceedings**

From time to time we may be involved in various disputes and litigation matters that arise in the ordinary course of business. We are currently not a party to any material legal proceedings.

**Item 1A. Risk Factors**

The risk factors described in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2018 as filed with the SEC on May 14, 2018 have not materially changed.

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

None.

**Item 3. Defaults Upon Senior Securities**

None.

**Item 4. Mine Safety Disclosures**

Not applicable.

**Item 5. Other Information**

For a discussion regarding the 2018 Inducement Equity Incentive Plan and the Discretionary Bonuses, please see Note 12 "Subsequent Events" of the Unaudited Condensed Consolidated Financial Statements included in Item 1 of Part I within this Quarterly Report.

**Item 6. Exhibits**

The exhibits filed as part of this Quarterly Report on Form 10-Q are set forth on the Exhibit Index.

**EXHIBIT INDEX**

| Exhibit No. | Exhibit Title | Filed with this Form 10-Q | Incorporated by Reference | | |
|---|---|---|---|---|---|
| | | | Form | File No. | Date Filed |
| 4.1 | Form of Common Warrant. | | S-1 | 333-224958 | 5/16/2018 |
| 4.2 | Form of Pre-funded Warrant. | | S-1 | 333-224958 | 5/16/2018 |
| 10.1Δ | Amended and Restated 2014 Equity Incentive Plan. | | 8-K | 001-36754 | 5/8/2018 |
| 10.2Δ | Executive Employment Agreement, dated as of July 2, 2018, by and between Evofem Biosciences, Inc. and Saundra Pelletier. | | 8-K | 001-36754 | 7/3/2018 |
| 10.3Δ | Executive Employment Agreement, dated as of July 2, 2018, by and between Evofem Biosciences, Inc. and Justin J. File. | | 8-K | 001-36754 | 7/3/2018 |
| 10.4Δ | Executive Employment Agreement, dated as of July 2, 2018, by and between Evofem Biosciences, Inc. and Kelly Culwell. | | 8-K | 001-36754 | 7/3/2018 |
| 10.5Δ | Executive Employment Agreement, dated as of July 2, 2018, by and between Evofem Biosciences, Inc. and Russell Barrans. | | 8-K | 001-36754 | 7/3/2018 |
| 10.6Δ | Executive Employment Agreement, dated as of July 2, 2018, by and between Evofem Biosciences, Inc. and Alexander A. Fitzpatrick. | | 8-K | 001-36754 | 7/3/2018 |
| 10.7Δ | 2018 Inducement Equity Incentive Plan. | X | | | |
| 10.8 | Notice of Grant of Stock Option under the 2018 Inducement Equity Incentive Plan. | X | | | |
| 31.1 | Certification of Principal Executive Officer 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. | X | | | |
| 31.2 | Certification of Principal Financial Officer 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. | X | | | |
| *32.1 | Certification of Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. | X | | | |
| †101.INS | XBRL Instance Document | X | | | |
| †101.SCH | XBRL Taxonomy Extension Schema Document | X | | | |
| †101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document | X | | | |
| †101.DEF | XBRL Definition Linkbase Document | X | | | |
| †101.LAB | XBRL Taxonomy Extension Labels Linkbase Document | X | | | |
| †101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document | X | | | |

| | |
|---|---|
| Δ | Management Compensation Plan or arrangement. |
| * | Furnished herewith. This certification is being furnished solely to accompany this report pursuant to 18 U.S.C. 1350, and are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the registrant, whether made before or after the date hereof, regardless of any general incorporation by reference language in such filing. |
| † | The financial information of Evofem Biosciences, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2018 filed on August 2, 2018 formatted in XBRL (Extensible Business Reporting Language): (i) the Condensed Consolidated Balance Sheets, (ii) Parenthetical Data to the Condensed Consolidated Balance Sheets, (iii) the Condensed Consolidated Statements of Operations, (iv) the Condensed Consolidated Statements of Convertible Preferred Stock and Stockholders' Equity (Deficit), (v) the Condensed Consolidated Statements of Cash Flows, and (vi) Notes to Unaudited Condensed Consolidated Financial Statements, is furnished electronically herewith. |

**SIGNATURES**

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

**EVOFEM BIOSCIENCES, INC.**

Date: August 2, 2018

By: /s/ Justin J. File

Justin J. File

Chief Financial Officer
(Principal Financial Officer and Principal Accounting Officer)

**Exhibit 10.7**

# Evofem Biosciences, Inc.
## 2018 Inducement Equity Incentive Plan

1. **ESTABLISHMENT, PURPOSE AND TERM OF PLAN**.

1.1 **Establishment**. The Evofem Biosciences, Inc. 2018 Inducement Equity Incentive Plan (the *"**Plan**"*) was established effective July 24, 2018 (the *"**Effective Date**"*).

1.2 **Purpose**. The purpose of the Plan is to advance the interests of the Participating Company Group and its stockholders by providing an incentive to attract, retain and reward persons performing services for the Participating Company Group and by motivating such persons to contribute to the growth and profitability of the Participating Company Group. The Company intends that the Plan be reserved for persons to whom the Company may issue securities without stockholder approval as an inducement pursuant to Listing Rule 5635(c)(4) of the corporate governance rules of the Nasdaq Stock Market. The Plan seeks to achieve this purpose by providing for Awards in the form of Options, Stock Appreciation Rights, Restricted Stock Awards and Restricted Stock Units.

1.3 **Term of Plan**. The Plan shall continue in effect until its termination by the Committee; provided, however, that all Awards shall be granted, if at all, within ten (10) years from the Effective Date.

2. **DEFINITIONS AND CONSTRUCTION**.

2.1 **Definitions**. Whenever used herein, the following terms shall have their respective meanings set forth below:

(a) *"**Affiliate**"* means (i) a parent entity, other than a Parent Corporation, that directly, or indirectly through one or more intermediary entities, controls the Company or (ii) a subsidiary entity, other than a Subsidiary Corporation, that is controlled by the Company directly or indirectly through one or more intermediary entities. For this purpose, the terms "parent," "subsidiary," "control" and "controlled by" shall have the meanings assigned such terms for the purposes of registration of securities on Form S-8 under the Securities Act.

(b) *"**Award**"* means any Option, Stock Appreciation Right, Restricted Stock Purchase Right, Restricted Stock Bonus, Restricted Stock Unit or Other Stock-Based Award granted under the Plan.

(c) *"**Award Agreement**"* means a written or electronic agreement between the Company and a Participant setting forth the terms, conditions and restrictions applicable to an Award.

(d) *"**Board**"* means the Board of Directors of the Company.

(e) *"**Cashless Exercise**"* means a Cashless Exercise as defined in Section 6.3(b)(i).

(f) *"**Cause**"* means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between a Participant and a Participating Company applicable to an Award, any of the following: (i) the Participant's theft, dishonesty, willful misconduct, breach of fiduciary duty for personal profit, or falsification of any Participating Company documents or records; (ii) the Participant's material failure to abide by a Participating Company's code of conduct or other policies (including, without limitation, policies relating to confidentiality and reasonable workplace conduct); (iii) the Participant's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of a Participating Company (including, without limitation, the Participant's improper use or disclosure of a Participating Company's confidential or proprietary information); (iv) any intentional act by the Participant which has a material detrimental effect on a Participating Company's reputation or business; (v) the Participant's repeated failure to perform any reasonable assigned duties after written notice from a Participating Company of, and a reasonable opportunity to cure, such failure; (vi) any material breach by the Participant of any employment, service, non-disclosure, non-competition, non-solicitation or other similar agreement between the Participant and a Participating Company, which breach is not cured pursuant to the terms of such agreement; or (vii) the Participant's conviction (including any plea of guilty or *nolo contendere*) of any criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or which impairs the Participant's ability to perform his or her duties with a Participating Company.

(g) *"**Change in Control**"* means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between the Participant and a Participating Company applicable to an Award, the occurrence of any one or a combination of the following:

(i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as such term is defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing more than fifty percent (50%) of the total Fair Market Value or total combined voting power of the Company's then-outstanding securities entitled to vote generally in the election of Directors; provided, however, that a Change in Control shall not be deemed to have occurred if such degree of beneficial ownership results from any of the following: (A) an acquisition by any person who on the Effective Date is the beneficial owner of more than fifty percent (50%) of such voting power, (B) any acquisition directly from the Company, including, without limitation, pursuant to or in connection with a public offering of securities, (C) any acquisition by the Company, (D) any acquisition by a trustee or other fiduciary under an employee benefit plan of a Participating Company or (E) any acquisition by an entity owned directly or indirectly by the stockholders of the Company in substantially the same proportions as their ownership of the voting securities of the Company; or

(ii) an Ownership Change Event or series of related Ownership Change Events (collectively, a *"**Transaction**"*) in which the stockholders of the Company immediately before the Transaction do not retain immediately after the Transaction direct or indirect

beneficial ownership of more than fifty percent (50%) of the total combined voting power of the outstanding securities entitled to vote generally in the election of Directors or, in the case of an Ownership Change Event described in Section 2.1(x)(iii), the entity to which the assets of the Company were transferred (the *"**Transferee**"*), as the case may be; or

(iii) a date specified by the Committee following approval by the stockholders of a plan of complete liquidation or dissolution of the Company;

provided, however, that a Change in Control shall be deemed not to include a transaction described in subsections (i) or (ii) of this Section 2.1(g) in which a majority of the members of the board of directors of the continuing, surviving or successor entity, or parent thereof, immediately after such transaction is comprised of Incumbent Directors.

For purposes of the preceding sentence, indirect beneficial ownership shall include, without limitation, an interest resulting from ownership of the voting securities of one or more corporations or other business entities which own the Company or the Transferee, as the case may be, either directly or through one or more subsidiary corporations or other business entities. The Committee shall determine whether multiple events described in subsections (i), (ii) and (iii) of this Section 2.1(g) are related and to be treated in the aggregate as a single Change in Control, and its determination shall be final, binding and conclusive.

(h) *"**Code**"* means the Internal Revenue Code of 1986, as amended, and any applicable regulations and administrative guidelines promulgated thereunder.

(i) *"**Committee**"* means the Compensation Committee and such other committee or subcommittee of the Board, if any, duly appointed to administer the Plan and having such powers in each instance as shall be specified by the Board.

(j) *"**Company**"* means Evofem Biosciences, Inc., a Delaware corporation, and any successor corporation thereto.

(k) *"**Director**"* means a member of the Board.

(l) *"**Disability**"* means, unless such term or an equivalent term is otherwise defined by the applicable Award Agreement or other written agreement between the Participant and a Participating Company applicable to an Award, the permanent and total disability of the Participant, within the meaning of Section 22(e)(3) of the Code.

(m) *"**Dividend Equivalent Right**"* means the right of a Participant, granted at the discretion of the Committee or as otherwise provided by the Plan, to receive a credit for the account of such Participant in an amount equal to the cash dividends paid on one share of Stock for each share of Stock represented by an Award held by such Participant.

(n) *"**Employee**"* means any person treated as an employee (including an Officer) in the records of a Participating Company. The Company shall determine in good faith and in the exercise of its discretion whether an individual has become or has ceased to be an Employee

and the effective date of such individual's employment or termination of employment, as the case may be. For purposes of an individual's rights, if any, under the terms of the Plan as of the time of the Company's determination of whether or not the individual is an Employee, all such determinations by the Company shall be final, binding and conclusive as to such rights, if any, notwithstanding that the Company or any court of law or governmental agency subsequently makes a contrary determination as to such individual's status as an Employee.

(o) *"**Exchange Act**"* means the Securities Exchange Act of 1934, as amended.

(p) *"**Fair Market Value**"* means, as of any date, the value of a share of Stock or other property as determined by the Committee, in its discretion, or by the Company, in its discretion, if such determination is expressly allocated to the Company herein, subject to the following:

(i) Except as otherwise determined by the Committee, if, on such date, the Stock is listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be the closing price of a share of Stock as quoted on the national or regional securities exchange or quotation system constituting the primary market for the Stock, as reported in *The Wall Street Journal* or such other source as the Company deems reliable. If the relevant date does not fall on a day on which the Stock has traded on such securities exchange or quotation system, the date on which the Fair Market Value shall be established shall be the last day on which the Stock was so traded or quoted prior to the relevant date, or such other appropriate day as shall be determined by the Committee, in its discretion.

(ii) Notwithstanding the foregoing, the Committee may, in its discretion, determine the Fair Market Value of a share of Stock on the basis of the opening, closing, or average of the high and low sale prices of a share of Stock on such date or the preceding trading day, the actual sale price of a share of Stock received by a Participant, any other reasonable basis using actual transactions in the Stock as reported on a national or regional securities exchange or quotation system, or on any other basis consistent with the requirements of Section 409A (including, but not limited to, the determination of Fair Market Value based on the average selling price of the Stock during a specified period that is within thirty (30) days before or thirty (30) days after such date, provided that, with respect to the grant of an Option or SAR, the commitment to grant such Award based on such valuation method must be irrevocable before the beginning of the specified period). The Committee may vary its method of determination of the Fair Market Value as provided in this Section for different purposes under the Plan to the extent consistent with the requirements of Section 409A.

(iii) If, on such date, the Stock is not listed or quoted on a national or regional securities exchange or quotation system, the Fair Market Value of a share of Stock shall be as determined by the Committee in good faith without regard to any restriction other than a restriction which, by its terms, will never lapse, and in a manner consistent with the requirements of Section 409A.

(q) *"**Incumbent Director**"* means a director who either (i) is a Director as of the Effective Date or (ii) is elected, or nominated for election, to the Board with the affirmative votes of at least a majority of the Incumbent Directors at the time of such election or nomination (but excluding a director who was elected or nominated in connection with an actual or threatened proxy contest relating to the election of directors of the Company).

(r) *"**Insider**"* means an Officer, a Director or other person whose transactions in Stock are subject to Section 16 of the Exchange Act.

(s) *"**Net Exercise**"* means a Net Exercise as defined in Section 6.3(b)(iii).

(t) *"**Nonstatutory Stock Option**"* means an Option not intended to be (as set forth in the Award Agreement) or which does not qualify as an incentive stock option within the meaning of Section 422(b) of the Code.

(u) *"**Officer**"* means any person designated by the Board as an officer of the Company.

(v) *"**Option**"* means a Nonstatutory Stock Option granted pursuant to the Plan.

(w) *"**Other Stock-Based Award**"* means an Award denominated in shares of Stock and granted pursuant to Section 10.

(x) *"**Ownership Change Event**"* means the occurrence of any of the following with respect to the Company: (i) the direct or indirect sale or exchange in a single or series of related transactions by the stockholders of the Company of securities of the Company representing more than fifty percent (50%) of the total combined voting power of the Company's then outstanding securities entitled to vote generally in the election of Directors; (ii) a merger or consolidation in which the Company is a party; or (iii) the sale, exchange, or transfer of all or substantially all of the assets of the Company (other than a sale, exchange or transfer to one or more subsidiaries of the Company).

(y) *"**Parent Corporation**"* means any present or future "parent corporation" of the Company, as defined in Section 424(e) of the Code.

(z) *"**Participant**"* means any eligible person who has been granted one or more Awards.

(aa) *"**Participating Company**"* means the Company or any Parent Corporation, Subsidiary Corporation or Affiliate.

(bb) *"**Participating Company Group**"* means, at any point in time, the Company and all other entities collectively which are then Participating Companies.

(cc) *"**Restricted Stock Award**"* means an Award of a Restricted Stock Bonus or a Restricted Stock Purchase Right.

(dd) *"**Restricted Stock Bonus**"* means Stock granted to a Participant pursuant to Section 8.

(ee) *"**Restricted Stock Purchase Right**"* means a right to purchase Stock granted to a Participant pursuant to Section 8.

(ff) *"**Restricted Stock Unit**"* means a right granted to a Participant pursuant to Section 9 to receive on a future date or the occurrence of a future event a share of Stock or cash in lieu thereof, as determined by the Committee.

(gg) *"**Rule 16b-3**"* means Rule 16b-3 under the Exchange Act, as amended from time to time, or any successor rule or regulation.

(hh) *"**SAR**"* or *"**Stock Appreciation Right**"* means a right granted to a Participant pursuant to Section 7 to receive payment, for each share of Stock subject to such Award, of an amount equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the Award over the exercise price thereof.

(ii) *"**Section 409A**"* means Section 409A of the Code.

(jj) *"**Section 409A Deferred Compensation**"* means compensation provided pursuant to an Award that constitutes nonqualified deferred compensation within the meaning of Section 409A.

(kk) *"**Securities Act**"* means the Securities Act of 1933, as amended.

(ll) *"**Service**"* means a Participant's employment or service with the Participating Company Group. Unless otherwise provided by the Committee, a Participant's Service shall not be deemed to have terminated merely because of a change in the capacity in which the Participant renders Service or a change in the Participating Company for which the Participant renders Service, provided that there is no interruption or termination of the Participant's Service. Furthermore, a Participant's Service shall not be deemed to have been interrupted or terminated if the Participant takes any military leave, sick leave, or other bona fide leave of absence approved by the Company. However, unless otherwise provided by the Committee, if any such leave taken by a Participant exceeds ninety (90) days, then on the ninety-first (91st) day following the commencement of such leave the Participant's Service shall be deemed to have terminated, unless the Participant's right to return to Service is guaranteed by statute or contract. Notwithstanding the foregoing, unless otherwise designated by the Company or required by law, an unpaid leave of absence shall not be treated as Service for purposes of determining vesting under the Participant's Award Agreement. A Participant's Service shall be deemed to have terminated either upon an actual termination of Service or upon the business entity for which the Participant performs Service ceasing to be a Participating Company. Subject to the foregoing, the Company, in its discretion, shall

determine whether the Participant's Service has terminated and the effective date of and reason for such termination.

(mm) *"**Stock**"* means the common stock of the Company, as adjusted from time to time in accordance with Section 4.5.

(nn) *"**Stock Tender Exercise**"* means a Stock Tender Exercise as defined in Section 6.3(b)(ii).

(oo) *"**Subsidiary Corporation**"* means any present or future "subsidiary corporation" of the Company, as defined in Section 424(f) of the Code.

(pp) *"**Trading Compliance Policy**"* means the written policy of the Company pertaining to the purchase, sale, transfer or other disposition of the Company's equity securities by Directors, Officers, Employees or other service providers who may possess material, nonpublic information regarding the Company or its securities.

(qq) *"**Vesting Conditions**"* mean those conditions established in accordance with the Plan prior to the satisfaction of which an Award or shares subject to an Award remain subject to forfeiture or a repurchase option in favor of the Company exercisable for the Participant's monetary purchase price, if any, for such shares upon the Participant's termination of Service or failure of a performance condition to be satisfied.

2.2 **Construction**. Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of the Plan. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

3. **ADMINISTRATION**.

3.1 **Administration by the Committee**. The Plan shall be administered by the Committee. All questions of interpretation of the Plan, of any Award Agreement or of any other form of agreement or other document employed by the Company in the administration of the Plan or of any Award shall be determined by the Committee, and such determinations shall be final, binding and conclusive upon all persons having an interest in the Plan or such Award, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or Award Agreement or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest therein. All expenses incurred in connection with the administration of the Plan shall be paid by the Company.

3.2 **Authority of Officers**. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, determination or election that is the responsibility of or that is allocated to the Company herein, provided that the Officer has apparent authority with respect to such matter, right, obligation, determination or election.

3.3 **Administration with Respect to Insiders**. With respect to participation by Insiders in the Plan, at any time that any class of equity security of the Company is registered pursuant to Section 12 of the Exchange Act, the Plan shall be administered in compliance with the requirements, if any, of Rule 16b-3.

3.4 **Powers of the Committee**. In addition to any other powers set forth in the Plan and subject to the provisions of the Plan, the Committee shall have the full and final power and authority, in its discretion:

(a) to determine the persons to whom, and the time or times at which, Awards shall be granted and the number of shares of Stock, units or monetary value to be subject to each Award;

(b) to determine the type of Award granted;

(c) to determine the Fair Market Value of shares of Stock or other property;

(d) to determine the terms, conditions and restrictions applicable to each Award (which need not be identical) and any shares acquired pursuant thereto, including, without limitation, (i) the exercise or purchase price of shares pursuant to any Award, (ii) the method of payment for shares purchased pursuant to any Award, (iii) the method for satisfaction of any tax withholding obligation arising in connection with any Award, including by the withholding or delivery of shares of Stock, (iv) the timing, terms and conditions of the exercisability or vesting of any Award or any shares acquired pursuant thereto, (v) the time of expiration of any Award, (vi) the effect of any Participant's termination of Service on any of the foregoing, and (vii) all other terms, conditions and restrictions applicable to any Award or shares acquired pursuant thereto not inconsistent with the terms of the Plan;

(e) to determine whether an Award will be settled in shares of Stock, cash, other property or in any combination thereof;

(f) to approve one or more forms of Award Agreement;

(g) to amend, modify, extend, cancel or renew any Award or to waive any restrictions or conditions applicable to any Award or any shares acquired pursuant thereto;

(h) to accelerate, continue, extend or defer the exercisability or vesting of any Award or any shares acquired pursuant thereto, including with respect to the period following a Participant's termination of Service;

(i) to prescribe, amend or rescind rules, guidelines and policies relating to the Plan, or to adopt sub-plans or supplements to, or alternative versions of, the Plan, including, without limitation, as the Committee deems necessary or desirable to comply with the laws of, or to accommodate the tax policy, accounting principles or custom of, foreign jurisdictions whose residents may be granted Awards; and

(j) to correct any defect, supply any omission or reconcile any inconsistency in the Plan or any Award Agreement and to make all other determinations and take such other actions with respect to the Plan or any Award as the Committee may deem advisable to the extent not inconsistent with the provisions of the Plan or applicable law.

3.5 **Option or SAR Repricing**. The Committee shall not have the authority, without additional approval by the stockholders of the Company, to approve a program providing for either (a) the cancellation of outstanding Options or SARs having exercise prices per share greater than the then Fair Market Value of a share of Stock ("***Underwater Awards***") and the grant in substitution for Underwater Awards of new Options or SARs covering the same or a different number of shares but having a lower exercise price per share then on the original grant date, or payments in cash, or (b) the substitution of other Awards for Underwater Awards.

3.6 **Indemnification**. In addition to such other rights of indemnification as they may have as members of the Board or the Committee or as officers or employees of the Participating Company Group, to the extent permitted by applicable law, members of the Board or the Committee and any officers or employees of the Participating Company Group to whom authority to act for the Board, the Committee or the Company is delegated shall be indemnified by the Company against all reasonable expenses, including attorneys' fees, actually and necessarily incurred in connection with the defense of any action, suit or proceeding, or in connection with any appeal therein, to which they or any of them may be a party by reason of any action taken or failure to act under or in connection with the Plan, or any right granted hereunder, and against all amounts paid by them in settlement thereof (provided such settlement is approved by independent legal counsel selected by the Company) or paid by them in satisfaction of a judgment in any such action, suit or proceeding, except in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such person is liable for gross negligence, bad faith or intentional misconduct in duties; provided, however, that within sixty (60) days after the institution of such action, suit or proceeding, such person shall offer to the Company, in writing, the opportunity at its own expense to handle and defend the same.

## 4. SHARES SUBJECT TO PLAN.

4.1 **Maximum Number of Shares Issuable**. Subject to adjustment as provided in Sections 4.2 and 4.3, the maximum aggregate number of shares of Stock that may be issued under the Plan shall be equal to 250,000 shares and shall consist of authorized but unissued or reacquired shares of Stock or any combination thereof.

4.2 **Share Counting**. If an outstanding Award for any reason expires or is terminated or canceled without having been exercised or settled in full, or if shares of Stock acquired pursuant to an Award subject to forfeiture or repurchase are forfeited or repurchased by the Company for an amount not greater than the Participant's purchase price, the shares of Stock allocable to the terminated portion of such Award or such forfeited or repurchased shares of Stock shall again be available for issuance under the Plan. Shares of Stock shall not be deemed to have been issued pursuant to the Plan with respect to any portion of an Award that is settled in cash. Shares withheld or reacquired by the Company in satisfaction of tax withholding obligations pursuant to Section 15.2 with respect to Options and SARs shall not be available for issuance under the Plan, however,

shares withheld for such basis on other Awards shall again be available for issuance under the Plan. Upon payment in shares of Stock pursuant to the exercise of a SAR, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which such SAR was exercised. If the exercise price of an Option is paid by means of a Net Exercise, then the number of shares of Stock available for issuance under the Plan shall be reduced by the gross number of shares subject to the Option exercise. If the exercise price of an Option is paid by tender to the Company, or attestation to the ownership, of shares of Stock owned by the Participant, the number of shares available for issuance under the Plan shall be reduced by the gross number of shares for which the Option is exercised.

4.3 **Adjustments for Changes in Capital Structure**. Subject to any required action by the stockholders of the Company and the requirements of Sections 409A and 424 of the Code to the extent applicable, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting regular, periodic cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number and kind of shares subject to the Plan and to any outstanding Awards, the Annual Increase, and in the exercise or purchase price per share under any outstanding Award in order to prevent dilution or enlargement of Participants' rights under the Plan. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." If a majority of the shares which are of the same class as the shares that are subject to outstanding Awards are exchanged for, converted into, or otherwise become (whether or not pursuant to an Ownership Change Event) shares of another corporation (the *"**New Shares**"*), the Committee may unilaterally amend the outstanding Awards to provide that such Awards are for New Shares. In the event of any such amendment, the number of shares subject to, and the exercise or purchase price per share of, the outstanding Awards shall be adjusted in a fair and equitable manner as determined by the Committee, in its discretion. Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the exercise or purchase price per share shall be rounded up to the nearest whole cent, and in no event may the exercise or purchase price, if any, under any Award be decreased to an amount less than the par value, if any, of the stock subject to such Award. The Committee in its discretion, may also make such adjustments in the terms of any Award to reflect, or related to, such changes in the capital structure of the Company or distributions as it deems appropriate. The adjustments determined by the Committee pursuant to this Section shall be final, binding and conclusive.

4.4 **Assumption or Substitution of Awards**. The Committee may, without affecting the number of shares of Stock reserved or available hereunder, authorize the issuance or assumption of benefits under this Plan in connection with any merger, consolidation, acquisition of property or stock, or reorganization upon such terms and conditions as it may deem appropriate, subject to compliance with Section 409A and any other applicable provisions of the Code.

5. **ELIGIBILITY, PARTICIPATION AND AWARD LIMITATIONS**.

5.1 **Persons Eligible for Awards**. Awards may be granted only to Employees of the Company or of an Affiliate at the time a Stock Right is granted and a person to whom the Company may issue securities without stockholder approval as an inducement pursuant to Listing Rule 5635(c)(4) of the corporate governance rules of the Nasdaq Stock Market.

5.2 **Participation in the Plan**. Awards are granted solely at the discretion of the Committee. Eligible persons may be granted more than one Award. However, eligibility in accordance with this Section shall not entitle any person to be granted an Award, or, having been granted an Award, to be granted an additional Award.

6. **STOCK OPTIONS**.

Options shall be evidenced by Award Agreements specifying the number of shares of Stock covered thereby, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

6.1 **Exercise Price**. The exercise price for each Option shall be established in the discretion of the Committee; provided, however, that the exercise price per share shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the Option. Notwithstanding the foregoing, an Option may be granted with an exercise price lower than the minimum exercise price set forth above if such Option is granted pursuant to an assumption or substitution for another option in a manner that would qualify under the provisions of Sections 409A or 424(a) of the Code.

6.2 **Exercisability and Term of Options**. Options shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such Option; provided, however, that (a) no Option shall be exercisable after the expiration of ten (10) years after the effective date of grant of such Option and (b) no Option granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such Option (except in the event of such Employee's death, disability or retirement, upon a Change in Control, or as otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of an Option, each Option shall terminate ten (10) years after the effective date of grant of the Option, unless earlier terminated in accordance with its provisions.

6.3 **Payment of Exercise Price**.

(a) ***Forms of Consideration Authorized***. Except as otherwise provided below, payment of the exercise price for the number of shares of Stock being purchased pursuant to any Option shall be made (i) in cash, by check or in cash equivalent; (ii) if permitted by the Committee and subject to the limitations contained in Section 6.3(b), by means of (1) a Cashless

Exercise, (2) a Stock Tender Exercise or (3) a Net Exercise; (iii) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (iv) by any combination thereof. The Committee may at any time or from time to time grant Options which do not permit all of the foregoing forms of consideration to be used in payment of the exercise price or which otherwise restrict one or more forms of consideration.

(b) ***Limitations on Forms of Consideration***.

(i) **Cashless Exercise**. A *"**Cashless Exercise**"* means the delivery of a properly executed notice of exercise together with irrevocable instructions to a broker providing for the assignment to the Company of the proceeds of a sale or loan with respect to some or all of the shares being acquired upon the exercise of the Option (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System). The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any program or procedures for the exercise of Options by means of a Cashless Exercise, including with respect to one or more Participants specified by the Company notwithstanding that such program or procedures may be available to other Participants.

(ii) **Stock Tender Exercise**. A *"**Stock Tender Exercise**"* means the delivery of a properly executed exercise notice accompanied by a Participant's tender to the Company, or attestation to the ownership, in a form acceptable to the Company of whole shares of Stock owned by the Participant having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised. A Stock Tender Exercise shall not be permitted if it would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's stock. If required by the Company, an Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for a period of time required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

(iii) **Net Exercise**. A *"**Net Exercise**"* means the delivery of a properly executed exercise notice followed by a procedure pursuant to which (1) the Company will reduce the number of shares otherwise issuable to a Participant upon the exercise of an Option by the largest whole number of shares having a Fair Market Value that does not exceed the aggregate exercise price for the shares with respect to which the Option is exercised, and (2) the Participant shall pay to the Company in cash the remaining balance of such aggregate exercise price not satisfied by such reduction in the number of whole shares to be issued.

6.4 **Effect of Termination of Service**.

(a) ***Option Exercisability***. Subject to earlier termination of the Option as otherwise provided by this Plan and unless otherwise provided by the Committee, an Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is

then vested only during the applicable time period determined in accordance with this Section and thereafter shall terminate.

(i) **Disability**. If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the date of expiration of the Option's term as set forth in the Award Agreement evidencing such Option (the *"**Option Expiration Date**"*).

(ii) **Death**. If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months (or such longer or shorter period provided by the Award Agreement) after the Participant's termination of Service.

(iii) **Termination for Cause**. Notwithstanding any other provision of the Plan to the contrary, if the Participant's Service is terminated for Cause or if, following the Participant's termination of Service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of Service or act.

(iv) **Other Termination of Service**. If the Participant's Service terminates for any reason, except Disability, death or Cause, the Option, to the extent unexercised and exercisable for vested shares on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months (or such longer or shorter period provided by the Award Agreement) after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) ***Extension if Exercise Prevented by Law***. Notwithstanding the foregoing, other than termination of Service for Cause, if the exercise of an Option within the applicable time periods set forth in Section 6.4(a) is prevented by the provisions of Section 13 below, the Option shall remain exercisable until the later of (i) thirty (30) days after the date such exercise first would no longer be prevented by such provisions or (ii) the end of the applicable time period under Section 6.4(a), but in any event no later than the Option Expiration Date.

6.5 **Transferability of Options**. During the lifetime of the Participant, an Option shall be exercisable only by the Participant or the Participant's guardian or legal representative. An

Option shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award Agreement evidencing such Option, an Option shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act.

7. **STOCK APPRECIATION RIGHTS**.

Stock Appreciation Rights shall be evidenced by Award Agreements specifying the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

7.1 **Types of SARs Authorized**. SARs may be granted in tandem with all or any portion of a related Option (a *"**Tandem SAR**"*) or may be granted independently of any Option (a *"**Freestanding SAR**"*). A Tandem SAR may only be granted concurrently with the grant of the related Option.

7.2 **Exercise Price**. The exercise price for each SAR shall be established in the discretion of the Committee; provided, however, that (a) the exercise price per share subject to a Tandem SAR shall be the exercise price per share under the related Option and (b) the exercise price per share subject to a Freestanding SAR shall be not less than the Fair Market Value of a share of Stock on the effective date of grant of the SAR. Notwithstanding the foregoing, an SAR may be granted with an exercise price lower than the minimum exercise price set forth above if such SAR is granted pursuant to an assumption or substitution for another stock appreciation right in a manner that would qualify under the provisions of Section 409A of the Code.

7.3 **Exercisability and Term of SARs**.

(a) ***Tandem SARs***. Tandem SARs shall be exercisable only at the time and to the extent, and only to the extent, that the related Option is exercisable, subject to such provisions as the Committee may specify where the Tandem SAR is granted with respect to less than the full number of shares of Stock subject to the related Option. The Committee may, in its discretion, provide in any Award Agreement evidencing a Tandem SAR that such SAR may not be exercised without the advance approval of the Company and, if such approval is not given, then the Option shall nevertheless remain exercisable in accordance with its terms. A Tandem SAR shall terminate and cease to be exercisable no later than the date on which the related Option expires or is terminated or canceled. Upon the exercise of a Tandem SAR with respect to some or all of the shares subject to such SAR, the related Option shall be canceled automatically as to the number of shares with respect to which the Tandem SAR was exercised. Upon the exercise of an Option related to a Tandem SAR as to some or all of the shares subject to such Option, the related Tandem SAR shall be canceled automatically as to the number of shares with respect to which the related Option was exercised.

(b) ***Freestanding SARs***. Freestanding SARs shall be exercisable at such time or times, or upon such event or events, and subject to such terms, conditions, performance criteria and restrictions as shall be determined by the Committee and set forth in the Award Agreement evidencing such SAR; provided, however, that (i) no Freestanding SAR shall be exercisable after the expiration of ten (10) years after the effective date of grant of such SAR and (ii) no Freestanding SAR granted to an Employee who is a non-exempt employee for purposes of the Fair Labor Standards Act of 1938, as amended, shall be first exercisable until at least six (6) months following the date of grant of such SAR (except in the event of such Employee's death, disability or retirement, upon a Change in Control, or as otherwise permitted by the Worker Economic Opportunity Act). Subject to the foregoing, unless otherwise specified by the Committee in the grant of a Freestanding SAR, each Freestanding SAR shall terminate ten (10) years after the effective date of grant of the SAR, unless earlier terminated in accordance with its provisions.

7.4 **Exercise of SARs**. Upon the exercise (or deemed exercise pursuant to Section 7.5) of an SAR, the Participant (or the Participant's legal representative or other person who acquired the right to exercise the SAR by reason of the Participant's death) shall be entitled to receive payment of an amount for each share with respect to which the SAR is exercised equal to the excess, if any, of the Fair Market Value of a share of Stock on the date of exercise of the SAR over the exercise price. Payment of such amount shall be made (a) in the case of a Tandem SAR, solely in shares of Stock in a lump sum upon the date of exercise of the SAR and (b) in the case of a Freestanding SAR, in cash, shares of Stock, or any combination thereof as determined by the Committee, in a lump sum upon the date of exercise of the SAR. When payment is to be made in shares of Stock, the number of shares to be issued shall be determined on the basis of the Fair Market Value of a share of Stock on the date of exercise of the SAR. For purposes of Section 7, an SAR shall be deemed exercised on the date on which the Company receives notice of exercise from the Participant or as otherwise provided in Section 7.5.

7.5 **Deemed Exercise of SARs**. If, on the date on which an SAR would otherwise terminate or expire, the SAR by its terms remains exercisable immediately prior to such termination or expiration and, if so exercised, would result in a payment to the holder of such SAR, then any portion of such SAR which has not previously been exercised shall automatically be deemed to be exercised as of such date with respect to such portion.

7.6 **Effect of Termination of Service**. Subject to earlier termination of the SAR as otherwise provided herein and unless otherwise provided by the Committee, an SAR shall be exercisable after a Participant's termination of Service only to the extent and during the applicable time period determined in accordance with Section 6.4 (treating the SAR as if it were an Option) and thereafter shall terminate.

7.7 **Transferability of SARs**. During the lifetime of the Participant, an SAR shall be exercisable only by the Participant or the Participant's guardian or legal representative. An SAR shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Notwithstanding the foregoing, to the extent permitted by the Committee, in its discretion, and set forth in the Award

Agreement evidencing such Award, a Tandem SAR related to a Nonstatutory Stock Option or a Freestanding SAR shall be assignable or transferable subject to the applicable limitations, if any, described in the General Instructions to Form S-8 under the Securities Act.

8. **RESTRICTED STOCK AWARDS**.

Restricted Stock Awards shall be evidenced by Award Agreements specifying whether the Award is a Restricted Stock Bonus or a Restricted Stock Purchase Right and the number of shares of Stock subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

8.1 **Types of Restricted Stock Awards Authorized** . Restricted Stock Awards may be granted in the form of either a Restricted Stock Bonus or a Restricted Stock Purchase Right. Restricted Stock Awards may be granted upon such conditions as the Committee shall determine

8.2 **Purchase Price**. The purchase price for shares of Stock issuable under each Restricted Stock Purchase Right shall be established by the Committee in its discretion. No monetary payment (other than applicable tax withholding) shall be required as a condition of receiving shares of Stock pursuant to a Restricted Stock Bonus, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock subject to a Restricted Stock Award.

8.3 **Purchase Period**. A Restricted Stock Purchase Right shall be exercisable within a period established by the Committee, which shall in no event exceed thirty (30) days from the effective date of the grant of the Restricted Stock Purchase Right.

8.4 **Payment of Purchase Price**. Except as otherwise provided below, payment of the purchase price for the number of shares of Stock being purchased pursuant to any Restricted Stock Purchase Right shall be made (a) in cash, by check or in cash equivalent, (b) by such other consideration as may be approved by the Committee from time to time to the extent permitted by applicable law, or (c) by any combination thereof.

8.5 **Vesting and Restrictions on Transfer**. Shares issued pursuant to any Restricted Stock Award may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. During any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, such shares may not be sold, exchanged, transferred, pledged, assigned or otherwise disposed of other than pursuant to an Ownership Change Event or as provided in Section 8.8. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to such Restricted Stock Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then satisfaction of the Vesting

Conditions automatically shall be determined on the first to occur of (a) next trading day on which the sale of such shares would not violate the Trading Compliance Policy; and (b) the last day of the calendar year in which the original vesting date occurred. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

8.6 **Voting Rights; Dividends and Distributions**. Except as provided in this Section, Section 8.5 and any Award Agreement, during any period in which shares acquired pursuant to a Restricted Stock Award remain subject to Vesting Conditions, the Participant shall have all of the rights of a stockholder of the Company holding shares of Stock, including the right to vote such shares and to receive all dividends and other distributions paid with respect to such shares; provided, however, that such dividends and distributions shall be subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid, and otherwise shall be paid no later than the end of the calendar year in which such dividends or distributions are paid to stockholders (or, if later, the 15th day of the third month following the date such dividends or distributions are paid to stockholders). In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.5, any and all new, substituted or additional securities or other property to which the Participant is entitled by reason of the Participant's Restricted Stock Award shall be immediately subject to the same Vesting Conditions as the shares subject to the Restricted Stock Award with respect to which such dividends or distributions were paid or adjustments were made.

8.7 **Effect of Termination of Service**. Unless otherwise provided by the Committee in the Award Agreement evidencing a Restricted Stock Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then (a) the Company shall have the option to repurchase for the purchase price paid by the Participant any shares acquired by the Participant pursuant to a Restricted Stock Purchase Right which remain subject to Vesting Conditions as of the date of the Participant's termination of Service and (b) the Participant shall forfeit to the Company any shares acquired by the Participant pursuant to a Restricted Stock Bonus which remain subject to Vesting Conditions as of the date of the Participant's termination of Service. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company.

8.8 **Nontransferability of Restricted Stock Award Rights**. Rights to acquire shares of Stock pursuant to a Restricted Stock Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or the laws of descent and distribution. All rights with respect to a Restricted Stock Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

9. **RESTRICTED STOCK UNITS**.

Restricted Stock Unit Awards shall be evidenced by Award Agreements specifying the number of Restricted Stock Units subject to the Award, in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

9.1 **Grant of Restricted Stock Unit Awards**. Restricted Stock Unit Awards may be granted upon such conditions as the Committee shall determine. **Purchase Price**. No monetary payment (other than applicable tax withholding, if any) shall be required as a condition of receiving a Restricted Stock Unit Award, the consideration for which shall be services actually rendered to a Participating Company or for its benefit. Notwithstanding the foregoing, if required by applicable state corporate law, the Participant shall furnish consideration in the form of cash or past services rendered to a Participating Company or for its benefit having a value not less than the par value of the shares of Stock issued upon settlement of the Restricted Stock Unit Award.

9.2 **Vesting**. Restricted Stock Unit Awards may (but need not) be made subject to Vesting Conditions based upon the satisfaction of such Service requirements, conditions, restrictions or performance criteria, , as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. The Committee, in its discretion, may provide in any Award Agreement evidencing a Restricted Stock Unit Award that, if the satisfaction of Vesting Conditions with respect to any shares subject to the Award would otherwise occur on a day on which the sale of such shares would violate the provisions of the Trading Compliance Policy, then the satisfaction of the Vesting Conditions automatically shall be determined on the first to occur of (a) the next trading day on which the sale of such shares would not violate the Trading Compliance Policy; and (b) the last day of the calendar year in which the original vesting date occurred.

9.3 **Voting Rights, Dividend Equivalent Rights and Distributions**. Participants shall have no voting rights with respect to shares of Stock represented by Restricted Stock Units until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Restricted Stock Unit Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Dividend Equivalent Rights, if any, shall be paid by crediting the Participant with a cash amount or with additional whole Restricted Stock Units as of the date of payment of such cash dividends on Stock, as determined by the Committee. The number of additional Restricted Stock Units (rounded down to the nearest whole number), if any, to be credited shall be determined by dividing (a) the amount of cash dividends paid on the dividend payment date with respect to the number of shares of Stock represented by the Restricted Stock Units previously credited to the Participant by (b) the Fair Market Value per share of Stock on such date. Such cash amount or additional Restricted Stock Units shall be subject to the same terms and conditions and shall be settled in the same manner and at the same time as the Restricted Stock Units originally subject to the Restricted Stock Unit Award. In the event of a dividend or distribution

paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.5, appropriate adjustments shall be made in the Participant's Restricted Stock Unit Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of the Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions as are applicable to the Award.

9.4 **Effect of Termination of Service**. Unless otherwise provided by the Committee and set forth in the Award Agreement evidencing a Restricted Stock Unit Award, if a Participant's Service terminates for any reason, whether voluntary or involuntary (including the Participant's death or disability), then the Participant shall forfeit to the Company any Restricted Stock Units pursuant to the Award which remain subject to Vesting Conditions as of the date of the Participant's termination of Service.

9.5 **Settlement of Restricted Stock Unit Awards**. The Company shall issue to a Participant on the date on which Restricted Stock Units subject to the Participant's Restricted Stock Unit Award vest or on such other date determined by the Committee in compliance with Section 409A, if applicable, and set forth in the Award Agreement one (1) share of Stock (and/or any other new, substituted or additional securities or other property pursuant to an adjustment described in Section 9.4) for each Restricted Stock Unit then becoming vested or otherwise to be settled on such date, subject to the withholding of applicable taxes, if any. If permitted by the Committee, the Participant may elect, consistent with the requirements of Section 409A, to defer receipt of all or any portion of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section, and such deferred issuance date(s) and amount(s) elected by the Participant shall be set forth in the Award Agreement. Notwithstanding the foregoing, the Committee, in its discretion, may provide for settlement of any Restricted Stock Unit Award by payment to the Participant in cash of an amount equal to the Fair Market Value on the payment date of the shares of Stock or other property otherwise issuable to the Participant pursuant to this Section.

9.6 **Nontransferability of Restricted Stock Unit Awards**. The right to receive shares pursuant to a Restricted Stock Unit Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. All rights with respect to a Restricted Stock Unit Award granted to a Participant hereunder shall be exercisable during his or her lifetime only by such Participant or the Participant's guardian or legal representative.

## 10. OTHER STOCK-BASED AWARDS.

Other Stock-Based Awards shall be evidenced by Award Agreements in such form as the Committee shall establish. Such Award Agreements may incorporate all or any of the terms of the Plan by reference and shall comply with and be subject to the following terms and conditions:

10.1 **Grant of Other Stock-Based Awards**. The Committee may grant other types of equity-based or equity-related Awards not otherwise described by the terms of this Plan

(including the grant or offer for sale of unrestricted securities, stock-equivalent units, stock appreciation units, securities or debentures convertible into common stock or other forms determined by the Committee) in such amounts and subject to such terms and conditions as the Committee shall determine. Other Stock-Based Awards may be made available as a form of payment in the settlement of other Awards or as payment in lieu of compensation to which a Participant is otherwise entitled. Other Stock-Based Awards may involve the transfer of actual shares of Stock to Participants[, or payment in cash or otherwise of amounts based on the value of Stock and may include, without limitation, Awards designed to comply with or take advantage of the applicable local laws of jurisdictions other than the United States].

10.2 **Value of Other Stock-Based Awards** . Each Other Stock-Based Award shall be expressed in terms of shares of Stock or units based on such shares of Stock, as determined by the Committee. The Committee may require the satisfaction of such Service requirements, conditions, restrictions or performance criteria, as shall be established by the Committee and set forth in the Award Agreement evidencing such Award. If the Committee exercises its discretion to establish performance criteria, the final value of Other Stock-Based Awards that will be paid to the Participant will depend on the extent to which the performance criteria are met.

10.3 **Payment or Settlement of Cash-Based Awards and Other Stock-Based Awards** . Payment or settlement, if any, with respect to a Cash-Based Award or an Other Stock-Based Award shall be made in accordance with the terms of the Award, in cash, shares of Stock or other securities or any combination thereof as the Committee determines. To the extent applicable, payment or settlement with respect to each Cash-Based Award and Other Stock-Based Award shall be made in compliance with the requirements of Section 409A.

10.4 **Voting Rights; Dividend Equivalent Rights and Distributions**. Participants shall have no voting rights with respect to shares of Stock represented by Other Stock-Based Awards until the date of the issuance of such shares of Stock (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), if any, in settlement of such Award. However, the Committee, in its discretion, may provide in the Award Agreement evidencing any Other Stock-Based Award that the Participant shall be entitled to Dividend Equivalent Rights with respect to the payment of cash dividends on Stock during the period beginning on the date such Award is granted and ending, with respect to each share subject to the Award, on the earlier of the date the Award is settled or the date on which it is terminated. Such Dividend Equivalent Rights, if any, shall be paid in accordance with the provisions set forth in Section 9.4. Dividend Equivalent Rights shall not be granted with respect to Cash-Based Awards. In the event of a dividend or distribution paid in shares of Stock or other property or any other adjustment made upon a change in the capital structure of the Company as described in Section 4.5, appropriate adjustments shall be made in the Participant's Other Stock-Based Award so that it represents the right to receive upon settlement any and all new, substituted or additional securities or other property (other than regular, periodic cash dividends) to which the Participant would be entitled by reason of the shares of Stock issuable upon settlement of such Award, and all such new, substituted or additional securities or other property shall be immediately subject to the same Vesting Conditions and performance criteria, if any, as are applicable to the Award.

10.5 **Effect of Termination of Service**. Each Award Agreement evidencing a Cash-Based Award or Other Stock-Based Award shall set forth the extent to which the Participant shall have the right to retain such Award following termination of the Participant's Service. Such provisions shall be determined in the discretion of the Committee, need not be uniform among all Cash-Based Awards or Other Stock-Based Awards, and may reflect distinctions based on the reasons for termination, subject to the requirements of Section 409A, if applicable.

10.6 **Nontransferability of Cash-Based Awards and Other Stock-Based Awards**. Prior to the payment or settlement of a Cash-Based Award or Other Stock-Based Award, the Award shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. The Committee may impose such additional restrictions on any shares of Stock issued in settlement of Cash-Based Awards and Other Stock-Based Awards as it may deem advisable, including, without limitation, minimum holding period requirements, restrictions under applicable federal securities laws, under the requirements of any stock exchange or market upon which such shares of Stock are then listed and/or traded, or under any state securities laws or foreign law applicable to such shares of Stock.

11. **STANDARD FORMS OF AWARD AGREEMENT**.

11.1 **Award Agreements**. Each Award shall comply with and be subject to the terms and conditions set forth in the appropriate form of Award Agreement approved by the Committee and as amended from time to time. No Award or purported Award shall be a valid and binding obligation of the Company unless evidenced by a fully executed Award Agreement, which execution may be evidenced by electronic means.

11.2 **Authority to Vary Terms**. The Committee shall have the authority from time to time to vary the terms of any standard form of Award Agreement either in connection with the grant or amendment of an individual Award or in connection with the authorization of a new standard form or forms; provided, however, that the terms and conditions of any such new, revised or amended standard form or forms of Award Agreement are not inconsistent with the terms of the Plan.

12. **CHANGE IN CONTROL AND OWNERSHIP CHANGE EVENTS**.

12.1 **Effect of Change in Control and Ownership Change Events on Awards**. Subject to the requirements and limitations of Section 409A, if applicable, the Committee may provide for any one or more of the following:

(a) ***Accelerated Vesting***. In its discretion, the Committee may provide in the grant of any Award or at any other time may take action it deems appropriate to provide for acceleration of the exercisability, settlement, and/or vesting in connection with a Change in Control of each or any outstanding Award or portion thereof and shares acquired pursuant thereto upon such conditions, including termination of the Participant's Service prior to, upon, or following the Change in Control, and to such extent as the Committee determines. Further, unless otherwise provided by the applicable Award Agreement or determined by the Committee and subject to Section 14.4(f),

in the event that the Acquiror (as defined below) elects not to assume, continue or substitute for, in accordance with Section 12.1(b) or to cash out in accordance with Section 12.1(c), any portion of an Award outstanding immediately prior to an Ownership Change Event, the exercisability and/or vesting of such portion of the Award held by a Participant whose Service has not terminated prior to an Ownership Change Event shall be accelerated in full effective as of a date prior to, but conditioned upon, the consummation of an Ownership Change Event as determined by the Committee.

(b) ***Assumption, Continuation or Substitution***. In the event of an Ownership Change Event in which the Company is not the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the *"**Acquiror**"*), the Company may, without the consent of any Participant, assume, substitute for, or continue the Company's rights and obligations under each or any Award or portion thereof outstanding immediately prior to the Ownership Change Event or substitute for each or any such outstanding Award or portion thereof a substantially equivalent award with respect to the Acquiror's stock, as applicable. For purposes of this Section, if so determined by the Committee in its discretion, an Award denominated in shares of Stock shall be deemed assumed if, following the Ownership Change Event, the Award confers the right to receive, subject to the terms and conditions of the Plan and the applicable Award Agreement, for each share of Stock subject to the Award immediately prior to the Ownership Change Event, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Ownership Change Event was entitled (and if holders were offered a choice of consideration, the type of consideration chosen by the holders of a majority of the outstanding shares of Stock); provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise or settlement of the Award, for each share of Stock subject to the Award, to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Ownership Change Event. Any Award or portion thereof which is neither assumed or continued by the Acquiror in connection with the Ownership Change Event nor exercised or settled as of the time of consummation of the Ownership Change Event shall terminate and cease to be outstanding effective as of the time of consummation of the Ownership Change Event in which the Company is no longer surviving.

(c) ***Cash-Out of Outstanding Stock-Based Awards***. The Committee may, in its discretion and without the consent of any Participant, determine that, upon the occurrence of an Ownership Change Event, each or any Award denominated in shares of Stock or portion thereof outstanding immediately prior to the Ownership Change Event and not previously exercised or settled shall be canceled in exchange for a payment with respect to each vested share (and each unvested share, if so determined by the Committee) of Stock subject to such canceled Award in (i) cash, (ii) stock of the Acquiror , or (iii) other property which, in any such case, shall be in an amount having a Fair Market Value equal to the Fair Market Value of the consideration to be paid per share of Stock in the Ownership Change Event, reduced (but not below zero) by the exercise or purchase price per share, if any, under such Award. In the event such determination is made by the Committee, an Award having an exercise or purchase price per share equal to or greater than the Fair Market Value of the consideration to be paid per share of Stock in the Ownership Change

Event in which the Company is no longer surviving may be canceled without payment of consideration to the holder thereof. Payment pursuant to this Section (reduced by applicable withholding taxes, if any) shall be made to Participants in respect of the vested portions of their canceled Awards as soon as practicable following the date of the Ownership Change Event and in respect of the unvested portions of their canceled Awards in accordance with the vesting schedules applicable to such Awards.

12.2 **Federal Excise Tax Under Section 4999 of the Code**.

(a) ***Excess Parachute Payment***. If any acceleration of vesting pursuant to an Award and any other payment or benefit received or to be received by a Participant would subject the Participant to any excise tax pursuant to Section 4999 of the Code due to the characterization of such acceleration of vesting, payment or benefit as an "excess parachute payment" under Section 280G of the Code, then, provided such election would not subject the Participant to taxation under Section 409A, the Participant may elect to reduce the amount of any acceleration of vesting called for under the Award in order to avoid such characterization. Unless the Participant is subject to a written agreement between the Participant and a Participating Company governing the order of reduction, to the extent amounts are to be reduced, then payments shall be accomplished by reducing or eliminating severance payments that the Participant may become entitled to, then reducing or eliminating cash bonus payments, then by the reduction, or elimination of equity awards which are valued in full for purposes of Section 280G of the Code, then the reduction or elimination of accelerated vesting or settlement of other equity awards and finally the reduction or elimination of other compensatory payments. Such reductions shall first come from each category to the extent such amounts constitute Section 409A Deferred Compensation and with respect to any category in which there are multiple awards or grants, in reverse chronological order (i.e. with the most recent grant or award reduced or eliminated first).

(b) ***Determination by Independent Accountants***. To aid the Participant in making any election called for under Section 12.3(a), no later than the date of the occurrence of any event that might reasonably be anticipated to result in an "excess parachute payment" to the Participant as described in Section 12.3(a), the Company shall request a determination in writing by the professional firm engaged by the Company for general tax purposes, or, if the tax firm so engaged by the Company is serving as accountant or auditor for the Acquiror, the Company will appoint a nationally recognized tax firm to make the determinations required by this Section. (the "***Tax Firm***"). As soon as practicable thereafter, the Tax Firm shall determine and report to the Company and the Participant the amount of such acceleration of vesting, payments and benefits which would produce the greatest after-tax benefit to the Participant. For the purposes of such determination, the Tax Firm may rely on reasonable, good faith interpretations concerning the application of Sections 280G and 4999 of the Code. The Company and the Participant shall furnish to the Tax Firm such information and documents as the Tax Firm may reasonably request in order to make its required determination. The Company shall bear all fees and expenses the Tax Firm charge in connection with its services contemplated by this Section.

13. **COMPLIANCE WITH APPLICABLE LAW**.

The grant of Awards and the issuance of shares of Stock or other property pursuant to any Award shall be subject to compliance with all applicable requirements of federal, state and foreign securities law and other applicable laws rules and regulations, approvals by government agencies as may be required or as the Company deems necessary or advisable, and the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, no Award may be exercised or shares issued pursuant to an Award unless (a) a registration statement under the Securities Act shall at the time of such exercise or issuance be in effect with respect to the shares issuable pursuant to the Award, or (b) in the opinion of legal counsel to the Company, the shares issuable pursuant to the Award may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares under the Plan shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to issuance of any Stock, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

## 14. COMPLIANCE WITH SECTION 409A.

14.1 **Awards Subject to Section 409A**. The Company intends that Awards granted pursuant to the Plan shall either be exempt from or comply with Section 409A, and the Plan shall be so construed. The provisions of this Section 14 shall apply to any Award or portion thereof that constitutes or provides for payment of Section 409A Deferred Compensation. Such Awards may include, without limitation:

(a) A Nonstatutory Stock Option or SAR that includes any feature for the deferral of compensation other than the deferral of recognition of income until the later of (i) the exercise or disposition of the Award or (ii) the time the stock acquired pursuant to the exercise of the Award first becomes substantially vested.

(b) Any Restricted Stock Unit Award, Performance Award, Cash-Based Award or Other Stock-Based Award that either (i) provides by its terms for settlement of all or any portion of the Award at a time or upon an event that will or may occur later than the end of the Short-Term Deferral Period (as defined below) or (ii) permits the Participant granted the Award to elect one or more dates or events upon which the Award will be settled after the end of the Short-Term Deferral Period.

Subject to the provisions of Section 409A, the term "***Short-Term Deferral Period***" means the 2½ month period ending on the later of (i) the 15th day of the third month following the end of the Participant's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture or (ii) the 15th day of the third month following the end of the Company's taxable year in which the right to payment under the applicable portion of the Award is no longer subject to a substantial risk of forfeiture. For this purpose, the term "substantial risk of forfeiture" shall have the meaning provided by Section 409A.

14.2 **Deferral and/or Distribution Elections**. Except as otherwise permitted or required by Section 409A, the following rules shall apply to any compensation deferral and/or payment elections (each, an "***Election***") that may be permitted or required by the Committee pursuant to an Award providing Section 409A Deferred Compensation:

(a) Elections must be in writing and specify the amount of the payment in settlement of an Award being deferred, as well as the time and form of payment as permitted by this Plan.

(b) Elections shall be made by the end of the Participant's taxable year prior to the year in which services commence for which an Award may be granted to the Participant.

(c) Elections shall continue in effect until a written revocation or change in Election is received by the Company, except that a written revocation or change in Election must be received by the Company prior to the last day for making the Election determined in accordance with paragraph (b) above or as permitted by Section 14.3.

14.3 **Subsequent Elections**. Except as otherwise permitted or required by Section 409A, any Award providing Section 409A Deferred Compensation which permits a subsequent Election to delay the payment or change the form of payment in settlement of such Award shall comply with the following requirements:

(a) No subsequent Election may take effect until at least twelve (12) months after the date on which the subsequent Election is made.

(b) Each subsequent Election related to a payment in settlement of an Award not described in Section 14.4(a)(ii), 14.4(a)(iii) or 14.4(a)(vi) must result in a delay of the payment for a period of not less than five (5) years from the date on which such payment would otherwise have been made.

(c) No subsequent Election related to a payment pursuant to Section 14.4(a)(iv) shall be made less than twelve (12) months before the date on which such payment would otherwise have been made.

(d) Subsequent Elections shall continue in effect until a written revocation or change in the subsequent Election is received by the Company, except that a written revocation or change in a subsequent Election must be received by the Company prior to the last day for making the subsequent Election determined in accordance the preceding paragraphs of this Section 14.3.

14.4 **Payment of Section 409A Deferred Compensation**.

(a) ***Permissible Payments***. Except as otherwise permitted or required by Section 409A, an Award providing Section 409A Deferred Compensation must provide for payment in settlement of the Award only upon one or more of the following:

(i) The Participant's "separation from service" (as defined by Section 409A);

(ii) The Participant's becoming "disabled" (as defined by Section 409A);

(iii) The Participant's death;

(iv) A time or fixed schedule that is either (i) specified by the Committee upon the grant of an Award and set forth in the Award Agreement evidencing such Award or (ii) specified by the Participant in an Election complying with the requirements of Section 14.2 or 14.3, as applicable;

(v) A change in the ownership or effective control or the Company or in the ownership of a substantial portion of the assets of the Company determined in accordance with Section 409A; or

(vi) The occurrence of an "unforeseeable emergency" (as defined by Section 409A).

(b) ***Installment Payments***. It is the intent of this Plan that any right of a Participant to receive installment payments (within the meaning of Section 409A) shall, for all purposes of Section 409A, be treated as a right to a series of separate payments.

(c) ***Required Delay in Payment to Specified Employee Pursuant to Separation from Service***. Notwithstanding any provision of the Plan or an Award Agreement to the contrary, except as otherwise permitted by Section 409A, no payment pursuant to Section 14.4(a)(i) in settlement of an Award providing for Section 409A Deferred Compensation may be made to a Participant who is a "specified employee" (as defined by Section 409A) as of the date of the Participant's separation from service before the date (the *"**Delayed Payment Date**"*) that is six (6) months after the date of such Participant's separation from service, or, if earlier, the date of the Participant's death. All such amounts that would, but for this paragraph, become payable prior to the Delayed Payment Date shall be accumulated and paid on the Delayed Payment Date.

(d) ***Payment Upon Disability***. All distributions of Section 409A Deferred Compensation payable pursuant to Section 14.4(a)(ii) by reason of a Participant becoming disabled shall be paid in a lump sum or in periodic installments as established by the Participant's Election. If the Participant has made no Election with respect to distributions of Section 409A Deferred Compensation upon becoming disabled, all such distributions shall be paid in a lump sum upon the determination that the Participant has become disabled.

(e) ***Payment Upon Death***. If a Participant dies before complete distribution of amounts payable upon settlement of an Award subject to Section 409A, such undistributed amounts shall be distributed to his or her beneficiary under the distribution method for death established by the Participant's Election upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death. If the Participant has made no Election with

respect to distributions of Section 409A Deferred Compensation upon death, all such distributions shall be paid in a lump sum upon receipt by the Committee of satisfactory notice and confirmation of the Participant's death.

(f) ***Payment Upon Change in Control***. Notwithstanding any provision of the Plan or an Award Agreement to the contrary, to the extent that any amount constituting Section 409A Deferred Compensation would become payable under this Plan by reason of a Change in Control, such amount shall become payable only if the event constituting a Change in Control would also constitute a change in ownership or effective control of the Company or a change in the ownership of a substantial portion of the assets of the Company within the meaning of Section 409A. Any Award which constitutes Section 409A Deferred Compensation and which would vest and otherwise become payable upon a Change in Control as a result of the failure of the Acquiror to assume, continue or substitute for such Award in accordance with Section 12.1(b) shall vest to the extent provided by such Award but shall be converted automatically at the effective time of such Change in Control into a right to receive, in cash on the date or dates such award would have been settled in accordance with its then existing settlement schedule (or as required by Section 14.4(c)), an amount or amounts equal in the aggregate to the intrinsic value of the Award at the time of the Change in Control.

(g) ***Payment Upon Unforeseeable Emergency***. The Committee shall have the authority to provide in the Award Agreement evidencing any Award providing for Section 409A Deferred Compensation for payment pursuant to Section 1 (a) (vi) in settlement of all or a portion of such Award in the event that a Participant establishes, to the satisfaction of the Committee, the occurrence of an unforeseeable emergency. In such event, the amount(s) distributed with respect to such unforeseeable emergency cannot exceed the amounts reasonably necessary to satisfy the emergency need plus amounts necessary to pay taxes reasonably anticipated as a result of such distribution(s), after taking into account the extent to which such emergency need is or may be relieved through reimbursement or compensation by insurance or otherwise, by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship) or by cessation of deferrals under the Award. All distributions with respect to an unforeseeable emergency shall be made in a lump sum upon the Committee's determination that an unforeseeable emergency has occurred. The Committee's decision with respect to whether an unforeseeable emergency has occurred and the manner in which, if at all, the payment in settlement of an Award shall be altered or modified, shall be final, conclusive, and not subject to approval or appeal.

(h) ***Prohibition of Acceleration of Payments***. Notwithstanding any provision of the Plan or an Award Agreement to the contrary, this Plan does not permit the acceleration of the time or schedule of any payment under an Award providing Section 409A Deferred Compensation, except as permitted by Section 409A.

(i) ***No Representation Regarding Section 409A Compliance***. Notwithstanding any other provision of the Plan, the Company makes no representation that Awards shall be exempt from or comply with Section 409A. No Participating Company shall be liable for any tax, penalty or interest imposed on a Participant by Section 409A.

15. **TAX WITHHOLDING**.

15.1 **Tax Withholding in General**. The Company shall have the right to deduct from any and all payments made under the Plan, or to require the Participant, through payroll withholding, cash payment or otherwise, to make adequate provision for, the federal, state, local and foreign taxes (including social insurance), if any, required by law to be withheld by any Participating Company with respect to an Award or the shares acquired pursuant thereto. The Company shall have no obligation to deliver shares of Stock, to release shares of Stock from an escrow established pursuant to an Award Agreement, or to make any payment in cash under the Plan until the Participating Company Group's tax withholding obligations have been satisfied by the Participant.

15.2 **Withholding in or Directed Sale of Shares**. The Company shall have the right, but not the obligation, to deduct from the shares of Stock issuable to a Participant upon the exercise or settlement of an Award, or to accept from the Participant the tender of, a number of whole shares of Stock having a Fair Market Value, as determined by the Company, equal to all or any part of the tax withholding obligations of any Participating Company. The Fair Market Value of any shares of Stock withheld or tendered to satisfy any such tax withholding obligations shall not exceed the amount determined by the applicable minimum statutory withholding rates. The Company may require a Participant to direct a broker, upon the vesting, exercise or settlement of an Award, to sell a portion of the shares subject to the Award determined by the Company in its discretion to be sufficient to cover the tax withholding obligations of any Participating Company and to remit an amount equal to such tax withholding obligations to such Participating Company in cash.

16. **AMENDMENT, SUSPENSION OR TERMINATION OF PLAN**.

The Committee may amend, suspend or terminate the Plan at any time. The Plan will terminate on [ ]. The Plan may be terminated at an earlier date by vote of the Board. No amendment, suspension or termination of the Plan shall affect any then outstanding Award unless expressly provided by the Committee. Other than as set forth in Section 11 of the Plan, the Committee may not without stockholder approval reduce the exercise price of an Option or cancel any outstanding Option in exchange for a replacement option having a lower exercise price, any other Award or for cash. In addition, the Committee not take any other action that is considered a direct or indirect "repricing" for purposes of the stockholder approval rules of the applicable securities exchange or inter-dealer quotation system on which the Stock is listed, including any other action that is treated as a repricing under generally accepted accounting principles. Except as provided by the next sentence, no amendment, suspension or termination of the Plan may have a materially adverse effect on any then outstanding Award without the consent of the Participant. Notwithstanding any other provision of the Plan or any Award Agreement to the contrary, the Committee may, in its sole and absolute discretion and without the consent of any Participant, amend the Plan or any Award Agreement, to take effect retroactively or otherwise, as it deems necessary or advisable for the purpose of conforming the Plan or such Award Agreement to any present or future law, regulation or rule applicable to the Plan, including, but not limited to, Section 409A.

17. **MISCELLANEOUS PROVISIONS**.

17.1 **Repurchase Rights**. Shares issued under the Plan may be subject to one or more repurchase options, or other conditions and restrictions as determined by the Committee in its discretion at the time the Award is granted. The Company shall have the right to assign at any time any repurchase right it may have, whether or not such right is then exercisable, to one or more persons as may be selected by the Company. Upon request by the Company, each Participant shall execute any agreement evidencing such transfer restrictions prior to the receipt of shares of Stock hereunder and shall promptly present to the Company any and all certificates representing shares of Stock acquired hereunder for the placement on such certificates of appropriate legends evidencing any such transfer restrictions.

17.2 **Forfeiture Events**.

(a) The Committee may specify in an Award Agreement that the Participant's rights, payments, and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture, or recoupment upon the occurrence of specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events may include, but shall not be limited to, termination of Service for Cause or any act by a Participant, whether before or after termination of Service, that would constitute Cause for termination of Service, or any accounting restatement due to material noncompliance of the Company with any financial reporting requirements of securities laws as a result of which, and to the extent that, such reduction, cancellation, forfeiture, or recoupment is required by applicable securities laws.

(b) If the Company is required to prepare an accounting restatement due to the material noncompliance of the Company, as a result of misconduct, with any financial reporting requirement under the securities laws, any Participant who knowingly or through gross negligence engaged in the misconduct, or who knowingly or through gross negligence failed to prevent the misconduct, and any Participant who is one of the individuals subject to automatic forfeiture under Section 304 of the Sarbanes-Oxley Act of 2002, shall reimburse the Company for (i) the amount of any payment in settlement of an Award received by such Participant during the twelve- (12-) month period following the first public issuance or filing with the United States Securities and Exchange Commission (whichever first occurred) of the financial document embodying such financial reporting requirement, and (ii) any profits realized by such Participant from the sale of securities of the Company during such twelve- (12-) month period.

17.3 **Provision of Information**. Each Participant shall be given access to information concerning the Company equivalent to that information generally made available to the Company's common stockholders.

17.4 **Rights as Employee**. No person, even though eligible pursuant to Section 5, shall have a right to be selected as a Participant, or, having been so selected, to be selected again as a Participant. Nothing in the Plan or any Award granted under the Plan shall confer on any Participant a right to remain an Employee or interfere with or limit in any way any right of a Participating Company to terminate the Participant's Service at any time. To the extent that an Employee of a Participating Company other than the Company receives an Award under the Plan, that Award shall in no event be understood or interpreted to mean that the Company is the Employee's employer or that the Employee has an employment relationship with the Company.

17.5 **Rights as a Stockholder**. A Participant shall have no rights as a stockholder with respect to any shares covered by an Award until the date of the issuance of such shares (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date such shares are issued, except as provided in Section 4.5 or another provision of the Plan.

17.6 **Delivery of Title to Shares**. Subject to any governing rules or regulations, the Company shall issue or cause to be issued the shares of Stock acquired pursuant to an Award and shall deliver such shares to or for the benefit of the Participant by means of one or more of the following: (a) by delivering to the Participant evidence of book entry shares of Stock credited to the account of the Participant, (b) by depositing such shares of Stock for the benefit of the Participant with any broker with which the Participant has an account relationship, or (c) by delivering such shares of Stock to the Participant in certificate form.

17.7 **Fractional Shares**. The Company shall not be required to issue fractional shares upon the exercise or settlement of any Award.

17.8 **Retirement and Welfare Plans**. Neither Awards made under this Plan nor shares of Stock or cash paid pursuant to such Awards may be included as "compensation" for purposes of computing the benefits payable to any Participant under any Participating Company's retirement plans (both qualified and non-qualified) or welfare benefit plans unless such other plan expressly provides that such compensation shall be taken into account in computing a Participant's benefit.

17.9 **Beneficiary Designation**. Subject to local laws and procedures, each Participant may file with the Company a written designation of a beneficiary who is to receive any benefit under the Plan to which the Participant is entitled in the event of such Participant's death before he or she receives any or all of such benefit. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Company, and will be effective only when filed by the Participant in writing with the Company during the Participant's lifetime. If a married Participant designates a beneficiary other than the Participant's spouse, the effectiveness of such designation may be subject to the consent of the Participant's spouse. If a Participant dies without an effective designation of a beneficiary who is living at the time of the Participant's death, the Company will pay any remaining unpaid benefits to the Participant's legal representative.

17.10 **Severability**. If any one or more of the provisions (or any part thereof) of this Plan shall be held invalid, illegal or unenforceable in any respect, such provision shall be modified so as to make it valid, legal and enforceable, and the validity, legality and enforceability of the remaining provisions (or any part thereof) of the Plan shall not in any way be affected or impaired thereby.

17.11 **No Constraint on Corporate Action**. Nothing in this Plan shall be construed to: (a) limit, impair, or otherwise affect the Company's or another Participating Company's right or power to make adjustments, reclassifications, reorganizations, or changes of its capital or business structure, or to merge or consolidate, or dissolve, liquidate, sell, or transfer all or any part of its

business or assets; or (b) limit the right or power of the Company or another Participating Company to take any action which such entity deems to be necessary or appropriate.

17.12 **Unfunded Obligation**. Participants shall have the status of general unsecured creditors of the Company. Any amounts payable to Participants pursuant to the Plan shall be considered unfunded and unsecured obligations for all purposes, including, without limitation, Title I of the Employee Retirement Income Security Act of 1974. No Participating Company shall be required to segregate any monies from its general funds, or to create any trusts, or establish any special accounts with respect to such obligations. The Company shall retain at all times beneficial ownership of any investments, including trust investments, which the Company may make to fulfill its payment obligations hereunder. Any investments or the creation or maintenance of any trust or any Participant account shall not create or constitute a trust or fiduciary relationship between the Committee or any Participating Company and a Participant, or otherwise create any vested or beneficial interest in any Participant or the Participant's creditors in any assets of any Participating Company. The Participants shall have no claim against any Participating Company for any changes in the value of any assets which may be invested or reinvested by the Company with respect to the Plan.

17.13 **No Representations or Covenants with respect to Tax Qualification**. Although the Company may endeavor to (a) qualify an Award for favorable tax treatment under the laws of the United States or jurisdictions outside of the United States or (b) avoid adverse tax treatment (*e.g.*, under Section 409A of the Code), the Company makes no representation to that effect and expressly disavows any covenant to maintain favorable or avoid unfavorable tax treatment, anything to the contrary in this Plan, including Section 14 hereof, notwithstanding. The Company shall be unconstrained in its corporate activities without regard to the potential negative tax impact on holders of Awards under the Plan.

17.1 **Choice of Law**. Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of the Plan and each Award Agreement shall be governed by the laws of the State of California, without regard to its conflict of law rules.

**Exhibit 10.8**

**EVOFEM BIOSCIENCES, INC.**

**NOTICE OF GRANT OF STOCK OPTION**

Evofem Biosciences, Inc. (the *"**Company**"*) has granted to the Participant an option (the *"**Option**"*) to purchase certain shares of Stock of the Company pursuant to the Company's 2018 Inducement Equity Incentive Plan (the *"**Plan**"*), as follows:

| | | | |
|---|---|---|---|
| **Participant:** | _____ | **Employee ID:** | _____ |
| **Date of Grant:** | _____ | | |
| **Number of Option Shares:** | _____ | | |
| **Exercise Price:** | _____ | | |
| **Initial Vesting Date:** | _____ | | |
| **Option Expiration Date:** | _____ | | |
| **Tax Status of Option:** | Nonstatutory Stock Option | | |
| | Except as provided in the Option Agreement, the number of Option Shares (disregarding any resulting fractional share) as of any date is determined as follows: | | |
| **Vested Shares:** | [Insert Vesting Schedule] | | |

By their signatures below or by electronic acceptance or authentication in a form authorized by the Company, the Company and the Participant agree that the Option is governed by this Grant Notice and by the provisions of the Plan and the Option Agreement, both of which are made a part of this document. The Participant represents that the Participant has read and is familiar with the provisions of the Plan and the Option Agreement, and hereby accepts the Option subject to all of their terms and conditions.

**EVOFEM BIOSCIENCES, INC.**

By: _____
Justin J. File, CFO

Address: 12400 High Bluff Drive, Suite 600
San Diego, CA 92130

**PARTICIPANT**

_____
[NAME]

Address:
_____

**EVOFEM BIOSCIENCES, INC.**

**STOCK OPTION AGREEMENT**

Evofem Biosciences, Inc. (the *"**Company**"*) has granted to the Participant named in the *Notice of Grant of Stock Option* (the *"**Grant Notice**"*) to which this Stock Option Agreement (the *"**Option Agreement**"*) is attached an option (the *"**Option**"*) to purchase certain shares of Stock (such shares, the "***Option Shares***") upon the terms and conditions set forth in the Grant Notice and this Option Agreement. The Option has been granted pursuant to and shall in all respects be subject to the terms and conditions of the Company's 2018 Inducement Equity Incentive Plan (the ***"Plan"***), as amended to the Date of Grant, the provisions of which are incorporated herein by reference. By signing the Grant Notice, the Participant: (a) acknowledges receipt of, and represents that the Participant has read and is familiar with, the Grant Notice, this Option Agreement, the Plan and a prospectus for the Plan prepared in connection with the registration with the Securities and Exchange Commission of shares issuable pursuant to the Option (the *"**Plan Prospectus**"*), (b) accepts the Option subject to all of the terms and conditions of the Grant Notice, this Option Agreement and the Plan and (c) agrees to accept as binding, conclusive and final all decisions or interpretations of the Committee upon any questions arising under the Grant Notice, this Option Agreement or the Plan.

1. **Definitions and Construction.**

1.1 **Definitions.** Unless otherwise defined herein, capitalized terms shall have the meanings assigned to such terms in the Grant Notice or the Plan.

1.2 **Construction.** Captions and titles contained herein are for convenience only and shall not affect the meaning or interpretation of any provision of this Option Agreement. Except when otherwise indicated by the context, the singular shall include the plural and the plural shall include the singular. Use of the term "or" is not intended to be exclusive, unless the context clearly requires otherwise.

2. **Tax Consequences.**

2.1 **Tax Status of Option.**

(a) ***Nonstatutory Stock Option.*** This Option is intended to be a Nonstatutory Stock Option and shall not be treated as an Incentive Stock Option within the meaning of Section 422(b) of the Code.

3. **Administration.**

All questions of interpretation concerning the Grant Notice, this Option Agreement, the Plan or any other form of agreement or other document employed by the Company in the administration of the Plan or the Option shall be determined by the Committee. All such determinations by the Committee shall be final, binding and conclusive upon all persons having an interest in the Option, unless fraudulent or made in bad faith. Any and all actions, decisions and determinations taken or made by the Committee in the exercise of its discretion pursuant to the Plan or the Option or other agreement thereunder (other than determining questions of interpretation pursuant to the preceding sentence) shall be final, binding and conclusive upon all persons having an interest in the Option. Any Officer shall have the authority to act on behalf of the Company with respect to any matter, right, obligation, or election which is the responsibility of or which is allocated to the Company herein, provided the Officer has apparent authority with respect to such matter, right, obligation, or election.

4. **Exercise of the Option.**

4.1 **Right to Exercise.** Except as otherwise provided herein, the Option shall be exercisable on and after the Initial Vesting Date and prior to the termination of the Option (as provided in Section 6) in an amount not to exceed the number of Vested Shares less the number of shares previously acquired upon exercise of the Option. In no event shall the Option be exercisable for more shares than the number of Option Shares, as adjusted pursuant to Section 9.

4.2 **Method of Exercise.** Exercise of the Option shall be by means of electronic or written notice (the *"**Exercise Notice**"*) in a form authorized by the Company. An electronic Exercise Notice must be digitally signed or authenticated by the Participant in such manner as required by the notice and transmitted to the Company or an authorized representative of the Company (including a third-party administrator designated by the Company). In the event that the Participant is not authorized or is unable to provide an electronic Exercise Notice, the Option shall be exercised by a written Exercise Notice addressed to the Company, which shall be signed by the Participant and delivered in person, by certified or registered mail, return receipt requested, by confirmed facsimile transmission, or by such other means as the Company may permit, to the Company, or an authorized representative of the Company (including a third-party administrator designated by the Company). Each Exercise Notice, whether electronic or written, must state the Participant's election to exercise the Option, the number of whole shares of Stock for which the Option is being exercised and such

other representations and agreements as to the Participant's investment intent with respect to such shares as may be required pursuant to the provisions of this Option Agreement. Further, each Exercise Notice must be received by the Company prior to the termination of the Option as set forth in Section 6 and must be accompanied by full payment of the aggregate Exercise Price for the number of shares of Stock being purchased. The Option shall be deemed to be exercised upon receipt by the Company of such electronic or written Exercise Notice and the aggregate Exercise Price.

4.3 **Payment of Exercise Price.**

(a) ***Forms of Consideration Authorized.*** Except as otherwise provided below, payment of the aggregate Exercise Price for the number of shares of Stock for which the Option is being exercised shall be made (i) in cash, by check or in cash equivalent; (ii) if permitted by the Company and subject to the limitations contained in Section 4.3(b), by means of (1) a Cashless Exercise, (2) a Net-Exercise, or (3) a Stock Tender Exercise; or (iii) by any combination of the foregoing.

(b) ***Limitations on Forms of Consideration.*** The Company reserves, at any and all times, the right, in the Company's sole and absolute discretion, to establish, decline to approve or terminate any program or procedure providing for payment of the Exercise Price through any of the means described below, including with respect to the Participant notwithstanding that such program or procedures may be available to others.

(i) **Cashless Exercise.** A *"**Cashless Exercise**"* means the delivery of a properly executed Exercise Notice together with irrevocable instructions to a broker in a form acceptable to the Company providing for the assignment to the Company of the proceeds of a sale or loan with respect to shares of Stock acquired upon the exercise of the Option in an amount not less than the aggregate Exercise Price for such shares (including, without limitation, through an exercise complying with the provisions of Regulation T as promulgated from time to time by the Board of Governors of the Federal Reserve System).

(ii) **Net-Exercise.** A *"**Net-Exercise**"* means the delivery of a properly executed Exercise Notice electing a procedure pursuant to which (1) the Company will reduce the number of shares otherwise issuable to the Participant upon the exercise of the Option by the largest whole number of shares having a Fair Market Value that does not exceed the aggregate Exercise Price for the shares with respect to which the Option is exercised, and (2) the Participant shall pay to the Company in cash the remaining balance of such aggregate Exercise Price not satisfied by such reduction in the number of whole shares to be issued. Following a Net-Exercise, the number of shares remaining subject to the Option, if any, shall be reduced by the sum of (1) the net number of shares issued to the Participant upon such exercise, and (2) the number of shares deducted by the Company for payment of the aggregate Exercise Price.

(iii) **Stock Tender Exercise.** A *"**Stock Tender Exercise**"* means the delivery of a properly executed Exercise Notice accompanied by (1) the Participant's tender to the Company, or attestation to the ownership, in a form acceptable to the Company of whole shares of Stock having a Fair Market Value that does not exceed the aggregate Exercise Price for the shares with respect to which the Option is exercised, and (2) the Participant's payment to the Company in cash of the remaining balance of such aggregate Exercise Price not satisfied by such shares' Fair Market Value. A Stock Tender Exercise shall not be permitted if it would constitute a violation of the provisions of any law, regulation or agreement restricting the redemption of the Company's Stock. If required by the Company, the Option may not be exercised by tender to the Company, or attestation to the ownership, of shares of Stock unless such shares either have been owned by the Participant for a period of time required by the Company (and not used for another option exercise by attestation during such period) or were not acquired, directly or indirectly, from the Company.

4.4 **Tax Withholding.**

(a) ***In General.*** At the time the Option is exercised, in whole or in part, or at any time thereafter as requested by a Participating Company, the Participant hereby authorizes withholding from payroll and any other amounts payable to the Participant, and otherwise agrees to make adequate provision for (including by means of a Cashless Exercise to the extent permitted by the Company), any sums required to satisfy the federal, state, local and foreign tax (including any social insurance) withholding obligations of the Participating Company Group, if any, which arise in connection with the Option. The Company shall have no obligation to deliver shares of Stock until the tax withholding obligations of the Participating Company Group have been satisfied by the Participant.

(b) ***Withholding in Shares.*** The Company shall have the right, but not the obligation, to require the Participant to satisfy all or any portion of a Participating Company's tax withholding obligations upon exercise of the Option by deducting from the shares of Stock otherwise issuable to the Participant upon such exercise a number of whole shares having a fair market value, as determined by the Company as of the date of exercise, not in excess of the amount of such tax withholding obligations determined by the applicable minimum statutory withholding rates.

4.5 **Beneficial Ownership of Shares; Certificate Registration.** The Participant hereby authorizes the Company, in its sole discretion, to deposit for the benefit of the Participant with any broker with which the Participant has an account relationship of which the Company has notice any or all shares acquired by the Participant pursuant to the exercise of the Option. Except as provided by the preceding sentence, a certificate for the shares as to which the Option is exercised shall be registered in the name of the Participant, or, if applicable, in the names of the heirs of the Participant.

4.6 **Restrictions on Grant of the Option and Issuance of Shares.** The grant of the Option and the issuance of shares of Stock upon exercise of the Option shall be subject to compliance with all applicable requirements of federal, state or foreign law with respect to such securities. The Option may not be exercised if the issuance of shares of Stock upon exercise would constitute a violation of any applicable federal, state or foreign securities laws or other law or regulations or the requirements of any stock exchange or market system upon which the Stock may then be listed. In addition, the Option may not be exercised unless (i) a registration statement under the Securities Act shall at the time of exercise of the Option be in effect with respect to the shares issuable upon exercise of the Option or (ii) in the opinion of legal counsel to the Company, the shares issuable upon exercise of the Option may be issued in accordance with the terms of an applicable exemption from the registration requirements of the Securities Act. THE PARTICIPANT IS CAUTIONED THAT THE OPTION MAY NOT BE EXERCISED UNLESS THE FOREGOING CONDITIONS ARE SATISFIED. ACCORDINGLY, THE PARTICIPANT MAY NOT BE ABLE TO EXERCISE THE OPTION WHEN DESIRED EVEN THOUGH THE OPTION IS VESTED. The inability of the Company to obtain from any regulatory body having jurisdiction the authority, if any, deemed by the Company's legal counsel to be necessary to the lawful issuance and sale of any shares subject to the Option shall relieve the Company of any liability in respect of the failure to issue or sell such shares as to which such requisite authority shall not have been obtained. As a condition to the exercise of the Option, the Company may require the Participant to satisfy any qualifications that may be necessary or appropriate, to evidence compliance with any applicable law or regulation and to make any representation or warranty with respect thereto as may be requested by the Company.

4.7 **Fractional Shares.** The Company shall not be required to issue fractional shares upon the exercise of the Option.

5. **Transferability of the Option.**

5.1 Except as provided in Section 5.2, the Option may be exercised during the lifetime of the Participant only by the Participant or the Participant's guardian or legal representative and shall not be subject in any manner to anticipation, alienation, sale, exchange, transfer, assignment, pledge, encumbrance, or garnishment by creditors of the Participant or the Participant's beneficiary, except transfer by will or by the laws of descent and distribution. Following the death of the Participant, the Option, to the extent provided in Section 7, may be exercised by the Participant's legal representative or by any person empowered to do so under the deceased Participant's will or under the then applicable laws of descent and distribution.

5.2 With the consent of the Committee and subject to any conditions or restrictions as the Committee may impose, in its discretion, the Participant may transfer during the Participant's lifetime and prior to the Participant's termination of Service all or any portion of the Option to one or more of such persons (each a *"**Permitted Transferee**"*) as permitted in accordance with the applicable limitations, if any, described in the General Instructions to the Form S-8 Registration Statement under the Securities Act and, if the Grant Notice designates this Option as an Incentive Stock Option, only as permitted by applicable regulations under Section 421 of the Code in a manner that does not disqualify this Option as an Incentive Stock Option. No transfer or purported transfer of the Option shall be effective unless and until: (i) the Participant has delivered to the Company a written request describing the terms and conditions of the proposed transfer in such form as the Company may require, (ii) the Participant has made adequate provision, in the sole determination of the Company, for satisfaction of the tax withholding obligations of the Participating Company Group as provided in Section 4.4 that may arise with respect to the transferred portion of the Option, (iii) the Committee has approved the requested transfer, and (iv) the Participant has delivered to the Company written documentation of the transfer in such form as the Company may require. With respect to the transferred portion of the Option, all of the terms and conditions of the Grant Notice, this Option Agreement and the Plan shall apply to the Permitted Transferee and not to the original Participant, except for (i) the Participant's rendering of Service, (ii) provision for the Participating Company Group's tax withholding obligations, if any, and (iii) any subsequent transfer of the Option by the Permitted Transferee, which shall be prohibited except as provided in Section 5.1, unless otherwise permitted by the Committee, in its sole discretion. The Company shall have no obligation to notify a Permitted Transferee of any expiration, termination, lapse or acceleration of the transferred Option, including, without limitation, an early termination of the transferred Option resulting from the termination of Service of the original Participant. Exercise of the transferred Option by a Permitted Transferee shall be subject to compliance with all applicable federal, state and foreign securities laws; however, the Company shall have no obligation to register with any federal, state or foreign securities commission or agency such transferred Option or any shares that may be issuable upon the exercise of the transferred Option by the Permitted Transferee.

6. **Termination of the Option.**

The Option shall terminate and may no longer be exercised after the first to occur of (a) the close of business on the Option Expiration Date, (b) the close of business on the last date for exercising the Option following termination of the Participant's Service as described in Section 7, or (c) an Ownership Change Event to the extent provided in Section 8.

7. **Effect of Termination of Service.**

7.1 **Option Exercisability.** The Option shall terminate immediately upon the Participant's termination of Service to the extent that it is then unvested and shall be exercisable after the Participant's termination of Service to the extent it is then vested only during the applicable time period as determined below and thereafter shall terminate.

(a) ***Disability.*** If the Participant's Service terminates because of the Disability of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant (or the Participant's guardian or legal representative) at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

(b) ***Death.*** If the Participant's Service terminates because of the death of the Participant, the Option, to the extent unexercised and exercisable for Vested Shares on the date on which the Participant's Service terminated, may be exercised by the Participant's legal representative or other person who acquired the right to exercise the Option by reason of the Participant's death at any time prior to the expiration of twelve (12) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date. The Participant's Service shall be deemed to have terminated on account of death if the Participant dies within three (3) months after the Participant's termination of Service.

(c) ***Termination for Cause.*** Notwithstanding any other provision of this Option Agreement to the contrary, if the Participant's Service is terminated for Cause or if, following the Participant's termination of Service and during any period in which the Option otherwise would remain exercisable, the Participant engages in any act that would constitute Cause, the Option shall terminate in its entirety and cease to be exercisable immediately upon such termination of Service or act.

(d) ***Other Termination of Service.*** If the Participant's Service terminates for any reason, except Disability, death or Cause, the Option, to the extent unexercised and exercisable for Vested Shares by the Participant on the date on which the Participant's Service terminated, may be exercised by the Participant at any time prior to the expiration of three (3) months after the date on which the Participant's Service terminated, but in any event no later than the Option Expiration Date.

7.2 **Extension if Exercise Prevented by Law.** Notwithstanding the foregoing, other than termination of the Participant's Service for Cause, if the exercise of the Option within the applicable time periods set forth in Section 7.1 is prevented by the provisions of Section 4.6, the Option shall remain exercisable until the later of (a) thirty (30) days after the date such exercise first would no longer be prevented by such provisions, or (b) the end of the applicable time period under Section 7.1, but in any event no later than the Option Expiration Date.

8. **Effect of Certain Ownership Change Events.**

In the event of an Ownership Change Event in which the Company is not the surviving, continuing, successor or purchasing corporation or other business entity or parent thereof, except to the extent that the Committee determines to cash out the Option in accordance with Section 13.1(c) of the Plan, the surviving, continuing, successor, or purchasing corporation or other business entity or parent thereof, as the case may be (the *"**Acquiror**"*), may, without the consent of the Participant, assume or continue in full force and effect the Company's rights and obligations under all or any portion of the Option or substitute for all or any portion of the Option a substantially equivalent option for the Acquiror's stock. For purposes of this Section, the Option or any portion thereof shall be deemed assumed if, following the Ownership Change Event, the Option confers the right to receive, subject to the terms and conditions of the Plan and this Option Agreement, for each share of Stock subject to such portion of the Option immediately prior to the Ownership Change Event, the consideration (whether stock, cash, other securities or property or a combination thereof) to which a holder of a share of Stock on the effective date of the Ownership Change Event was entitled; provided, however, that if such consideration is not solely common stock of the Acquiror, the Committee may, with the consent of the Acquiror, provide for the consideration to be received upon the exercise of the Option for each share of Stock to consist solely of common stock of the Acquiror equal in Fair Market Value to the per share consideration received by holders of Stock pursuant to the Ownership Change Event. The Option shall terminate and cease to be outstanding effective as of the time of consummation of the Ownership Change Event to the extent that the Option is not assumed, substituted for, or continued by the Acquiror in connection with the Ownership Change Event nor exercised as of the time of the Ownership Change Event. Notwithstanding the foregoing, to the extent the Option is not assumed, substituted for or cashed out, or otherwise continued by the Acquiror, the Option shall accelerate and become vested and exercisable immediately prior to, but conditioned upon, the consummation of the Ownership Change Event in which the Company is not the surviving, continuing, successor or purchasing corporation or other business entity or parent thereof.

9. **Adjustments for Changes in Capital Structure.**

Subject to any required action by the stockholders of the Company and the requirements of Sections 409A and 424 of the Code to the extent applicable, in the event of any change in the Stock effected without receipt of consideration by the Company, whether through merger, consolidation, reorganization, reincorporation, recapitalization, reclassification, stock dividend, stock split, reverse stock split, split-up, split-off, spin-off, combination of shares, exchange of shares, or similar change in the capital structure of the Company, or in the event of payment of a dividend or distribution to the stockholders of the Company in a form other than Stock (excepting normal cash dividends) that has a material effect on the Fair Market Value of shares of Stock, appropriate and proportionate adjustments shall be made in the number, Exercise Price and kind of shares subject to the Option, in order to prevent dilution or enlargement of the Participant's rights under the Option. For purposes of the foregoing, conversion of any convertible securities of the Company shall not be treated as "effected without receipt of consideration by the Company." Any fractional share resulting from an adjustment pursuant to this Section shall be rounded down to the nearest whole number and the Exercise Price shall be rounded up to the nearest

whole cent. In no event may the Exercise Price be decreased to an amount less than the par value, if any, of the stock subject to the Option. Such adjustments shall be determined by the Committee, and its determination shall be final, binding and conclusive.

10. **Rights as a Stockholder or Employee.**

The Participant shall have no rights as a stockholder with respect to any shares covered by the Option until the date of the issuance of the shares for which the Option has been exercised (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company). No adjustment shall be made for dividends, distributions or other rights for which the record date is prior to the date the shares are issued, except as provided in Section 9. If the Participant is an Employee, the Participant understands and acknowledges that, except as otherwise provided in a separate, written employment agreement between a Participating Company and the Participant, the Participant's employment is "at will" and is for no specified term. Nothing in this Option Agreement shall confer upon the Participant any right to continue in the Service of a Participating Company or interfere in any way with any right of the Participating Company Group to terminate the Participant's Service as an Employee, as the case may be, at any time.

11. **Notice of Sales Upon Disqualifying Disposition.**

The Participant shall dispose of the shares acquired pursuant to the Option only in accordance with the provisions of this Option Agreement. In addition, *if the Grant Notice designates this Option as an Incentive Stock Option,* the Participant shall (a) promptly notify the Chief Financial Officer of the Company if the Participant disposes of any of the shares acquired pursuant to the Option within one (1) year after the date the Participant exercises all or part of the Option or within two (2) years after the Date of Grant and (b) provide the Company with a description of the circumstances of such disposition. Until such time as the Participant disposes of such shares in a manner consistent with the provisions of this Option Agreement, unless otherwise expressly authorized by the Company, the Participant shall hold all shares acquired pursuant to the Option in the Participant's name (and not in the name of any nominee) for the one-year period immediately after the exercise of the Option and the two-year period immediately after Date of Grant. At any time during the one-year or two-year periods set forth above, the Company may place a legend on any certificate representing shares acquired pursuant to the Option requesting the transfer agent for the Company's stock to notify the Company of any such transfers. The obligation of the Participant to notify the Company of any such transfer shall continue notwithstanding that a legend has been placed on the certificate pursuant to the preceding sentence.

12. **Legends.**

The Company may at any time place legends referencing any applicable federal, state or foreign securities law restrictions on all certificates representing shares of stock subject to the provisions of this Option Agreement. The Participant shall, at the request of the Company, promptly present to the Company any and all certificates representing shares acquired pursuant to the Option in the possession of the Participant in order to carry out the provisions of this Section.

13. **Miscellaneous Provisions.**

13.1 **Termination or Amendment.** The Committee may terminate or amend the Plan or the Option at any time; provided, however, that except as provided in Section 8 in connection with an Ownership Change Event, no such termination or amendment may adversely affect the Option or any unexercised portion hereof without the consent of the Participant unless such termination or amendment is necessary to comply with any applicable law or government regulation. No amendment or addition to this Option Agreement shall be effective unless in writing.

13.2 **Further Instruments.** The parties hereto agree to execute such further instruments and to take such further action as may reasonably be necessary to carry out the intent of this Option Agreement.

13.3 **Binding Effect.** This Option Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer set forth herein, be binding upon the Participant and the Participant's heirs, executors, administrators, successors and assigns.

13.4 **Delivery of Documents and Notices.** Any document relating to participation in the Plan or any notice required or permitted hereunder shall be given in writing and shall be deemed effectively given (except to the extent that this Option Agreement provides for effectiveness only upon actual receipt of such notice) upon personal delivery, electronic delivery at the e-mail address, if any, provided for the Participant by a Participating Company, or upon deposit in the U.S. Post Office or foreign postal service, by registered or certified mail, or with a nationally recognized overnight courier service, with postage and fees prepaid, addressed to the other party at the address of such party set forth in the Grant Notice or at such other address as such party may designate in writing from time to time to the other party.

(a) **Description of Electronic Delivery.** The Plan documents, which may include but do not necessarily include: the Plan, the Grant Notice, this Option Agreement, the Plan Prospectus, and any reports of the Company provided generally to the Company's stockholders, may be delivered to the Participant electronically. In addition, if permitted by the Company, the Participant may deliver electronically the Grant Notice and Exercise Notice called for by Section 4.2 to the Company or to such third party involved in

administering the Plan as the Company may designate from time to time. Such means of electronic delivery may include but do not necessarily include the delivery of a link to a Company intranet or the Internet site of a third party involved in administering the Plan, the delivery of the document via e-mail or such other means of electronic delivery specified by the Company.

(b) **Consent to Electronic Delivery.** The Participant acknowledges that the Participant has read Section 13.4(a) of this Option Agreement and consents to the electronic delivery of the Plan documents and, if permitted by the Company, the delivery of the Grant Notice and Exercise Notice, as described in Section 13.4(a). The Participant acknowledges that he or she may receive from the Company a paper copy of any documents delivered electronically at no cost to the Participant by contacting the Company by telephone or in writing. The Participant further acknowledges that the Participant will be provided with a paper copy of any documents if the attempted electronic delivery of such documents fails. Similarly, the Participant understands that the Participant must provide the Company or any designated third party administrator with a paper copy of any documents if the attempted electronic delivery of such documents fails. The Participant may revoke his or her consent to the electronic delivery of documents described in Section 13.4(a) or may change the electronic mail address to which such documents are to be delivered (if Participant has provided an electronic mail address) at any time by notifying the Company of such revoked consent or revised e-mail address by telephone, postal service or electronic mail. Finally, the Participant understands that he or she is not required to consent to electronic delivery of documents described in Section 13.4(a).

13.5 **Integrated Agreement.** The Grant Notice, this Option Agreement and the Plan, together with any employment, service or other agreement between the Participant and a Participating Company referring to the Option, shall constitute the entire understanding and agreement of the Participant and the Participating Company Group with respect to the subject matter contained herein or therein and supersede any prior agreements, understandings, restrictions, representations, or warranties among the Participant and the Participating Company Group with respect to such subject matter. To the extent contemplated herein or therein, the provisions of the Grant Notice, the Option Agreement and the Plan shall survive any exercise of the Option and shall remain in full force and effect.

13.6 **Applicable Law.** Except to the extent governed by applicable federal law, the validity, interpretation, construction and performance of this Option Agreement shall be governed by the laws of the State of California as such laws are applied to agreements between California residents entered into and to be performed entirely within the State of California.

13.7 **Counterparts.** The Grant Notice may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**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, Saundra Pelletier, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evofem Biosciences, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018 By: /s/ Saundra Pelletier

Saundra Pelletier
President and Chief Executive Officer
*(principal executive officer)*

**Exhibit 31.2**

**CERTIFICATION PURSUANT TO**
**RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,**
**AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Justin J. File, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evofem Biosciences, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

    (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

    (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 2, 2018 By: /s/ Justin J. File

Justin J. File

Chief Financial Officer

*(principal financial officer and principal accounting officer)*

**Exhibit 32.1**

**CERTIFICATION PURSUANT TO**
**18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO**
**SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Quarterly Report of Evofem Biosciences, Inc. (the "Company") on Form 10-Q for the period ending June 30, 2018, as filed with the Securities and Exchange Commission on the date hereof (the "Quarterly Report"), each of the undersigned officers of the Company, does hereby certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of such officer's knowledge:

(1) The Quarterly Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Quarterly Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: August 2, 2018 By: /s/ Saundra Pelletier

Saundra Pelletier
President and Chief Executive Officer
*(principal executive officer)*

Date: August 2, 2018 By: /s/ Justin J. File

Justin J. File
Chief Financial Officer
*(principal financial officer and principal accounting officer)*

This certification accompanies the Form 10-Q to which it relates, is not deemed filed with the Securities and Exchange Commission and is not to be incorporated by reference into any filing of Evofem Biosciences, Inc. under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended (whether made before or after the date of the Form 10-Q), irrespective of any general incorporation language contained in such filing.